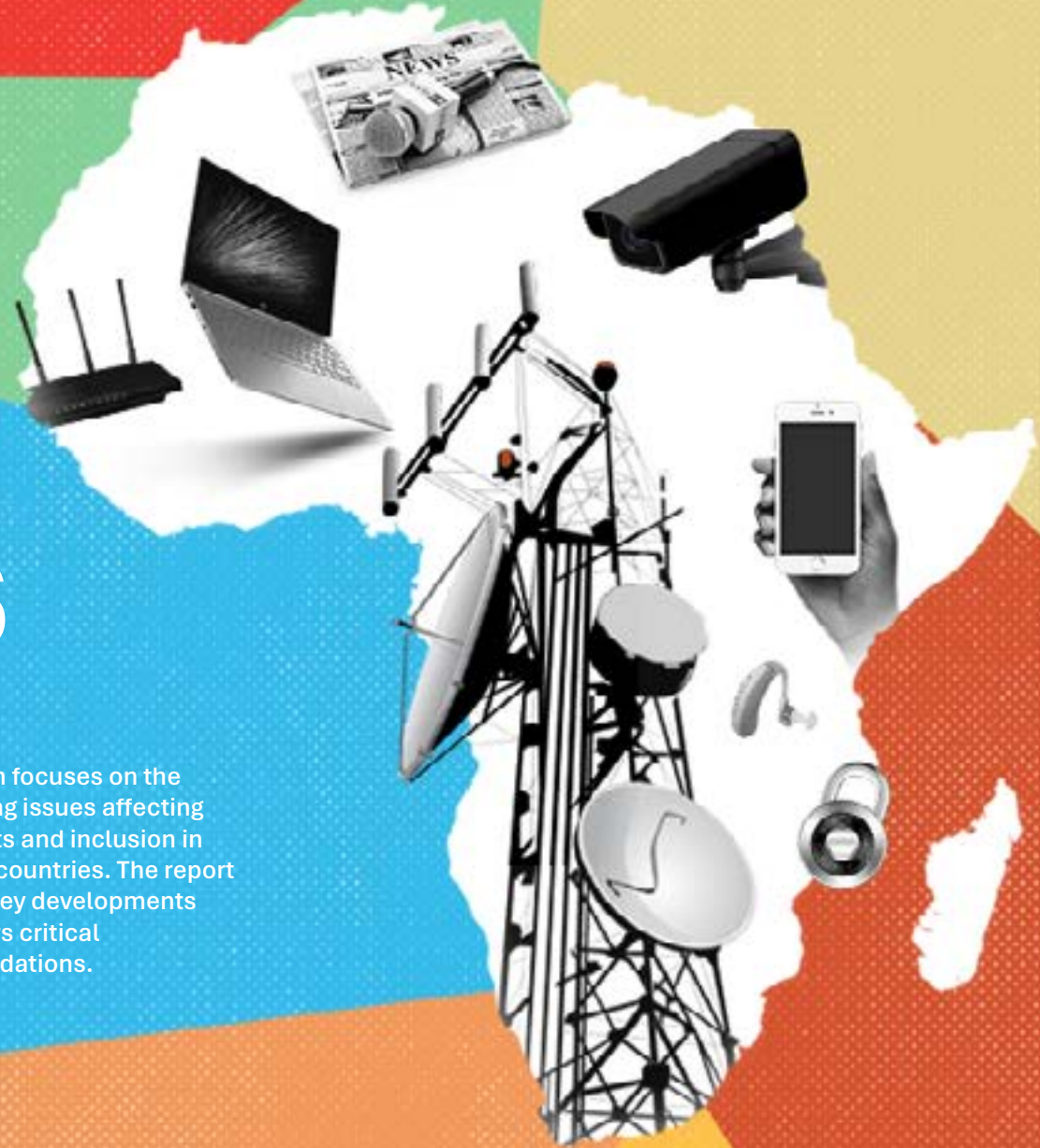


LONDA 2023

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT



Reports from
26
Countries

This edition focuses on the crosscutting issues affecting digital rights and inclusion in 26 African countries. The report identifies key developments and proffers critical recommendations.

LONDA

A Digital Rights and Inclusion in Africa Report 2023

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374 Borno Way, Yaba, Lagos, Nigeria
Email: media@paradigmhq.org
www.paradigmhq.org



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About Londa

Paradigm Initiative (PIN) annually monitors the environment, documents violations, and reports on the state of digital rights and inclusion in Africa. The title ‘Londa’ is of Zulu origin and echoes a call for action to protect and defend the digital rights and inclusion environment in Africa. Londa is an advocacy tool of engagement with different stakeholders in the reported countries, serves as a yardstick for measuring their annual performance and provides critical recommendations to improve the digital space. The report also acknowledges relevant positive developments. The call is for digital rights protection in Africa.

Londa!



Londa Credits

Acknowledgements

The Londa 2023 report features 26 African country reports authored by digital rights experts from across Africa. Paradigm Initiative appreciates their contributions aimed at positive and lasting change. We are truly grateful for the support of the editorial team who invested time and knowledge to ensure key aspects are covered in this publication. Through the unwavering support of funding partners, we celebrate the ability to provide a tool of engagement that diverse stakeholders can leverage to engage duty bearers and understand the digital rights ecosystem in Africa.

Country Report Contributors:

» Maria Malomalo – Angola	» Dércio Tsandzana - Mozambique
» Dr. Qemal Affagnon - Benin	» Nashilongo Gervasius - Namibia
» Oarabile Mudongo – Botswana	» Khadijah El Usman - Nigeria
» Arsene Tungali - Central African Republic	» Louis Gitinywa – Rwanda
» Arsene Tungali – Democratic Republic of Congo	» Astou Diouf - Senegal
» Mohamed Sayed Mohamed Farahat - Egypt	» S’lindile Khumalo and Murray Hunter (ALT Advisory)- South Africa
» Atnaf Berhane - Ethiopia	» Anonymous - Sudan
» Madeline Ileleji - Gambia	» Anonymous - Tanzania
» Zita Ursula Zage - Ghana	» Emmanuel Agbenonwossi, with technical support from Seyram Adiakpo – Togo
» Miriam Wanjiru - Kenya	» Yosr Jouini - Tunisia
» Sibongile Mokapane - Lesotho	» Sandra Aceng - Uganda
» Charles Kajoloweka - Malawi	» Bulanda Nkhowani - Zambia
» Mohamed Sayed Mohamed Farahat - Mauritania	» Bridgette Ndlovu - Zimbabwe

Editorial Team:

- ‘Gbenga Sesan
- Dr. Margaret Nyambura Ndung’u
- Dr. Mawaki Chango
- Hlengiwe Dube
- Nnenna Paul-Ugochukwu
- Thobekile Matimbe

Translators:

- Paper Bag Africa (English/French Translation)

Copy Editors:

- French Copy Editor - Dr. Mouhamed Diop
- English Copy Editor - Sabine Matsheka

Designer:

- Kenneth Oyeniyi

An Overview of 26 African Countries



Background

This consolidated report encapsulates the state of digital rights and digital inclusion in 26 African countries. The significance of this annual report is its succinct yet compact presentation of the key concerns in the countries reported on and guides reformatory actions by stakeholders, led by duty bearers comprising African States and the private sector. The consolidated report is the joint effort of PIN's internal research and editorial team and external researchers who dedicate time to monitor, document and report occurrences that raise or demote the profile of countries regarding their digital rights record. The report, titled Londa, is a call to action for every government and stakeholder to take their place in defending digital rights, which are human rights online and or enjoyed simply using digital technologies. Londa 2022 presented the state of digital rights and inclusion in 24 African countries. This year's edition expanded the assessment coverage and covered 26 countries, including Mauritania, Egypt, and Lesotho, which had not previously been featured. In 2022, the authors bemoaned the slow-paced ratification of the Malabo convention that was not yet adopted and called for African States to show an inclination to promote personal data and a human rights-centred approach to cyber security through ratification of the treaty. Calls were made for African countries to refrain from shutting down the Internet.

Methodology

The research methodology adopted for this report combines qualitative and quantitative research. Each country's report gives an overview of the approach that the researchers took. Some relied heavily on desk research, while others delved into the field to unearth findings of key thematic areas. For instance, some authors requested information from government officials on the Universal Service Fund while those who failed to access the relevant information resorted to assessments of available information online to formulate their responses. Regional and international frameworks were cited or relied upon, such as the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression and Access to Information in Africa. Other sources of information were the Londa 2022 report, government websites, civil society reports, media articles and websites informing the findings and recommendations.

A Summary of 2023

Londa 2023 covers a wide range of thematic issues arising across different countries. Developments in information and communications technologies show countries like Rwanda not just being known as the city of a thousand hills but also, a beacon of development exhibiting 'vision and ambition' in the context of ICT and digital innovation through robust policies and thrust to be a regional innovation hub as presented in the Rwanda Country Report. 2023 saw enactments of laws with Tunisia enacting its cybersecurity Decree-Law 17 of March 11, Tanzania enacting the

Personal Data Protection Act on May 1 2023, Malawi passing its Data Protection Act of 2023 and Nigeria enacting the Data Protection Act 2023 (NDPA) in June 2023. The year was a progressive one for the enactment of data protection laws.

However, information disorders were experienced in 2023, with election periods breeding disinformation in countries like Nigeria during their March 2023 elections. However, online gender-based violence was a cause for concern and was highlighted as a barrier to women's inclusion on online platforms. Among others, vague laws are cited as barriers to freedom of expression and access to information. Countries like Namibia still don't have a cybercrime law, while those with such laws have suffered a backlash from civil society organisations given human rights violating provisions. Article 21 of law No. 007-2016 on Cybercrimes, for instance, criminalises the 'posting of photos, phrases or voice or text messages containing prejudice to Islamic values without definition of what the full breadth of conduct deemed criminal. In Rwanda, concerns were raised about the abuse of legislation by state security to unleash indiscriminate mass digital surveillance. In a positive stride towards eliminating vague laws in Africa, Uganda's Constitutional Court decided on the vagueness of section 25 of the Computer Misuse Act 2 of 2011, declaring it void. The provision prohibited any person from "wilfully and repeatedly [using] electronic communication to disturb or attempt to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication."

Internet disruptions were unwelcome in 2023, featuring in 5 out of the 26 countries. Mauritania and Ethiopia had blatant internet shutdowns, while Mozambique, Zimbabwe, and Senegal had varied degrees of internet throttling and partial shutdowns on mobile internet networks. In Sudan, internet access disruption was caused by power outages. Tunisia had notable progress in expanding internet access and connectivity through initiatives such as 'the national education network, satellite internet trials, and efforts to bridge connectivity gaps' in marginalised communities. The report also features an assessment of the implementation of the Universal Service Fund cited differently across the African countries covered in this report but addressing national access to universal services to bridge the unresolved digital divide with at least notable improvements in Uganda on the implementation of the Universal Service Fund in 2023 compared with performance in 2022. The digital divide still echoes across the reported African countries, yet some countries have faced challenges implementing the USF. Namibia, for instance, has had a setback with the fund remaining dormant as telecommunications operators resist compliance through legal action. Lesotho reports on the USF expenditure are not readily available for public access, with countries like Zimbabwe and Benin failing to disclose the actual amount publicly and regularly since the fund's inception. The failure of governments to disclose the amounts available under USF is a masking veil on transparency, showing gaps in good governance practices.

Regional developments

The long-awaited adoption of the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) came into force on June 8, 2023, following Mauritania's ratification in May 2023. An area for advocacy is calling for African states to accede to the treaty. This will ensure commitment across the continent to foster data protection practices that enhance trade and cross-border data flows guided by regional cooperation on universally adopted and respected data protection principles. The African Commission on Human and Peoples' Rights adopted Resolution 573 on the deployment of mass and unlawful targeted communication surveillance and its impact on human rights in Africa at the 77th Ordinary Session held from 20 October to 09 November 2023. The significance of the resolution is that it calls for States to refrain from deploying targeted mass communications surveillance to attack vulnerable groups such as human rights defenders and the media, promoting freedom of expression and the right to privacy.

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A Summary of Recommendations

The recommendations below are made to different stakeholders capturing the spirit of the country specific recommendations made in this report. While this summary is not exhaustive, each country report covers particular thematic areas with customised recommendations.

Recommendations

The Government



- » Refrain from internet shutdowns in whichever form.
- » Proactively disclose the utilisation of the Universal Service Fund and the amount to track progress easily.
- » Bridge the digital divide by ensuring that underserved communities and persons with disabilities have meaningful access to digital technologies.
- » Raise awareness against information disorders, ensuring that women are protected from online gender-based violence.
- » Repeal laws that violate freedom of expression, access to information and privacy, such as repressive cybercrime laws and vague data protection provisions.
- » Ensure the necessary safeguards in the rolling out of digital ID policies and practices.
- » Refrain from targeted surveillance that affects human rights defenders, media, and civil society actors.
- » Enact national Artificial Intelligence (AI) strategies to address AI and emerging technologies.

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Private Sector



- » Contribute towards broadband access through financial resources, collaborating with governments.
- » Ensure that community standards protect vulnerable groups from the lived realities of information disorders through rights-respecting content moderation practices.
- » Contribute to the Universal Service Fund to bridge the digital divide.
- » Disclose transparency reports concerning the process of responding to government requests for internet shutdowns and unauthorised data access.

Civil Society Organisations



- » Advocate for digital rights and digital inclusion.
 - » Raise awareness of information disorders capacitating communities to fact check.
 - » Raise awareness of digital rights and cybercrimes.
 - » CSOs should monitor, document and report on digital rights, the USF and internet disruptions to hold duty bearers accountable.
-

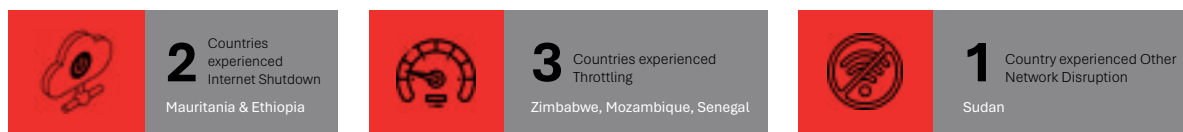
Academia

- » Contributing knowledge through research informing policy reforms.
-

Media

- » Raising awareness of digital rights through their mandate of disseminating information.

Internet Shutdowns



Universal Service Fund

Country	Existing USF as per law	USF Implemented	Being Accessible USF (On websites or upon request by researchers)
Uganda	Yes	Yes	Yes
Namibia	Yes	No	Not
Nigeria	Yes	Yes	Yes
Mozambique	Yes	Yes	No
Sudan	Yes	Partially	Yes
Tanzania	Yes	Yes	Yes
Tunisia	Yes	Partially	No
Zambia	Yes	Yes	Yes
Benin	Yes	Yes	No
Central African Republic	Yes	Partially	Partially
Democratic Republic of Congo	Yes	No	No
Senegal	Yes	Yes	Yes
Togo	Yes	Yes	No
Egypt	Yes	Yes	Yes
Ethiopia	Yes	Yes	No
Ghana	Yes	Yes	Yes
Rwanda	Yes	Yes	Partially
South Africa	Yes	Yes	Partially
Kenya	Yes	Yes	Yes
The Gambia	Yes	No	No
Lesotho	Yes	Yes	No
Angola	Yes	No	No
Zimbabwe	Yes	Yes	No
Botswana	Yes	Yes	Yes
Malawi	Yes	Yes	Yes
Mauritania	Yes	Yes	No

Overview of the USF findings

- » Out of 26 reported countries, 1 did not have a USF provision.
- » Those countries with accessible USF information do not necessarily have up-to-date information on their websites. Some researchers only accessed information through information requests to the government.
- » Countries with partial access may have some information on their websites but are experiencing administrative challenges to administer the USF.
- » 4 out of 26 countries represented are not implementing the USF.
- » 3 out of 26 countries are partially implementing the USF as reported.
- » 11 countries out of 26 don't have readily accessible information on USF, while 3 have granted partial access with unverifiable information.
- » 1 country (Namibia) is yet to record any meaningful USF information, pending its operationalisation.
- » There is a need for African governments to take the USF seriously and ensure it addresses the digital divide.
- » The private sector is enjoined to comply with the government in contributing to the USF to develop the ICT sector.

The background of the page is a complex, abstract pattern of overlapping, irregular geometric shapes in various shades of green. The shapes resemble stylized, jagged polygons and are arranged in a way that creates a sense of depth and movement. The overall effect is a textured, organic-looking pattern.

COUNTRY REPORTS



Angola

EXECUTIVE SUMMARY

Digital rights and freedoms are fundamental human rights. The Angola country report used desk review and key informant interviews to delve into the country's most pressing digital rights issues: Digital inclusion, development in ICT and emerging technologies, data protection and cyber security and the Universal Service and Access Funds. The research found that there has been a noticeable increase from 2022 in internet penetration and mobile technology usage in Angola. At the same time, the accelerated promotion of digital platforms for financial transactions and efforts to increase broadband have contributed significantly to improved infrastructure and digital inclusion. Despite the advancements, the high inflation rates have resulted in prohibitive data costs, poor infrastructure, and ambiguity in managing the Universal Service and Access Funds, which limit the full enjoyment of digital rights. The report recommends regular assessment and monitoring of digital inclusion initiatives to identify areas for improvement, including gathering data on internet penetration, developing digital skills, and assessing the impact of various programs on communities. It is also recommended that digital content and services be made accessible to people with disabilities

and that special attention is given to collaboration between the government, private sector, educational institutions, and the community.

Introduction

Angola is a Portuguese-speaking Southern African country with borders with Namibia, Zambia, Botswana and the Democratic Republic of Congo (DRC) and a population of 33,08 million based on 2022 statistics.¹ Since attaining independence in 1979, Angola has been ruled by the Popular Movement for the Liberation of Angola (MPLA), with Joao Lourenco as the current President.² Oil is the country's major contributor to the Gross Domestic Product (GDP), resulting in a high poverty rate due to fluctuating oil prices.³ The Freedom on the Net 2023 report by Freedom House rated Angola as partly free with a score of 61 over 100, with 0 being the least free and 100 the freest. In 2023, Angola witnessed an increase in internet penetration by 3,1% from 2022.⁴ The country's biggest mobile network, Unitel, expanded its 4G network to more than 80% of the country while 5G services became available in major cities, including Luanda and Benguela.⁵ During the same year, Conecta Angola was launched to link high-population areas to internet access points in every province.⁶ The expansion of internet services was enabled by the commercialisation of Angola's communication satellite, Angosat 2.⁷ The country also received an investment from the China Export and Import Bank to expand its broadband project.⁸ In addition, the government announced the development of a National Cybersecurity Strategy and the establishment of a Cybersecurity School.⁹ Despite the progress made over the year, inflation witnessed due to drops in fuel prices and debt repayment¹⁰ increased data and ICT costs affecting access. In addition, unreliable electricity, particularly in rural communities, affects access to the Internet and mobile technologies.¹¹ The government's continued ownership of Unitel and Angola Telecom¹² creates a monopoly in the sector. Unclear use of the Universal Service and Access Funds has also led to growing questions about the fund's objectives.¹³

1 The World Bank, Angola Overview <https://www.worldbank.org/en/country/angola/overview>

2 As above.

3 As above.

4 Simon Kemp, "Digital 2023: Angola," DataReportal, February 13, 2023, <https://datareportal.com/reports/digital-2023-angola>

5 Myles, , "Angola: Unitel accelerates the extension of the coverage of its telecommunications network," Extensia, December 13, 2023 <https://extensia-ltd.com/2023/12/13/angola-unitel-accelerates-the-extension-of-the-coverage-of-its-telecoms-network/>

6 Jornal de Angola, "Conecta Angola prevê internet para mais de 30 mil cidadãos," January 27, 2024 <https://www.jornaldeangola.ao/ao/noticias/conecta-angola-preve-internet-para-mais-de-30-mil-cidadaos/>

7 Simon Kemp, "Digital 2023 Angola," February 13, 2023 <https://datareportal.com/reports/digital-2023-angola>

8 Angola Press Agency, "Angola: China grants USD249 million loan for Broadband Project in Angola," January 1, 2023 <https://allafrica.com/stories/202301120264.html>

9 Lusa/Verangola, , "Angola is preparing a National Cybersecurity Strategy against Cyber Attacks," May 10, 2023 <https://www.verangola.net/va/en/052023/Telecommunications/35500/Angola-is-preparing-a-National-Cybersecurity-Strategy-against-cyberattacks.htm>

10 The World Bank, Angola Overview <https://www.worldbank.org/en/country/angola/overview>

11 Freedom on the Net (2023)

12 JF Sebastião TV CABO and UNITEL among the companies to be privatized in 2023, 04May 2023 <https://www.menosfios.com/en/tv-cabo-e-unitel-entre-as-empresas-a-privatizar-em-2023/>

13 Jornal de Angola, "Fundo sem visibilidade é pago pelos operadores" 08 October 2010, <https://www.jornaldeangola.ao/ao/noticias/fundo-sem-visibilidade-e-pago-pelos-operadores/>

► Country Analysis

Internet access and digital inclusion

Digital inclusion refers to the efforts and initiatives to provide equal access to digital technologies and resources for all individuals in the country, regardless of their socioeconomic status, geographic location, or other potential barriers. In 2023, Angola made reasonable strides in expanding its digital infrastructure, including developing telecommunications and internet connectivity. 2023 witnessed a substantial increase in internet and mobile use in Angola. A total of 11,78 million internet users were recorded at the start of 2023 with 32,6% penetration, marking a 3,1% increase in internet users from 2022 to 2023.¹⁴ In addition, 3,7 million social media users were recorded, representing 10,2% of the total population and 20,11 million active cellular mobile connections, representing 55,7%.¹⁵ During the period under review, the largest phone company, Unitel, reported an increase in 4G LTE coverage to 126 municipalities, 167 rural communes and 17 other localities, representing 76,8% of Angola's 164 municipalities and 30,8% of the country's 542 communes.¹⁶ Unitel also reported the availability of 5G network in eight municipalities in Luanda, two in Benguela and one in Huambo.¹⁷ In 2023, Unitel opened the North Submarine Cable, which connects Cabinda and Zaire provinces and improves internet connectivity.¹⁸

Promoting digital literacy is essential for ensuring that all individuals can effectively use digital technologies. Educational programs and training initiatives can empower people with the necessary skills to navigate the digital landscape, access information, and use online services. The government of Angola initiated a strategic plan which was under consultation focusing on the development of digital skills, expansion of digital literacy for both students and teachers, equipping primary and secondary schools with computers and the Internet and creating a virtual university.¹⁹

The continued development of digital financial services contributed to financial inclusion. Encouraging mobile banking and digital payment systems can bring financial services to previously underserved populations. The country witnessed the proliferation and expansion of e-services to boost the digital economy. Empresa Interbancária de Serviços and Mastercard developed a co-branded contactless card for cross-border payments, particularly for business people.²⁰ In addition, the United States Government Agency for International Development (USAID) and a phone company, Africell, initiated a project 'Digital Money is Better' meant to expand the use of mobile applications.²¹ Similarly, Angola's National Bank (BNA) and the UNDP jointly convened a workshop to promote digital inclusion in micro-business.²² These partnerships demonstrate the

14 Simon Kemp, "Digital 2023: Angola," DataReportal, February 13, 2023, <https://datareportal.com/reports/digital-2023-angola>

15 As above

16 Myles, , "Angola: Unitel accelerates the extension of the coverage of its telecommunications network," Extensia, December 13, 2023 <https://extensia-ltd.com/2023/12/13/angola-unitel-accelerates-the-extension-of-the-coverage-of-its-telecoms-network/>

17 As above

18 Winston Qiu, "Unitel lands 2 Africa Subsea Cable in Angola," August 3, 2023 <https://www.submarinenetworks.com/en/systems/asia-europe-africa/2africa/unitel-lands-2africa-subsea-cable-in-angola>

19 Angola Press Agency, "Angola Long term strategy foresees greater inclusive digital education," June 8, 2023 <https://allafrica.com/stories/202306090261.html>

20 Vaughan O'Grady, "Digital Transformation Initiatives on the way in Angola," August 8, 2023 <https://developingtelecoms.com/telecom-technology/customer-management/15344-digital-transformation-initiatives-on-the-way-in-angola.html>

21 As above

22 Angola Press Agency, "Angola: Bna, UNDP Promote Digital Inclusion in Micro-Business," June 4, 2023 <https://allafrica.com/stories/202306060068.html>

importance of international development agencies and the private sector in advancing digital technologies in Angola.

Despite considerable progress in digital inclusion, digital technologies, data protection, and cybersecurity gaps still affect people's digital rights in Angola. Between May and June 2023, the Angolan Kwanza depreciated by 40% against the USD owing to lower oil revenues and larger external debt servicing.²³ The economic crisis faced by Angola in 2023 affected the cost of data information and communication technologies, limiting access to the Internet.²⁴ High prices, lack of internet signal and network instability affect internet and mobile technology access.²⁵ Due to the worsening economic situation, the digital divide could widen based on gendered differences, social stratification and geo-location.

Only 73,7% of the urban population and 7,3% of the rural population in Angola have access to electricity.²⁶ In areas facing electricity challenges, constant power outages affect access to the Internet, further widening the digital divide.²⁷ Resultantly, even in cases where free internet points are provided, limited access to electricity affects access to the Internet. In addition to the challenges relating to the cost of living and electricity outages, it is worth noting that the government of Angola remains the biggest player in the telecommunications industry. Despite commitments to privatise the biggest mobile network provider, UNITEL, which is owned by the State Assets and Participations Management Institute (IGAPE) and the state oil company, Sonangol, the company remains in the hands of the government.²⁸ The state's continued control of the mobile provider compromises digital freedoms and affects fair practice in the broader environment.

The delays in registering Starlink, an alternative internet provider, also limits access for the population. Initial predictions were that Starlink would start operating in the 3rd semester of 2023. However, delays in the regulatory approval from the Angolan Institute of Communications (INACOM) affected the operations.²⁹ The service provider is expected to begin operations in the last trimester of 2024.

Developments in ICT and emerging technologies

Developments in Information and Communication Technology and emerging technologies in Angola were underway in 2023, with the government and private sector trying to harness the potential of new and emerging technologies. Investments have been made to expand and improve the telecommunications infrastructure. During the period under review, the Angola online project, an initiative the government promoted, continued establishing hotspots across the country. Angola-online was established in 2014 to increase access to digital technologies and enhance digital literacy, particularly among traditionally marginalised groups.³⁰ Additionally, 2023 saw the launch of 'Conecta Angola' during the International Forum for Information and Communication Technologies in Angola (ANGOTIC), which aims to establish two access points per province to make internet available in higher population density areas.³¹ The project, which is coordinated by the Ministry of Telecommunications, Information Technologies and Social Communication, established eight

23 The World Bank, Angola Overview <https://www.worldbank.org/en/country/angola/overview>

24 Interview with a Key Informant held in December 2023.

25 Freedom on the Net (2023)

26 Freedom on the Net (2023)

27 As above

28 JF Sebastião TV CABO and UNITEL among the companies to be privatized in 2023, 04May 2023

<https://www.menosfios.com/en/tv-cabo-e-unitel-entre-as-empresas-a-privatizar-em-2023/>

29 Ferreira Manuel Starlink só deverá estar disponível em Angola em 2024 6 November 2023

<https://pti.ao/starlink-so-devera-estar-disponivel-em-angola-em-2024/>

30 Biz Community, "Project 'Angola Online' officially launched," September 13, 2014 <https://www.bizcommunity.com/Article/7/16/118808.html>

31 Jornal de Angola, "Conecta Angola prevê internet para mais de 30 mil cidadãos," January 27, 2024 <https://www.jornaldeangola.ao/ao/noticias/conecta-angola-preve-internet-para-mais-de-30-mil-cidadaos/>

internet kits in 2023 in Belo Horizonte (Bie), Canzar (Lunda Norte), Sombo (Lunda Sul), ITEL (Luanda), Jamba Cueio and Dirico (Cuando Cubango) to provide free wireless hotspots.³²

Conecta Angola uses the Angosat 2 satellite.³³ Angosat is a communication satellite launched on October 12, 2022 by the Angolan government, with testing of its telecommunications services conducted in January 2023.³⁴ In 2023, Angosat was commercialised to enable national and international operators to provide telecommunications services and expand access in offline areas while offering competitive prices.³⁵ Investment in expanding broadband networks and deploying affordable and reliable internet services are essential for digital inclusion. The China Export and Import Bank loaned the government of Angola \$249 million for the Broadband Project to support the country in implementing and expanding broadband.³⁶ This project will increase infrastructure, increasing gains across all sectors.

In addition, the government is making inroads to improve access to services provided by public institutions. In 2023, following the 2022 signing of a Memorandum of Understanding between the Angolan government and a multinational company, Presight, the government announced a US\$89 million investment in an Angolan National Cloud for data storage of government services and information.³⁷ The Cloud aims to ‘foster the digital development of the nation’s economy, improve citizens’ perception of governance and government efficiency, bring citizens closer to government actions, cultivate local talent in the use of information and communication technologies and cloud services, as well as establish a basis for digital transformation across the country’s industry.’³⁸

Data Protection and Cybersecurity

Angola has been enhancing data protection and cybersecurity measures, aligning with global trends to address the challenges posed by the increasing digitalisation of information. The country has enacted data protection legislation to safeguard individuals’ privacy and regulate the processing of personal data. The Constitution of the Republic of Angola protects the Right to Privacy under Article 32. In addition to the constitutional provision, the country enacted other laws governing data protection, including Protection of Personal Data (Law 22/11), Electronic Communications and Information Society Services Law (Law 23/11), Protection of Information Systems and Networks (Law 7/17) and Presidential Decree 214/16 of October 10/16 on rules governing the structure of the regulatory body.³⁹ The Angolan Data Protection Authority (APD) generally oversees and enforces data protection regulations. It is crucial to ensure compliance with data protection laws and promote awareness. The laws include transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity, and confidentiality. Organisations are expected to adhere to these principles when processing personal data. The Data Protection Law does not contain a mandatory breach notification requirement. However, the Electronic Communication and Information Society Services Law mandates companies offering communication services that are accessible to the public to notify APD and INACOM (the Electronic communications authority) of any intentional or reckless breach of security, including non-authorised access to personal data.⁴⁰

32 As above.

33 As above.

34 GGPEN, “Angosat-2 capabilities”, https://ggpen.gov.ao/?page_id=7887

35 Simon Kemp, “Digital 2023 Angola,” February 13, 2023 <https://datareportal.com/reports/digital-2023-angola>

36 Angola Press Agency, “Angola: China grants USD249 million loan for Broadband Project in Angola,” January 1, 2023 <https://allafrica.com/stories/202301120264.html>

37 360 Mozambique, “Angola: New \$89 M ‘Cloud’ to store and facilitate access to government data and services,” February 17, 2023 <https://360mozambique.com/world/angola/angola-new-89m-cloud-to-store-and-facilitate-access-to-government-data-and-services/>

38 As above

39 Angola Data Protection Overview <https://www.dataguidance.com/notes/angola-data-protection-overview>

40 DLA Piper, “Data Protection Laws of the World Angola,” February 5, 2024 <https://www.dlapiperdataprotection.com/system/>

No major developments occurred regarding the data protection and cybersecurity legislative framework.

At the Forum on Cybersecurity, the Minister of State for Economic Coordination highlighted that Angola was creating a National Cybersecurity Strategy which includes a cybersecurity agency and observatory and establishing a Cybersecurity Academy.⁴¹ Investing in a clear national strategy and equipping people with the necessary skills and knowledge to work in cybersecurity will strengthen the country's overall cybersecurity posture. In addition, the Minister highlighted the need to raise awareness and educate the population about the importance of cybersecurity.⁴² Promoting awareness about cybersecurity best practices and providing training programs to individuals and organisations contributes to building a cyber-resilient society. Capacity-building initiatives are crucial for enhancing the country's overall cybersecurity. The President of Angola reiterated the need for a Cybersecurity Academy in recognition of the pertinence of addressing cybersecurity in the country.⁴³ Organisations in Angola must stay informed about the evolving regulatory landscape, comply with data protection laws, and continually assess and strengthen their cybersecurity measures.

Universal Service and Access Fund (USAF)

Angola established a fund to support the development of communications (FADCOM), with sources of revenue from contributions by operators to the Universal Service and Access Fund (USAF), state appropriations, and donations.⁴⁴ FADCOM was created in 2010 through Presidential Decree 264/10 ideally to contribute towards the expansion of telecommunications networks and ensure universal access through the promotion of telecommunications and information and communication technology (ICT) services.⁴⁵ Typically, the Fund is financed through contributions from the telecommunications service providers operating in the country, which are calculated as a percentage of the providers' revenues and are directed towards the development of universal service projects. As per regulations, the fund receives 1% of annual income from telecommunications companies, yet there is no clarity on how much FADCOM has and how these resources are used.⁴⁶ Assessing and monitoring the Fund is difficult because it needs more transparency and accountability. The Fund's exact amount is unknown as this information is not readily accessible. However, as highlighted in sections on Digital Inclusion of People and Development in ICT and emerging technologies, the government made notable strides to improve access, including continuing with Angola-online, setting up Conecta Angola and investing in the country's national cloud. In January 2022, the government approved the restructuring of public funds, including FADCOM, yet by May 2023, the restructuring process had still not been implemented.⁴⁷ How the USAF will be managed after the restructuring is still unclear. Efforts to get additional information and comments regarding the fund and its operation were fruitless.

modules/za.co.heliosdesign.dla.lotw.data_protection/functions/handbook.pdf?country-1=AO

41 Lusa/Verangola, "Angola is preparing a National Cybersecurity Strategy against Cyber Attacks," May 10, 2023 <https://www.verangola.net/va/en/052023/Telecommunications/35500/Angola-is-preparing-a-National-Cybersecurity-Strategy-against-cyberattacks.htm>

42 As above

43 Africa Indilpomacy News, "Angola's President launches Cybersecurity Initiative," June 21, 2023 <https://indiplomacy.com/2023/06/21/angolas-president-launches-cybersecurity-initiative/>

44 UNESCO, "Angola Technology," May 22, 2023 <https://education-profiles.org/sub-saharan-africa/angola/~technology>

45 Jornal de Angola, "Fundo sem visibilidade é pago pelos operadores" 08 October 2010, <https://www.jornaldeangola.ao/ao/noticias/fundo-sem-visibilidade-e-pago-pelos-operadores/>

46 As above.

47 Teresa Gando, "Restruturação dos Fundos Público está a andar muito "devagarinho"" May 12, 2023, <https://expansao.co.ao/empresas/interior/restruturacao-dos-fundos-publico-esta-a-andar-muito-devagarinho-113124.html>

► Conclusion & Recommendations

Conclusion

The successful development of ICT in Angola requires continued collaboration between the government, private sector, educational institutions, and the community. Ongoing efforts in these areas contribute to the country's technological advancement and economic development. Fostering digital inclusion in Angola requires a holistic approach that addresses infrastructure, education, accessibility, and collaboration between various stakeholders. As technology advances, efforts to bridge the digital divide will be essential to ensure that all individuals can fully participate in the digital age and enjoy their rights. In light of the findings from the research, the following recommendations are made;

Recommendations

Government

- » Prioritise increasing access to electricity for both urban and rural communities to implement digital inclusion programs effectively.
 - » Partner with the private sector to accelerate digital growth and curb cybersecurity effectively within the confines of human rights. The government should implement measures to safeguard critical assets, including telecommunications networks, energy grids, and financial systems, from cyber threats.
 - » eEnsure that legislation addressing cybercrime is in place to define offences, penalties, and procedures for investigating and prosecuting cybercrime.
 - » Ensure that USAF contributions from service providers are collected, allocated and utilised efficiently in line with universal service and access objectives.
 - » Issue accessible reports to the general public outlining how the USAF resources are distributed and utilised.
 - » Update the Data Protection Law to include a provision which mandates companies to report any data breach within 24 hours.
 - » Prioritise the capacity-building of public officials in digital technologies and cybersecurity.
-

Civil society

- » monitor digital inclusion initiatives to ensure greater transparency and accountability from the government, particularly concerning the USAF.
- » Prioritise programming focusing on raising awareness of digital rights and digital inclusion.

Private Sector

- » The private sector should invest in advancing community access to ICTs by expanding broadband access. The private sector, particularly telecommunication companies which contribute to the USAF, should monitor how the resources are used and push for greater transparency and accountability from the government.

Academia

- » There is a need for more research into digital rights in Angola with a deliberate focus on the USAF. Mainly, academics should focus on how the Fund is used and monitored and its effectiveness in bridging the digital gap.
-



Benin

EXECUTIVE SUMMARY

A decade ago, Benin identified digitalisation as an important lever for accelerating economic growth. With this aim in mind, the government of Benin emphasised promoting the digital transformation of the West African nation. In this report, we recognise the efforts made by the government. Following a qualitative analysis, this report reveals numerous encouraging experiences involving public authorities and civil society. Besides the effort to bridge the digital divide and build the digital economy, the report points out some challenges the country faces. Among those is the existence of repressive laws that negatively impact freedom of expression. This report also reveals that there has been little communication about how the Universal Service Fund is managed.

Introduction

For Benin authorities, digital technologies are a major tool for economic, political and social transformation. To achieve its ambition, the country has developed an explicitly pro-digital policy. Last January, the country adopted a national strategy to make digital technology a lever for economic and social growth. This aimed at establishing an ecosystem and a digital culture that fosters innovation over time. For example, since 2020, Benin has proceeded with the digitalisation of administrative procedures, resulting in the setting up of a national portal that gives citizens access to more than 250 online services.⁴⁸ Benin is also promoting digital technology through education and digital content development. To this end, the country has created the Agency for the Development of Sèmè City⁴⁹. This agency has been designed to stimulate and strengthen Benin's innovation and business competitiveness in international markets.

Benin has gradually positioned itself among the sub-regional and regional leaders in digital development. With a score of 0.34 in 2022, the analysis of the e-participation index of Benin reveals that the country ranks in third place in West Africa, behind Côte d'Ivoire (0.37) and Togo (0.39), and 13th on the continent, the leader being Rwanda with a score of 0.64⁵⁰. Over the next few years, Benin will certainly continue to benefit from the efforts made so far. However, the authorities have to work more to improve their current achievement to make the digital ecosystem more inclusive. The government of Benin has made significant efforts to keep telecommunication retail prices low. The telecommunications regulator imposes price controls that prevent companies from overcharging customers. Based on an analysis of service production costs on the operators' networks and an allowable profit margin to guarantee firms remain profitable, ARCEP has established a framework for voice, SMS and data service tariffs. This reform benefits users as it sets price thresholds that prevent operators from overcharging consumers. Despite all these efforts, internet e-participation could be more inclusive if the Internet was more affordable. Affordable internet is when 1 GB of mobile broadband data is priced at 2% or less of average monthly income⁵¹

Regarding the Benin digital economy agenda, one flagship project has been designed to strengthen the digital sector. To tackle the issue unequivocally, the Beninois Government decided to team up with Canal + to launch a new digital TV channel⁵². This project is currently being deployed through the Digital TV transition⁵³. However, in today's digital media era, an important amount of data is collected of people's browsing history and preferences. This data is utilised for targeted advertising and even influencing political opinions. Moreover, data aggregation and correlation can create comprehensive content infringing on personal autonomy and enabling discriminatory practices. In such a context, one of the major preoccupations Benin leaders should contend with is to enhance data protection. Authorities should also facilitate the creation of an animation industry that is innovative, flexible, creative, and idea-driven. Also, Benin authorities should develop TV policies which are focused on the restoration of national cultures which are still patterned on the western model.

48 See Les e-services populaires <https://service-public.bj/> (accessed on 11 December 2023).

49 See Sèmè City: Benin's Innovation and knowledge city <https://semecity.bj/en/> (accessed on 01 December 2023).

50 See Un E -government knowledgebase

<https://publicadministration.un.org/egovkb/en-us/Data-Center> (accessed on 12 December 2023).

51 See The world's slowest internet is the least affordable <https://internethealthreport.org/2019/the-worlds-slowest-internet-is-the-least-affordable/> (accessed on 14 December 14 2023).

52 See Lancement d'A+ Bénin, la nouvelle chaîne béninoise du Groupe CANAL+

<https://www.agencecofin.com/audiovisuel/1907-110451-lancement-da-benin-la-nouvelle-chaine-beninoise-du-groupe-canal/> (accessed on 03 December 2023).

53 See Benin finally switches from analogue to digital terrestrial

<https://www.afro-impact.com/en/benin-finally-switches-from-analogue-to-digital-terrestrial/> (accessed on 02 December 2023).

► Country Analysis

Online Freedom of Expression

Despite the general openness of the media system and its growing plurality, free and bold development of media and journalism in Benin is still hampered by various threats. In Freedom House's 2023 study on civil liberties, Benin is rated partly free⁵⁴. It reflects situations where journalists continue to be arrested. The ability of the media to cover current news and politics has been curtailed by the passing of media laws that criminalise the criticism of government officials. For instance, the Digital Code contains certain repressive provisions that can be used to silence critics. This is the case of Article 550, which unduly restricts the right to freedom of expression, notably by removing prison sentences for the offence of false information. This strategy, which consists of strengthening speech-related crimes, protects those in power from criticism.

On August 8, 2023, the High Authority for Audiovisual and Communication (HAAC), which regulates the country's communication sector, indefinitely suspended operations of the privately owned press group La Gazette du Golfe, including its TV, radio, print, and online outlets. Before the suspension of La Gazette du Golfe, the HAAC had released a press statement dated August 3, 2023, in which it invited media professionals to demonstrate greater professionalism and respect for constitutional and legal provisions in processing information relating to coups d'état in Africa and the sub-region.

According to the High Authority for Audiovisual and Communication, La Gazette du Golfe's coverage of the situation in Niger amounted to condoning the July 26, 2023 coup d'état in that country, and a violation of its own (HAAC), the Code of Information and Communication as well as the Code of Ethics of journalism. Among other threats to freedom of expression that have proliferated in Benin is the mounting number of legal attacks on journalists. Occasionally, security forces do not shy away from directly attacking journalists. Sometimes, these threats are used to silence public interest reporting but the intended goal is also to exert control of the audiences served by the media.

On January 13th 2023, journalist Maxime Lissanon was arrested after publishing a Facebook post related to the legislative elections of January 8th 2023⁵⁵. Because of this publication, he was subsequently charged with inciting rebellion. Later in June, the journalist Virgile Ahouansè was given a suspended sentence of 12 months of imprisonment and a fine of 200,000 CFA francs⁵⁶. In Ahouansè's case, the judges have based their decision on Article 550 of the Digital Code, which pertains to "harassment through electronic communications" and provides for up to two years in prison and/or fines of up to 10 million West African francs (16500 USD) for various crimes. Anyone who, for example, "initiates an electronic communication that coerces, intimidates, harasses or causes distress" or "initiates or relays false information against a person through social networks" may be charged. Benin had been among the most stable democracies in sub-Saharan Africa, but this status has been in a sharp decline for a couple of years. Since journalism is increasingly moving online, the threat from laws like Benin's Digital Code is expected to loom even larger.

54 See <https://freedomhouse.org/country/benin/freedom-world/2023> (accessed on 03 December 2023).

55 See liberté de presse au Bénin les démocrates condamne l'arrestation du journaliste Maxime Lissanon <https://matinlibre.com/2023/02/21/liberte-de-presse-au-benin-les-democrates-condamne-larrestation-du-journaliste-maxime-lissanon/> (accessed on 09 December 2023).

56 See Bénin: la Criet condamne le journaliste Virgile Ahouansè <https://beninwebtv.com/benin-la-criet-condamne-le-journaliste-virgile-ahouanse/> (accessed on 11 December 2023).

Data Protection and Cyber Security

When it comes to data protection, Benin has been one of Africa's front-runners in this field. The data protection regime in Benin is governed by two pieces of legislation namely the Law No. 2017-20 of April 20, 2018 of the Digital Code and the Law No. 2009-09 of May 22, 2009 dealing with the Protection of Personally Identifiable Information. Each year on 28 January, Benin celebrates the Data Protection day⁵⁷. On the 18th edition of the event this year, the Data Protection Authority invited internet users to reflect on their relationship with technology and to apply good practices to protect their personal data⁵⁸.



Figure 1: Travelling exhibition organised by the Benin Data Protection Authority to raise awareness on Data Protection Day.

57 See

journee mondiale de la protection des donnees personnelles 2022 l'agence de protection des données personnelles du bénin lance la célébration a parakou <https://www.kingonews.com/journee-mondiale-de-la-protection-des-donnees-personnelles-2022-lagence-de-protection-des-donnees-personnelles-du-benin-lance-la-celebration-a-parakou/> (accessed on 29 November 2023).

58 See Le Bénin célèbre la journée mondiale de protection des données personnelles

<https://cio-mag.com/le-benin-celebre-la-journee-mondiale-de-protection-des-donnees-personnelles/> (accessed on 28 November 2023).

If this can be seen as a well-intentioned initiative, concerns have also been raised regarding how Benin governments abuse surveillance powers to spy into the private affairs of their opponents to gather information, which is then used to suppress and stifle legitimate, democratic political activity. In fact, despite these substantial efforts to protect human rights, Benin's government has been accused of using the software Pegasus⁵⁹. To date, there is no evidence that these practices have stopped. This can be explained based on a grey zone between the state's duty to respect the right to privacy on the one hand and the obligation to protect national security on the other hand.

It is important to stress that governments using such spyware on individuals violate their rights to privacy and freedom of expression and association. The Constitution of Benin contains several provisions promoting freedom of expression and information. Article 8 stipulates that the State must ensure that citizens have equal access to information. Article 23 states that everyone has the right to freedom of expression and opinion while respecting public order as stipulated in laws and regulations.

Finally, Article 24 specifically recognises and protects freedom of the press and gives responsibility to the Higher Authority for Audio-Visual Media and Communication.

Benin is making strides towards becoming a key player in West Africa's digital revolution. For instance, the development and implementation of digital strategies has led the government to establish a number of institutions, such as Agence des Services et Systèmes d'Information (ASSI). This agency is responsible for the operational implementation of programmes and projects within the framework of strategies for the development of secure digital information systems in Benin. In this capacity, ASSI is responsible for providing strategic, methodological and operational assistance to all government structures and operators of vital importance. In addition, ASSI ensures the execution of projects relating to smart government, e-commerce and dematerialisation. Apart from ASSI, the Government has set up l'Agence Nationale de Sécurité des Systèmes d'Information (ANSSI). Among other things, this Agency is responsible for drafting legal and regulatory texts relating to the security of information systems and networks and the application of agreements, treaties and conventions relating to the fight against cybercrime and cybersecurity ratified by the Republic of Benin. Despite the presence of these institutions, several recent hacking incidents show that Benin needs to develop real digital sovereignty⁶⁰.

While the law provides a number of necessary legal safeguards to protect individuals, Benin is listed for the moment as having approved a law for the ratification of the Malabo Convention⁶¹. If this can be considered as a good sign, priority should be given to the ratification itself since a number of further steps need to be taken before the Convention enters into force. Once they have done so, Benin authorities should carefully implement the Convention's Framework with legislation that respects human rights at the national level.

Most notably, Law No. 2017-20 of April 20, 2018, of the Digital Code and Law No. 2009-09 of May 22, 2009, dealing with the Protection of Personally Identifiable Information, applies to any person or entity in the country that deals with personal data. Furthermore, it is important to emphasise that the mandate of the Data Protection Authority prescribed in the law is to regulate data protection, enforce compliance with the law, create further regulations for implementation and to receive and investigate complaints. It is, therefore, imperative that these laws put the privacy of users at the center so that Benin's citizens can control what personal data they share and with whom. Above all, one warning is the obligation of the State to ensure the privacy rights of Beninese citizens,

59 See Bénin : les services de renseignement israéliens au service de Patrice Talon ? <https://lejournaldefafric.com/benin-les-renseignement-israeliens-au-service-de-patrice-talon/> (accessed on 11 December 2023).

60 See Disinformation as a tool of regime survival in Tunisia <https://arabcenterdc.org/resource/disinformation-as-a-tool-of-regime-survival-in-tunisia/> (accessed on 29 November 2023)

61 See Benin ratifies Malabo Convention on Cybersecurity <https://www.wearotech.africa/en/fils-uk/news/public-management/benin-ratifies-malabo-convention-on-cybersecurity>

especially because a Tunisian company was given a contract to install a data centre in Benin⁶².

This risk is illustrated by recent scandals involving the manipulation of social networks in different parts of Africa. What is particularly alarming about this situation is that a Tunisian firm called UReputation is conducting sophisticated disinformation campaigns. Based on several developments, UReputation has been particularly active on social media platforms designed to influence presidential elections⁶³.

Universal Service Fund

Since its establishment in 2011, the Universal Service Fund (USF) has played a vital role in delivering advanced telecommunications services in Benin. The USF is placed under the authority of the Beninese Agency of the Universal Service of Electronic Communications and Post. This agency is in charge of ensuring the implementation of the funds in underserved communities. The types of projects the USF supports in Benin can be grouped into two categories: infrastructure and non-infrastructure. Information about the exact amount in the Fund is not accessible. In Benin, USF is collected through mandatory contributions by mobile network operators, but the exact amount of their contributions over time is unknown.

Thanks to the availability of this Fund, the Benin Government plans to connect the municipalities to the government's digital network. So far, the government of Benin has installed several dozens of community digital points throughout the country. These actions are being implemented to reach broad digital usage among the population. To achieve results, Benin authorities have implemented a comprehensive digital policy⁶⁴. This policy focuses on the Internet network rehabilitation and a 2,000 km extension of the high-speed internet network with fiber optic backbone which runs from the north to south of Benin; development of a metropolitan network around Ouidah-Calavi-Godomey and Cotonou-PortoNovo of 250 km; construction of a 960 km fiber optic backbone security loop; the extension of the 4G/LTE networks with new Radio sites; and the creation of points of presence in Karimama, Péréré, Avrankou, Toffo, Zè, So-Ava, Ganvié and the Aguégues; securing the existing network between Kandi and Malanville⁶⁵.

Furthermore, the government aims to build more community digital points throughout the country. The community digital points are built in the style of a cyber-café equipped with 10 computers and dedicated to all possible digital use. In Benin, the community digital points also serve as free public wifi access points. They are set up in collaboration with the town halls, often in the youth centres of the concerned municipalities. Despite this encouraging record, the authorities are aware of some inequalities regarding mobile telecommunications usage.

The broadband mobile internet base (3G/4G) represented 39% of the mobile internet base

62 See L'entreprise tunisienne TMI installe le datacenter national du Bénin https://africanmanager.com/en/dossiers.php?n=15081&art=Benin/Smart_Government:_issues_and_challenges_for_a_more_inclusive_digital (accessed on 18 December 2023)

63 See Disinformation as a tool of regime survival in Tunisia <https://arabcenterdc.org/resource/disinformation-as-a-tool-of-regime-survival-in-tunisia/> (accessed on 06 December 2023)

64 See Benin/Smart Government: issues and challenges for a more inclusive digital https://jumelages-partenariats.com/en/dossiers.php?n=15081&art=Benin/Smart_Government:_issues_and_challenges_for_a_more_inclusive_digital (accessed on 02 December 2023)

65 See Programme d'Action du Gouvernement https://revealingbenin.com/wp-content/uploads/2021/03/5-ETAT-DE-MISE-EN-CEUVRE_Cadre-de-vie-Infrastructure-et-TransportNumerique-Décentralisation.pdf (accessed on 07 December 2023)

in 2023⁶⁶. According to the agency regulating telecommunications and postal services in Benin, this rate increased significantly in 2021 and rose to 51%⁶⁷. Since 2018, more than 43 out of 77 localities in the country have been equipped with digital community points. Building on this success, the authorities would like to set up more community digital points in some eligible municipalities that do not yet have them.

In Benin, mobile operators are being solicited to enhance the outreach of this initiative. Their efforts are part of the Universal Service Fund, used to progress network deployment in disadvantaged areas. This is one of the reasons mobile operators increased their infrastructure investments by 1.9% between 2018 and 2020 to meet their quality of service and network coverage obligations in Benin⁶⁸. However, Benin is among the many countries that have published only a few details on their Universal Service and Access Funds activities. If some efforts are made so far, these efforts do not include complete financial specifications. Another observation is that available information to the public does not always include all the financial details of the Universal Service Fund in Benin. Thus, it is hard to have a complete image of how the Fund is spent, on which projects and through which time frame.

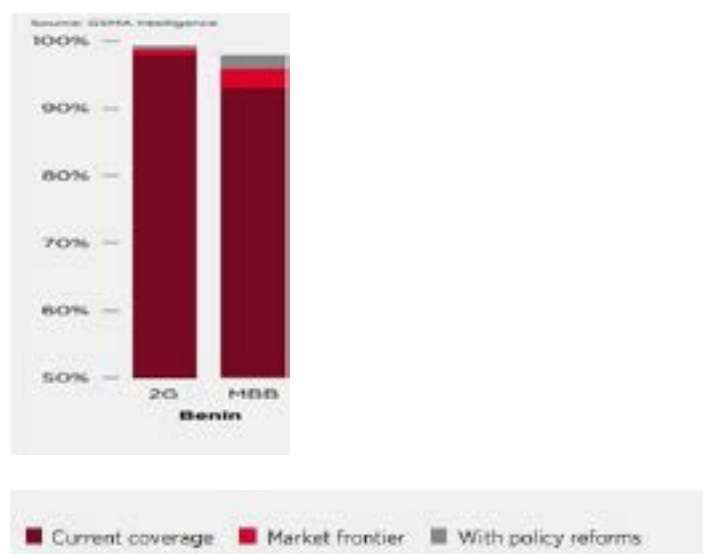


Figure 3: 2G and mobile broadband coverage in Benin (GSMA 2023)⁶⁹

According to the Telecommunication Infrastructure Index, mobile phone and internet penetration rates per 100 inhabitants were estimated at 101.71% and 5.3% in 2016 and 82.38% and 20% in 2020⁷⁰. For its part, the Regulatory Authority for Telecommunications and Postal Services of Benin stated that the penetration rate of mobile telephony was estimated at 80.14% in 2016 and 91.17%

66 See data report digital 2023 benin <https://datareportal.com/reports/digital-2023-benin/> (accessed on 19 November 2023).

67 See Rapport Annuel d'activités l'ARCEP-BENIN <https://arcep.bj/wp-content/uploads/2021/06/Rapport-Annuel-dactivit%C3%A9s-2020-de-lARCEP-BENIN.pdf> (accessed on 15 November 2023).

68 See rapport annuel d'activités l'ARCEP-BENIN <https://arcep.bj/wp-content/uploads/2021/06/Rapport-Annuel-dactivit%C3%A9s-2020-de-lARCEP-BENIN.pdf> (accessed on 13 November 2023).

69 See The role USF can play in effort to close the connectivity gap in Benin <https://www.gsma.com/subsaharanafrica/wp-content/uploads/2023/10/USF-Africa.pdf> (accessed on 07 November 2023).

70 See <https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2020> (accessed on 10 November 2023).

in 2020⁷¹. Nevertheless, the rates calculated by ARCEP are theoretical penetration rates as they do not account for subscribers who own SIM cards that they might not use.

To get data on mobile coverage in Benin, GSMA has leveraged the model developed in a study by the World Bank and GSMA⁷². Thanks to this methodology, they could perform a hyper-granular supply and demand analysis based on geospatial techniques⁷³. While the above data shows significant progress, the table below highlights the necessity to boost investments in network infrastructure, to achieve better mobile broadband coverage.

Amount of investment needed to provide near-universal mobile broadband coverage

Source: GSMA Intelligence

	Expected mobile broadband coverage without additional investment by 2030*	Expected coverage with additional investment	Investment gap (no policy reform), \$ million	Investment gap (with policy reform), \$ million	Coverage with 40% mobile broadband adoption
Benin	98%	99.5%	30	26	99%

Figure 5 : Amount of investment needed to provide near- universal mobile broadband coverage in Benin (GSMA 2023)⁷⁴

Considering the role that the Universal Service Fund can play in achieving the goals mentioned above, its operability is criticised in Benin. Among the improvement points is the general lack of public disclosure and financial probity. These critiques were made especially regarding how the money is collected and disbursed. The inconsistency and lack of reporting on Universal Service Fund fees makes quantifying the amount collected over time hard. In addition, the Universal Service Fund is also severely judged for its lack of transparency and clarity on how funds are allocated. The credibility and effectiveness of Universal Service Fund policies and its ability to incentivise mobile network operators to deploy networks in rural areas are linked to Benin’s commitment to transparency.

71 See UN E-Government Knowledgebase <https://arcep.bj/wp-content/uploads/2022/03/Tableau-de-bord-Mobile-au-31-Decembre-2021.pdf> (accessed on 03 November 2023).

72 See mobile coverage maps <https://www.mobilecoveragemaps.com/> (accessed on 06 November 2023).

73 See Using Geospatial Connectivity Policies <https://data.gsmainelligence.com/api-web/v2/research-file-download?id=69042425&file=230322-Using-Geospatial-Connectivity-Policies.pdf> (accessed on 07 November 2023).

74 See The role USF can play in effort to close the connectivity gap in Benin <https://www.gsma.com/subsaharanafrica/wp-content/uploads/2023/10/USF-Africa.pdf> (accessed on 07 November 2023).

▶ Conclusion & Recommendations

Conclusion

In Benin, the ongoing revolution in information technology has resulted in innovations that are having increasingly visible effects on the lives of the average citizen. While mobile internet connectivity has improved over the past few years, this report found that the gaps are still wide, and the country should continue to step up efforts to tackle the barriers to mobile internet adoption and use for greater digital inclusion. The report also found that governments leverage automated systems to strengthen information controls. While these innovations can revolutionise information and entertainment delivery, some of the implications of these social changes could be harmful or even socially and politically explosive.

Recommendations

Government

- » Improve accountability and transparency on the Universal Service Funds by sharing information in an accessible manner
- » Examine new potential funding mechanisms of the Universal Service Funds that could bridge any remaining deployment gaps
- » Hold regular meetings and public consultations with all internet and human rights stakeholders on the deployment of policies and public solutions
- » Provide all the necessary information for individuals to understand when and how technologies are used, particularly in the context of public services
- » Refrain from punishing criticism of the state authorities online

Civil Society

- » -Maintain dialogue with the government by developing contacts which ensure that citizen-oriented logic is maintained during the elaboration and deployment of policies or public solutions
- » Call on governments to ensure the digital inclusion of all and check that the impacts of ongoing digital transformation are positive in the longer term.
- » -Evaluate existing data protection laws to determine whether they sufficiently protect the right to privacy and the right to data protection
- » -Push for legislative frameworks which ensure respect for human rights



Botswana

EXECUTIVE SUMMARY

Through a multifaceted approach combining empirical investigations and desk research methods, our study delves into thematic areas such as Privacy and Surveillance, the Universal Service Fund (USF), and Developments in ICT and Emerging Technologies. Key findings reveal commendable strides in expanding internet access and fostering ICT development, mixed with privacy, surveillance, and digital inequality concerns. Key takeaways include establishing the Universal Access and Service Fund (UASF) as a catalyst for bridging the digital divide alongside challenges in regulatory frameworks and privacy protections. Strategic recommendations, detailed in the body of the report, emphasise the need to refine surveillance laws, enhance transparency in UASF operations, and foster collaboration among stakeholders. This report is a foundation for informed

discourse and action, paving the way for Botswana's more inclusive and rights-centric digital future.

Introduction

In the dynamic realm of digital rights and internet freedoms, Botswana’s progress since the 2022 report reflects a transformative path marked by both growth and persistent challenges.⁷⁵ In exploring the digital rights landscape of 2023, the nuanced interplay between progress and unresolved issues becomes evident. While the nation demonstrates commendable progress in expanding internet access and fostering ICT development, concerns linger regarding privacy, surveillance, and digital inequality. Amid intensified efforts in digital inclusion and infrastructure deployment, the evolving landscape underscores the pressing need for regulatory frameworks and stakeholder engagement recalibration.

⁷⁵ O, Mudongo 'Londa 2022 -Botswana Digital Rights and Inclusion Report' https://paradigmhq.org/sdm_downloads/londa-2022-botswana/ (accessed 13 February 2024)

► Country Analysis

Privacy and Surveillance

The Constitution firmly established the right to privacy in Botswana in 1966, which explicitly prohibits unreasonable searches and seizures of property and persons without a warrant (Section 9). Complementing this constitutional protection, the country has enacted the Data Protection Act, 2018 (DPA) (Act No. 32 of 2018),⁷⁶ designed to regulate the processing of personal data and safeguard individuals' privacy concerning their personal information (Part III). While Botswana has taken steps to safeguard privacy rights through various measures, including the Data Protection Act, there remains a gap in the legal framework concerning surveillance practices by law enforcement agencies.

Developments in 2022 saw the introduction of the Criminal Procedure And Evidence (Controlled Investigations) Bill, 2022,⁷⁷ which, while addressing some aspects of digital communication surveillance for law enforcement purposes, may not fully encompass the comprehensive legal framework needed to regulate all aspects of surveillance practices in Botswana.⁷⁸ Critics argue that the Bill falls short in providing sufficient procedural safeguards, raising concerns about potential violations of fundamental rights, particularly the right to privacy.⁷⁹ Upon analysis, it appears the Act lacks sufficient procedural safeguards to protect the right to privacy. The absence of robust safeguards raises concerns about the potential for abuse and violations of digital rights, including unlawful surveillance practices by law enforcement agencies. As such, there is a pressing need to review and amend the Bill to strengthen protections for digital rights, ensuring that any surveillance activities are conducted within a framework that upholds privacy rights and maintains due process. In response to these challenges, various organisations in Botswana actively advocate for privacy and digital rights. One of the notable entities includes the Media Institute of Southern Africa (MISA) which has conducted training workshops and seminars as part of a digital rights awareness project within the country.⁸⁰

At the international level, Botswana has demonstrated its commitment to protecting privacy and human rights by ratifying significant treaties, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.⁸¹ These ratifications signify Botswana's commitment to global standards and principles aimed at safeguarding individual liberties and respecting human dignity. The country's dedication to these principles has been evaluated by the Freedom House's Freedom on the Net report, which assigned Botswana a score

36

76 Data Protection Act, 2018 (Act No. 32 of 2018): <https://www.bocra.org.bw/sites/default/files/documents/DataProtectionAct.pdf>.

77 Criminal Procedure And Evidence (Controlled Investigations) Bill, 2022: <https://cpj.org/wp-content/uploads/2022/01/Botswana-Criminal-Procedure-and-Evidence-Bill.pdf>

78 R, Wanjohi 'Digital age dilemmas: Navigating human rights threats in Botswana's online realm' (2023) <https://advox.global-voices.org/2023/10/03/digital-age-dilemmas-navigating-human-rights-threats-in-botswanas-online-realm/> (accessed on 12 January 2024).

79 T, Bulule "Surveillance within the Law: A Critique of the Legal Framework for Surveillance of Digital Communications by Law Enforcement Authorities in Botswana" (2023) https://www.researchgate.net/publication/371570996_Surveillance_within_the_Law_A_Critique_of_the_Legal_Framework_for_Surveillance_of_Digital_Communications_by_Law_Enforcement_Authorities_in_Botswana (accessed on 15 January 2024).

80 The Patriot 'MISA Botswana Conducts Awareness Workshop on Digital Rights' (2024) <https://thepatriot.co.bw/misa-botswana-conducts-awareness-workshops-on-digital-rights/> (accessed on 12 January 2024).

81 African Commission on Human and People's Rights (ACHPR) Declaration on Freedom of Expression and Access to Information (the Declaration) <https://achpr.au.int/en/node/902> (accessed on 11 January 2024).

of 72 out of 100 (with 0 indicating the least free and 100 the most free).⁸² Despite progress, ongoing scrutiny and advocacy efforts underline the importance of addressing potential shortcomings in privacy protection within Botswana’s legal framework.

Universal Access and Service Fund (UASF)

The Universal Access and Service Fund (UASF) was established in 2014 as per Section 5 (c) of the Communications Regulatory Authority (CRA) Act, 2012 (Act No. 19 of 2012) and the Notarial Deed of Trust.⁸³ As of the latest financial statement for 2022, the UASF’s total asset value stands at Pula 573,165,960.⁸⁴ Transparency regarding the Fund’s financial status has been published to ensure accountability and effective utilisation of funds. Its primary objective is to ensure that all Batswana have affordable access to basic yet essential communications services. Oversight of the Fund is entrusted to an independent Board of Trustees, representing both public and private sectors, with the Communications Regulator (BOCRA) serving as the Secretariat.⁸⁵ The UASF demonstrably impacted Botswana’s communication landscape through diverse projects, including promoting access, developing ICT infrastructure, and developing ‘grassroots level’ skills to exploit the benefits of ICTs and ensure wider accessibility across the nation.⁸⁶ One notable project funded by the UASF was the Botswana Digital Project for Village Connectivity, which was launched to improve internet access and digital connectivity in rural areas.⁸⁷ This initiative aims to bring essential digital services to underserved communities, empowering residents with access to information, education, and economic opportunities.

Beyond these developments, the UASF champions education by implementing school connectivity initiatives. By bridging the digital divide in educational institutions, they equip students with the tools needed to thrive in the modern digital world.⁸⁸ This plan emphasises the UASF’s role in addressing issues such as the lack of broadband internet and low bandwidth capacity in government schools nationwide. In collaboration with BOCRA, the UASF progressed further by deploying Wi-Fi hotspots nationwide. This strategic partnership expands affordable internet access, fostering innovation and entrepreneurship within local communities.⁸⁹ The UASF has established itself as a key player in driving Botswana’s digital transformation through these comprehensive efforts.

Recognising the UASF’s significance in bridging the digital divide and ensuring universal access, the government of Botswana incorporated it into the National Development Plan 11 covering the years 2017-2023.⁹⁰ The positive impact of the UASF is demonstrated through the substantial increase in mobile subscriptions, which has exhibited steady growth. Currently, the number of mobile

82 Freedom House ‘Freedom on the Net 2023: Botswana’ (2023) <https://freedomhouse.org/country/botswana/freedom-world/2023> (accessed on 11 December 2024).

83 Universal Access Service Fund <http://www.uasf.org/bw/wp-content/uploads/2016/10/UASF-deed-of-trust.pdf> (accessed on 29 January 2024).

84 UASF, ‘2022 Annual Report’ <https://www.uasf.org/bw/wp-content/uploads/2023/07/UASF-2022-AR-web.pdf> (accessed 13 February 2024)

85 BOCRA ‘Universal Access Service Fund Strategic Plan 2019 - 2024’ <https://www.bocra.org/bw/sites/default/files/documents/Final-Draft-UASF-Strategy-2019-2024-for-consultation.pdf> (accessed on 20 January 2024)

86 UASF ‘BCRA through the UASF employs Sixty-Eight (68) IT Officers’ <https://www.uasf.org/bw/bocra-through-the-uasf-employs-sixty-eight-68-it-officers-2/> (accessed on 2024)

87 teleSUR ‘Botswana: Digital Project for Village Connectivity Launched’ (2023) <https://www.telesurenglish.net/news/Botswana-Digital-Project-for-Village-Connectivity-Launched-20231019-0012.html> (accessed on 12 February 2024)

88 Huawei ‘Connecting Schools for Better Opportunities in Botswana’ (2018) <https://www.huawei.com/en/huaweitech/industry-insights/outlook/mobile-broadband/wireless-for-sustainability/cases/connecting-schools-better-opportunities-botswana> (accessed on 19 January 2024)

89 African Wireless Communication ‘Botswana launches a US\$12.7m project to get 500 villages online’ (2022) <https://www.africanwirelesscomms.com/news-details?itemid=4597#> (accessed on 29 January 2024)

90 United Nations Botswana ‘UN Development Plan 11’ <https://botswana.un.org/sites/default/files/2020-10/NDP%2011%20full%202017.pdf> (accessed on 12 January 2024)

subscriptions has reached a peak of approximately 165.3 for every 100 people in the country.⁹¹ This upward trajectory underscores the effectiveness of the UASF initiatives in significantly expanding mobile access and fostering connectivity among the population.

Recent developments highlight the dynamic role of the UASF in Botswana. In November 2020, the UASF signed a Memorandum of Agreement (MoA) between the Ministries of Transport and Communications (MTC), Basic Education (MoBE) as well as Local Government and Rural Development (MLGRD) to provide ICT equipment and internet connectivity to schools in the Kweneng district. Additionally, in 2019, the School Connectivity Project was launched in Mabutsane sub-district, aiming to provide broadband internet and low bandwidth capacity to government schools across the country.⁹² As for the School Connectivity Project, recent data from Project Connect 1 indicates that as of January 2024, Botswana, including the Mabutsane sub-district, has achieved a 53.06% real-time connectivity rate in schools.⁹³ This figure suggests a degree of advancement in delivering broadband internet and low bandwidth capacity to government schools nationwide since the project's inception in 2019. The government's recognition of its role in bridging the digital divide and recent collaborative initiatives highlight its ongoing positive impact on universal access and service in the country.

Developments in ICT and Emerging Technologies

Digital technologies are key drivers to Botswana's pursuit of economic diversification and its embrace of the Fourth Industrial Revolution (4IR). The recently introduced Digital Transformation/4IR Strategy, named SmartBots, prioritises universal connectivity as one of its four key pillars, aiming to ensure inclusivity and equality.⁹⁴ The nation's strategic focus on leveraging emerging technologies such as artificial intelligence (AI) is rooted in its commitment to economic diversification and its proactive approach to addressing the challenges and opportunities posed by the 4IR. Amongst these challenges is the digital divide between urban and rural areas, including the high cost of data.⁹⁵

The Ministry of Communications, Knowledge and Technology (MCKT), as a pivotal driver of the digital transformation strategy, introduced SmartBots as a transformative initiative. In this landscape, the Botswana Communications Regulatory Authority (BOCRA) emerges as a crucial entity capable of shaping and streamlining the regulatory environment associated with digital technologies. Concurrently, the Botswana Fibre Networks (BOFINET) is well-positioned to bolster the government's digital infrastructure and connectivity objectives. The recalibrated focus of the Botswana Digital and Innovation Hub (BDIH) on digital technologies and e-Government marks a strategic shift, positioning it as a key player in the country's expanding digital ecosystem.⁹⁶ However, amid these developments, the role of the Ministry in implementing SmartBots requires clarity, especially following the government's restructuring that amalgamated the Research, Science, Technology, and Innovation (RSTI) with digital transformation and digital technology areas. As evidenced by both the Technology and Innovation Policy⁹⁷ and the country's

91 Statista 'Number of mobile cellular subscriptions per 100 inhabitants in Botswana from 2000 to 2022' (2023) <https://www.statista.com/statistics/501956/mobile-cellular-subscriptions-per-100-inhabitants-in-botswana/> (accessed on 20 January 2024)

92 UASF 'MoBE, MTC and MLGRD Sign MoA for ICT Equipment and Internet Connectivity in Kweneng Schools' <https://www.uasf.org.bw/mobe-mtc-and-mlgrd-sign-moa-for-ict-equipment-and-internet-connectivity-in-kweneng-schools/> (accessed on 15 January 2024)

93 UNICEF "Project Connect" <https://projectconnect.unicef.org/country-progress> (accessed on 10 February 2024)

94 See <https://smartbots.gov.bw/>

95 O Mudongo 'Botswana's quest for Fourth Industrial Revolution, a delusion of grandeur?' (2020) <https://researchictafrica.net/2020/01/21/botswanas-quest-for-fourth-industrial-revolution-4ir-a-delusion-of-grandeur/> (2020) accessed on 29 January 2024

96 A Maramwidze 'Botswana intensifies SmartBots digitisation strategy' (2021) <https://itweb.africa/content/lwrKxq3K-jPAqmg1o> (accessed on 05 December 2023)

97 United Nations 'Botswana Science, Technology & Innovation Policy Review' (2023) <https://unctad.org/system/files/>

National ICT policy reviews e-commerce strategy.⁹⁸ This comprehensive approach aims to foster growth in export markets, spur private-sector development, empower citizens, create job opportunities, and enhance productive capacity. Reflecting this momentum, the ICT sector has made a noteworthy contribution of 2.5% to the total GDP in Q4 2022.⁹⁹

Recognising the transformative potential inherent in emerging technologies, Botswana is considering the implementation of regulations, including the proposed Botswana SmartBots Lab Governance Framework.¹⁰⁰ This regulatory initiative aims to ensure the successful management, performance and risk management of ICT systems within the country. Despite this progressive step, there are notable gaps in Botswana's commitment to regional standards, exemplified by its yet-to-be-ratified status of the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention).¹⁰¹ The complacency to ratify this treaty, underscores the nation's current lack of commitment to ensuring the security, reliability, and efficiency of ICT systems.

Recognising the transformative potential of AI, the Botswana government has placed it at the forefront of its national agenda. The recent developments in the nation underscore an unwavering commitment to harnessing emerging technologies, with AI playing a pivotal role in driving economic diversification and fostering innovation.¹⁰² While recent developments underscore the nation's commitment to leveraging emerging technologies such as AI.¹⁰³ However, amidst these initiatives, the implications of new regulations such as the EU AI Act on Botswana's regulatory and policy approaches to AI technology remain uncertain.¹⁰⁴ Acknowledging the UNESCO Recommendation on the Ethics of Artificial Intelligence as a valuable reference point, it's essential to note that while it lacks the binding force of a treaty, its guidelines provide valuable insights for shaping AI policy and governance frameworks. In the context of Botswana, where AI regulation is still evolving, policymakers may consider drawing inspiration from the UNESCO recommendation to inform the development of ethical AI principles and standards.¹⁰⁵ By incorporating ethical considerations into AI policy formulation, Botswana can ensure that its approach to AI technology aligns with global best practices and fosters responsible innovation.

This nuanced interplay between domestic regulatory initiatives and international standards reveals regulatory gaps in Botswana's quest to foster a responsible and innovative ICT landscape. As the country continues to adopt digital technology, these measures, though foundational, also highlight areas requiring attention and refinement to ensure sustainable growth and development within the evolving ICT sector.

official-document/dtltkid2023d1_en.pdf (accessed on 01 January 2024)

98 UNCTAD 'UNCTAD ICT Policy Review and National E-commerce Strategy for Botswana' (2021) <https://www.un-ilibrary.org/content/books/9789210058636> (Accessed on 29 November 2023)

99 Statistic Botswana 'Botswana Information & Communication Technology Stats Brief Q4, 2022' (2022) <https://statsbots.org/bw/sites/default/files/publications/Botswana%20Information%20%20Communication%20Technology%20Stats%20Brief%20Q4%202022.pdf> (access on 02 December 2023)

100 UNCTAD 'Botswana-SmartBots Governance Framework- Botswana Lab Report Executive Summary, 2023' <https://www.uneca.org/sites/default/files/TCND/Smart%20Botswana%20Lab%20Report%20Executive%20Summary.pdf> (accessed on 10 January 2024)

101 AUC 'African Union Convention on Cyber Security and Personal Data Protection' <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection> (accessed on 08 January 2024)

102 Xinhua 'Botswanan official says country ready to embrace artificial intelligence' (2023) <https://english.news.cn/af-rica/20230512/925c7f5dc5ae4a70a3248e1932020e08/c.html> (accessed on February 2024)

103 Andrew Maramwidze 'AI gets government support in Botswana' (2023) <https://itweb.africa/content/LPp6V7rBPBY7DKQz> (accessed 10 February 2024)

104 European Parliament 'EU AI Act: first regulation on artificial intelligence' <https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence> (accessed on 01 January 2024)

105 UNESCO 'Recommendation on the Ethics of Artificial Intelligence' <https://en.unesco.org/about-us/legal-affairs/recommendation-ethics-artificial-intelligence> (accessed on 11 February 2024)

▶ Conclusion & Recommendations

Conclusion

In conclusion, Botswana's digital landscape presents a complex interplay of advancements and challenges. While strides are being made in privacy protection through the DPA and digital inclusion through initiatives like the UASF and the SmartBots strategy, gaps persist, particularly in surveillance regulation and ethical considerations in emerging technologies. Despite a strong constitutional foundation and international commitments, ongoing scrutiny highlights the need for continual improvement. Clarity in regulatory frameworks, enhanced collaboration, and a deeper recognition of ethical values are essential for fostering a responsible and innovative ICT landscape in Botswana.

Moving forward, Botswana must prioritise refining surveillance laws to ensure adequate procedural safeguards, enhancing transparency in USF operations, and aligning policy measures with global ethical standards, as highlighted by the UNESCO Recommendation on the Ethics of Artificial Intelligence. Strengthening partnerships between regulatory bodies, civil society, and academia can foster a more holistic approach to digital governance, ensuring that technological advancements are harnessed for the benefit of all citizens. By addressing these challenges and leveraging domestic and international best practices, Botswana can chart a course towards a more inclusive, rights-centric, and sustainable digital future.

Recommendations

Private Sector: » Private sector entities involved in developing and deploying AI technologies should actively engage with and collaborate with the proposed Botswana SmartBots Lab Governance Framework, ensuring the ethical and responsible use of AI.

Media: » Media organisations should collaborate with civil society organisations (CSOs) to conduct surveys and focus group discussions to gauge the public's awareness and perception of digital rights issues. This collaboration will help foster informed public discourse and ensure that media coverage accurately reflects the concerns and priorities of the community.

Academia: » They must contribute to developing ethical AI regulations by providing research and expertise to support the implementation of the proposed Botswana SmartBots Lab Governance Framework.

» They should lead in conducting long-term studies to evaluate the impact of the SmartBots strategy on digital inclusion, economic growth, and societal development.

Government:

- » It is strongly recommended that the government prioritises the ratification of the Malabo Convention and the development of a comprehensive AI policy.
- » Government agencies responsible for legislation should prioritise the development of comprehensive laws addressing the surveillance of private communications, incorporating clear procedural safeguards. Specifically, lawmakers should consider introducing provisions that require transparency and accountability in surveillance practices, such as mandatory reporting requirements and regular audits of surveillance activities.
- » Policymakers should actively contribute to the strengthening of the Data Protection Act, ensuring it provides robust safeguards for personal data and empowers individuals with control over their information. Specifically, they should consider amendments that strengthen provisions related to data security standards and breach notification requirements.

Civil Society:

- » They should advocate for comprehensive laws addressing the surveillance of private communications, emphasising the importance of procedural safeguards to protect individual rights.
 - » They must raise awareness and advocate for the expedited ratification of international treaties, such as the African Union Convention on Cyber Security and Personal Data Protection.
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Central African Republic

EXECUTIVE SUMMARY

The Central African Republic (CAR) is one of the least populated countries in Africa, with internet and mobile phone penetration rates among the lowest in the region. This report captures the state of digital rights and inclusion in CAR, focusing on internet access and disruptions, privacy, surveillance and data protection, and the Universal Service Fund as major thematic areas of focus. As early as 2024, the government finally launched operations and commercialisation of its broadband connectivity (optic fiber), which marks the completion of the Central African Backbone (CAB) - RCA project started in 2019, and which has the potential to upgrade the country terms of connectivity. In terms of the development of ICTs and their use in citizen's daily lives, the country is still behind since no public services are delivered using technology, but this could be explained by the lack of broadband connectivity for many years, which is now available and the government's desire to bring digital literacy to universities and schools. The report recommends that the government leverage digital technologies to open new avenues for development in CAR, support poverty reduction, increase economic activity, and expand public service delivery in a country under constant conflict. Data

presented in this report was collected through desk research that explored and analysed the various legal frameworks, other similar studies, and news reports about the specific issues covered by this report.

Introduction

The Central African Republic (CAR) is a French-speaking country in the central region of Africa with Bangui as its capital. It has a surface area of 622,980 km² and a population estimated by the World Bank at 5.45 million in 2021. Independent since December 1958, the country has faced political and security instability for more than two decades despite the remarkable efforts of Central Africans and the international community. The crisis escalated around 2013 and was marked by a coup d'état orchestrated by Michel Djotodia. On September 26, 2020, Faustin-Archange Touadéra, announced his candidacy for the presidential election scheduled for December 27, 2020. According to provisional results, the president was re-elected as Head of the Central African Republic with 53.92% of the vote at the end of a turbulent electoral cycle.

The CAR is party to several international and regional conventions that promote human rights in general as well as the rights to privacy, secrecy of correspondence and free access to information. The most important are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

The national legislation on electronic communications and Internet use is not extensive enough. To date, the country has only one law to regulate electronic communications. This is Law 18.002 of January 17, 2018, governing electronic communications in the Central African Republic,¹⁰⁶ which is referred to as the Electronic Communications Law of 2018. The electronic communications and internet sector are monitored, with the authority to enforce applicable regulations, by the Autorité de Régulation des Communications Électroniques et de la Poste (ARCEP Centrafrique). This body was created by Law 17.020 of May 17, 2017 establishing ARCEP.¹⁰⁷ This body is under the supervision of the Ministry and is in charge of electronic communications. It has the authority to be informed of all violations of laws in this area before the seizure of the courts, according to article 102 of the Electronic Communications Law of 2018.

This report provides a country analysis that first touches on internet freedom issues such as internet access and disruptions, privacy and surveillance practices, and data protection. Further, the country analysis presents the state of CAR's Universal Service Fund. Lastly, the report concludes with a number of recommendations.

¹⁰⁶ Electronic Communications Act of 2018, https://arcep.cf/images/textes/lois/Loi_18_002_regissant_les_communications_electroniques_en_RCA.pdf (accessed on January 8, 2024).

¹⁰⁷ Law 17.020 of May 17, 2017 establishing ARCEP, https://arcep.cf/images/textes/lois/Loi_17_020_portant_creation_ARCEP.PDF (accessed on January 8, 2024).

► Country Analysis

Internet access and disruptions

The country's landscape of information and communication technologies (ICTs) is a bit unusual. For one, the cell phone and internet sectors are not that developed and official up-to-date data is not available. "Due to the inaccuracy of data collected from telecom operators and the fact that we don't have the appropriate equipment to double-check, we decided not to publish an updated report. The 2020 report¹⁰⁸ is the last one we have made public", said Mr. Bertrand Alain Yonso, Head of Information Systems and Statistics at the Regulator (ARCEP Centrafrique).

Fridolin Ngoulou, a local digital technology expert provides¹⁰⁹ a comprehensive report on the state of connectivity in the country, sharing, "In the Central African Republic, internet users have reached 557,000 and the internet penetration rate is 11.4%. Internet users are growing rapidly in the Central African Republic. Internet users on cell phones account for 97.8% of the total number of users."

According to the third quarter 2020 report from ARCEP Centrafrique, the cell phone and internet market was dominated by four main operators (by the time of writing this report, one had ceased operating in CAR). These operators are also internet service providers (ISPs). These are Telecel (48% of the market), Orange France (37% of the market), Moov Africa (15% of the market) and Azur Nationlink Télécoms (which did not report their figures for that quarter and the operator that ceased operations in 2021, according to data from the Regulator).

In July 2023, it was reported¹¹⁰ that "MTN, the South African telecom group, has been awarded the contract to manage and operate the national fiber optic infrastructure in the Central African Republic. This public-private partnership contract aims to improve connectivity in the country and provide wholesale internet services to telecommunications operators such as Orange, Télécel and Moov. Bayobab, an MTN subsidiary specialising in the operation of telecom infrastructure, will be responsible for the maintenance of this strategic infrastructure."

On January 15, 2024, the broadband connectivity, as well as the newly built digital training center and startup incubator, were officially opened by CAR President and partners involved in the optic fiber deployment project (CAB-RCA, with funding from the World Bank and the European Union), whose works were respectively launched on October 4, 2019 and June 29, 2023. "This launch also sees the commissioning of the rehabilitated and equipped laboratory at the Institut Supérieur des Technologies, located at the Ecole Normale Supérieure, and the one at the Lycée Technique, which will serve as a reference center to support the rapid rise of digital technology in the Central African Republic (CAR), with the transition to broadband, which will stimulate the national economy and accelerate the country's emergence", as reported¹¹¹ by Oubangui Medias, CAR's main online media agency. On the same day, telecoms operators also had the opportunity to sign the agreement with

108 ARCEP Centrafrique, L'évolution des Indicateurs des marchés de télécommunications en Centrafrique, https://arcep.cf/images/documents_divers/observatoires/2020/TABLEAU_DE_BORD_MARCHES_TELECOM_RCA_Q3_2020.pdf (accessed on January 22, 2024).

109 Que représente le numérique en Centrafrique en 2021 : <https://oubanguimedias.com/2021/04/08/que-represente-le-numerique-en-centrafrique-en-2021/> (accessed on January 22, 2023)

110 La Centrafrique confie à MTN la gestion de son infrastructure de fibre optique : <https://afriqueitnews.com/tech-media/centrafrique-confie-mtn-gestion-infrastructure-fibre-optique/> (accessed on January 22, 2024)

111 Centrafrique : Lancement de la connexion haut débit en Centrafrique : <https://oubanguimedias.com/2024/01/17/centrafrique-lancement-de-la-connexion-haut-debit-en-centrafrique/> (accessed on January 22, 2024)

Bayobab (MTN) in order to launch commercialisation of the optic fiber capabilities.

According to another report by ARCEP Centrafrique on the evolution of indicators of telecom markets by the first quarter of 2020, these telecom companies cover only 51% of the national territory.¹¹² Alongside other factors, such as illiteracy (eight out of 10 adults are illiterate according to a UNICEF official and low purchasing power, this would justify the low penetration rate of mobile telephony and internet.¹¹³ Another reason could be the fact that only 3% of the CAR population has access to electricity, according to Fridolin Ngoulou quoted above.

In terms of connectivity disruptions (including internet shutdowns) in the country, a local news agency reported¹¹⁴ a case on October 15, 2022, at around 19h30 that affected the 3rd largest city of the country, Bambari. The news agency reported that “Syrian and Libyan mercenaries from the Wagner company have demanded the disconnection of telephone and internet networks throughout the town and its outskirts. Local radio stations no longer work... An hour later, people in the city are beginning to wonder about the origin of this gigantic blackout. It became even more worrying when some people in other towns, even abroad, tried in vain to reach their families and colleagues in Bambari.” The same news agency reports that no communiqué was issued by the Regulator explaining the reason, but local sources reported that it was to reduce communication due to a military operation in villages on the outskirts of Bambari by mercenaries in collaboration with national armed forces.

Another reported case of an internet disruption is due to non-payment by the CAR Presidency for Internet services commissioned by Orange-Centrafrique. “According to our investigations, the French cell phone company Orange-Centrafrique provides the internet connection via VSAT to the Presidency of the Republic. For more than five months, its bills have not been paid, and the debt amounts to tens of thousands of CFA francs. Orange-Centrafrique, which had failed to mention that the line had been allocated to the Presidency of the Republic, decided to cut the connection for unpaid bills.”¹¹⁵ However, this did not affect the rest of the citizens.

Citizens in CAR started using Starkink technology as a way to access the Internet. However, the Regulator (ARCEP) was against that plan and announced that it was illegal to “import, sell, install and operate Starlink equipment” through a post on their Facebook page¹¹⁶ on December 23, 2023. CAR citizens were against such a decision and called on the Regulator to provide better and alternative connectivity options rather than refusing the use of this innovative technology.

A similar initiative was taken by the French Regulator (Arcep, a similar name with CAR’s) but they had to reverse their decision after public consultation that showed how important increased connectivity was for users. The French news agency Le Figaro noted¹¹⁷ that “Starlink gives people in areas poorly served by telecom operators’ fixed and mobile networks access to high-speed Internet, via thousands of small satellites circulating in low orbit (mainly 550 kilometers) around the Earth. It requires special equipment costing around 600 Euros and a monthly subscription fee of around

112 IFRI, Les réseaux sociaux centrafricains à l’aube des élections : symptôme avancé d’une crise politique à venir, <https://www.ifri.org/fr/publications/etudes-de-lifri/reseaux-sociaux-centrafricains-laube-elections-symptome-avance-dune>, (accessed on January 22, 2024).

113 IFRI, Les réseaux sociaux centrafricains à l’aube des élections : symptôme avancé d’une crise politique à venir, <https://www.ifri.org/fr/publications/etudes-de-lifri/reseaux-sociaux-centrafricains-laube-elections-symptome-avance-dune>, (accessed on January 22, 2024).

114 Centrafrique : les hommes de Wagner coupent les réseaux téléphoniques à Bambari : <https://corbeaunews-centrafrique.org/centrafrique-les-hommes-de-wagner-coupent-les-reseaux-telephoniques-a-bambari/> (accessed on January 22, 2024)

115 Centrafrique : la connexion internet de la présidence de la république coupée pour des factures impayées : <https://corbeaunews-centrafrique.org/centrafrique-la-connexion-internet-de-la-presidence-de-la-republique-coupee-pour-des-factures-impayees/> (accessed on January 22, 2024)

116 ARCEP – Against STARLINK equipment: <https://web.facebook.com/photo?fbid=685857503658737&set=a.419024563675367> (accessed on January 8, 2024)

117 Telecoms : l’Arcep attribue une nouvelle autorisation pour Starlink : <https://www.lefigaro.fr/secteur/high-tech/telecoms-l-arcep-attribue-une-nouvelle-autorisation-pour-starlink-20220602> (accessed on January 8, 2024)

100 Euros.”

In February 2021, both Regulatory Agencies, in CAR and Gabon, entered into a “free-roaming” agreement, posted¹¹⁸ on CAR’s side, but this hasn’t been effective at the time of writing this report. A similar agreement was signed on November 9, 2021 among member states of the Central African Economic and Monetary Community (CEMAC) zone, where CAR and Gabon are members. But a year later, the agreement was not yet effective.¹¹⁹

A post¹²⁰ on ARCEP’s Facebook page reads the following: “On November 16, 2023, ARCEP gave formal notice to #TelecelCentrafrique, #MoovAfricaCentrafrique and #OrangeCentrafrique to remedy the poor quality of services provided on their networks within 30 days, or face sanctions.” Sources inside the Communications Regulatory Authority confirm that the formal notice expired on December 15, 2023. A team from CAR’s Communications Regulator went to visit the telecommunications companies to check whether they had taken steps to improve their services, and a report is underway to inform the next steps. If they did not improve their services, sanctions as per the law would be imposed on them.

Privacy, surveillance and data protection

The rights to privacy, access to information as well as the right to inform are protected by the Constitution of the Central African Republic. Important references can be found on article 16¹²¹ of the Constitution¹²² on March 30, 2016. Freedom of the press is recognised and guaranteed, as per paragraph 2 of article 15. Freedom House score for 2021 is 9/100. It is exercised under the conditions set by the law according to article 15 of the same Constitution.

Information is not conclusive on the exact number of television or radio stations in CAR. However, sources, including PKSOL’s CAR profile¹²³, mention that “the country has one government-controlled television station and about two dozen privately-owned radio stations. Many of them are run by religious organisations”. It is worth noting that the television broadcasting services are owned by the government and operated by Radio - Télévision Centrafrique and citizens also have access to cable TV via the French media company Canal +. Radio Ndeke Luka, supported by Fondation Hirondelle, is the number one in the country and is recognised as one of the few media outlets to broadcast information that respects facts and sources by entities such as the Network of Journalists for Human Rights (RJDH) and a few associations of bloggers and journalists doing fact-checking, is regularly subjected to pressure.

As in most African countries, there are vague provisions in the laws that set limits on the secrecy of correspondence by authorising forms of surveillance in specific cases. In the Central African Republic, these are in the Electronic Communications Law of 2018 (The Law of 2018). The Londa Report 2022 for CAR speaks¹²⁴ more about specific articles as well as elements likely to facilitate

118 Téléphonie mobile : la RCA et le Gabon signent un Protocole d’Accord, pour la mise en place de l’itinérance à moindre coût entre les deux pays : <https://www.arcep.cf/index.php/actualites/dernieres-informations> (accessed on January 9, 2024)

119 Free roaming: le Gabon se désolé du retard en zone cemac : <https://www.gabonreview.com/free-roaming-le-gabon-se-desole-du-retard-en-zone-cemac/> (accessed on January 9, 2024)

120 Mise en demeure de l’ARCEP (publication Facebook) : <https://web.facebook.com/ArcepCentrafrique/posts/pfbid02anJ8vQCijzdToKAx2TZpH9T8nj6jQE4aQTrUArtTqKjcJvuYwPvMV4fvB28KUCXGI> (Accessed on January 10, 2024)

121 Article 16: The secrecy of correspondence as well as that of electronic postal, telegraphic and telephone communications are inviolable. Restrictions to the above provisions can only be ordered by law.

122 Constitution of 30 March 2016, https://www.constituteproject.org/constitution/Central_African_Republic_2016.pdf?lang=en (accessed on January 10, 2024).

123 CAR Profile: <https://pksoi.armywarcollege.edu/index.php/central-african-republic-country-profile-information/#:~:text=The%20country%20has%20one%20government,dozen%20privately%20Downed%20radio%20stations> (accessed on February 26, 2024)

124 Londa 2022 Reports. Download CAR’s report via this link: <https://paradigmhq.org/londa-22/> (accessed on January 22,

surveillance in CAR.

CAR does not have ¹²⁵ specific legislation on cybercrime. The CAR does not have an officially recognised national or sector-specific cybersecurity strategy or an officially approved national or sector-specific cybersecurity framework for implementing internationally recognised cybersecurity standards. There is no cybersecurity framework for the certification and accreditation of national agencies and public sector professionals in the Central African Republic. This would be important to ensure that cyber crimes are addressed with human rights safeguards. Further, the country hasn't adopted the AU Convention on Cybersecurity and Personal Data Protection, known as the Malabo Convention; doing so would benefit and inspire the development of cyber legislation.

The country has no stand-alone law or regulations on data protection nor one that specifically deals with issues related to biometric databases and data localisation.¹²⁶ Because there is no data protection law, no data protection authority has been appointed.¹²⁷

However, the Law of 2018 insists on the respect of privacy and the protection of customers' personal data, except for the cases provided for by the law in article 112.¹²⁸ This law briefly covers important points such as the collection of data, the processing of data, the duration of their storage and their anonymisation and deletion except for cases provided for by the law. These provisions on anonymisation and deletion are introduced by article 116.¹²⁹ There are no readily accessible reports on whether the state has used sections such as article 112, to undermine citizen's privacy but vague mentions such as "national defense and public security and the prerogatives of public authority" have the potential to lead to vague interpretation, therefore leading the state to violate citizen's right to privacy.

The Universal Service Fund

The Universal Service Fund (USF) in CAR is established by the Electronic Communications Law of 2018 under articles 77 to 81. It is defined as "a minimum set of defined services of specified quality that is accessible to the whole population under affordable tariff conditions throughout the territory" (Article 77). It is established with contributions from each operator at a rate of "2% of the previous year's turnover of each operator" (Article 79).

The law provides that "particular modalities for the provision of universal service are defined by decree taken in the council of ministers". Decree No 19 043 defining the terms and conditions for the provision and financing of the USF of electronic communications was signed by the President on February 20, 2019,¹³⁰ announcing the formation of the Electronic Communications Development

2024)

125 Cyberwellness profile for Central African Republic: https://www.itu.int/en/ITU-D/Cybersecurity/Documents/Country_Profiles/Central_African_Rep.pdf (accessed on January 22, 2024)

126 CIPESA: Privacy Imperiled: Analysis of Surveillance, Encryption and Data Localisation Laws in Africa: https://cipesa.org/?w-pfb_dt=492 (accessed on January 10, 2024)

127 CAR Data Protection Factsheet: <https://dataprotection.africa/central-african-republic/> (accessed on January 22, 2024)

128 Article 112 of the Electronic Telecommunications Act of 2018 calls on Operators and their employees to respect the secrecy of correspondence by electronic means, to protect the privacy and personal data of their users. Except for the requirements required by national defense and public security and the prerogatives of public authority.

129 Article 116: This chapter applies to the processing of personal data in the context of the provision of electronic communications services to the public. It applies in particular to networks that support data collection and identification devices. Operators, in particular those whose activity is to provide access to online public communication services, shall erase or render anonymous any data relating to: traffic, subject to the provisions relating to persons; the need to investigate, establish and prosecute criminal offences; and the need for billing.

130 Decree No 19 043 defining the terms and conditions for the provision and financing of the FSU of electronic communications: https://arcep.cf/images/textes/decrets/decret_19_043_FSU.pdf (accessed on January 10, 2024).

Committee (under Section 2).

That Committee is designed to function as an autonomous and multistakeholder body to exercise governance and management decision-making authority over the Fund while the day-to-day operations and technical functions will be directly carried out by the Regulator. To that end, the latter has already set up an office named “Service Chargé de la Protection des Consommateurs et de la Gestion du Service Universel” (in English: Service in charge of consumer protection and management of the universal service). At the time of the writing of this section, high-level sources in the Regulator’s office confirmed that this Committee hasn’t been formed but the process is ongoing.

Due to that delay, the Fund is not yet in a position to collect the telecommunications operators’ contributions (2% of their turnover). It is confirmed that the three mobile operators have been informed and they are working at making the deposit once an invoice is issued.

► Conclusion & Recommendations

Conclusion

Digital technology can open up new avenues for development in CAR, support poverty reduction, increase economic activity, and expand public service delivery. In particular, digital transformation starts with improving digital connectivity, given the current gaps in the digital infrastructure network. The CAR is still behind and is, therefore, not ready to embark on its digital transformation to reap all the benefits that come with it. To improve its readiness, key transformational steps have to be put in place.

Recommendations

Government & Parliament

- » The government should consider private investments as well as leverage the universal service fund to support the deployment of technology infrastructure, which could help expand communication and connectivity opportunities across the country;
- » The government should consider updating its legal framework by enacting laws such as those on privacy and data protection, cybersecurity (adopting the Malabo Convention would be a very good starting point), in order to reflect the current development across Africa and leverage these laws to support the development of a more open civic space;
- » The government should work with stakeholders to increase digital literacy programs through partnerships with civil society and electricity services (through partnership with private sector), the lack of which has been identified as one of the reasons for the low internet penetration rate in the country. Civil Society

Civil society organisations and individual users

- » Civil society groups should play the role of watchdog, ensuring the various government-led or announced projects are implemented;
 - » Initiatives such as the universal service funds and their management need to have civil society representatives giving oversight to make sure there is implementation;
 - » Civil society entities should consider funding options such as through international donors and partnering with the government to develop digital literacy programs that will increase technology uptake in the country.
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Private sector

- » Telecommunications companies should support the government in their efforts to develop and operationalise the universal service fund to help deploy connectivity to areas they find less interesting for their businesses;
 - » Private entities operating in the technology space should comply with the law and international standards to protect the private communications and personal data of their users.
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Democratic Republic of Congo

EXECUTIVE SUMMARY

This Londa report on the Democratic Republic of the Congo (DRC) addresses digital rights issues and provides an overview of the ICT landscape for this country at the heart of the African continent. This report speaks of the two main legal texts covering the country's digital landscape: the 2020 Telecoms and ICT law and the Digital Code enacted in 2023. The two texts are the main ones used here to assess the country's digital rights situation and can be considered as major milestones in the country's search to update its legal framework for the last few years. It is noted in this report that, unlike the 2018 general elections that saw the country go under a long internet shutdown period, the just concluded 2023 general elections recorded no internet shutdown nor any telecoms disruption, which is a positive sign. Unlike the previous administration under President Kabila, which recorded many network disruptions, President Tshisekedi's presidency recorded no disruption for his 5-year tenure.

This report addresses the Universal Service Fund in the RDC (FDSU). The FDSU, the institution in charge of managing the USF, was established by the 2020 Telecoms and ICT Law, providing for telecom operators to contribute 3% of their annual turnover

to it. The FDSU management is still working on securing the funds which were used to contribute to the national budget and need to be redirected. The report also touches on the situation of women human rights defenders and the gender-oriented online violence they are facing as they work to participate in the creation of a rights-respecting digital space. The state of cybersecurity and data protection in the DRC is also mentioned, highlighting that no specific law covers any of the two aspects. Still, a few articles on both issues exist in the two main legal frameworks. The report ends with a conclusion and recommendations addressed to various stakeholders, including the regulatory authority, the government, the parliament, civil society organisations and telecom companies. Data presented in this report was collected through desk research that comprised the exploration and analysis of the various legal frameworks, other similar studies as well as news reports about the specific issues covered by this report.

Introduction

The Democratic Republic of Congo (DRC) is the second largest country in Africa, with an area of 2,345,000 km² located at the heart of the continent. According to World Bank data, its population is estimated at 99 million (2022), and its GDP per capita at 586,464 US dollars (2022).¹³¹ The DRC had its general elections on December 20, 2023 and saw the incumbent president, Felix Antoine Tshisekedi Tshilombo, be provisionally announced as the winner for a second term by the Electoral Commission on December 31, 2023, pending confirmation by the Highest Court. Unlike the previous 2018 general elections, no internet disruptions were noticed, a positive sign that showed the current administration's commitment to the tech ecosystem.

131 World Bank, Congo Democratic Republic available at <https://data.worldbank.org/country/congo-dem-rep?view=chart>

► Country Analysis

ICT-related Legal Frameworks

The digital ecosystem in the DRC has a few legal instruments that cover the sector to ensure a smooth collaboration between the different state and private bodies which are considered partners in the fight for meaningful connectivity in the DRC. The two most important ones are presented below.

1. The 2020 Telecommunications and Information and Communication Technologies Law of the DRC Referred to in this study as the 2020 Telecoms and ICT Law, this document is considered the most important framework law that oversees the telecommunication and ICT sector in the country. According to the Prime Minister's office¹³²: "This law also aims to make telecommunication and information and communication technologies a truly economic growth sector and job creator in the Democratic Republic of Congo."

A long-awaited project by different actors in the sector, this law, enacted in November 2020, came in replacement of Framework-Law No 013/2002 of October 16, 2002 on Telecommunications in the DRC that was mostly focused on telecoms. It was important for the country to have it updated with the aim of, filling the gaps that hinder the smooth running of the market and the economic profitability of the ICT sector for the Congolese State, and adapting the legislation to the imperatives of security and the evolution of the telecommunications industry in the digital age.

2. Le Code du Numérique (The Digital Code) It is Ordinance-Law No 023/10 of March 13, 2023 on the Digital Code, a project led by the Ministry of Digital Affairs and one of the projects mentioned in the National Digital Plan, under its 3rd pillar, Governance and Regulation. This is part of Project 62, whose objective is the « implementation of a legal and regulatory framework for digital activities with a participative, corrective, adaptive, complementary and forward-looking approach, in line with commitments at sub-regional, regional and international levels."¹³³ This ordinance law is considered the legal lever for the digital transformation of DRC, as it is positioned as an instrument for developing and diversifying the national economy. It aims to foster the emergence of the digital economy by facilitating the development of digital services and the widespread distribution of digital technology based on established rules.

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Internet access and disruptions

With four main telecom companies operating in the DRC: Vodacom, Orange, Airtel, and Africell; the mobile telephony penetration rate is at 58.6% and the mobile internet penetration rate at 30.8% in the second quarter of 2023, according to a report by the Regulatory Authority¹³⁴. The DRC

132 The 2020 Telecoms and ICT Law: https://www.primature.cd/public/wp-content/uploads/2022/04/Loi-N%C2%B020-017-du-25-novembre-relative-aux-Te%CC%81le%CC%81com_08-12-020.pdf

133 PNN: https://www.numerique.cd/pnn/pnn/Plan_National_du_Nume%CC%81rique_HORIZON_2025.pdf (National Digital Plan, Page 66) (Accessed on Jan 5, 2023).

134 Regulatory Authority Report: https://drive.google.com/file/d/18uPpM6np908blnm6igZL_jlscf-dC_oA/view?usp=sharing

citizens were invited for the general elections on December 20, 2023 which saw the mandate of President Felix Antoine Tshisekedi Tshilombo renewed for a second term after the announcement by the Electoral Commission on December 31. Unlike the previous general elections of 2018, no internet shutdown or disruption was noted during these elections.

The Universal Service Fund

Article 14 of the 2020 Telecoms and ICT Law provides the following: “The Government creates, by decree approved by the Council of Ministers, a public body responsible for promoting telecoms and ICTs in rural and semi-urban areas that are not of interest to the sector’s economic operators. To this end, the law creates a Universal Service Fund for the telecommunications and ICT sectors. It is placed under the authority of the Minister.” Decree No 22/51 of December 30, 2022 provides for the creation, organisation and operation of a public body called the Fonds de Développement du Service Universel des Télécommunications et des Technologies de l’Information et de la Communication (FDSU)¹³⁵ or the Universal development fund for ICT, in English. This institution was presented¹³⁶ to telecoms operators during a meeting with the Minister of ICT on July 24, 2023, an initiative that was welcomed and supported by operators as well as by the telecoms regulator, who said: “This fund, which has been set up by telecoms operators over the years to cover 3% of their turnover, will be used to develop telecommunications in less profitable areas.” To operationalise this law, a ministerial order¹³⁷ came in to appoint a mission manager and their deputy. Their mission is to prepare the implementation of the FDSU (Art. 2) and this mission lasts until the appointment of the official managers by a presidential decree, which hasn’t happened as of yet.

The FDSU will be in charge of the following missions, as per Article 5 of Decree No 22/51 referenced above:

1. Financing interventions and projects aimed at implementing the Government’s universal service development strategies;
2. Promote access to telecoms and ICT services for rural and disadvantaged communities;
3. Promote the participation of the private sector in the provision of telecoms and ICT services in rural and peri-urban areas;
4. Promote the economic and social development of rural and semi-urban areas through access to telecoms and ICT services;
5. Identify the needs of rural and semi-urban populations.

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According to the law, the FDSU’s financial resources are constituted, among other sources, by a 3% levy on the annual turnover of telecoms and ICT operators. The current battle and challenge for this team will be to ensure that this fund is properly nourished, as this money is collected but has already been used to increase the national budget for the last 10 years. This is a difficult exercise,

135 Decree No 22/51 of December 30, 2022 : <https://drive.google.com/file/d/14q4rGuje6y1ygeuSBFrMbWALQE7UUnel/view?usp=sharing>

136 PTNTIC: Augustin Kibassa préside la réunion de présentation du FDSU aux opérateurs des télécoms : <https://www.african-ewsrdc.net/actu/ptntic-augustin-kibassa-preside-la-reunion-de-presentation-du-fdsu-aux-operateurs-des-telecoms/> (Accessed on Jan 5, 2023)

137 Ministerial order No CAB/MIN/PTNTIC/AKIM/KL/Kbs/009/2023 of May 24, 2023 appointing a mission manager and a deputy mission manager for the FDSU in the DRC: <https://drive.google.com/file/d/1xxugFqVw8JFKua0KLCLc0UXQ04ErdIHF/view?usp=sharing>

as the portion that goes into the national budget finances other aspects of the country's expenses and has to now be released so that it can be used to finance the Fund. By creating this entity, the Congolese Head of State aims to improve the national telecoms network "so that all Congolese, wherever they may be, have access to the Internet". This is essential in the context of accelerated digital transformation, where the government wants to dematerialise administrative procedures to make the administration's actions more transparent¹³⁸. The provisional team managing the FDSU hasn't implemented any project as directed by the laws at the time of writing this report.

Online Gender-Based Violence

The lack of digital knowledge and skills among some women human rights defenders in the DRC is an additional vulnerability that makes their work difficult and exposes them more to human rights violations. There is a rise in the rate of online gender-based violence in the DRC. Unfortunately, there is silence on this subject. For many, these acts of violence are at the root of technophobia (the fact that women tend to refrain from using technology as a consequence of the harm they are facing) that is increasingly noticed among women. Careful consideration is needed on this.

This technophobia and the gap between men and women in the use of digital tools and the internet, in particular, is said to have its roots in retrograde cultures and customs that have for years sought to exclude women and girls from public spaces and platforms of expression. Cases of sextortion, harassment and other forms of online threats discourage many women human rights defenders from continuing to use the Internet in their daily work. These forms of attacks often result in the publication of intimate content to discredit the victim or extort them for ransom. Some women activists and journalists continue to suffer violence from misogynistic Internet users when they speak out on public platforms, often without any reaction from the managers of these platforms nor public support from the rest of the community, as said¹³⁹ during this workshop organised by journalists on this topic. These sexist attacks must be discouraged by a common outpouring of solidarity from Internet users and platform managers.

Cybersecurity and Data Protection

To date, in the DRC, no law in force specifically deals with cybersecurity and cybercrime issues. Other laws and related texts, such as the Telecoms and ICT law and the Digital Code, address these areas. The Digital Code enshrines the creation of the National Cybersecurity Agency in Article 275. It is a public body with legal personality and placed under the President's office. When instituted, it will take care of all matters related to cybersecurity and the security of information systems in the country. This is a significant step forward in the Congolese digital sector. The Digital Code applies to digital activities and services; writings, electronic tools and trust service providers; digital content; security and criminal protection of computer systems.¹⁴⁰ This code considers cybercrime offenses by defining them as a set of specific criminal offenses related to information and communication technologies whose commission is facilitated or linked to the use of technologies.

138 RD Congo: vers l'opérationnalisation du Fonds de développement des services universels : <https://www.agenceecofin.com/telecom/2407-110570-rd-congo-vers-l-operationnalisation-du-fonds-de-developpement-des-services-universels> (Accessed on Jan 5, 2024)

139 RDC : les femmes des médias appelées à dénoncer les attaques dressées contre elles sur les réseaux sociaux: <https://zoom-eco.net/a-la-une/rdc-les-femmes-des-medias-appelées-a-denoncer-les-attaques-dressees-contre-elles-sur-les-reseaux-sociaux/>

140 Article 1 of Ordinance-Law No. 23/010 of March 13, 2023, on the Digital Code of the DRC

Women human rights defenders are also victims, like all Congolese, of the government's prerogatives to violate the rights of access to the internet. Indeed, article 125 of the 2022 ICT and Telecoms Law maintains that the State may, for the time it determines, either for reasons of internal and/or external security, national defense or public order, or in the interest of the telecommunications service, or for any other reason deemed necessary, suspend, restrict, filter, prohibit or close certain services and applications, in whole or in part, including the use of their facilities. In the past, this has been relied on to order internet disruptions, such as Internet shutdowns. Calls from civic groups have been made to amend this section to address its vague nature and the possibility of abuse.

Women human rights defenders are not exempt from these measures which can lead to censorship, surveillance and/or deprivation of rights of access to information and freedoms of association and assembly. This agency, like those of the intelligence services, being under the direct authority of the President's office, can become a tool of repression used by the public authorities. Articles 323¹⁴¹ and 324¹⁴² of the Digital Code reiterate the prerogatives granted to the National Cybersecurity Agency, which may authorise the interception of personal data, their retention and integrity protection as well as the interception of correspondence sent by electronic means. This is for several reasons, including the maintenance of national sovereignty, territorial integrity, and national defense, as well as the breach of public order. This provision, however, can be abused to violate encryption and privacy of communications; there is a need for a balanced approach that upholds human rights.

141 Article 323 of the Digital Code: The National Cybersecurity Agency authorizes: 1. the interception of correspondence sent by means of electronic communications, in accordance with the provisions of this Ordinance-Law; 2. the preservation and protection of the integrity and collection, including in real time in accordance with the procedures provided for in Articles 25 et seq. of the Code of Criminal Procedure, of data and information on personal data and in Article 273 of this Ordinance-Law. The detailed rules for implementing the provisions of this Article shall be specified by regulation.

142 Article 324 of the Digital Code: The interception operations referred to in this Ordinance-Law are authorized by the National Cybersecurity Agency when they are necessary: 1. the maintenance of national sovereignty, territorial integrity or national defense; 2. the preservation of the major foreign policy interests of the Democratic Republic of Congo; 3. the safeguarding of the major economic, industrial and scientific interests of the Democratic Republic of Congo; 4. the prevention of terrorism, collective violence likely to seriously undermine public order or organized crime and delinquency.

► Conclusion & Recommendations

Conclusion

Conclusion

The major highlight of this year is that the DRC has done well in 2023 regarding its digital rights record, with no internet disruption recorded during the 2023 electoral cycle. Citizens and the international community were calling on the government not to violate citizens' digital rights as it did during the 2018 cycle, which saw a 20-day internet shutdown starting the day after the general elections until a few hours before the final results were published.

In line with the above, the following recommendations are made to various bodies in the DRC landscape:

Recommendations

The government

- » Ensure the entity managing the Universal Service Fund (FDSU) receives the necessary funds, allowing them to start deploying their work on the ground immediately and supporting internet connectivity for rural areas.
- » Ensure the Regulator plays their role, including advocating for the rights of users of telecoms and internet services across the country.
- » The Parliament must play its legislative role by granting the country the appropriate and up-to-date laws and regulations that take into account the global standards and practices in the telecommunications and internet service provision industry;
- » Ensure the public interest is taken into account as a priority in all government actions, especially regarding connectivity matters;
- » Implement laws fairly in line with international human rights standards to ensure fairness to the benefit of the population.

Civil society organisations and individuals:

- » Multiply awareness-raising activities but also consolidate joint actions in multi-stakeholder meetings such as forums relating to internet governance to improve or develop different consultation frameworks for the benefit of the digital ecosystem in the Democratic Republic of Congo.
 - » It takes a surge of solidarity from all Congolese internet users to stop sexist attacks and other forms of harassment against women human rights defenders online.
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**Telecom-
munications
companies:**

- » Comply with the law and international standards to protect their users' private communications and personal data.
 - » Refrain from consenting with illegal requests by government institutions regarding access to personal data.
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Egypt

EXECUTIVE SUMMARY

This report is an evaluation of the state of digital rights in Egypt throughout the year 2023 and serves as complementary to the Londa Egypt report published in 2021.¹⁴³ The focal points of this assessment encompass themes such as internet accessibility and interruptions, freedom of expression in online spaces, privacy and surveillance issues, data protection, cybersecurity, the Universal Service Fund, and advancements in information and communication technologies (ICTs), along with emerging technologies. The findings of this report highlight that while the current legal framework safeguards the digital rights and rights of internet users, it paradoxically serves as a foundation for digital rights abuses and a means to restrict the digital civic space. The report employed both analytical and qualitative research methodologies. Secondary data was gathered through an extensive literature review, delving into the primary themes discussed within. The review encompassed various sources, including academic books, research

reports, and articles. The proposed recommendations advocate for the implementation of dedicated legislation governing the creation and utilisation of artificial intelligence (AI) systems, focusing on adopting approaches that prioritise human rights in digital rights. It is also imperative to formulate executive regulations (bylaws) to streamline the enforcement of data protection laws. Additionally, introducing access to information law is essential to foster governance that is both transparent and accountable.

143 Mohamed Farahat, Egypt Digital Rights And Inclusion 2020 Report, Londa, Paradigm Initiative <https://paradigmhq.org/wp-content/uploads/2021/05/lr-Egypt-Digital-Rights-Inclusion-2020-Report.pdf>

Introduction

Egypt is a North African country with an estimated population of 112,716,598 in 2023.¹⁴⁴ In 2023, 41.3% of the total population lived in urban areas and 58.5% of the total population reside in rural areas. The country is party to several international human rights binding treaties that emphasise and guarantee internet freedoms and digital rights, such as the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, and the Arab Convention of Anti-information Technology Crimes (Cybercrimes). Egypt is yet to ratify the 2014 African Union Convention on Cyber Security and Personal Data Protection (the Malabo Convention). It is therefore envisaged that Egyptian domestic laws be aligned with existing international human rights laws and standards.

In relation to connectivity, Egypt ranked third in Africa after Morocco and Seychelles. A noteworthy 80.75% of the populace is actively engaged as internet users.¹⁴⁵ By January 2023 41.4% of the population were social media users.¹⁴⁶ Notably, the growth rate of ICT sectors surged to approximately 16.3% in the fiscal year 2022/2023.¹⁴⁷ Since 2018, Egypt has been enacting legislation that significantly shapes the landscape of digital rights. Laws that govern internet freedoms include the Personal Data Protection Law No. 151 of 2020 and the law no. 175 of 2018 combating information technology crimes.¹⁴⁸ Egypt also enacted national security and anti-terrorism laws. However, rather than primarily safeguarding digital rights, this legislative framework has often been utilised to restrict the civic space. Regrettably, the implementation of these measures has also had adverse consequences on media freedoms.¹⁴⁹

Moreover, in the aftermath of the COVID-19 pandemic, Egypt continues to grapple with dissemination of false information in its various manifestations such as misinformation and disinformation.¹⁵⁰ It is, therefore, evidently imperative to adopt an access to information legislation to guarantee the proactive dissemination of credible information to the public by relevant stakeholders. Generally, there was no significant improvement in the digital rights situation in Egypt in 2023 juxtaposed with the developments observed over the preceding five years. According to Freedom House, Egypt's score for internet freedom in 2018 was 28 out of 100 in 2019, 26 out of 100 in 2020, 27 out of 100 in 2021 and in 2023, 28 out of 100.¹⁵¹ Throughout the five year period, Egypt was classified as "not free" in the category of internet freedom. The subsequent sections of this report explore the reasons behind the low rate of internet freedoms, examining whether the root cause lies in the legislation or its execution.

This report examines the state of digital rights and digital inclusion in Egypt during 2023. It covers the dynamics of internet freedom, right to privacy, surveillance, online expression, data protection, the universal service fund and AI regulation.

144 Worldometers, Egypt , <https://www.worldometers.info/world-population/egypt-population/>

145 Statista, Share of internet users in Africa as of January 2023, <https://www.statista.com/statistics/1124283/internet-penetration-in-africa-by-country/#:~:text=As of January 2023%2C Morocco had an internet,percent%2C followed by Egypt with approximately 81 percent.>

146 Datareportal, Digital 2023, Egypt. <https://datareportal.com/reports/digital-2023-egypt>

147 Egypt , State information Service, <https://www.sis.gov.eg/Story/191377/ICT-Sector?lang=en-us>

148 Mohamed Farahat, (2021). Egypt Digital Rights And Inclusion, LONDA, Paradigm Initiative,. <https://paradigmhq.org/wp-content/uploads/2021/05/lr-Egypt-Digital-Rights-Inclusion-2020-Report.pdf> , Mohamed Farahat (2021) , Egypt Digital Rights Landscape Report, in T. Roberts (ed.), Digital Rights in Closing Civic Space: Lessons from Ten African Countries, Brighton: Institute of Development Studies, DOI: 10.19088/IDS.2021.014. AND, Miral Sabry AlAshry, op.cit.,

149 Miral Sabry AlAshry (2022) A critical assessment of the impact of Egyptian laws on information access and dissemination by journalists, Cogent Arts & Humanities. P. 1. DOI: 10.1080/23311983.2022.2115

150 Mohamed Farahat, Coronavirus Trials in Egypt: Blurring the Lines Between Fake News and Freedom of Expression, SMEX.

151 Freedom House, "Freedom On The Net 2023, Egypt", <https://freedomhouse.org/country/egypt/freedom-net/2023> .

Accessed 1/1/2024.

► Country Analysis

Internet Access

As reported by the International Telecommunication Union (ITU), in 2022, mobile telephone subscriptions encompassed 93% of the Egyptian population.¹⁵² In November 2023, the percentage soared to 96.73%.¹⁵³ Subscribers numbered 102.77 million in March 2023¹⁵⁴, and this figure increased to 103.74 million by November.¹⁵⁵ Only 10% of the population has a fixed broadband telephone subscription,¹⁵⁶ while 65% maintained active mobile broadband subscriptions in 2022.¹⁵⁷ This notably surged to 73.07% by November 2023.¹⁵⁸ As of 2022, the international bandwidth per Internet user was (71 kbit/s). According to the Speedtest Global Index, the speed of fixed broadband in Egypt by October 2023 was 61.22 Mbps, ranking 83rd globally.¹⁵⁹ Regarding internet connectivity, as of 2022¹⁶⁰, only 72 % of the population was connected.¹⁶¹ In terms of mobile network coverage, in 2022¹⁶² 100 % of the population was covered by 3G mobile network, while 98% of the population was covered by 4G mobile network during the same period.¹⁶³ Egypt is one of 14 countries in Africa where 5G networks are being tested or widely deployed.¹⁶⁴ Other African countries, including North African countries, still invest in 4G networks.¹⁶⁵ Egypt has achieved remarkable strides in connectivity and is among the leading countries on the continent in this regard.

Privacy and Surveillance

As mentioned earlier, Egypt is a party to most of the international human rights binding treaties which emphasise and guarantee the rights to privacy and prohibit the unlawful surveillance practices. Principle 40 of the African Commission on Human and Peoples' Rights' 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa states that

152 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Egypt. P1. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_EGY.pdf

153 Ministry of Communications and Information Technology, ICT Indicators in Brief December 2023 | Monthly Issue. P.2. https://mcit.gov.eg/Upcont/Documents/Publications_1512024000_ICT_Indicators_in_Brief_December_2023_15012024.pdf

154 Ministry of Communications and Information Technology. (2021-2022). Survey of ICT usage in household and individuals. Retrieved from https://mcit.gov.eg/Upcont/Documents/Publications_1272023000_ICT_Indicators_Quarterly_Bulletin_Q1_2023.pdf

155 Ministry of Communications and Information Technology, ICT Indicators in Brief December 2023 | Monthly Issue. P.2 https://mcit.gov.eg/Upcont/Documents/Publications_1512024000_ICT_Indicators_in_Brief_December_2023_15012024.pdf

156 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Egypt. P1. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_EGY.pdf.

157 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Egypt. P1. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_EGY.pdf

158 Ministry of Communications and Information Technology, ICT Indicators in Brief December 2023 | Monthly Issue. P.3 https://mcit.gov.eg/Upcont/Documents/Publications_1512024000_ICT_Indicators_in_Brief_December_2023_15012024.pdf

159 Speedtest Global Index. <https://www.speedtest.net/global-index/egypt#mobile>

160 Figures of 2023 were not available during the time of writing this report.

161 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Egypt. P2. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_EGY.pdf

162 Figures of 2023 were not available during the time of writing this report.

163 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Egypt. P1. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_EGY.pdf

164 Diplo Foundation , Status of internet access and connectivity in Africa, <https://www.diplomacy.edu/resource/report-stronger-digital-voices-from-africa/internet-access-connectivity-africa/>

165 Diplo Foundation , Status of internet access and connectivity in Africa, <https://www.diplomacy.edu/resource/report-stronger-digital-voices-from-africa/internet-access-connectivity-africa/>

“[e]veryone has the right to privacy, including the confidentiality of their communications and the protection of their personal information and everyone has the right to communicate anonymously or use pseudonyms on the internet and to secure the confidentiality of their communications and personal information from access by third parties through the aid of digital technologies”.¹⁶⁶

Article 57 of the Constitution provides the protection to the right to privacy and this provision aligns with the principle 40 of the ACHPR 2019 Declaration and other international human rights treaties and standards. Article 57 states that “ the right to privacy may not be violated, shall be protected and may not be infringed upon. Postal, telegraphic, and electronic correspondence, telephone conversations, and other means of communication are inviolable, their confidentiality is guaranteed, and they may not be confiscated, viewed, or monitored except by a reasoned judicial order, for a specific period, and in the circumstances specified by law.”¹⁶⁷ The State is also committed to protecting the right of citizens to use public means of communication in all its forms. It is not permissible to disrupt, stop, or deprive citizens of them arbitrarily. While this is regulated by law, other laws have provisions that undermine the right to privacy, as expounded later in this report.

In addition to the aforementioned article 57, article 99 of the Constitution establishes the right to remedies and compensation for damage resulting from abuse of privacy. The article 99 stipulates that “[a]ny violation of personal freedom, or the sanctity of the private life of citizens, or any other public rights and freedoms which are guaranteed by the Constitution and the Law is a crime. The criminal and civil lawsuit arising of such crime shall not abate by prescription. The affected party shall have the right to bring a direct criminal action.”¹⁶⁸ The right to remedy and compensation are guaranteed by the Constitution and also guaranteed under article 163 of civil law; In particular, there are many compensation claims submitted to Egyptian courts for breach of privacy with final judgement in favour of affected persons

Article 25 of law No. 175 of 2018 on combating information technology crimes criminalises the breach of the family’s principles and values of Egyptian society and the violation of the inviolability of private life. It is punished by imprisonment for a period of not less than six months and a fine of not less than 50,000 Egyptian pounds (1600 US Dollars) and not exceeding 100,000 pounds(3200 US Dollars). The same article includes some actions that constitute a breach of privacy such as sending a large number of messages electronically to a specific person without his consent granting data to a system or website to promote goods or services without their consent, or publishing, via the information network or by any means of information technology, information, news, pictures, and the like, that violate the privacy of any person without his consent, whether the published information is correct or incorrect. Article 26 of the same law added that “[a]nyone who intentionally uses an information program or information technology to process personal data of others in order to link it to content that is contrary to public morals or to display it in a way that would infringe on his character or honour. In the same context, article 20 of the Law No. 180 of 2018 regarding Regulating the Press, Media, and the Supreme Council for Media Regulation stipulated that “It is prohibited in any means of publication or broadcast to breach the private lives of citizens”.

In terms of surveillance¹⁶⁹ according to principle 41 of the ACHPR 2019 Declaration, states shall use surveillance when it is “authorised by law, that conforms with international human rights law and standards, and that is premised on specific and reasonable suspicion that a serious crime has been or is being carried out or for any other legitimate aim”.¹⁷⁰ In the Egyptian context, community standards

166 African Commission on Human and Peoples’ Rights ,the Declaration of Principles on Freedom of Expression and Access to Information in Africa, 2019.

167 Egypt , Constitution 2014 article 57.

168 Constitution article 99.

169 For detailed information about surveillance practices and related framework refer to Mohamed Farahat (2021), Egypt country report, in Surveillance Law in Africa: a Review of Six Countries, Brighton: Institute of Development Studies, pp.48-70. DOI: 10.19088/IDS.2021.059

170 African Commission on Human and Peoples’ Rights, The Declaration of Principles of Freedom of Expression and Access to

and ensuring national security is always used as justification for undertaking surveillance.¹⁷¹ Under the regime of Hosni Mubarak surveillance practices were primarily focused on monitoring terrorist activities. However, the dynamics have transformed significantly in the aftermath of the 2011 revolution and subsequent political events, emanating from the pivotal role that social media played. Surveillance measures have expanded beyond tracking terrorist activities. Rigorous steps were implemented to regulate internet access and scrutinise online content. Legislation is used to ban websites, obtain personal data, abuse citizens' right to privacy and criminalise the right to freedom of expression through allegations of disseminating false news.¹⁷²

As already stated, article 57 of the Constitution prohibits surveillance except when authorised by a judicial order, strictly for a defined duration, and in cases specified by the law. Article 71 of the Constitution stipulates that "it is prohibited to censor, confiscate, suspend or shut down Egyptian newspapers and media in any way. In exceptional circumstances, they may be subject to limited censorship in times of war or general mobilisation".¹⁷³ However, the same laws contain specific provisions that grant powers to the authorities to block websites that are deemed a threat to national security. Article 1 of the Cybercrimes Law No. 175 of 2018 defines national security as everything related to the independence, stability, and security of the homeland and anything linked to affairs of the Presidency, the Ministry of Defense and General Intelligence. The term 'national security' is vague and shrouded in ambiguity. The lack of clarity in defining national security bestows unfettered discretionary powers upon the authorities, allowing them to decide which actions may pose a threat to national security. Although the Constitution prohibits surveillance practices without a judicial order, the different laws provide the legal basis for surveillance such as Telecommunications Regulation Law no. 10 of 2003, Personal Data Protection Law No. 151 of 2020, Anti-Terrorism Law No. 94 of 2015, Anti-Cyber and Information Technology Crimes no. 175 of 2018, and Emergency Law no. 162 of 1958.¹⁷⁴ On the basis of the information already provided, it can be asserted that the existing laws exhibit a partial alignment with international human rights standards at a superficial level. However, the same laws contain provisions that undermine digital rights.

Online Freedom of Expression

The ACHPR 2019 Declaration stresses the importance of both rights and states that "[t]he respect, protection and fulfilment of these rights is crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights".¹⁷⁵ This segment of the report underscores the correlation between freedom of expression and the right to access to information. When both rights are guaranteed without undue restrictions, it contributes to combating the spreading of false news while promoting freedom of expression, including the right to engage in constructive criticism of government policies.

Despite the surveillance practices outlined earlier, it is essential to underscore the constitutional assurance of freedom of expression. Article 65 guarantees freedom of thought and opinion and

Information in Africa 2019.

171 OpenNet Initiative (September 2004). A Starting Point: Legal Implications Of Internet Filtering.

172 Mohamed Farahat (2021), Egypt country report, in Surveillance Law in Africa: a Review of Six Countries, Brighton: Institute of Development Studies, p.48. DOI: 10.19088/IDS.2021.059 p.48.

173 Constitution article 71

174 Mohamed Farahat (2021), Egypt country report, in Surveillance Law in Africa: a Review of Six Countries, Brighton: Institute of Development Studies, pp.53-56. DOI: 10.19088/IDS.2021.059

And , Mohamed Farahat ,Mohamed Farahat, Egypt Digital Rights and Inclusion 2020 report, LONDA, Paradigm Initiative <https://paradigmhq.org/wp-content/uploads/2021/05/lr-Egypt-Digital-Rights-Inclusion-2020-Report.pdf>

175 African Commission on Human and Peoples' Rights, The Declaration of Principles of Freedom of Expression and Access to Information in Africa 2019 Principle 1

all individuals have the right to express their opinions through various means of expression and publication, including digital platforms. However, article 102 (Bis) of the Penal Code criminalises broadcasting false news, statements, or rumours particularly if such actions are considered to potentially disturb public security, spread terror among people, or jeopardise public interest. While the legitimacy of criminalising the publication of false news is acknowledged, the existing legal framework does not define the parameters of what constitutes harm to public security and interest. Moreover, article 19 of the Law No. 180 of 2018 Regulating the Press, Media, and the Supreme Council for Media Regulation prohibits publication of false news, incitements of violations of the law, promotion of violence, or hatred, and discrimination between citizens. It also forbids publication of content that endorses racism, or includes an abuse of the honour of individuals, or cursing or slandering them, or insulting religions. Article 4 of this law also restricts publication of content that contradicts the Constitution. In this regard, it explicitly prohibits the promotion of activities that encourage legal violations, contravene the professional code of honour, disrupt public order, or undermine public morals. The article also prohibits the propagation of content that fosters discrimination, violence, racism, or hatred.

Evidently, the aforementioned provision exhibits legal deficiencies characterised by the utilisation of ambiguous terms like “public order” and “public morality.” It also fails to specify actions deemed as detrimental to the honour of individuals. The lack of precision raises concerns regarding the clarity and enforceability of the provision, warranting a careful reassessment to enhance its legal robustness and effectiveness. Also, the absence of a well-defined legal framework that distinguishes between misinformation and the lawful dissemination and unrestricted flow of information poses a significant challenge to the preservation of freedom of expression that is constitutionally guaranteed. The country’s 2021 National Human Rights strategy that was developed by the government acknowledges “the lack of a legal framework regulating access to and circulation of official information, data, and statistics, albeit being a constitutional right”.¹⁷⁶

Egypt is yet to enact an access to information law, a situation which is contrary to the aspiration enshrined under principle 26 of the ACHPR 2019 Declaration which stipulates that the law shall guarantee the right of access to information. Therefore, dissemination of information that deviates from official government publications is consistently deemed a violation, constituting the offence of disseminating false information.

The laws above serve as mechanisms to restrict freedom of expression. In August 2023, Hisham Kassem, a prominent politician and news publisher, was arrested and detained on charges of libel and slander.¹⁷⁷ The allegations stemmed from Kassem’s critical Facebook posts directed towards a former Minister. Prosecutors referenced vague and broad terminology, like intentionally “disturbing the authorities.”¹⁷⁸

Data Protection

65

The Data Protection Law (DPL) No 151 of 2020 was enacted in 2020. Despite its enactment, the executive regulation of the data protection law is yet to be adopted. The undue delay in promulgating the regulation poses a significant obstacle to law enforcement, notably impeding the establishment of essential guidelines necessary for the proper execution and compliance with the provisions outlined in the legislation. According to articles 2 and 6(1) of the DPL, the consent of the data

176 Egypt, Supreme Standing Committee for Human Rights, National Human Rights Strategy (2021) p31 <https://sschr.gov.eg/media/gapb5bq4/national-human-rights-strategy.pdf>

177 Human Rights Watch, World Report 2024, events of 2023, P. 191. https://www.hrw.org/sites/default/files/media_2024/01/World_Report_2024_LOWRES_WEBSPREADS_0.pdf

178 Human Rights Watch, World Report 2024, events of 2023, P. 191. https://www.hrw.org/sites/default/files/media_2024/01/World_Report_2024_LOWRES_WEBSPREADS_0.pdf

subject for processing and gathering the personal data is required in processing data. In addition, article 2 gives the data subject control over their data and allows them to delete it. The data subject has the following rights:

1. Knowing, accessing, or obtaining personal data held by any holder, controller, or processor.
2. Changing the prior consent to retain or process his personal data.
3. Correction, modification, erasure, addition or updating of personal data.
4. Allocate treatment within a specific scope.
5. Knowing of any breach or violation of his personal data.
6. Objecting to the processing of personal data or its results if they conflict with the basic rights and freedoms of the person concerned with the data.

In terms of transparency, the DPL is aligned with international standards in this regard, particularly article 13 of the Malabo Convention includes provisions regarding transparency requirements on data usage.¹⁷⁹ According to article 2 of the law a person has a right to know, access, or obtain their personal data. In addition, the data subject has a right to be informed of any breach or violation of their personal data. According to article 7 of personal data protection law, the data breach incident shall be reported to the data protection centre within 72 hours and in case that data is related to national security should be reported immediately. The data subject should be notified of data breach within the next three days after reporting the breach to the centre. Furthermore, article 3 emphasises the principle of legitimacy in collecting and processing the personal data. Article 3 stipulates conditions that should be met in the collection, processing and retention of personal data. These are:

1. Personal data is collected for legitimate, specific and declared purposes for the person concerned.
2. It must be correct, sound and secure.
3. To be processed in a lawful and appropriate manner for the purposes for which it was collected.

Data minimisation is one of the data protection principles guaranteed by article 3 of the data protection law. Article 3 emphasises that the collected data should not be kept longer than necessary to fulfil its specified purpose. The executive regulations of this law specify the policies, procedures, controls and standard standards for collecting, processing, preserving and securing this data. Data minimisation regulation in the law ensures that organisations collect, process, and retain only the personal data that is strictly necessary for the purpose for which it was collected. This provision is aligned with article 22 of the Malabo Convention, which permits the retention of personal data until the fulfilment of the intended purpose for which the data were originally collected and processed.¹⁸⁰ However, article 2 of the Cybercrimes Law No 175 of 2018 grants permission to service providers to retain and store user data for 180 days. This provision for data retention contradicts the data protection law. The cybercrime law does not include a provision that justifies personal data retention for that timeframe. The law should be amended to enhance transparency and incorporate a clear justification for data retention.

The data protection law has provisions that regulate the processing of sensitive personal data. Article 12 prohibits the collection, transfer, storage, retention, processing, or disclosure of sensitive

179 African Union, African convention on Cybersecurity and personal data protection 2104.

180 African Union, African convention on Cybersecurity and personal data protection 2104.

personal data except with authorisation from the “personal data protection centre”.¹⁸¹ Except in cases authorised by law, written and explicit consent is required from the person concerned. Additionally, when processing children’s personal data, the consent of the guardian must be secured for the aforementioned operations. Participation of a child in activities such as games, competitions, or any other engagements should not be contingent upon the provision of personal data beyond what is strictly essential for their involvement in the said activity. Article 1 of the law defines sensitive data as data that discloses psychological, mental, physical or genetic health, biometric data, financial data, religious beliefs, political opinions, or security status. In all cases, children’s data is considered sensitive personal data. Article 41 of the law states that “Any holder, controller, or processor who collects, makes available, circulates, processes, discloses, stores, transmits or saves sensitive personal data shall be punished by imprisonment for a period of not less than three months and a fine of not less than 500,000 pounds and not exceeding five million pounds, or by one of these two penalties, Without the consent of the data subject or in cases other than those legally authorised”.

Universal Service Fund (USF)

According to GSMA Intelligence,¹⁸² Universal Service Fund (USF) is based on three principles: availability, affordability, and accessibility.¹⁸³ Egypt allocated a specific fund for accessing universal services, regulated by the Telecom Regulation Law no.10 of 200. Article 2 of that law stipulates that Telecommunication Services shall comply with the following rules:

1. Publicity of information;
2. Protection of free competition;
3. Provision of Universal Service; and
4. Protection of Users’ rights”.

Article 9 stipulates that the National Telecommunications Regulatory Authority (NTRA) is entitled to maintain an autonomous budget, adhering to the guidelines outlined in its internal regulations and in conformity with the Unified Accounting System. This autonomy extends without any restrictions imposed by governmental rules or regulations. In 2005, the National Telecom Regulatory Authority (NTRA) established the USF.¹⁸⁴ The USF strives for the provision of essential telecommunication services to every citizen at reasonable rates.¹⁸⁵ There is no publicly available official record about the value of the USF, according to some media reports, the USF started with an initial budget of 50 million Egyptian Pounds.¹⁸⁶ Moreover, the National Telecommunications Regulatory Authority (NTRA) has proposed and financed projects to establish, operate, and provide mobile phone services to 54 urban areas and 22 strategic roads throughout the Republic, with a total length of 3,100 km, and a total cost of one billion and 668 million Egyptian pounds (54 Million US Dollars).¹⁸⁷ Furthermore, the National Telecommunications Regulatory Authority (NTRA) has initiated measures

181 According to article 1 of personal data protection law No 151 of 2020, centre refers to the personal data protection centre.
 182 GSMA Intelligence is the global home of mobile market information, driven by our team of expert analysts and is the definitive source of mobile industry insights, forecasts, and research, used around the world. <https://www.gsmaintelligence.com>.
 183 GSMA, (2023). Universal service funds in Africa Policy reforms to enhance effectiveness, p.14. <https://www.gsma.com/subsaharanafrika/wp-content/uploads/2023/10/USF-Africa.pdf>.
 184 National Telecom Regulatory Authority (NTRA), Universal Service Policy, P.3. <https://www.tra.gov.eg/wp-content/uploads/2020/11/Universal-Service-Policy.pdf>
 185 National Telecom Regulatory Authority (NTRA), Universal Service Policy, P.8. <https://www.tra.gov.eg/wp-content/uploads/2020/11/Universal-Service-Policy.pdf>
 186 <https://muhtwaplus.com/49705/2020/07/25/????-????-????????-??-????-?/>
 187 El Youm El Sabaa, accessed 13 /2/2024. <https://www.youm7.com/story/2021/12/8/??-??-????-????-??-????-??????-??????-????-??/5571579>

infrastructure of Digital Society and Digital Architecture with high speeds and capabilities similar to those of the developed countries;

- 5) Broadband Project, this project aims to increase the deployment of high-speed internet in Egypt and support the development of the digital community for the purpose of creating jobs, encouraging the utilisation of information and communication technologies in various governmental sectors, thus improving the quality of life for citizens and reducing the digital divide between urban and rural communities”.¹⁹³

While acknowledging that the USF regulations focus on digital transformation to a considerable extent, it is imperative to propose recommendations to amend the existing framework so that it explicitly provides for regulating funds for digital literacy and awareness. The abovementioned initiatives contribute to filling the digital gap in Egypt, promoting economic development, and ensuring connectivity in urban and rural areas. As ICT is one of the core services of the government, it is always keen to allocate financial sources to improve.

Developments in ICT and Emerging Technologies

In November 2019, the Egyptian Cabinet approved the establishment of the National Council for Artificial Intelligence (NCAI).¹⁹⁴ At its inception, the primary task of the NCAI was the adoption of a national AI strategy. Subsequently, in July 2021, the NCAI adopted the Egypt AI strategy.¹⁹⁵ At the point of adoption, it was envisaged that the strategy would be implemented in a phased approach until the end of 2022. In 2023, the strategy’s execution remained in its initial stage, primarily attributable to the postponed launch. The goal of the initial phase is “to prove the value of AI in the different domains and build the foundations upon which to build AI at scale”.¹⁹⁶ Although the Egyptian government adopted the national AI strategy¹⁹⁷ and established the NCAI, binding legislation on AI is yet to be enacted.

Regarding the influence of AI on privacy, Egypt enacted the previously stated cybercrimes and data protection laws in 2018 and 2022 respectively, providing a framework that could be utilised, to some degree, for AI regulation, particularly in terms of privacy and combat arbitrary and unlawful surveillance and personal data protection. However, both laws are inadequate to completely regulate AI in Egypt as both laws tackle human acts and do not expose actions committed by AI systems.

In 2023, the NCAI adopted the Egyptian Charter for responsible AI (the Charter).¹⁹⁸ The main aim of the Charter is to ensure the ethical use, deployment and management of AI systems in Egypt.¹⁹⁹ The Charter also incorporates overarching principles such as fairness, transparency, a focus on human-centeredness, accountability, and the assurance of security and safety.²⁰⁰ In addition, the strategy acknowledges that “the existence of policies, regulations, and legislation to mitigate potential misuse, whether ethical, legal, or socio-economic, can promote and enable the widespread

193 National Telecom Regulatory Authority (NTRA), Universal Service Policy, pp.17-19.. <https://www.tra.gov.eg/wp-content/uploads/2020/11/Universal-Service-Policy.pdf>, pp. 17-19.

194 <https://ai.gov.eg>

195 Egypt , AI strategy, [https://ai.gov.eg/Egypt National AI Strategy \(6-4-2021\)4.pdf](https://ai.gov.eg/Egypt%20National%20AI%20Strategy%20(6-4-2021)4.pdf)

196 Egypt AI strategy , p. 60.

197 Egypt , Egypt Artificial Intelligence Strategy. [https://ai.gov.eg/Egypt National AI Strategy \(6-4-2021\)4.pdf](https://ai.gov.eg/Egypt%20National%20AI%20Strategy%20(6-4-2021)4.pdf)

198 Egypt ,Egyptian Charter For Responsible AI <https://aicm.ai.gov.eg/en/Resources/EgyptianCharterForResponsibleAIEnglish-v1.0.pdf>

199 Egypt ,Egyptian Charter For Responsible AI. p.1. <https://aicm.ai.gov.eg/en/Resources/EgyptianCharterForResponsibleAIEnglish-v1.0.pdf>

200 Egypt ,Egyptian Charter For Responsible AI. pp..2-3. <https://aicm.ai.gov.eg/en/Resources/EgyptianCharterForResponsibleAIEnglish-v1.0.pdf>

adoption of AI solutions”.²⁰¹ This is not the case yet. Egypt’s ethical use and deployment of AI systems is undermined by the lack of a national legal framework on AI.

One of the recommendations proposed in the strategy is to “communicate and coordinate with appropriate government bodies to issue laws and regulations when and where needed.”²⁰² This recommendation may be considered a call for the adoption of a regulation where the need arises. The question of adopting independent and specific AI laws and regulations may need more time because Egypt has recently commenced regulating AI through adopting a national strategy and Charter for responsible AI. In this stage, AI may regulate through adding specific provisions to existing laws. In the same vein, as per media reports, the Parliamentary Committee on Communication and Technology has commenced deliberations on the adoption of AI-related regulations. The Committee Chairperson indicated that the proposed regulation will not be a separate law, instead, the plan is to introduce AI-specific provision to the cybercrimes law no. 175 for 2018. This approach is the first step towards the establishment of precise regulations governing various facets of AI within the cybercrimes law. The imperative to regulate the utilisation of AI systems is strongly advocated for, whether achieved through the enactment of an independent law or the incorporation of targeted provisions into existing legal frameworks.

201 Egypt , AI strategy, p.47. [https://ai.gov.eg/Egypt National AI Strategy \(6-4-2021\)4.pdf](https://ai.gov.eg/Egypt National AI Strategy (6-4-2021)4.pdf)
202 Egypt , AI strategy, p.47. [https://ai.gov.eg/Egypt National AI Strategy \(6-4-2021\)4.pdf](https://ai.gov.eg/Egypt National AI Strategy (6-4-2021)4.pdf)

▶ Conclusion & Recommendations

Conclusion

While Egypt's current legal frameworks contain provisions aimed at safeguarding digital rights, their efficacy in upholding citizens' right to privacy is questionable. The absence of a precise definition outlining legitimate aims and reasonable grounds for surveillance poses a significant threat to digital rights. Moreover, the lack of clear criteria for identifying false news not only undermines freedom of expression but also opens the door to potential abuse. Addressing these gaps is crucial to fortifying the protection of digital rights and privacy for the citizens of Egypt. Therefore, in light of the identified gaps, stakeholders must consider the recommendations proposed in this report.

Recommendations

Parliament:

- » Enact an access to information law and adopt human rights-based approaches to combating publication of false information.
- » Amend the Telecommunications Regulation Law and ensure the legitimacy of surveillance practices.
- » Amend Article 2 of Cybercrimes law No 175 of 2018, requiring service providers to retain and store data for 180 days, by including justifications for the six-month data retention period.
- » Enact law regulating the use of AI systems and deployment, in alignment with the AI strategy.
- » Introduce explicit regulations either through a standalone law or as an integral component within existing legislation to strengthen the legal framework on privacy rights and their protection. A proposed adjustment involves amending the title of the personal data protection law to: "Privacy and personal data protection". Additionally, emphasis should be placed on including a dedicated and comprehensive chapter solely focused on delineating the rights to privacy and the corresponding safeguards within the legal framework. This nuanced approach ensures a more robust and distinct coverage of privacy concerns, enhancing the overall efficacy of the regulatory measures.

National Human Rights Council:

- » Engage in continuous monitoring of digital rights violations, document and propose policies and practices that uphold human rights.
 - » Aligning with their mandate, investigate all digital rights violations and, where necessary, refer violations for further investigation and judicial oversight.
-

Government:

- » Incorporate digital rights explicitly into the national human rights strategy.
- » Refrain from infringing on digital rights, such as privacy rights, and cease engaging in unauthorised surveillance.
- » Enact legislation that promotes ethical utilisation of artificial intelligence.
- » Ratify the Malabo Convention.
- » Facilitate access to Universal Service Fund information through official government websites.
- » Enhance transparency and accountability by annually publishing comprehensive reports on the Universal Fund's activities and funded projects.
- » Craft the USF reports to vividly highlight the significant progress achieved by the USF in narrowing the digital gap and addressing the digital divide. Illustrate the impactful strides made in fostering digital inclusion and reducing disparities.

Civil Society Organisations:

- » Enhance the skills of various stakeholders through comprehensive training programs.
 - » Strengthen the capability of legal professionals, with a particular focus on strategic litigation and the utilisation of international human rights standards in national court proceedings.
 - » Report any privacy breaches to the National Human Rights Council and other relevant judicial entities.
-



Ethiopia

The Ethiopian digital rights landscape has experienced successes and challenges over the past few years. Amidst conflicts and crackdowns on journalists and online platforms, 2023 has been particularly challenging for digital rights. Internet shutdowns and restrictions on online freedom have become familiar practices by the authorities. Prime Minister Abiy, once hailed as a champion of peace and reform, remarked that the 'Internet is neither water nor air' following a weeks-long complete nationwide internet shutdown in 2019. The internet shutdown in the Amhara region and the five-month social media restriction highlight a lack of government commitment to respecting internet freedoms.²⁰³

Freedom of expression has been restricted following the state of emergency that was imposed in Amhara Regions on August 4, 2023, by the Minister of the Council.²⁰⁴ Online journalists who were reporting on the conflict in the Amhara regions have been subjected to arbitrary arrests and pre-trial detentions.²⁰⁵ In accordance with principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, states are obligated to ensure the safety of journalists and media professionals.²⁰⁶ However, the current situation presents a clear violation of this principle. The arrest of journalists,

particularly those reporting on sensitive issues, has led to a climate of fear resulting in self-censorship, thereby impacting the freedom of expression. This restriction has further intensified online polarisation and the spread of disinformation. While it curtails the expression of domestic opinions, it paradoxically enables the proliferation of hate speech and polarized views from the diaspora.²⁰⁷ Consequently, the quality of online discourse has been severely compromised, rendering it unhealthy.

The internet penetration in Ethiopia stands at 16.7%. Lower than compared to neighbouring countries. As of February 2023, the number of internet users in Ethiopia was 20.86 million.²⁰⁸ Ethiopia has set a goal to make 70% of its citizens digitally literate by the end of 2025.²⁰⁹ As an encouraging step to advance quality telecom service, state-owned telecommunications provider Ethiotelcom has launched a 5g network in 145 sites in the capital Addis Ababa.²¹⁰

Introduction

Internet access and disruptions

Under Prime Minister Abiy's leadership, Ethiopia has struggled with persistent political instability for years. This volatility has been closely intertwined with restrictions on internet access and online platforms, raising concerns about censorship and the violation of digital rights.²¹¹ The Ethiopian government rarely justifies its network disruptions using legal justifications although these justifications are often vague and seldom invoked. The most common reasons include national security legislation and states of emergency.²¹² However, the government often fails to justify their actions in a particular case, and the legal basis for these disruptions is often contested as there is no specific law to restrict communication outlets in the country.²¹³

Despite criticism from human rights groups and the international community, including the former United Nations Special Rapporteur on Freedom of Opinion and Expression in 2020, Ethiopian officials believe that internet shutdowns can curb violence and maintain national security.²¹⁴ This rationale was prominently used to justify nationwide blackouts, such as the one following the high-profile assassinations of government officials in June 2019.²¹⁵ Prime Minister Abiy Ahmed defended these measures, saying the 'internet is neither water nor air' and that they would shut down the internet if necessary.²¹⁶ Although the Internet is not a physical necessity like water or air, it has become a vital platform for exercising the rights to freedom of expression, access to information and other human rights. Prime Minister Abiy's assertion that the 'Internet is neither water nor air' and that they would shut it down if necessary seems to downplay the significance of internet access as a fundamental human right, as emphasised in the 2019 ACHPR²¹⁷ Declaration and the UN 2016 Resolution on the promotion, protection and enjoyment of human rights on the Internet.²¹⁸

Throughout 2023, Ethiopia experienced renewed political violence. Despite the November 2022 Pretoria Peace Agreement ostensibly ending the Tigray War, a fresh conflict ignited in the Amhara region, prompting a state of emergency.²¹⁹ In response, authorities imposed a complete internet shutdown on August 3, 2023. Over 22 million people in the Amhara region were disconnected from communication and vital information.²²⁰ This ongoing blackout has hindered information

211 #KeeoltOn in Conflict: the human impact of internet shutdown in Amhara Region, Ethiopia (AccessNow, 22 November 2023) <https://www.accessnow.org/keepiton-in-conflict-the-human-impact-of-internet-shutdowns-in-amhara-region-ethiopia/#:~:text=The%20same%20report%20also%20highlights,abuses%20to%20be%20covered%20up.>

212 Ethiopia: Authorities must grant independent investigators, media unfettered access to the Amhara region to probe violations under state of emergency. (Amnesty International, August 18, 2023) <https://www.amnesty.org/en/latest/news/2023/08/ethiopia-authorities-must-grant-independent-investigators-media-unfettered-access-to-amhara-region-to-probe-violations-under-state-of-emergency/>

213 Kinfe Micheal Yilma, PhD "Network Disruptions and the Law in Ethiopia: A Legal Guide" (Internews, August/September 2021) <https://internews.org/wp-content/uploads/2022/08/Network-Disruptions-and-the-Law-in-Ethiopia.pdf>

214 Ethiopia enters 3rd week of internet shutdown after deadly unrest (CBC, July 15, 2020) <https://www.cbc.ca/news/world/ethiopia-internet-shutdown-unrest-1.5649893>

215 In June 2019, three Amhara regional leaders in Bahir Dar City, the capital of the Amhara Region, and the Ethiopian Army Chief in Addis Ababa were assassinated. Following the assassinations, all internet communication was restricted for two weeks.

216 Kinfe Yilma 'The Legal Justification of Sorts for Ethiopia's Internet Shutdown' (Addis Fortune, July 18, 2020) <https://addis-fortune.news/the-legal-justification-of-sorts-for-ethiopia-internet-shutdowns/>

217 Declaration of Principles on Freedom of Expression 2019 (April 17, 2020) <https://achpr.au.int/en/special-mechanisms-reports/declaration-principles-freedom-expression-2019>

218 The promotion, protection and enjoyment of human rights on the Internet (July 2016) <https://www.right-docs.org/doc/a-hrc-res-32-13/>

219 Dawit Endeshaw 'Ethiopia declares six month state of emergency in Amhara after clashes' (Reuters, August 4, 2023) <https://www.reuters.com/world/africa/ethiopia-declares-state-emergency-following-militia-clashes-2023-08-04/>

220 Authorities in Ethiopia must restore internet access in Amhara (AccessNow September 12, 2023) <https://www.accessnow.org/press-release/amhara-internet-shutdown/#:~:text=This%20is%20the%20second%20time,to%20disband%20>

► Country Analysis

flow, right to communication, freedom of expression and other rights that are dependent on access to the internet. The blackout also fueled worries about human rights abuses in the region, as most human rights violations during conflict times go unreported and block access to life saving information from the rest of the world.

Beyond conflict-related shutdowns, social media restrictions have become increasingly common. These restrictions are notably implemented to prevent the leakage of exam papers and to control public demonstrations. For instance, in June 2023, authorities blocked messaging applications to prevent exam leakage.²²¹ Furthermore, a significant five-month blockade was imposed on major social media outlets, including Facebook, YouTube, Instagram, and Telegram, in early 2023. This blockade was reportedly in response to the Ethiopian Orthodox Tewahedo Church using these platforms to organise protests against the government.²²² An open letter by a network of global human rights organisations condemned these actions as blatant censorship and a violation of citizens' rights.²²³ The censorship prevented online users from accessing media outlets and limited their information access to a single narrative churned by state-owned media outlets. Ethiopia's online users with knowledge of censorship resorted to alternative methods to bypass the blockade using a Virtual Private Network (VPN). The surge in VPN usage reached 3,651% following the social media outlets' blockade in 2023.²²⁴

The compromised digital rights landscape, as a result of internet shutdowns, has a significant impact on the functioning of the economy. Internet shutdowns can block foreign direct investment, hinder the operation of digital businesses, remittance transfers, and the smooth functioning of tech startups and small businesses that are reliant on online platforms.²²⁵ An estimate by Internet Society's NetLoss calculator indicates that Ethiopia lost roughly US\$144 million for blocking social media outlets between February and June 2023.²²⁶

Online Freedom of Expression

The Constitution of the Federal Democratic Republic of Ethiopia guarantees free speech and media freedom, similar to article 9 of the African Charter on Human and Peoples' Rights (African

regional%20security%20forces.

221 Social media shutdown in Ethiopia for exams (CGTN Africa, June 15, 2023) <https://africa.cgtn.com/social-media-shut-down-in-ethiopia-for-exams/>

222 Ethiopia: Social Media accessible again after 5 months of blockage (Africanews July 19, 2023) <https://www.africanews.com/2023/07/19/ethiopiasocial-media-accessible-again-after-5-months-of-blockage/>

223 Open letter to the Ethiopian Government: urgently end ongoing internet shutdown in all regions across the country (Accessnow, April 26, 2023) <https://www.accessnow.org/press-release/open-letter-to-the-ethiopian-government/>

224 Rob Binns "VPN Global Demand: Why these countries searched for VPNs most in 2023" (January 19, 2024) <https://www.techopedia.com/vpn/countries-most-searched-vpns-in-2023>

225 Yohannes Eneyew Ayalew "BUSINESS TRAMPLED Demystifying the Impact of Internet Shutdown on Start-up Businesses in Ethiopia" (CARD August 2022) <https://www.cardeth.org/wp-content/uploads/2022/10/Business-Trampled-Demystifying-the-Impact-of-Internet-Shutdown-on-Start-up-Businesses-in-Ethiopia.pdf>

226 Metasebia Teshome 'Ethiopia's internet shutdown proves to be detrimental' (Capital Ethiopia, July 03, 2023) <https://www.capitalethiopia.com/2023/07/03/ethiopias-internet-shutdown-proves-to-be-detrimental/#:~:text=Ethiopia%20loses%20144.8%20million%20dollars,internet%20shutdowns%20around%20the%20world.>

Charter)²²⁷ and article 19 of the International Covenant on Civil and Political Rights (ICCPR).²²⁸ This includes the freedom to seek, receive, and share information through any medium, including the Internet. There are specific laws that govern mass media, broadcasting services, hate speech, disinformation, and social media regulation. Previously, media outlets in Ethiopia were regulated by the Freedom of the Mass Media and Access to Information Proclamation. This law was updated in 2021 with the introduction of the Media Proclamation.²²⁹

The new media law in Ethiopia, while aiming to regulate the evolving media landscape, faces several critical challenges. The main challenge is the government's own breaches of the law, particularly regarding pre-trial detention.²³⁰ This lack of adherence to its own legal framework undermines the law's effectiveness and raises questions about its commitment to media freedom.²³¹ Online media registration in Ethiopia is regulated by a directive from the Ethiopian Media Authority, requiring individuals or businesses disseminating information online to register with the Authority. This includes those using online platforms for commercial purposes. The directive grants legal status to outlets that fulfil the Authority's requirements, such as adhering to laws against hate speech, curating content, and protecting user data.²³²

The civil war that erupted in November 2020 continues to have a chilling effect on freedom of expression. Nine journalists covering the war were forcefully abducted or detained.²³³²³⁴ A foreign correspondent's license was revoked for covering the Civil War.²³⁵ In 2022, a press conference planned by a group of civil society organisations to call for peace was banned by the authorities.²³⁶ In December 2023, an opposition group called for a demonstration to demand peace and oppose the ongoing conflict in the Amhara region. This demonstration was banned by the police, resulting in the arrest of the organisers.²³⁷ The situation reflects the broader context of restricted civic space in Ethiopia.

The ongoing conflict in the Amhara region and the tension between the government and the Ethiopian Tewahido Orthodox Church has enabled the government to target journalists and activists.²³⁸ The State of Emergency that was declared in the Amhara region in August has been used to stifle the right to free expression. The Committee to Protect Journalists (CPJ) records show that three journalists were detained under a state of emergency law in August 2023 and later

227 African Charter On Human And Peoples' Rights: Article 9 <https://www.african-court.org/wpafc/wp-content/uploads/2020/04/AFRICAN-BANJUL-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf>

228 UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations Treaty Series (UNTS), vol. 999, p. 171, article 19.

229 Media Proclamation No.1238/2021, 27th Year No.22, Federal Negarit Gazette, April 5, 2021 Addis Ababa.

230 Zelalam Shiferaw Woldemichael "Unlawful detention of journalists in Ethiopia continues despite amended laws" (Ethiopia Insight December 11, 2022) <https://www.ethiopia-insight.com/2022/12/11/restrictions-on-journalists-in-ethiopia-continue-despite-amended-laws/>

231 Misganaw Mulugeta Assefa "NEW MEDIA LEGISLATIONS AND THEIR IMPLEMENTATIONS IN ETHIOPIA: A REVIEW" (CARD, April 2023) <https://www.cardeth.org/sites/default/files/New%20Media%20Legislations%20and%20their%20Implementations%20in%20Ethiopia.pdf>

232 (Addis Fortune May 29, 2021) <https://addisfortune.news/new-directive-to-govern-online-media-outlets/>

233 Tigray war places Ethiopia among top jailers of journalists (Nation, December 09, 2021) <https://nation.africa/kenya/news/africa/ethiopia-now-among-africa-top-jailers-of-journalists-3647366>

234 Fred Harter 'Ethiopia Gets tough on journalists since Tigray conflict' (VOA, August 02, 2022) <https://www.voanews.com/a/ethiopia-gets-tough-on-journalists-since-tigray-conflict-/6683980.html>

235 Ethiopia Expels NewYork Times Reporter Who Covered Tigray War (VOA, May 22, 2021) https://www.voanews.com/a/ethiopia-tigray_ethiopia-expels-new-york-times-reporter-who-covered-tigray-war/6206113.html

236 Biruk Alemu "News: Despite ban on meeting press, local CSOs call for immediate peace in Ethiopia, basic services provision in Tigray, other conflict hit areas" (Addis Standard, September 7, 2022) <https://addisstandard.com/news-despite-ban-on-meeting-press-local-csos-call-for-immediate-peace-in-ethiopia-basic-services-provision-in-tigray-other-conflict-hit-areas/>

237 Ethiopia: Political group plan to protest in Addis Ababa (Crisis24, December 08, 2023) <https://crisis24.garda.com/alerts/2023/12/ethiopia-political-group-plan-to-protest-in-addis-ababa-dec-10>

238 Security forces detain two journalists amidst crackdown following ongoing orthodox church schism, ensuing unrest (Addis Standard, February 15, 2023) <https://addisstandard.com/news-security-forces-detain-two-journalists-amidst-crackdown-following-ongoing-orthodox-church-schism-ensuing-unrest/>

released.²³⁹ In October 2023, three journalists were detained and sent to a military camp without any trial.²⁴⁰ These arrests and detentions are an indication that Ethiopian authorities are not committed to protecting the media space in line with international human rights law and standards. Despite the media legislation prohibiting pre-trial detention, media houses and journalists are constantly attacked, face arbitrary arrests and harassed.²⁴¹ This harsh treatment contributes to shrinking the very space that the Mass Media Proclamation is supposed to expand and creates a climate of fear and repression.

In March 2020, Ethiopia enacted the Hate Speech and Disinformation Prevention and Suppression Proclamation, sparking both hopes for a safer online space and concerns about its potential to stifle free expression.²⁴² While the government claims the law is essential to combat harmful content that could destabilise the country, critics point to its vague definitions and broad reach as threats to fundamental rights. The law prohibits the dissemination of hate speech and disinformation across various media, including social media, print, and broadcasting.²⁴³ Concerns about the law's potential for misuse are amplified by the government's history of restricting press freedom and human rights. The law's stringent penalties, including imprisonment and fines:

a) Any person who commits acts proscribed under Article 4 shall be punished with simple imprisonment not exceeding two years or a fine not exceeding 100,000 birr.

B) If an attack against a person or a group has been committed as a result of a hate speech, the punishment shall be simple imprisonment not exceeding from one year up to five years.

c) Any person who commits acts proscribed under Article 5 shall be punished with simple imprisonment not exceeding one year or a fine not exceeding 50,000 birr.

d) If the offense of hate speech or disinformation offense has been committed through a social media account having more than 5,000 followers or through a broadcast service or print media, the person responsible for the act shall be punished with simple imprisonment not exceeding three years or a fine not exceeding 100,000 birr.

f) If violence or public disturbance occurs due to the dissemination of disinformation, the punishment shall be rigorous imprisonment from two years up to five years. g) If no violence or public disturbance has resulted due to the commission of the offense of hate speech

239 Three more journalists arrested under Ethiopia's state of emergency (CPI, September 06, 2023) <https://cpj.org/2023/09/three-more-journalists-arrested-under-ethiopias-state-of-emergency/>

240 Three journalist detained in Ethiopia, transferred to military camp (CPI, October 05, 2023) <https://cpj.org/2023/10/three-journalists-detained-in-ethiopia-transferred-to-military-camp/>

241 Ethiopia among the worst jailer of journalists – Rights group (Africa News, August 02, 2022) <https://www.africanews.com/2022/08/02/ethiopia-among-worst-jailers-of-journalists-rights-group/>

242 Berhan Taye "Ethiopia's hate speech and disinformation law: the pros, the cons, and a mystery" (Accessnow May 19, 2020) <https://www.accessnow.org/ethiopias-hate-speech-and-disinformation-law-the-pros-the-cons-and-a-mystery/>

243 Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185 /2020,

or disinformation and if a court of law is convinced that the correction of the convict will be better served through alternatives other than fine or imprisonment, the court could sentence the convict to render mandatory community service.²⁴⁴

In March 2021, Journalist Yayisew Shimelis is believed to be the first person to be targeted by this law. Yayisew was arrested based on the story that he covered. In the report, Yayisew claimed that the government allegedly expected a high number of fatalities from the virus and had prepared burial plots for up to 200,000 potential victims.²⁴⁵ In April 2020 Yayisew was released on bail²⁴⁶ Later, in May 2022, he was sentenced to three months of mandatory community work.²⁴⁷

Vague definitions of “hate speech” and “disinformation” create a chilling effect on free expression, hindering open dialogue and investigative journalism. The lack of clarity forces citizens and journalists to self-censor for fear of prosecution, potentially silencing crucial dissent and critical voices.²⁴⁸ Additionally, the government’s record on press freedom and human rights fuels anxieties about the potential misuse of the law as a tool for suppression, with its broad powers and harsh penalties for online speech.²⁴⁹

In the past few years, there has been a significant increase in hate speech and incitement to violence on social media platforms. This surge was particularly noticeable during the Tigray conflict, where misinformation and hate speech were rampant.²⁵⁰ Consequently, the unrestricted flow of information began to infringe on the realm of free speech. While social media has provided a space for individuals to obtain information and voice their opinions, it has simultaneously evolved into a hotbed for user-instigated violence.

In December 2022, Meta was sued by a group of lawyers in Kenya’s High Court. The lawsuit alleged that Meta’s algorithm promoted speech that incited ethnic violence in Ethiopia. The case is being brought by individuals who have been directly affected by the hate speech and violence incited on Facebook, including Fisseha Tekle, a legal adviser at Amnesty International, and Abraham Meareg, the son of a university professor who was killed following hateful posts on Facebook.²⁵¹ The protection of minority groups on social media platforms has been a subject of criticism by various rights groups. This criticism has been particularly pronounced in the context of the LGBTI+ community, which has been targeted by online hate campaigns and calls for violence.²⁵² These cases highlighted the potential misuse of social media platforms and raised questions about the responsibility of tech companies in moderating the content shared on their platforms.

244 Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185 /2020, Article 7

245 Journalist Yayisew Shimelis was detained and charged under the Anti-Hate Speech and Disinformation Proclamation after making a report during the COVID-19 pandemic. In the report, Yayisew claimed that the government allegedly expected a high number of fatalities from the virus and had prepared burial plots for up to 200,000 potential victims.

246 Mahlet Fasil “News update: Prosecutors charge journalist Yayesew with newly enacted hate speech law” (Addis Standard, April 21, 2020) <https://addisstandard.com/news-update-prosecutors-charge-journalist-yayesew-with-newly-enacted-hate-speech-law/>

247 Journalists Yayesew Shimelis and Temesgen Desalegn detained in Ethiopia (CPJ, May 27, 2022) <https://cpj.org/2022/05/journalists-yayesew-shimelis-and-temesgen-desalegn-detained-in-ethiopia/>

248 Analysis of Ethiopia’s Hate Speech and Disinformation Prevention and Suppression Proclamation No.11 85 /2020 (CIPESA, July, 2020) https://cipesa.org/wp-content/files/briefs/Analysis-of-Ethiopia’s-Hate-Speech-Proclamation_July-2020.pdf

249 Ethiopia: Hate speech and disinformation law must not be used to suppress the criticism of the Government (Article 19, January 19, 2021) <https://www.article19.org/resources/ethiopia-hate-speech-and-disinformation-law-must-not-be-used-to-suppress-the-criticism-of-the-government/>

250 Peter Mwai “Ethiopia’s Tigray Conflict: What are Facebook and Twitter doing about hate speech?” (BBC, November 23, 2021) <https://www.bbc.com/news/59251942>

251 Kenya: Meta sued for 1.6 billion USD for fueling Ethiopia ethnic violence (Amnesty, December 14, 2022) https://www.amnesty.org/en/latest/news/2022/12/kenya-meta-sued-for-1-6-billion-usd-for-fueling-ethiopia-ethnic-violence/?__cf_chl_tk=dV-V8BylQHVmGumAUX9NL9PoRb3fAAgC7J5Zno5oyQYE-1703772237-0-gaNycGzNEDs

252 TikTok videos responsible for online harassment and physical attacks, claim Ethiopia’s LGBTQ+ community (The Economic times, August 11,, 2022 <https://economictimes.indiatimes.com/tech/technology/tiktok-videos-responsible-for-online-harassment-and-physical-attacks-claim-ethiopia’s-lgbtq-community/articleshow/102636602.cms>

Gendered Disinformation

Ethiopia's digital landscape is no stranger to chaos. Gendered disinformation is a way of using false narratives about gender and sex, and aims to silence women from public discourse. This silencing often involves harmful stereotypes, hyper-sexualisation, and political targeting. While data on this is limited in Ethiopia, the increasing internet usage exposes women to such campaigns, deterring their online participation and access to information, even causing real world harm.²⁵³ Ethiopia's social media, despite potential for connection and information sharing, fosters a toxic public discourse through hate speech, disinformation, and online gender based violence. This fuels societal divisions and unrest, while platforms like Facebook face criticism for slow content moderation.²⁵⁴

Specifically, Ethiopian women suffer online harassment and non consensual sharing of intimate images as silencing tactics. While the 2020 Anti-Hate Speech and Disinformation Law includes gender, along with ethnicity, race, religion, and disability as protected characteristics, it lacks protection against online gender-based violence. Efforts to raise awareness, educate users, and advocate for stronger online protection laws are very limited.²⁵⁵

Digital Identity (ID)

The House of Peoples' Representatives approved the Digital Identification Proclamation Bill in May 2023.²⁵⁶ According to the National ID Program (NIDP) website, by the end of 2023, 3.5 million citizens had registered since the program's inception in 2021.²⁵⁷ The Bill allows the national program to collect biometric and demographic data of Ethiopians and foreigners living in Ethiopia.²⁵⁸ Upon registration, a unique number known as Fayda number (Identification Number) is allocated to the registrant and sent to them via an unencrypted text message, which could potentially compromise the person's identity number.

In July 2023, the National Bank of Ethiopia (NBE) and the Ethiopian Digital ID program partnered to announce the use of digital IDs for financial institutions and onboarding customers to the digital ID platform in the 2023/24 Ethiopian fiscal year. This partnership also allows banks to register new customers for digital IDs to scale up the number of digital ID holders.²⁵⁹ According to the Digital ID Proclamation, it is not mandatory for citizens to register for a digital ID, but the proclamation allows institutions, including banks, to require a digital ID or deny services.²⁶⁰

On December 13, 2023, the World Bank approved a US\$350 million grant to accelerate the deployment of the biometric Digital ID across Ethiopia. This initiative aims to provide at least 90 million Ethiopians, refugees and migrants living in Ethiopia, with a digital ID.²⁶¹ The government is

253 A/78/288: Gendered disinformation and its implications for the right to freedom of expression – Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression <https://www.ohchr.org/en/documents/thematic-reports/a78288-gendered-disinformation-and-its-implications-right-freedom>

254 Meta sued for 1.6 billion USD for fueling Ethiopia ethnic violence (Amnesty, December 14, 2022) https://www.amnesty.org/en/latest/news/2022/12/kenya-meta-sued-for-1-6-billion-usd-for-fueling-ethiopia-ethnic-violence/?__cf_chLtk=dVV8BylQHVMgu-mAUX9NL9PoRb3fAAgC7J5Zno5oyQYE-1703772237-0-gaNycGzNEDs

255 Ermias Mulugeta "Technology's sour blessing: Technology facilitated gender-based violence in Ethiopia" (Gender IT, December 07, 2023) <https://genderit.org/feminist-talk/technologys-sour-blessing-technology-facilitated-gender-based-violence-ethiopia>

256 Parliament approved digital id law (Shega, March 30, 2023) <https://shega.co/post/parliament-approves-digital-id-law/>

257 'Digital Id' <https://id.gov.et/>

258 Amanuel Yilkal "Gov't to issue digital IDs for foreigners living in Ethiopia" (The Reporter Ethiopia, May 14, 2022) <https://www.thereporterethiopia.com/23805/>

259 NBE, National Id announce new initiative (FBC, July 11, 2023) <https://www.fanabc.com/english/implementation-of-national-id-will-help-build-a-stronger-financial-sector-nbe/>

260 Ethiopia to require digital ID for accessing government services (Dig Watch, January 14, 2024) <https://dig.watch/updates/ethiopia-to-require-digital-id-for-accessing-government-services>

261 World Bank supports Ethiopia's Digital Id projects to increase access to services and economic opportunities (World

planning to issue digital IDs for 95% of the population by the end of 2025.²⁶² However, a significant concern that has been raised is the absence of an active law that protects the biometric and demographic data of citizens. Currently, there is no comprehensive legislation that safeguards this critical data. This lack of a legal framework for data protection raises questions about the security and privacy of the citizens' privacy.²⁶³

Human rights groups and digital rights advocates warn that the rollout of digital IDs in Ethiopia during a period of active conflict raises serious concerns about lack of transparency, potential for ethnic profiling and discrimination, and misuse of the law.²⁶⁴ This is particularly worrisome in light of recent trends in ethnic profiling and human rights abuses during conflicts like the Tigray War, where the National Bank of Ethiopia suspended bank accounts in the Tigray region for months.²⁶⁵ If access to essential services like food aid, healthcare, and banking becomes tied to digital IDs in such a volatile context, it risks creating a system where basic necessities are withheld based on ethnicity rather than need, deepening existing inequalities and potentially further fueling discrimination.

Developments in ICT and Emerging Technologies

In 2020, Ethiopia adopted a digital plan titled “Digital Ethiopia 2025: A Digital Strategy for Ethiopia Inclusive Prosperity”.²⁶⁶ The plan is designed towards achieving a digital technology based economy and to accelerate digitisation. The strategy focuses on four key areas: developing a reliable, inclusive, and interoperable infrastructure; promoting the adoption of inclusive digital payments; building a strong and consistent regulatory and oversight framework; and creating an enabling environment for innovation.²⁶⁷ Although the strategy is designed to realise the country's digital potential and leverage technology to build digital economic development, the security situation in the country has created a less enabling environment for new technology companies. Telecommunication companies that are joining the Ethiopian telecommunication industry following the telecommunication liberalisation process have been struggling with sustainability issues because of the deteriorating security situation and lack of commitment to opening up the country's economy.²⁶⁸ This could affect service quality and consistency, which are crucial for ensuring digital rights. Inadequate service and frequent interruptions can hinder the growth of the country's ICT sector, widening the digital divide and impacting digital rights like the right to access information and freedom of expression.

In a significant move towards liberalising the financial market, the National Bank of Ethiopia granted licenses to Safaricom's Mpesa.²⁶⁹ Mpesa is a service that operates on digital technology to

Bank, December 13, 2023) <https://www.worldbank.org/en/news/press-release/2023/12/13/world-bank-supports-afe-ethiopian-digital-id-project-to-increase-access-to-services-and-economic-opportunities#:~:text=The%20project%20will%20also%20invest,for%20Host%20Community%20and%20Refugees>.

262 Ethiopia preparing to issue national id to citizens until 2025 (ENA, December 16, 2021) https://www.ena.et/web/eng/w/en_31670

263 Dadimos Haile “Ethiopia Data protection overview” (Data Guidance, October, 2023) (<https://www.dataguidance.com/notes/ethiopia-data-protection-overview>)

264 Zecharias Zelalem “Ethiopia digital ID prompts fears of ethnic profiling” (Context, February 01, 2023) <https://www.context.news/surveillance/ethiopia-digital-id-prompts-fears-of-ethnic-profiling>

265 Central bank suspends accounts opened in Tigray state (Addis Fortune, September 1, 2021) <https://addisfortune.news/central-bank-suspends-accounts-opened-in-tigray-state/>

266 Digital Ethiopia 2025, a digital strategy for Ethiopia inclusive prosperity: http://unidoseoul.org/en/files/2023/11/Ethiopia-Digital-Strategy_Digital-Ethiopia-2025_The-office-of-the-Prime-Minister.pdf

267 Digital Ethiopia 2025 https://www.lawethiopia.com/images/Policy_documents/Digital-Ethiopia-2025-Strategy-english.pdf

268 Aaron Ross and Dawit Endeshaw ‘Safaricom's Ethiopia struggles deters potential telecoms investors. (Reuters, December 21, 2023) <https://www.reuters.com/business/media-telecom/safaricom-ethiopia-struggle-deters-potential-telecoms-investors-2023-12-19/>

269 Ethiopia grants Safaricom Mpesa license (Business Daily, May 11, 2023) <https://www.businessdailyafrica.com/bd/corporate/companies/ethiopia-grants-safaricom-m-pesa-licence-4230692>

facilitate payment transactions. This decision marks a pivotal moment in the financial landscape of Ethiopia, opening up new avenues for foreign financial institutions to join the Ethiopian market.

This development comes on the heels of the launch of Ethiotelcom’s own digital payment platform, Telebirr, in 2021.²⁷⁰ While Mpesa is a newcomer in the Ethiopian market, Telebirr has made aggressive strides in establishing its dominance. One of the key strategies employed by Telebirr is the mandatory use of its platform for certain transactions. A prime example is the requirement to use Telebirr to refuel at gas stations.²⁷¹ Even though this move has no legal background, it ensures that Telebirr becomes an integral part of everyday transactions. In its annual report, Telebirr announced that it had reached a significant milestone with a user base of 30 million.²⁷²

On June 30, 2023, the Ministry of Innovation and Technology revealed that a draft national AI policy is in its final stages. While the draft policy is not available to the public, state media reports claim that the policy aims to tap into the potential of AI technology and ensure its responsible and sustainable use across the country.²⁷³

In 2022, Ethiopia opened a Science Museum dedicated to showcasing the country’s technological advancements. The museum exhibits local solutions in various sectors including healthcare, finance, cybersecurity, Geographic Information Systems (GIS), service industries, data analytics, manufacturing, and robotics.²⁷⁴

Universal Service Fund

In 2019, the Communications Service Proclamation initiated the creation of the Universal Service Fund (USF). The USF in Ethiopia is a significant part of the country’s efforts to improve access to essential services. The primary objective of the USF is to narrow the digital divide by facilitating widespread access to the internet and telecommunication services. It particularly focuses on providing these services to communities in rural, remote, underserved, and low income areas.²⁷⁵ The exact amount allocated to the USF is not specified in the available resources.

As a telecom and communications regulatory body, the Ethiopian Communications Authority (ECA) is responsible for implementing the objectives and targets for Universal Access, with a specific focus on ensuring that the service reaches users in Ethiopia’s rural and remote regions. The ECA is also tasked with oversight and management of the Universal Service Fund. While the fund is collected from telecom companies in the country, the CEO of Ethio Telecom stressed that it is ECA’s responsibility to fund the expansion of services.²⁷⁶

As part of opening up the telecom market, ECA’s new attempt to give the third telecom license failed to attract investors.²⁷⁷ The Fund will primarily be financed through mandatory yearly contributions from all licensed providers operating in different segments of the Communications sector.

270 Ethiotelcom launches telebirr (Capital Ethiopia, May 17, 2021) <https://www.capitalethiopia.com/2021/05/17/ethio-telecom-launches-telebirr/>

271 Ibrahim Mamma, Endashaw Tesfaye ‘Road to digitalization – lesson from fuel station’ (Kflip, May 09, 2023) <https://kflip.info/2023/05/09/the-road-to-digitalization-lessons-from-fuel-stations/>

272 Ethiotelcom’s mobile money reached 34.3mil subscribers with transactions 679.2 billion (FBC, July 18, 2023) <https://www.fanabc.com/english/ethio-telecoms-mobile-money-business-reaches-34-3mil-subscribers-with-transaction-of-etb-679-2-billion/>

273 Ethiopia Finalising National Policy on AI (ENA, June 30, 2023) https://www.ena.et/web/eng/w/eng_2993624

274 Ethiopia inaugurates state-of-the-art Science Museum (ECA, 4 October, 2022) <https://www.uneca.org/stories/ethiopia-inaugurates-state-of-the-art-science-museum>

275 Ethiopia Series (Pygma Consulting, March 2020) <https://pygmaconsulting.com/wp-content/uploads/2020/05/Ethiopia-II-Regulating-the-Telecoms-sector.pdf>

276 Elias Tegegn “Ethiotelcom CEO’s comment on rural access spark feud with regulator” (July 22, 2023) <https://www.thereporterethiopia.com/35631/>

277 Lori Prinsloo, Fasika Tadesse “Ethiopia fails to attract any bids for the third telecom license” (Bloomberg, November 14, 2023) <https://www.bloomberg.com/news/articles/2023-11-14/ethiopia-fails-to-attract-any-bids-for-third-telecom-license>

However, the government's specific statements regarding the USF are not readily available in the current resources to adequately assess its successes and challenges during the period under consideration.

Data Protection and Cyber Security

Ethiopia is envisaged to enact a personal data protection law in 2024. This is a significant legislative milestone which is aimed at regulating the protection of personal information. The Council of Ministers has given its approval to the draft Personal Data Protection Bill, marking a crucial step in the legislative process.²⁷⁸ Following this, the parliament is anticipated to ratify the Bill, thereby transforming it into law.

The initial version of Ethiopia's personal data protection law was met with optimism by digital rights groups, as it proposed the establishment of an independent Data Protection Commission. While there is a concern regarding the independence of the Commission, it was seen as a potential safeguard against intrusions. Experts suggested the Commission to be independent from private entities, the government, and international actors.²⁷⁹

However, the final version of the law deviated from the initial proposal. It positioned the data protection office under the Ethiopian Telecommunication Authority (ECA), which is responsible for regulating telecom providers in the country. This change has raised concerns about the office's independence and its ability to effectively protect individual privacy.²⁸⁰ This shift from the draft to the final version has cast doubt on the law's original intent to serve as an independent guardian of citizens' data. This significant law, which will have far-reaching implications on personal data protection in Ethiopia, is thus being ratified under a cloud of non-transparency.

Ethiopia has taken a strict approach to cybersecurity compared to the broader framework outlined by the United Nations. While the UN Cybersecurity Norms, endorsed by UN member states in 2015, provide a non binding set of principles for responsible state behaviour online, emphasizing the importance of international cooperation, respect for existing international law, and responsible conduct in cyberspace.²⁸¹ Ethiopia's 2016 Computer Crime Proclamation establishes a more restrictive legal framework focusing on monitoring national information infrastructure and cyber space and grants significant surveillance powers to the Information Network Security Administrator (INSA), a government agency with a history of extensive monitoring activities.²⁸²

Rights groups argue that the Computer Crime Proclamation's definitions of certain offences, such as "inciting violence" and "disseminating false information," are overly vague and open to subjective interpretation. Furthermore, the law grants INSA broad leeway to target dissent or control online discourse, raising concerns about potential misuse for political purposes.²⁸³ There is no public record where authorities use this law to target politicians and human rights defenders. However, the law's expansion of INSA's authority further amplifies these concerns, given the INSA's past

278 Ethiopia prepares first personal data protection law (October 27, 2023) <https://ethiopianmonitor.com/2023/10/27/ethiopia-prepares-first-personal-data-protection-law/>

279 Position Paper on the draft personal data protection of Ethiopia (CARD, August 2022) <https://www.cardeth.org/wp-content/uploads/2022/08/CARDs-Position-Paper-on-the-Draft-Personal-Data-Protection-of-Ethiopia.pdf>

280 Draft Personal Data Protection Proclamation (HoPR) https://www.hopr.gov.et/documents/portlet_file_entry/20181/%E1%B%A8%E1%8C%8D%E1%88%8D+%E1%8B%B3%E1%89%B3+%E1%8C%A5%E1%89%A0%E1%89%83+%E1%88%A8%E1%89%82%E1%89%85+%E1%8A%A0%E1%8B%8B%E1%8C%85.pdf/7b1f56b2-ec08-e593-3884-afd597691dc1

281 Bart Hogeveen "The UN Cyber Norms: How Do They Guide the Responsible Development and Use of Offensive Cyber Capabilities?" 2022 https://cyberdefensereview.army.mil/Portals/6/Documents/2022_fall/08_Hogeveen.pdf?ver=BYnHYWAYLrW_PpP4lJm5A%3D%3D

282 Ethiopia: Computer Crime Proclamation (Article 19, July 2016) [https://www.article19.org/data/files/medialibrary/38450/Ethiopia-Computer-Crime-Proclamation-Legal-Analysis-July-\(1\).pdf](https://www.article19.org/data/files/medialibrary/38450/Ethiopia-Computer-Crime-Proclamation-Legal-Analysis-July-(1).pdf)

283 FREEDOM ON THE NET 2016 (Freedom House, 2016) <https://freedomhouse.org/country/ethiopia/freedom-net/2016>

record of large scale surveillance.²⁸⁴

INSA, the institution that has a mandate to monitor and respond to incidents related to cyber security in Ethiopia has reported that over 6,700 cyber attack attempts in 2023. The types of attacks included targeting websites, malware, infrastructure scans, DDOS, and hacking into networks. The majority of these attacks were thwarted, with only 191 causing threats.²⁸⁵

Surveillance

Ethiopia's commitment to privacy seems to be contradictory. Article 26 of the Constitution explicitly guarantees this fundamental right, protecting individuals from unwarranted searches and ensuring the inviolability of correspondence. However, a comprehensive data protection law is still awaiting ratification by the parliament. The draft Data Proclamation, approved by the Council of Ministers in 2023.²⁸⁶

Ethiopia's history of pervasive surveillance casts a long shadow over this fragile promise. Reports from Human Rights Watch and Citizen Lab detail the infamous INSA's aggressive tracking of human rights defenders and journalists abroad using commercial spyware.²⁸⁷ INSA is responsible for protecting Ethiopia's national interests in the sphere of information and information infrastructures. While legal reforms have revised some warrantless surveillance practices under the revised anti-terrorism law,²⁸⁸ practices under the state of emergency grant unlimited power to authorities to continue infringing upon citizens' rights.²⁸⁹ Problematic laws and practices often circumvent human rights protections, enabling authorities to monitor and intrude upon the online activities of opposition leaders and influential social media users.

The Ethiopian government leverages its control over the state owned Ethio Telecom to conduct pervasive surveillance, exploiting call records, internet traffic, and SMS messages. A research by Human Rights Watch in 2014 shows that through the use of Chinese-made technology, authorities can intercept communications, track locations, and build detailed profiles of citizens deemed threats.²⁹⁰

The state of emergency, imposed in August 2023 following the conflict in the Amhara regions, has been used by authorities to target journalists and opposition political members. Under the directive of the state of emergency, authorities have the power to arrest suspects who attempt or prepare to commit crimes against the constitutional order, violate the emergency decree, or obstruct its implementation, all without a court order.²⁹¹ This directive grants authorities unlimited

284 "They Know Everything We Do" News Release Ethiopia: Telecom Surveillance Chills Rights Telecom and Internet Surveillance in Ethiopia (HRW, March 25, 2014) <https://www.hrw.org/report/2014/03/25/they-know-everything-we-do/telecom-and-internet-surveillance-ethiopia>

285 Ethiopia reports over 6,000 cyber attack attempts in 12 months (APA News July 25, 2023) <https://apanews.net/ethiopia-reports-over-6000-cyber-attack-attempts-in-12-months/>

286 Ethiopia readys personal data protection law (Further Africa, October 30, 2023) <https://furtherafrica.com/2023/10/30/ethiopia-readys-personal-data-protection-law/>

287 Bill Marczak, Geoffrey Alexander, Sarah McKune, John Scott-Railton, Ron Deibert "Ethiopian Dissidents Targeted with New Commercial Spyware" (Citizenlab, December 6, 2017) <https://citizenlab.ca/2017/12/champing-cyberbit-ethiopian-dissidents-targeted-commercial-spyware/>

288 Ethiopia Adopts New Version of Much-Criticized Terrorism Law J(VoA, January 03, 2020) https://voanews.com/a/africa_ethiopia-adopts-new-version-much-criticized-terrorism-law/6182042.html

289 Ethiopia uses emergency law to ramp up arrests of journalists (CPJ, December 15, 2021) <https://cpj.org/2021/12/ethiopia-uses-emergency-law-to-ramp-up-arrests-of-journalists/>

290 "They Know Everything We Do" Telecom and Internet Surveillance in Ethiopia (HRW, March 25, 2014) <https://www.hrw.org/report/2014/03/25/they-know-everything-we-do/telecom-and-internet-surveillance-ethiopia>

291 Ethiopia: Authorities must grant independent investigators, media unfettered access to Amhara region to probe violations under state of emergency. (Amnesty International, August 18, 2023) <https://www.amnesty.org/en/latest/news/2023/08/ethiopia-authorities-must-grant-independent-investigators-media-unfettered-access-to-amhara-region-to-probe-violations-under-state-of-emer->

power to surveil citizens and fosters a climate of fear and self censorship, further entrenching the government's control over its citizens.

► Conclusion & Recommendations

Conclusion

Ethiopia's internet landscape is a complex mix of challenges and opportunities. Internet shutdowns, often justified by national security concerns, have become a regular occurrence, stifling dissent and disrupting communication. Social media platforms, which are crucial for information dissemination and connectivity, are frequently blocked. The Hate Speech and Disinformation Proclamation and the state of emergency laws restrict freedom of expression and grant extensive surveillance powers. The introduction of digital IDs without strong data protection measures poses significant privacy and discrimination risks. In light of the tenuous state of digital rights in Ethiopia, stakeholders are encouraged to consider recommendations that have been proposed in this report. These recommendations provide a framework for addressing challenges and vulnerabilities surrounding digital rights within the country.

Recommendations

The Government:

- » It is imperative for the government to unequivocally prioritise and safeguard digital rights in order to secure the country's digital future. This involves refraining from resorting to internet shutdowns and censorship, abolishing restrictive laws like the state of emergency, and placing a paramount emphasis on transparency and accountability. Implementing these measures not only cultivates a flourishing digital ecosystem but also plays a pivotal role in fostering a more inclusive and democratic society.
 - » Authorities should actively collaborate with diverse stakeholders including civil society to cultivate a robust and inclusive digital ecosystem, leveraging technology as a facilitator rather than a barrier. This approach promotes a shared responsibility in shaping policies and frameworks that address the needs and concerns of all members of society. Engaging with a wide range of perspectives ensures that technological advancements are harnessed to enhance inclusivity, promote privacy, and enhance information security.
 - » Authorities should prioritise upholding freedom of expression and guaranteeing the safety of journalists by ending arbitrary arrests. Safeguarding online freedom of expression is crucial in fostering a democratic society where diverse voices can be heard without fear of reprisal. Ensuring the safety of journalists is paramount in maintaining a free and informed public discourse. Authorities should actively work towards creating an environment where journalists can carry out their work without the threat of persecution, thereby strengthening the foundation of democracy, promoting transparency and accountability in society.
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- » The data protection framework should be amended to include provisions for the establishment of an independent commission with a mandate to oversee compliance with data protection regulations, investigate potential breaches, and enforce appropriate measures against entities that fail to adhere to the prescribed standards. Entrusting such responsibility to an impartial and autonomous commission, creates a robust system that prioritises and reinforces the commitment to maintaining the highest standards of data security and privacy.
 - » The government should prioritise a peaceful resolution of conflicts in the Amhara and Oromia regions, as it holds the key to unlocking significant socio-economic benefits. The establishment of peace in these regions has the potential to create a conducive environment for telecom providers to extend their coverage to currently underserved areas. This extension of connectivity is crucial in bridging the digital divide and fostering socioeconomic development.
 - » The Ministry of Justice and the Parliament should adopt a comprehensive approach to lawmaking by actively incorporating contributions from various stakeholders, including public, private, and civil society entities. In order to ensure a more inclusive and well-informed legislative process, it is crucial to conduct extensive multi stakeholder consultations during the drafting stages of legislation.
 - » The government should promptly enact a comprehensive regulation clearly delineating the specific obligations for both telecom companies and the Ethiopian Communication Authority (ECA). The proposed regulation should provide a transparent framework outlining the roles, responsibilities, and performance standards for telecom companies, guaranteeing fair competition, consumer protection, and the overall development of the telecommunications sector. By establishing a well-defined regulatory framework, the government can contribute to the sustainable growth of the telecommunications industry, promoting economic development and improved connectivity for the citizens of Ethiopia.

Civil Society:

- » To ensure the respect of digital rights in the country, civil society organizations should focus on advocacy and litigation work. They should produce extensive research on the impact of digital rights violations on citizens. Additionally, they should launch targeted campaigns to raise awareness and challenge these violations.
- » To strengthen their influence on digital rights, local civil society organisations should form a coalition. This provides a unified platform to voice concerns about digital rights violations. They should also collaborate with regional and international organisations to bolster the cause of digital rights, thereby gaining additional resources, expertise, and credibility.
- » Civil Society Organizations should advocate for the reasons and areas where they can influence legislators. They should also campaign for the establishment of an independent Personal Data Protection Commission that oversees the enforcement of personal data protection laws.

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- » Civil society organisations should unite to combat the issue of repeated internet shutdowns. By focusing on strategic litigation, they can challenge the legality of these shutdowns in court and set legal precedents that uphold the right to internet access, providing a long-term solution.

Private Sector:

- » Social media companies need to work to bridge the digital divide and help the efforts to increase the digital literacy rate in the country. In order to mitigate disinformation and hate speech, they need to scale up their content moderation work in the local language and make the platform safe for everyone. To ensure freedom of expression is ensured, social media companies need to collaborate with local actors to make sure users' rights are respected.
 - » Telecom companies should commit to their contribution to the Universal Service Fund and work on addressing the digital divide in the country.
 - » Local tech startups and businesses should support the advocacy work of civil society organisations for the respect of digital rights and prevent internet shutdown that is affecting their business.
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The Gambia

EXECUTIVE SUMMARY

In recent years in the Gambia, issues of technological advancement have dominated discussions among stakeholders and citizens across all sectors. Internet accessibility, high tariff charges imposed on consumers, poor connectivity experienced across communities in the country, and other issues pertinent to digital rights, access, connectivity, and openness have been at the forefront of national discussions. From the Mayoral elections, National Internet Governance Forum, and the National Youth Connekt Event, the pressures mounted on the regulatory authority, the government, and the telecoms have recently yielded much success, with internet prices reduced to meet consumers' needs. However, several questions about meaningful access are yet to be answered, with limitations in the internet infrastructure affecting social development and economic sustenance. Protecting personal data remains a big challenge for the government, the private sector, and individuals in the Gambia. Establishing the Gambia Computer Security and Incident Response Team (gmCSIRT) as a national coordinating centre for all cybersecurity incidents under the Public Utilities Regulatory Authority (PURA) is another response to protecting personal data. Yet, the lack of adequately implemented policy deters significant progress from being made in these areas.

The research methodology utilised reflects key developments made in the Gambia through the evaluation of policy documents published, public and stakeholder dialogues and validation workshops held, and a series of interviews and correspondence made with different stakeholders in the private and government sectors. Regarding digital inclusion, the Information Technology Association of the Gambia (ITAG) launched a national assessment of its digital landscape based on UNESCO's Internet Universality Indicators framework, which covers UNESCO ROAMX principles on Rights, Openness, Access, Multi-Stakeholder Approach and cross-cutting issues. A framework with stakeholder recommendations= was developed to identify challenges in internet development as it affects citizens' socio-economic development, especially for persons with disabilities, youth, children and women. A key recommendation shared by all stakeholders was the need for digital literacy integration in all sectors, especially in education while a notable outcome of the findings is that the government of The Gambia has shown readiness to implement the Universal Access Policy, which has been lying dormant.²⁹²

Introduction

This research was carried out through a thorough evaluation of developments in the ICT sector in 2023, looking at government implementation and stakeholder contribution, particularly in developing the National Digital Economy Master Plan. The Gambia's internet resilience index stands at 43.45%, ranking 29th in Africa. In 2023, its internet penetration rate was at 33.%, with mobile phone subscribers at 2.86 million, a major improvement from previous years, with the figures on internet penetration rate in 2022 indicating a 2.9% increase from 23.7% increase in 2021, improving the number of internet users to more than 51% of the population.²⁹³ Internet usage by the population stands at 37%.²⁹⁴ The Gambia ranked 170th out of 179 countries for fixed broadband internet download and upload speeds as of April 2023.²⁹⁵ The Public Utility Regulatory Authority, in June 2023, endorsed the deployment of 5G technology by the QCell GSM operator after it met the International Telecommunication Union (ITU) standards on spectrum bands and bandwidths for 5G technology deployment.²⁹⁶ In October 2023, The Gambia Digital Economy Master Plan 2023-2033 was launched to turn the Gambia into the most digitally advanced society and IT innovation hub in Africa. The creation of the 86-page document was supported by the African Union (AU) and the European Union (EU) Digital for Development Hub Project to leverage technology, services and digital solutions to connect the unconnected, enhance the development of digital services in sectors like education, transportation, health, agriculture, trade etc.²⁹⁷

The Gambia is set to benefit from the \$266.5 million World Bank West Africa Regional Digital Integration Transformation program to boost connectivity and promote a single digital market and employment opportunities in beneficiary countries.²⁹⁸ The project objectives for the Gambia also include the development of a single data market to enable secure exchange, storage, and processing of data, as well as develop a single online market that allows the government, private sector, and individuals to access and deliver public and private services.²⁹⁹

293 State of Digital Rights and Inclusion in The Gambia. <https://paradigmhq.org/wp-content/uploads/2023/06/The-Gambia-Londa-2022.pdf>

294 National Digital Economy Masterplan 2023-2033. <https://mocde.gov.gm/wp-content/uploads/2023/10/Final-The-Gambia-Digital-Economy-Master-Plan-2023-20233.pdf>

295 The Gambia Freedom on the Net, 2023. <https://freedomhouse.org/country/gambia/freedom-net/2023>

296 5G Mobile Wireless Technology in The Gambia <https://pura.gm/public-notice-5g-mobile-wireless-technology-in-the-gambia/>

297 The Gambia Digital Economy Masterplan 2023-2033 <https://mocde.gov.gm/wp-content/uploads/2023/10/Final-The-Gambia-Digital-Economy-Master-Plan-2023-20233.pdf>

298 Gambia to benefit from World Bank \$266.5 million World Bank Regional Digital Project alongside Guinea, Guinea Bissau and Mauritania. <https://mocde.gov.gm/gambia-to-benefit-from-266-5-million-world-bank-regional-digital-project/>

299 The Western Africa Regional Digital Integration Program WARDIP, (P176932). <https://mocde.gov.gm/wp-content/uploads/2023/11/WARDIP-Stakeholder-Engagement-Plan-SEP-%E2%80%93-P176932-The-Gambia.docx.pdf>

► Country Analysis

Internet Access and Disruptions

There were no experienced internet disruptions in The Gambia in 2023 as compared to 2022, where about six outages were recorded between 2021-2022.³⁰⁰ Although The Gambia's connection to the ACE cable and the Serrekunda Internet Exchange Point (SIXP) is primarily managed by private sector actors, the government retains ownership and control over the country's national fibre backbone, which enables it to restrict access to the Internet and mobile phone services with little to no oversight or transparency. The Public Utility Regulatory Authority (PURA), in response to the internet disruptions, released a statement to explain the measures put in place to prevent such occurrences. Since the repair and maintenance of the ACE cable is under the ACE consortium, they mobilised specially equipped ships to The Gambia for repairs during the periods of disruptions. After several investigations were made on the issue, it was found that the internet cuts were a result of fishing activities on a rocky area around where the cable was laid. A regulation declaring the area a protected zone was enacted, and patrol ships were procured from the navy to help monitor the area.³⁰¹

In September 2021, Comium Telecom in the Gambia was suspended by the Public Utility Regulatory Authority over the failure of the GSM Operator to pay its license and spectrum fees as well as the international gateway fees.³⁰² In 2023, to rebuild its brand image and gain customer loyalty, Comium initiated a new marketing strategy with free data bundles of 20GB to any person who purchased a sim card from the GSM operator. This new development led to huge numbers of persons opting in for Comium lines to gain access to free data bundles. This, in turn, led other GSM Operators to bring down the cost of 1GB of data from \$5 to \$2.5 (Gambian Dalasi (GMD) 225 to GMD 130), a 37% deduction by the telecom operator Qcell, with prices ranging from one telecom operator to the other.³⁰³ This development culminated with the Ministry of Communication and Digital Economy's Digital Economy Master Plan, a countrywide plan on the incorporation of technology, digital solutions and services to connect the unconnected, create jobs and develop the economy³⁰⁴ with discussions on interoperability led by the United Nations Economic Commission for Africa. In September 2023, The Gambia hosted the first West Africa Digital Governance Forum to support West African Member States in harnessing digital governance mechanisms for more sustainable development and inclusive societies.

Concerning digital financial inclusion, Wave, an international fintech company, dominated the Gambian market, making financial transactions easy and accessible on mobile devices. This new digital platform gave customers in The Gambia the opportunity to withdraw and deposit cash with ease and convenience.³⁰⁵ However, payment integration with mobile banking still remains a

92

300 State of Digital Rights and Inclusion in The Gambia. <https://paradigmhq.org/wp-content/uploads/2023/06/The-Gambia-Londa-2022.pdf>

301 PURA Explains Frequent Fibre Cuts- <https://pura.gm/pura-explains-frequent-fibre-cuts-and-plans-to-explore-securing-second-fibre-cable-and-extra-backup-facilities/>

302 Comium Gambia Faces Suspension. <https://foroyaa.net/comium-gambia-faces-suspension/>

303 Gambia: Operators cannot be forced to cut high cost of internet and data. <https://freedomnewspaper.gm/gambia-operators-can-not-be-forced-to-cut-high-costs-of-internet-and-data-minister-of-communication/>

304 National Digital Economy Masterplan 2023-2033. <https://mocde.gov.gm/wp-content/uploads/2023/10/Final-The-Gambia-Digital-Economy-Master-Plan-2023-20233.pdf>

305 Wave: Africa's largest remittance makes waves in Gambia. <https://thepoint.gm/africa/gambia/headlines/wave-africas-largest-digital-remittance-makes-waves-in-gambia>

challenge with the lack of a bank linking feature that enables customers to deposit money from their Wave account directly into their bank accounts.

Development in ICT

The Gambia has developed several policy and strategy documents to support the development of its digital economy sector, including the development of common standards and protocols for data governance, interoperability, security, and privacy across different jurisdictions and sectors. The government email policy 2023-2027 was finalised in 2023 to provide guidelines on the management and utilisation of the government email platform. Challenges in the previous years include the proper functioning of the government email platform, which has led to government officials using their private email for official correspondence.³⁰⁶ The Ministry of Communications and Digital Economy (MOCDE) developed the National Digital Economy Master Plan 2023-2033, with a focus on the development of digital infrastructure, digital government services, digital financial services and inclusion, digital entrepreneurship and innovation, digital literacy and skills, digital cooperation and partnership, cybersecurity etc. The Masterplan consists of 10 pillars to guide the development of the Gambia into a fully digital state pioneered by a resilient digital infrastructure to ensure efficient and effective service delivery to citizens and businesses for economic growth and transformation.

Since the creation of the Digital Master Plan, there has still been no key public infrastructure or authority in The Gambia to ensure public key encryption availability, digital certificates to authenticate users, and secure data, which is critical for e-commerce development and digital payment systems. However, the Open Data Strategy 2023-2026 was created to address the challenges posed by the lack of centralised registry, standardisation, and infrastructural limitations for data management and data quality. The action plan was created to increase the availability, disclosure, reuse, interoperability, and access of open data within the public sector. Even with the establishment of the Data Protection Bill, there is still no Data Protection Act and Data Protection Commission to ensure accountability and clarity in data ownership and management.³⁰⁷ The same was reported in 2022, meaning no significant progress has been made regarding this development.³⁰⁸

In June 2023, the Regional Workshop on Digital ID and Interoperability was held in Banjul, the Gambia, organised by the United Nations Economic Commission for Africa (UNECA). The workshop was held to enhance the advancement of digital ID management as a lever for inclusion and development in the African region using a multistakeholder approach through shared learning.³⁰⁹ Although the workshop presented great insights to achieving interoperability, creating a Digital ID System and Service Policy is still yet to be achieved to develop a robust and inclusive digital identification system for citizens.

306 Government Email Policy. <https://mocde.gov.gm/wp-content/uploads/2023/10/Final-Government-Email-Policy.pdf>
307 Government Open Data Strategy 2023-2026. <https://mocde.gov.gm/wp-content/uploads/2023/10/Final-Government-Open-Data-Strategy-2023-2026.pdf>
308 The state of Digital Rights and Inclusion in The Gambia. <https://paradigmhq.org/wp-content/uploads/2023/06/The-Gambia-Londa-2022.pdf>
309 The 2nd Digital ID and Interoperability Workshop in Banjul, The Gambia. https://www.uneca.org/sites/default/files/TCND/Workshop_Introduction_Chief_mactar.pdf



Figure 1: The Gambia Digital Economy Framework

The Gambia National ID System

The National ID system has been successfully launched with the help of ECOWAS, promoting cross-border use with neighbouring countries to drive inter-regional trade and integration.³¹⁰ Private and public stakeholders welcomed this development due to its potential to advance entrepreneurship and e-commerce. However, stakeholders raised key concerns in the validation workshops such as the need for more interoperability and public key infrastructure design in the National ID systems, the absence of which is prohibiting robust system development in Digital ID Applications and Systems within the country. The issue of data management and ownership have also been concerns raised by stakeholders since the National Identity Cards and Driving License are managed by a foreign company, pointing to the question of data sovereignty with the government’s plan of establishing a Tier 4 data centre.³¹¹ Establishing a digital identity system, interoperability system, and public services line-up is critical to building a robust digital economy in The Gambia.

Citizens have protested the annual renewal of driver’s licenses in January of the following year, irrespective of the month it was issued, taking to social media at several instances to express their distress with this inconvenience. In September 2022, The Gambia Transport Union consulted the Ministries of Justice, Interior, Finance, Transport and the police force as to why the renewal of driver’s licenses was not conducted according to the provision of the Motor Traffic Act with renewal stated as needed every 3 years. It was reported by their findings that no laws, regulations, policies, statutes or administrative directives could be traced to explain the basis for the current practice.³¹²

310 ECOWAS Drums Importance of Regional Biometric ID for The Gambia in Integration Push. <https://www.biometricupdate.com/202309/ecowas-drums-importance-of-regional-biometric-id-card-for-the-gambia-in-integration-push>

311 The Gambia Digital Economy Master Plan 2023-2033. <https://mocde.gov.gm/wp-content/uploads/2023/10/Final-The-Gambia-Digital-Economy-Master-Plan-2023-2033.pdf> -Page 5

312 Gambia Transport Unions Post on Drivers License Renewal- <https://www.facebook.com/>

An article published in The Standard Newspaper in January 2023 clearly highlights the chaos and confusion with the vehicle license procedure in The Gambia, marking the first quarter of the year most chaotic for drivers with inadequate road infrastructure and the ever-increasing number of vehicles in traffic. The situation has been marked as a system of extortion because according to section 27 (3) of the Motor Traffic Act, “A driver’s licence other than a provisional driver’s licence shall, unless previously revoked or surrendered, remain in force for a period of three years from the day on which it is issued.”³¹³

In November 2023, the contract between the Government of The Gambia and Semlex Group South Africa (SA) ended regarding the production of biometric ID cards and related documents. The President’s office released a memo to urge citizens to be patient as negotiations were ongoing, leading to the temporary hold on the production of driver’s licenses, national IDs, and resident permits.³¹⁴ The Police Force issued a statement in response to the government’s memo urging citizens, especially drivers, to ensure that they possess a driver’s license and not use the memo as an excuse for not being in possession of one. This led to several responses to the Kerr Fatou Twitter post on the issue, with citizens emphasising the need for an extension of the license renewal to five years instead of annually.

The inconvenience and chaos caused by the annual renewal goes in violation of digital rights, especially the right to access and inclusion. This is due to the fact that licenses can only be obtained in the Greater Banjul area at the Kanifing and Banjul offices with no outstations established in the other five administrative regions.

Digital Inclusion of Persons with Disabilities

Statistics show 7.9% of the Gambian population have a disability, while about 68% of people with disabilities (PwDs) between the ages of 15 and 24 are unemployed.³¹⁵ Persons with disabilities are often excluded from decision-making processes, leading to greater inequality and discrimination. Recognising the challenges they face, the Persons with Disability Bill was passed in The Gambia in July 2021 to make provisions for healthcare, social support, education, accessibility, rehabilitation, vocational training, communication, employment, and work protection.³¹⁶ However, even with the establishment of the Bill, members of the community are still excluded and face widespread stigma and discrimination, leading to increased invisibility. In April 2023, the United Nations Population Fund (UNFPA), in partnership with the Gambia Federation of Persons with Disability, organised a training for 25 members of the media on ethical reporting for disability issues. The training was done to enhance the rights of persons living with disability through public awareness.³¹⁷

Information Technology Association of the Gambia, in partnership with Jokkolabs Banjul, conducted the Internet Universality Indicators (IUI) Assessment, Gambia context supported by the United Nations Education, Scientific and Cultural Organisation (UNESCO). The research methodology included a multi-stakeholder approach to assess internet gaps and challenges affecting different stakeholder groups such as the government, private sector, youth and women, academia, and persons living with disability. Although there are several dialogue initiatives where the digital inclusion of vulnerable groups has been part of national dialogue such as the National

share/p/2Xxj4YmUkXvXKwhR/?mibextid=WC7FNe

313 Another Time for Drivers License Chaos- <https://standard.gm/another-time-for-drivers-licence-chaos/>

314 Gov’t Races to Resolve ID, Drivers License Situation. <https://thepoint.gm/africa/gambia/headlines/govt-races-to-resolve-id-cards-driver-licenses-situation>

govt-races-to-resolve-id-cards-driver-licenses-situation

315 Disability Rights in The Gambia: A way Forward. <https://borgenproject.org/disability-rights-in-the-gambia/>

316 Persons with Disability Bill 2020. https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5f024c694227530712966cfb/1593986241074/Persons+with+Disabilities+Bill_+2020.pdf

317 Enhancing the Rights of Persons with Disability through EthicL Reporting. <https://gambia.unfpa.org/en/news/enhancing-rights-persons-disabilities-through-ethical-reporting>

Youth Connekt, Gambia National IGF, and the just concluded Presidential National Dialogue, still available data on it is limited. The IUI-focused research on The Gambia also highlighted the need for digital inclusion of vulnerable groups, especially persons living with disability, to ensure their meaningful participation in socio-economic development and the advancement of their human rights through policy development and implementation, infrastructural development, advocacy, education, governance, technology, innovation, and investment in ICT.³¹⁸

Financial Inclusion, Youth, and Women

The United Nations Capital Development Fund (UNCDF) launched an initiative in 2022 to provide financial and technical assistance to Gambian fintech companies. This was done to provide digital financial services to underserved Gambian youths to address the limited access to digital financial services for women and youths. This was conducted through a financial literacy training program focused on bookkeeping, financial planning, savings, loans, risk management, and financial management, especially for women in rural Gambia. As of the end of 2022, 30000 women received financial literacy training in partnership with the Ministry of Gender, Children and Social Welfare.³¹⁹ Another development supported was the creation of the Ping mobile wallet in 2022 to enable remittance customers to store, send, and receive money in a sixmonth pilot program under the Jobs, Skills, and Finance for Women and Youth in The Gambia program.³²⁰

The Ping Wallet initiative offers services through three subscription plans with limited transaction fees and commission on airtime, providing easy access to remittances estimated at 63% of the Gambia's GDP. Today, the e-wallet company has agents across all six regions of the country, catering to the needs of women and youth in rural Gambia. A financial literacy resource platform was also developed to meet the needs of different learners, and the financial access resilience database was developed by the Ministry of Gender, Children and Social Welfare.³²¹ The Afrijula e-commerce platform was also developed by Insist Global in partnership with UNCDF as a tool for small and micro businesses with low literacy rates. The platform allows entrepreneurs to apply for loans from Bayba and Reliance Microfinance using their online profiles without using physical documentation or collateral, reducing the manual credit process by 80%.³²² Beneficiaries of the platform include the Gambia Women's Chamber of Commerce (GWCC) and the Gambia Chamber of Commerce and Industry (GCCl).³²³ As of August 2023, Afrijula has registered 8000 businesses on its platform.

In addition, new digital or e-wallet services such as Wave facilitating the sending of remittances are emerging with fast adoption within and outside the country, with over 1000 agents nationwide. This has gained so much popularity among the Gambia population due to its ease of access and low service fee, making it easy for citizens to send and receive money.³²⁴ Regarding digital entrepreneurship, hubs like the Gambia Tech Project have made tremendous achievements in providing incubation and acceleration programs for digital start-ups. Yet still, the ecosystem faces several challenges, such as limited access to finance, markets, and talent and regulatory and

318 Gambia Lauches Assessment of its Digital Enviroment. <https://www.unesco.org/en/articles/gambia-launches-assessment-its-digital-environment>

319 Innovative Financing, Empowering Women Entrepreneurs in The Gambia- <https://www.uncdf.org/article/8356/innovative-financing-empowering-women-entrepreneurs-in-the-gambia>

320 Financial Technology Start-up Initiative Lauched in The Gambia. <https://www.uncdf.org/article/7771/financial-technology-start-up-initiative-launched-in-the-gambia>

321 Innovative Financing, Empowering Women Entrepreneurs in The Gambia <https://www.uncdf.org/article/8356/innovative-financing-empowering-women-entrepreneurs-in-the-gambia>

322 Afrijula- A Digital Tool for Empowering Entrepreneurs in The Gambia. <https://www.uncdf.org/article/8347/afrijula---a-digital-tool-empowering-entrepreneurs-in-the-gambia>

323 Afrijula Impact and Partners. <https://afrijula.gm/impact.html>

324 Wave: Africa's largest remittance makes waves in The Gambia. <https://thepoint.gm/afrika/gambia/headlines/wave-africas-largest-digital-remittance-makes-waves-in-gambia>

policy barriers that hinder the growth and scaling of digital businesses and high-level adoption of e-services in the areas of interoperability, data protection, consumer protection, financial literacy, and overall digital literacy.

An essential aspect of digital entrepreneurship is the need for financing mechanisms tailored to the needs of startups and small businesses. As a small and rising economy, startups and SMEs are key in boosting digital innovation. However, traditional banking and investment channels may not be accessible or appropriate for these ventures. Therefore, alternative financing options such as crowdfunding, venture capital, and impact investing should be explored and promoted. Establishing a startup fund is one of The Gambia's most effective ways to support digital innovation and entrepreneurship.

Privacy and Surveillance, Data Protection and Cybersecurity

Chapter 4 of the 2020 Draft Constitution highlights the right to privacy as a fundamental human right under the Specific Rights and Freedoms section. This was reinforced by the statement, "No person shall be subject to arbitrary or unlawful interference with the privacy of his or her person, home, family, correspondence or communications. The right of a person under the above (subsection 1) may be limited in accordance with law and as necessary in an open and democratic society in the interest of national security, public safety or the economic wellbeing of the country."³²⁵ The 1997 Constitution of The Gambia did not account for cybersecurity protections hence stakeholders felt it relevant to have this addition made since digital rights have also been considered a fundamental human right.

The right to access to information was also considered in this section "every citizen has a right to access to information held by a public body or a relevant private body performing or having direct or indirect bearing in the execution of a public function."

These two additions were greatly appreciated by stakeholders with discussions ravaging the National Internet Governance Forum held annually. Since the Draft Constitution was rejected by Parliament not much can be done as there is still no data protection law in place. Even though The Gambia is a signatory to the 2010 Economic Commission of West African States (ECOWAS) Supplementary Act on Personal Data, the country is yet to transpose the ECOWAS Act domestically to establish a data protection authority.³²⁶ The 2009 access to information Act only provides provisions primarily for information and communication service providers."³²⁷

The Gambia, as reported in the 2022 report, has only signed The African Union's Malabo Convention on Cybersecurity and Personal Data Protection. Since the signatory was made, the country is still yet to submit its ratification.³²⁸

The lack of proper policy backing makes it tremendously difficult to prosecute cases related to cybersecurity with identity theft and fraud on the rise, the personal damage incurred and financial losses are creating distrust in the system. The establishment of a data protection Act will promote accountability, ensure the protection of personal data and prevent data breaches, promote trust and confidence amongst investors, businesses and consumers, and mitigate risks associated with regulatory non-compliance in the country. This will help foster a conducive environment for people and businesses to thrive as we build a digital economy using Information, Communication,

325 Final Draft of the Constitution of the Gambia- <https://static1.squarespace.com/static/5a7c2ca18a-02c7a46149331c/t/5e837b8fc031321ec1faf8e1/1585675156697/CRC+-+FINAL+DRAFT+CONSTITUTION.pdf>

326 The Gambia Data Protection Overview- <https://www.dataguidance.com/notes/gambia-data-protection-overview>

327 The Gambia Data Protection Overview- <https://www.dataguidance.com/notes/gambia-data-protection-overview>

328 Africa: AUs Malabo Convention- <https://dataprotection.africa/malabo-convention-set-to-enter-force/>

Technology (ICT) as a catalyst for development.

Successful steps have been taken in launching the first e-services, such as digital electronic birth certificates, the ASYCUDA customs management system, the vital statistics database, and the Civil Service E-recruitment Portal. These initiatives provide a promising path forward in switching from analog to digital on a national services level. The Ministry of Communications and Digital Economy (MoCDE) introduced various policies and strategies with “2020-2024 “ implementation timelines including the Broadband Policy & Strategy 2020-2024,³²⁹ Cybersecurity Policy & Strategy 2020-2024,³³⁰ and other strategies. The Gambindex scored 32.12, placing it in the 20 currently th position within the region.

The African Union Digital Transformation Strategy (DTS) and The EU Digital Roadmap overlap in areas such as the digital transformation of public administration, digital solutions related to connectivity, and leveraging digital transformation to improve education and skills. These policy and strategy initiatives include significant goals such as enhancing last-mile network connectivity, improving regulatory policies, reinforcing e-government and cybersecurity, expediting the establishment of regional ICT centres for communities and schools, advancing digital literacy for civil servants and the entire population, and fostering a favourable environment for local digital content creation.

In addition, The Africa Higher Education Centers and existing Technical and Vocational Education and Training (TVET) institutions are focused on enhancing higher education quality, teaching proficient and competent professionals in fields such as science, technology, engineering, mathematics, health, and agriculture to meet human capital demands. However, more investments are needed to ensure that all university students have access to broadband internet, computers, and mobile devices for online learning to satisfy the private sector’s expectations, necessitating a skilled workforce to sustain their operations. According to the US Department of State 2023 report, the total number of banking customers in The Gambia currently stands at 772,101, equivalent approximately to 30.8%, and only 14% use e-Banking. The Gambia currently has 80 branches and 208 point-of-sale (POS) terminals. The Gambia’s low adoption of traditional banking services highlights the need for innovative digital financial solutions. Limiting the transaction fees can be an additional tool to attract more digital financial usage by MSMEs and communities.

The low adoption rate of digital financial services is due to a lack of trust in the system, limited financial literacy, and a need for regulatory clarity.

Universal Service Fund

The Gambia is in the process of establishing the Universal Service Fund to ensure the type of service provided is the same for all users in terms of availability and affordability, that the price of service does not limit service access and that all subscribers are treated in a non-discriminatory manner to the price, service and quality of service, in all places, without distinction of race, sex, religion, etc.³³¹ However stakeholder engagement on the ground has been slow with the challenge of securing funding provision to support its implementation.

In 2023, the focus of the Ministry of Communication and Digital Economy MOCDE still remains to roll out a secondary submarine cable to address redundancy in the first mile, strengthen digital sovereignty, and support efforts in rapid digital transformation, establishment of a Tier 4 National

329 National Broadband Policy, 2020-2024. <https://gid.gov.gm/wp-content/uploads/2023/10/BROADBAND-POLICY-2024.pdf>

330 Gambia National Cybersecurity Policy 2020-2024. <https://gid.gov.gm/wp-content/uploads/2023/10/CYBERSECURITY-POLICY-2024.pdf>

331 Universal Service Funds in Africa, Policy Reforms to Enhance Effectiveness. <https://www.gsma.com/subsaharanafrica/wp-content/uploads/2023/10/USF-Africa.pdf>

Data Centre, deployment of an integrated payment gateway, digital government development, and the creation of the National Digital Identity initiative.

The ICT infrastructure relies on electricity infrastructure development. Strategic Roadmaps such as Universal Access by 2025 and transforming the Gambia Electricity Sub-sector play a key role in providing a reliable base for the functioning of ICT infrastructure. The Government, in partnership with UNDP, is implementing the Programme for Accelerated Community Development (PACD) to provide universal access to electricity for all Gambians by 2025, making it one of Africa's first countries to achieve universal access. The project employs a multi-sectoral approach to addressing poverty and inequality at the community level, extending rural electrification to seven communities in the North Bank Region. It will be a critical response to inclusive development for greater equity and social justice in line with the aims and aspirations of the National Development Plan and SDGs. More importantly, it will improve the conditions of the people, particularly women and girls in poor communities.³³² In addition, the new Global Gateway project of the EU is accelerating the implementation of the Gambia Renewable Energy project, which electrifies schools and health centres across the Gambia with reliable green energy, benefiting more than 1000 rural schools and 100 health centres. The project transforms electricity access in rural communities nationwide. It ensures that education and health services benefit from reliable and clean power. Once fully operational, the Gambia Renewable Energy project will increase the energy supply in the Gambia by one-fifth.³³³

332 Programme for Accelerated Community Development Signed. <https://op.gov.gm/programme-accelerated-community-development-pacd-signed>

333 Gambia Digital Economy Masterplan 2023-2033. <https://mocde.gov.gm/wp-content/uploads/2023/10/Final-The-Gambia-Digital-Economy-Master-Plan-2023-20233.pdf>

► Conclusion & Recommendations

Conclusion

Policy developments in the Gambia in 2023 can be quite commendable, especially with the creation of the Digital Economy MasterPlan 2023-2026. However, major challenges can only be addressed with the implementation of the Draft Constitution as the Constitutional Review Commission recommends to ensure data protection, privacy and security are captured to protect citizens and promote trust and accountability in governance. Much work needs to be done in the ICT sector to create and promote inclusive access and achieve meaningful connectivity for all. In as much as there is significant progress with legal and regulatory frameworks, implementation of major policy development is tremendously poor. To achieve significant growth in digital rights and inclusion, it is the responsibility of all stakeholders involved to collaborate to fast-track and enhance infrastructural development so that we can achieve our National Development Plans.

Recommendations

The government should:

- » Address unaffordable costs and internet coverage leading to a widened digital divide limiting access and participation of individuals, groups, and within different regions.
 - » Introduce and implement interoperability, data management, and Keyless Signature Infrastructure (KSI) within the government to promote the development of e-services in the country.
 - » Cybersecurity standards, frameworks, and systems need to pinpoint attention to the existing and upcoming services to ensure the trust of its people and businesses towards the emerging digital economy in The Gambia.
 - » Strengthen the legal and regulatory framework for digital financial services to provide clarity and certainty to market players. CBG should further develop clear rules and guidelines for digital financial services, including licensing, capital requirements, and consumer protection.
 - » Remove barriers to providing equal access to technology and communication, particularly infrastructural limitations leading to internet disruption.
 - » Legislation on personal data protection and privacy should be reformed in order to provide safeguards on the use of personal data to protect the right to privacy online.
 - » In terms of the policy, legal, and regulatory framework, strict laws should be in place to enforce consequences for people vandalising internet cables and hindering bandwidth availability.
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- » Prioritise infrastructure development and reliable electricity supply in rural areas to improve internet accessibility.
 - » Implement and enforce regulations encouraging service providers to invest in underserved areas to expand network coverage.

Civil Society

- » Better facilitate discussions centering Internet Rights, there is a need to develop and deploy local content to ensure barrier gaps hindering access are bridged.
- » Develop more awareness campaigns, especially for women and people in rural Gambia, to be educated more on their internet rights regarding access to information, the right to privacy, and the right to freedom of expression.
- » Promote initiatives to bridge the digital skills gap and enhance digital literacy among citizens, particularly in remote communities.
- » Advocate for accessible technology for persons with disabilities to ensure that digital platforms, websites, and applications are designed to be inclusive and accessible.

Private Sector

- » Pioneer investment in last-mile fibre networks to address barriers to adoption and affordability of mobile broadband.
 - » Support civil society initiatives in the implementation of digital rights programs.
 - » More support should be provided through public-private sector partnerships to contribute towards policy development and implementation and infrastructural development for internet expansion, especially in rural areas.
 - » Mobile network operators should facilitate the development of community networks in rural areas to provide easy access to the Internet for rural dwellers.
 - » Through corporate social responsibility, the banking sector should support the provision of the Internet in schools and hospitals to promote digital education and inclusion.
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Ghana

EXECUTIVE SUMMARY

This study analyses Ghana's digital rights and inclusion landscape across three thematic areas – online freedom of expression, universal service funding, and digital participation of persons with disabilities. It highlights the status of press freedoms, policy gaps expanding rural connectivity, and persistent digital divides excluding marginalised groups. Several stakeholder-targeted recommendations are proposed, including government accountability, measures to protect journalists, targeted investments in underserved communities, multi-stakeholder partnerships making ICTs affordable and accessible, and robust and inclusive policy-making embracing co-creation with persons with disabilities to ensure Ghana leverages digitisation to empower all citizens. The report synthesises evidence from diverse sources to objectively diagnose challenges, examine stakeholder concerns, and spotlight groups at risk of exclusion. It provides targeted recommendations across policy, regulation, infrastructure expansion, affordability programs, digital skills building, and monitoring mechanisms to ensure Ghana harnesses connectivity for inclusive development. Barriers must be addressed at legal and institutional levels to achieve universal empowering access. While Ghana can potentially be a digital rights model in Africa, realising this vision requires targeted interventions to confront

systemic marginalisation across all segments of society. The research employed desk research to assess quantitative and qualitative government data, NGO reports, and news articles.

Introduction

Formerly known as the Gold Coast, Ghana gained independence from colonial rule in 1957 and became the first sub-Saharan nation to do so. It is the second-most populous and second-largest economy in West Africa and holds significant influence in the socio-political and economic affairs of the region. The country has maintained political stability since 1992 and established itself as one of the most stable democracies on the continent with eight successful general elections. Despite being previously ranked among the top three in Africa for freedom of speech and press freedom, there is growing concern about the deterioration of press freedom in Ghana. According to the World Bank, Ghana has recently grappled with profound macroeconomic challenges, including currency depreciation, escalating inflation, and diminished investor confidence, leading to a sombre economic outlook and slow growth forecasts. The World Bank's forecast indicates that Ghana's economy is expected to continue growing at a slower pace in 2024 but is envisaged to recover to its potential growth by 2025.³³⁴ Youth groups and trade unions have been leading peaceful demonstrations in response to rising living costs and perceived government mismanagement.

As digital technologies become integral to society and the economy, critical questions arise about those who benefit from connectivity and those who are excluded. For rapidly digitising countries like Ghana, technology must translate into empowerment and opportunity for all population segments. However, systemic barriers continue to exclude many from full participation in the digital revolution. This report delves into Ghana's progress, identifies gaps, and highlights policy priorities across three crucial digital rights and inclusion dimensions: online freedom of expression, the Universal Service Fund, and the digital participation of persons with disabilities. Despite achieving significant milestones in expanding internet access and establishing a legal framework protecting free speech, substantial challenges persist, as evidenced by a modest decline in global press freedom rankings.

Violence against journalists by officials and questions about the effectiveness of universal service funds in bridging urban-rural divides are alarming trends. Women and Persons with disabilities (PWDs) face barriers such as device costs, digital literacy gaps, and limited accessibility features, hindering their access to and use of technology.

334 World Bank 'Ghana's Economy Expected to Recover Its Potential By 2025, says World Bank Report' (2023) <https://www.worldbank.org/en/news/press-release/2023/07/19/ghana-economy-expected-to-recover-its-potential-by-2025-says-world-bank-report> (accessed on 29 December 2023).

► Country Analysis

Internet Access and disruptions

Ghana has witnessed consistent improvements in internet access and quality, boasting a mobile internet penetration rate of 71.51% and a fixed-line penetration of 0.33%, as of January 2023.³³⁵ According to Data Reportal's Digital 2023 report, the internet penetration rate in the country had achieved a level of 68.2%.³³⁶ Over 50% of the country's population were online in 2023. Ghana has undertaken substantial initiatives to enhance internet infrastructure, exemplified by projects such as Google's CSquared, which involved laying fibre-optic cables in major cities. On the other hand, the recent implementation of the "e-levy" tax on mobile money transactions has impacted mobile money demand, resulting in a resurgence of cash-based transactions.³³⁷ The government has lowered the Communications Service Tax to address declining revenue from traditional voice calls and is contemplating taxing digital services.

In 2022, the World Bank approved US\$200 million for the government's Digital Acceleration Project, aimed at enhancing internet access in rural areas and promoting digital inclusion.³³⁸ However, despite these efforts, a persistent digital divide exists, particularly affecting women and persons with disabilities (PWDs), hindering their access to and utilisation of digital technologies.

Ghana's population exceeds 30 million,³³⁹ with women constituting 50%. Nevertheless, a United Nations study revealed that only 60% of Ghanaian women own smartphones, compared to 72% of men.³⁴⁰ Factors contributing to this gender disparity, as highlighted by Tech Cabal, include inadequate literacy and digital skills among Ghanaian women.³⁴¹

In terms of internet freedom, the Freedom House report designates Ghana as 'partly free' due to obstacles in access, violations of user rights, and content restrictions.³⁴² Although the country experiences minimal internet disruptions, planned blackouts can intermittently interrupt access for some residents. While rural areas in Ghana lack internet infrastructure, efforts are underway to bridge the urban-rural digital divide through initiatives such as the Ghana Investment Fund for Electronic Communications (GIFEC).

335 NCA-Ghana 'Data Subscription Analysis for December 2022 to January 2023' <https://nca.org.gh/wp-content/uploads/2023/04/Mobile-Data-Year-ended-2022-Jan-2023.pdf> (accessed on 27 December 2023).

336 Data Reportal 'Digital 2023: Ghana' (2023) <https://datareportal.com/reports/digital-2023-ghana> (accessed on 27 December 2023).

337 International Centre for Tax & Development 'Ghana's new e-levy: the sour, sweet and switches so far' (2023) <https://www.ictd.ac/blog/ghana-e-levy-sour-sweet-switches/> (accessed on 27 December 2023).

338 Techcabal 'Gender inequality is obstructing Ghana's path to a larger digital economy' (2023) <https://techcabal.com/2023/08/03/gender-inequality-is-obstructing-ghanas-path-to-a-larger-digital-economy/> (accessed on 2 February 2024).

339 Worldometer 'Ghana Population Live' (2024) <https://www.worldometers.info/world-population/ghana-population/> (accessed on 2 February 2024).

340 United Nations Ghana 'DigitALL: Innovation and technology for gender equality in Ghana- An Op-ed by Charles Abani, UN Resident Coordinator in Ghana' (2023) <https://ghana.un.org/en/225010-digital-all-innovation-and-technology-gender-equality-ghana-op-ed-charles-abani-un-resident> (accessed on February 2024).

341 Techcabal 'Gender inequality is obstructing Ghana's path to a larger digital economy' (2023) <https://techcabal.com/2023/08/03/gender-inequality-is-obstructing-ghanas-path-to-a-larger-digital-economy/> (accessed on 2 February 2024).

342 Freedom House 'Freedom on the net 2023 - Ghana' (2023) <https://freedomhouse.org/country/ghana/freedom-net/2023> (accessed on 27 December 2023).

Online Freedom of Expression

Despite the improvements in Ghana's internet infrastructure, challenges to online freedom persist. With its constitutional commitment to freedom of expression, Ghana previously held a prominent position as a champion of free speech in Africa, ranking among the top three countries for both freedom of speech and press freedom. However, recent developments present a grim picture of the erosion of these rights.

In the 2023 Reporters Without Borders rankings, Ghana experienced a decline of two positions, dropping from 60th to 62nd out of 180 countries.³⁴³ These rankings consider cumulative scores from five key indicators: media landscape, political environment, legislative framework, economic factors, and security considerations. While Ghana boasts a robust legal framework for media regulations, the rankings reveal a gap between the existing legal structure and implementation, including the actual safety and security conditions for journalists. This disconnect underscores the imperative for concerted efforts to bridge the gap between media laws and their effective implementation in the country. The decline in ranking signifies a decrease in global standing and underscores the urgent challenges facing freedom of expression in the nation. Disturbingly, attacks on media houses and journalists have become increasingly common, with state security entities and political party supporters emerging as primary perpetrators.

On May 3, 2023, a distressing incident highlighted the concerning trend when Abubakari Sadiq Gariba, a journalist affiliated with Dagbon FM in northern Ghana, was physically assaulted and threatened during his live weekly talk show "Panpantua" by local politician Iddrisu Hardi and resident Mumuni Osman.³⁴⁴

Despite legal actions taken against the assailants, there is a persistent and disconcerting lack of accountability and support for journalists who experience such attacks. In response to Abubakari's arrest, authorities imposed fines of GHC 3,600 (approximately USD 310) each on Hardi and Osman, prompting questions about the effectiveness of such measures in deterring future incidents.³⁴⁵ Another alarming occurrence transpired on October 7, 2023, when approximately 20 individuals stormed the studios of Accra-based United Television (UTV) during a live broadcast.³⁴⁶ As reported by Media for Foundation West Africa, additional recent evidence highlighting the deteriorating safety conditions of journalists in Ghana includes the arrests or detention of Kwabena Bobie Ansah (Accra FM) and Noah Dameh (Radio Ada).³⁴⁷ The High Court (Criminal Court 5 Division) granted national security operatives leave to detain freelance journalist Sacut Amenga-Etego for unauthorised filming, deemed a security threat to the court and its complex. Reports also detail incidents such as thugs storming the studio of Benya FM and police assaulting and detaining Connect FM's Eric Nana Gyetuah.³⁴⁸ In total, the Ghana Journalists Association (GJA) documented 45 cases of assault and attacks against journalists and media institutions in the last five years.³⁴⁹

343 Rsf 'Ghana' (2023) <https://rsf.org/en/country/ghana> (accessed on 29 January 2023).

344 GhanaWeb 'Press Freedom Day: Former NDC communications officer attacks radio presenter on live radio in Tamale' (2023) <https://www.ghanaweb.com/GhanaHomePage/television/news/Press-Freedom-Day-Former-NDC-communications-officer-attacks-radio-presenter-on-live-radio-in-Tamale-185168> (accessed on 27 December 2023).

345 Global Voices 'Silencing the press: Threats, violence, and injustices against journalists in Ghana' (2023) <https://globalvoices.org/2023/11/20/silencing-the-press-threats-violence-and-injustices-against-journalists-in-ghana/> (accessed on 27 December 2023).

346 Myjoyonline 'UTV condemns invasion of its studio by 'intruders'; demands justice' <https://www.myjoyonline.com/utv-condemns-invasion-of-its-studio-by-intruders-demands-justice/> (accessed on 28 December 2023).

347 Mfwa 'Ghana's poor press freedom ranking – The critical issues' (2023) <https://www.mfwa.org/issues-in-focus/ghanas-poor-pres-freedom-ranking-the-critical-issues/#:~:text=The%20country%20fell%20two%20places,2022%20to%2065.93%20in%202023.> (accessed on 27 December 2023).

348 Mfwa 'Ghana's poor press freedom ranking – The critical issues' (2023) <https://www.mfwa.org/issues-in-focus/ghanas-poor-pres-freedom-ranking-the-critical-issues/#:~:text=The%20country%20fell%20two%20places,2022%20to%2065.93%20in%202023.> (accessed on 27 December 2023).

349 Daily Guide Network '45 Journalists Assaulted in Ghana In 5 Years; GJA Calls For End To Impunity' (2023) <https://dailyguidenetwork.com/45-journalists-assaulted-in-ghana-in-5-years-gja-calls-for-end-to-impunity/> (accessed on 28 December 2023).

These incidents collectively paint a distressing picture of the challenges facing journalists in Ghana, highlighting the need for comprehensive measures to ensure their safety, uphold freedom of expression, and protect the media's vital role in society. Government efforts to address these issues have been sluggish and ineffective. Little progress has been made in establishing mechanisms for reporting and addressing attacks on journalists. Government intervention in content removal in Ghana is infrequent. In February 2021, legal representatives of the Judicial Service requested media houses to remove content it termed as “hateful” and “offensive” statements, but there were no reported compliance cases. In 2022, Google received two content removal requests from the government. It adhered to one related to impersonation and rejected the other on national security grounds. The Electronic Transactions Act, 2008, shields service providers from liability for illegal user content if they act promptly upon notification and are unaware of its illegality.³⁵⁰

Currently, Ghana is on the verge of voting on draft legislation called the Promotion of Proper Human Sexual Rights and the Ghanaian Family Values Bill. The Bill is aimed at criminalising both online and offline activities depicting positive portrayals of LGBT+ relationships. Should the legislation pass, internet service providers (ISPs) and website owners may find themselves compelled to proactively remove content to avoid potential legal consequences for posts supporting LGBT+ activities.³⁵¹ This Bill, which has the potential to criminalise the existence of LGBTQ+ individuals and restrict their online rights, adds another layer of concern. According to reports from TechPolicy, should the Bill be enacted, it could result in heightened surveillance, increased arrests, and the censorship of LGBTQ+ content.³⁵² Furthermore, traditional chiefs have been implicated in censoring the media, as exemplified by the Ada Traditional Area's ban on Radio Ada from covering the traditional festival, Asafotufiam.³⁵³ The Kumasi Traditional Council took a similar stance by ordering the closure of Oyerepa FM.³⁵⁴

Despite Ghana's constitutional commitment to freedom of expression, the challenges mentioned above underscore the evident necessity for further efforts to align the digital rights situation in Ghana with international standards and practices. This imperative arises from the fact that while the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill's potential passage could lead to the discrimination of LGBTQ+ individuals, violating principle 3 of the 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa,³⁵⁵ the persistent arrest and censorship of the media also contravene principles 10 and 20 of the Declaration.³⁵⁶

Digital Inclusion of Persons with Disabilities

Digital technologies, especially mobile phones and the Internet have become indispensable tools for participation in society and the economy. In 2022, Ghana's internet penetration rate was

350 Freedom House 'Freedom on the net 2023 - Ghana' (2023) <https://freedomhouse.org/country/ghana/freedom-net/2023> (accessed on 27 December 2023).

351 Freedom House 'Freedom on the net 2023 - Ghana' (2023) <https://freedomhouse.org/country/ghana/freedom-net/2023> (accessed on 27 December 2023).

352 Tech Policy 'Ghana's Anti-LGBTQ+ Agenda Will Be A Disaster For Human Rights — Online And Off' (2023) <https://www.techpolicy.press/ghanas-antilgbtq-agenda-will-be-a-disaster-for-human-rights-online-and-off/> (accessed on 27 December 2023).

353 The Fourth Estate 'Ada Traditional Council bans Radio Ada from covering 2022 Asafotufiami Festival' (2022) <https://thefourthstategh.com/2022/08/09/ada-traditional-council-bans-radio-ada-from-covering-2022-asafotufiami-festival/> (accessed on 27 December 2023).

354 Mfwa 'Ghana: Kumasi Traditional Council's censorship order untenable' (2022) <https://www.mfwa.org/issues-in-focus/ghana-kumasi-traditional-councils-censorship-order-untenable/> (accessed on 29 December 2023).

355 African Commission on Human and People's Rights 'Declaration of Principles on Freedom of Expression and Access to Information in Africa' (2019) https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf (accessed 30 January 2024).

356 African Commission on Human and People's Rights 'Declaration of Principles on Freedom of Expression and Access to Information in Africa' (2019) <https://achpr.au.int/en/node/902> (accessed 30 January 2024).

53% of the total population.³⁵⁷ As of the beginning of 2023, the rate increased to 68.2% out of a population of 33.80 million.³⁵⁸ This indicates that 10.75 million people in Ghana did not use the internet at the start of 2023. Thus, at least 31.8% of the population remained offline. According to the 2021 Population and Housing Census, PWDs constitute eight per cent of the population, which represents 2,098,138 individuals.³⁵⁹

Progress has been made in the advancement of the digital inclusion of PWDs. The government has demonstrated commitment through digital skills training workshops³⁶⁰ and policy initiatives like the Inclusive Education Policy³⁶¹ and the Ghana Disability Act.³⁶² Ghana passed the Persons with Disability Act in 2006 and became the first country in sub-Saharan Africa to ratify the UN Convention on the Rights of Persons with Disabilities (CRPD). However, it has not yet ratified the African Disability Protocol, which specifically addresses the unique challenges faced by the African disability community, including those related to the digital environment.³⁶³ Continued efforts are needed to fully implement these legal frameworks. The Persons with Disability Act mandates accessibility of public facilities and services, including Information and Communication Technologies (ICTs), but much accessibility work remains.

PWDs have lower rates of mobile phone ownership and mobile internet usage than people without disabilities. Research conducted by GSMA found that PWDs are 34% less likely to own a mobile phone and 72% less likely to own a smartphone. Only 16% of PWDs use mobile internet, compared to 61% of persons without disabilities. The main barriers reported by PWDs are the cost of gadgets, low literacy levels, and the disability itself.³⁶⁴ These barriers affect their ability to take advantage of the benefits of digital technologies. Mobile phones and the internet can support PWDs to live more independently. Technology, particularly assistive technologies, enables access to information, government services, education, health information, financial services like mobile money, and social connections. However, for PWDs to fully benefit, mobile devices and services should be accessible.

The GSMA research also revealed that awareness of accessibility features that make mobile phones usable for PWDs is still very low in Ghana. For example, only 18% of respondents with disabilities were aware of screen magnifiers and 12% of text-to-speech technology that converts written text into spoken words. Without knowledge of these features, PWDs face greater difficulties in using mobile devices. Accessibility should be built into technology design from the start so that PWDs can use and benefit from digital technologies with minimal barriers.³⁶⁵

Affordability is another key barrier.³⁶⁶ Smartphones with more sophisticated accessibility features

357 Data Reportal 'Digital 2022: Ghana' (2022) <https://datareportal.com/reports/digital-2022-ghana> (accessed on 19 November 2023).

358 Data Reportal 'Digital 2023: Ghana' (2023) <https://datareportal.com/reports/digital-2023-ghana> (accessed on 19 November 2023).

359 Ghana News Agency 'Persons with Disability and Ghana's Economy Today' (2022) <https://gna.org.gh/2022/11/persons-with-disability-and-ghanas-economy-today/#:~:text=According%20to%20the%202021%20Population,population%2C%20which%20represents%20%2C098%2C138%20individuals.> (accessed on 19 November 2023).

360 Graphic online 'Govt builds capacity of PWDs in digital technology' (2022) <https://www.graphic.com.gh/news/general-news/govt-builds-capacity-of-pwds-in-digital-technology.html> (accessed on 19 November 2023)

361 Special Attention Project Ghana 'Inclusive Education Policy' (2013) <https://sapghana.com/data/documents/Inclusive-Education-Policy-official-document.pdf> (accessed on 19 November 2023).

362 Special Attention Project Ghana 'Persons With Disability Act, 2006 Act 715' (2006) <https://sapghana.com/data/documents/DISABILITY-ACT-715.pdf> (accessed on 19 November 2023).

363 Stakeholders call on Minister to speed up the ratification of the African Disability Protocol (2023) <https://gna.org.gh/2023/08/stakeholders-call-on-minister-to-speed-up-the-ratification-of-the-african-disability-protocol/> (accessed on 25 January 2024).

364 GSMA 'Closing the Mobile Disability Gap in Ghana: Insights and Recommendations' (2022) <https://www.gsma.com/mobil-fordevelopment/wp-content/uploads/2022/04/Closing-the-mobile-disability-gap-in-Ghana.pdf> (accessed on 19 November 2023).

365 GSMA 'Closing the Mobile Disability Gap in Ghana: Insights and Recommendations' (2022) <https://www.gsma.com/mobil-fordevelopment/wp-content/uploads/2022/04/Closing-the-mobile-disability-gap-in-Ghana.pdf> (accessed on 19 November 2023).

366 B&FT online 'Digital representation matters—Fostering Internet inclusion among PWDs' (2022) <https://thebftonline.com>

are often too expensive for PWDs who already experience economic exclusion. The cost of internet data also prevents more frequent use. Stakeholders, including the public, private and nonprofit sectors, should contribute to addressing the affordability challenge through subsidies, special pricing, financing schemes, and other innovations. Low levels of digital skills and literacy among PWDs exacerbate the digital divide in Ghana.³⁶⁷ Developing proficiency in mobile device usage, mobile internet, accessibility features, and online services enhances connectivity among PWDs and empowers them to fully utilise digital technologies. Organisations that focus on PWDs can provide customised technology and skills training. Digital skills should also be integrated into the school curriculum.

While compiling this report, finding comprehensive information about the barriers facing PWDs in Ghana was challenging. The scarcity of information underscores an overarching issue: the need for enhanced data collection methodologies and systematic reporting mechanisms specifically tailored to capture the nuanced experiences of PWDs in the digital realm. A more robust and targeted approach to data collection is imperative to gain a nuanced understanding of the multifaceted challenges that hinder digital inclusion for PWDs. Moreover, the lack of comprehensive data may signify a broader gap in awareness and recognition of the unique obstacles faced by PWDs in the digital space. Efforts to bridge this informational void should extend beyond mere data collection to include initiatives that raise awareness about the importance of digital inclusion of PWDs and foster a more inclusive approach to policy-making and program implementation.

PWDs themselves should be at the forefront of digital inclusion efforts. PWDs must be included in policymaking and technology design processes. When solutions are co-created with PWDs, they best meet diverse needs. Already, PWD organisations are driving inclusion through advocacy campaigns, peer support networks, and assistive technology programs. With greater opportunities to get online, PWDs can make their voices heard.

Digital inclusion of PWDs requires combined effort across stakeholders. The government, mobile industry, nonprofits, international organisations and PWDs have an important role. Through multi-stakeholder partnerships, affordable and accessible technology, awareness-raising, digital skills training, implementation of inclusive policies and user-centred design, the disability digital divide can be closed. This will empower PWDs in the political and socio-economic spectrum.

Universal Service Fund

The Universal Service Fund (USF) is crucial in fostering connectivity and narrowing the digital gap within countries. In 2008, Ghana established its own USF to extend communication access and services nationwide. This was achieved through a 5% levy imposed on telecom revenues. Financial contributions to Ghana's USF come from licensed Mobile Network Operators (MNO), Internet Service Providers (ISPs), and interest accrued from investments.³⁶⁸

The Ghana Investment Fund for Electronic Communications (GIFEC) serves as the administrator responsible for ensuring equitable progress. GIFEC centrally coordinates proposals and disbursements. However, questions about sustainability arise, particularly with the distribution of 95% of accumulated funding over the past two years.³⁶⁹

The Ghanaian government allocated 155 million Ghana Cedis to rural broadband services in 2023,

com/2022/01/31/digital-representation-matters-fostering-internet-inclusion-among-pwds/ (accessed on 19 November 2023).

367 B&FT online 'Digital representation matters—Fostering Internet inclusion among PWDs' (2022) <https://thebftonline.com/2022/01/31/digital-representation-matters-fostering-internet-inclusion-among-pwds/> (accessed on 19 November 2023).

368 GIFEC 'Source of Fund' (2019) <https://gifec.gov.gh/source-of-fund/> (accessed on 10 December 2023).

369 Emerald 'Bridging the digital divide in Africa via universal service funds: an institutional theory perspective' (2023) <https://www.emerald.com/insight/content/doi/10.1108/ITP-01-2023-0042/full/html> (accessed on 10 December 2023).

underscoring its commitment to rural connectivity, as outlined in a GSMA Sub-Saharan Africa report from October 2023.³⁷⁰ Despite this commitment, the tangible impact of combating exclusion remains uncertain, and the fund's website lacks financial and project expenditure reports. GSMA and Boateng et al. argue that ineffective monitoring and reporting hinder impact evaluation.³⁷¹³⁷²

The Fund actively supports flagship initiatives such as the Rural Telephony and Digital Inclusion Project, launched in 2021, which involves installing over 3,000 cell sites and fibre in underserved locations across Ghana's 16 regions (GIFEC, 2023). Officials highlight these efforts as successes in expanding broadband connectivity.

However, the actual impact of reducing exclusion gaps is a subject of debate. Ghana's global connectivity ranking is still modest at 108th.³⁷³ Disparities persist between rural and urban areas, with only 28% rural adoption compared to 57% in urban regions. Moreover, the economically disadvantaged are six times less likely to access mobile internet.³⁷⁴ Even targeted groups like women face challenges, being 41% less likely than men to use mobile internet.

370 GSMA 'Universal service funds in Africa Policy reforms to enhance effectiveness' (2023) <https://www.gsma.com/subsaharanafrica/wp-content/uploads/2023/10/USF-Africa.pdf> (accessed on 10 December 2023)

371 Emerald 'Bridging the digital divide in Africa via universal service funds: an institutional theory perspective' (2023) <https://www.emerald.com/insight/content/doi/10.1108/ITP-01-2023-0042/full/html> (accessed on 10 December 2023).

372 GSMA 'Universal service funds in Africa Policy reforms to enhance effectiveness' (2023) <https://www.gsma.com/subsaharanafrica/wp-content/uploads/2023/10/USF-Africa.pdf> (accessed on 10 December 2023)

373 Myjoyonline 'Ghana ranks 108th in Global Gender Gap Index' (2023) <https://www.myjoyonline.com/ghana-ranks-108th-in-global-gender-gap-index/> (accessed on 10 December 2023)

374 GSMA 'Universal service funds in Africa Policy reforms to enhance effectiveness' (2023) <https://www.gsma.com/subsaharanafrica/wp-content/uploads/2023/10/USF-Africa.pdf> (accessed on 10 December 2023)

▶ Conclusion & Recommendations

Conclusion

In tackling the digital rights situation in Ghana, a multi-stakeholder approach should be considered. This approach would address issues like internet and mobile phone affordability through subsidies, special pricing, financing schemes, and other innovations. Stakeholders, including government bodies, non-profit organisations, and research institutions, should work collaboratively towards reporting on the myriad barriers confronting PWDs. Collective action is required to ensure Ghana leverages connectivity for empowerment and prosperity for all. Based on the analysis in this report, the following recommendations are proposed to promote digital inclusion and internet freedom in Ghana:

Recommendations

The government should:

- » Establish protections, reporting mechanisms, and accountability for violence against citizens
- » Reform and strengthen the National Mass Media Commission to safeguard press freedom
- » Protect vulnerable and marginalised groups such as women PWDs and the LGBTIQ+ by refraining from enacting legislation that will enable their censorship, surveillance, or arrests
- » Develop, review and update comprehensive legislation that addresses digital rights, including privacy protection, freedom of expression, and access to information
- » Publish regular detailed reports on USF project expenditures and evaluations
- » Prioritise USF investments in underserved communities.
- » Commission independent assessments on USF performance in closing digital divides
- » Allocate adequate budgetary resources to implement inclusive ICT policies and programs

Parliament should:

- » Strengthen legal protections for media freedom, censorship, data privacy, digital security and safety of journalists.
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The media should:

- » Conduct regular awareness campaigns through various media platforms to educate the public about digital rights, including the importance of the right to privacy, access to information and freedom of expression.
- » Facilitate open dialogues and provide platforms for deliberating on laws and policies that protect digital rights in collaboration with policymakers, legislators, civil society, and regulatory bodies. Collaborations amplify the message and strengthen advocacy efforts.
- » Advocate for developing and amendment legislation that protects digital rights, including press freedom.
- » Litigation and legal support: advocate for the legal protection of journalists.
- » Work with relevant stakeholders to initiate digital literacy and digital security programs to empower media practitioners and citizens with the knowledge and skills to navigate the digital space safely. This includes understanding online threats, recognising false information, and protecting personal data. Training sessions on digital security for journalists and other media practitioners are important to ensure the security of their communications and protection from online threats.
- » Monitor and report violations:
- » Establish effective mechanisms to monitor and report digital rights violations and cases of press freedom infringement.
- » Combat the proliferation of information disorder: Actively promote and practise high ethical standards in reporting to ensure that the public consumes accurate information.

The civil society should:

- » Engage in public awareness campaigns to educate the public about using digital technologies and human rights in the digital age.
- » Develop and support initiatives that enhance digital literacy, including digital security. Digital literacy ensures that the public is informed about their rights in the digital age and the risks associated with navigating the digital space.
- » Establish meaningful collaborations with policymakers and regulatory bodies to contribute to developing frameworks that promote and protect digital rights.
- » Advocate for adopting and implementing frameworks that relate to the intersection of technology and society calling for accountability and transparency in government and private sector.
- » Monitor the implementation of legal frameworks and expose practices that threaten digital rights.

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- » Provide legal assistance in digital rights violations and engage in strategic litigation to challenge infringements of digital rights through unjust laws and practices.
 - » Continuously engage in research and evaluate the impact of technologies on human rights and propose rights-based approaches to technology use and development.
 - » Foster regional and global collaborations to tackle issues of common interest, including cross-border digital rights concerns.

The private sector should:

- » Make ICTs more affordable and accessible, particularly for PWDs, by incorporating inclusive design principles into technology products serving the Ghanaian market.
- » Collaborate with the relevant stakeholders in promoting digital literacy, through for instance, the provision of sponsorship for events, workshops, and educational initiatives.
- » Align business models with the UN Business and Human Rights Principles to ensure the incorporation of human rights due diligence.
- » Collaborate with policymakers and regulatory bodies in developing frameworks on technology and its impact on society.
- » Ensure transparency in addressing cases of violations and responses to governments.
- » Continuously and diligently conduct technology impact assessments and adopt approaches that promote positive outcomes for the public in line with international norms and standards.
- » Foster relevant collaborations on international and cross-border matters related to digital rights.
- » Prioritise cybersecurity measures to protect the digital public from cyber threats such as unauthorised access or data breaches.



Kenya

EXECUTIVE SUMMARY

This Londa report provides an overview of the country's digital landscape, key developments in data protection and cybersecurity, emerging technologies, the status of digital inclusion and the Universal Service Fund (USF). The author primarily employed a mixed methodology with desk reviews of existing laws, policies, and regulations related to the digital landscape and conducted key informant interviews (KIIs) specifically for the Universal Service Fund (USF) section to gather insights from relevant stakeholders. The report begins by highlighting the internet penetration rate in Kenya, which ranks among the top in Africa. It also gives an overview of existing laws and regulations enacted by the Government of Kenya (GoK) to protect personal data and enhance cybersecurity. The report further indicates persistent challenges in Kenya's digital landscape. Some of these include a lack of awareness among citizens about their data privacy rights and persistent cyber threats, as evidenced by numerous cyberattacks and data breaches. The author also highlights Kenya's efforts in embracing emerging technologies such as artificial intelligence (AI) and blockchain, with notable applications in education, healthcare, agriculture, and financial services. However, the regulatory framework for these technologies is still evolving, presenting both opportunities and challenges.

Furthermore, the report emphasises that while efforts have been made to promote digital inclusion, significant gender disparities persist, particularly in internet access and digital literacy. The Universal Service Fund is seen to continue playing a crucial role in bridging the digital divide by funding initiatives to increase ICT access and connectivity, particularly in underserved communities. The report concludes with actionable recommendations such as the development of comprehensive governance frameworks for AI and supportive regulations, advocating for regulations that protect women from online harassment and cyberbullying; Awareness creation on data privacy issues, and supporting digital literacy programs for persons with disabilities to enhance accessibility and usage.

Introduction

Kenya is an East African country with a population of 54.56 million. The population is predominantly youthful, with 39.6% of its total population aged between 18 and 35 years.³⁷⁵ Celebrating 20 years of free primary education in 2023, Kenya has a literacy rate of 82.9%. The youth (15–24 years) have a literacy rate of 88.7%.³⁷⁶ English and Kiswahili are the two official languages in Kenya, where most people speak Kiswahili. According to the Kenya National Bureau of Statistics (KNBS) Economic Survey of 2023, released on May 3, 2023, Kenya's GDP is USD 86.5 billion, while the current GDP per capita is USD 1722.62.³⁷⁷ Kenya is a leading regional hub in technology, with a steady growth curve in crucial sectors like ICT, transport, and agriculture, among others. Investment in Information Communication Technology (ICT), for instance, recorded a growth rate of 14% in the year ended 2023.³⁷⁸ Further, in the year 2023, internet users in Kenya exceeded 19 million, with an estimated 35.30% internet penetration rate.³⁷⁹ Between January and March 2023, there was a 20.4% rise in data consumption, credited to increased internet use among Kenyans.³⁸⁰ Additionally, local demand for internet grew in Kenya by 19.6% to 9.6 million Gigabytes per second (Gbps) compared to 8.1 million Gigabytes per second (Gbps) in 2022.³⁸¹ The United Nations, in its recent e-Government Survey, ranks Kenya among the top 15 countries in Africa that have embraced digital uptake due to increased investment in digital infrastructure and the provision of government services online.³⁸² In terms of democracy, Kenya is governed by a constitution promulgated in 2010, with regular elections and fairly stable politics. While the 2010 Constitution clipped the powers of the Executive branch and improved the oversight role of parliament, corruption still undermines the legislature's independence. In practice, the parliament remains subservient to the President. The Kenyan judiciary is generally considered to be independent, and the courts have demonstrated this through a series of high-profile rulings in recent years, some against the wishes of the ruling government.³⁸³ Kenya remains a liberal democracy with one of the continent's most independent and vibrant media. Subsequently, in contrast to several other nations on the continent, Kenya stands out for its absence of internet shutdowns during elections or other significant political events.

375 Datareportal 'Digital Kenya:2023' (2023) <https://www.datareportal.com/report/digital-2023-kenya> (accessed on 05th December, 2023).

376 World Bank 'Literacy Rates, Adult (% of People ages 15 and above)' (2023) <https://data.worldbank.org/indicator/SE.ADT.LITR.MA.ZX?end=2022&locations=KE&start=2022&view=bar> (accessed on 05th December 2023).

377 KNBS 'Economic Survey 2023' (2023) <https://www.knbs.or.ke/publications/> (accessed on 04th December, 2023).

378 Communications Authority 'Kenyan Mobile Sector Records Growth in Revenue and Investments' (2023) <https://www.ca.go.ke/kenyan-mobile-sector-records-growth-revenue-and-investments> (accessed on 19 December 2023).

379 Statista 'Internet - Kenya' (2023) <https://fr.statista.com/outlook/co/digital-connectivity-indicators/internet/kenya> (accessed on 19 December 2023).

380 KBC 'Kenya's Internet Capacity up 20pc on Heavy Data Use' (2023) <https://www.kbc.co.ke/kenyas-internet-capacity-up-20pc-on-heavy-data-use/> (accessed on 13 December 2023).

381 Nation 'Kenyans Dump 800,000 Feature Phones in a Year' (2023) <https://nation.africa/kenya/business/technology/kenyans-dump-800-000-feature-phones-in-a-year-4368968> (accessed on 19 December 2023).

382 United Nations 'UN E-Government Survey 2022' (2022) <https://desapublications.un.org/sites/default/files/publications/2022-09/Web%20version%20E-Government%202022.pdf> (accessed on 18 December, 2023).

383 Freedom House 'Kenya: Freedom on the Net in 2023' (2023) <https://freedomhouse.org/country/kenya/freedom-net/2023> (accessed on 06 December 2023).

Country Analysis

Data Protection and Cybersecurity

Legal and Policy Landscape

There are several laws and rules in Kenya that protect personal information. These include the Data Protection Act (2019), the Data Protection (General) Regulations (2021), and the Data Protection (Complaints Handling Procedure and Enforcement) Regulations (2021). Other laws and regulations include the Consumer Protection Act 2021 and Article 31(c) and (d) of the Constitution of Kenya (2010), which pertain to the right to privacy. The Data Protection Act (2019) is the primary law on data protection and came into force on November 25, 2021. Its objectives are to regulate the processing of data, to protect the privacy of individuals, to establish legal and institutional mechanisms to protect personal data, and to provide data subjects with remedies to protect their personal data from processing that is not in accordance with the act.³⁸⁴ The Data Protection (General) Regulations (2021) serve to clarify some of the more procedural aspects of the aspirations contained in the Data Protection Act.³⁸⁵ Data Protection (Complaints Handling Procedure and Enforcement) Regulations (2021) provide for the modes through which data subjects may submit their complaints to the Office of Data Protection Commissioner (ODPC).³⁸⁶ These laws and policies are enforced by the Office of Data Protection Commission, the Communications Authority of Kenya (CA), and the courts.

Most of the laws and policies on data protection listed above are also concerned with cybersecurity. In addition, the Computer Misuse and Cybercrime Act (2018) defines cybercrimes, establishes penalties for their commission, and outlines the roles and responsibilities of various stakeholders in cybersecurity;³⁸⁷ the National ICT Policy Guidelines (2020) provides a framework for the development and implementation of ICT policies and strategies in Kenya;³⁸⁸ the National Cybersecurity Strategy 2022-2027 further outlines the government's vision and objectives for cybersecurity in Kenya and emphasises the need for a multi-agency approach to cybersecurity.³⁸⁹

Data Infringement and Human Rights Gaps

The courts frequently handle many data infringement cases from the public and private sectors. The courts in Kenya have proven to be important enforcers of the laws and continue to provide a breath of fresh air on the issue that has long been pressing. Despite the positive news from the courts, there have still been major cases that caused public outcry in 2023. For instance, the operations of a cryptocurrency project by OpenAI Worldcoin were suspended due to data security concerns. In August, the CA raised concerns about the security and storage of the collected data, the monetary

384 Data Protection Act, 2019 (Act No. 24 of 2019).

385 Oraro Advocates 'Data Protection the Coming into force of various Data Protection Regulations and What You Need to Know' (2023) <https://www.oraro.co.ke/data-protection-the-coming-into-force-of-various-data-protection-regulations-and-what-you-need-to-know/> (accessed on 06 December 2023).

386 Oraro Advocates 'Data Protection the Coming into force of various Data Protection Regulations and What You Need to Know' (2023) <https://www.oraro.co.ke/data-protection-the-coming-into-force-of-various-data-protection-regulations-and-what-you-need-to-know/> (accessed on 06 December 2023).

387 Computer Misuse and Cybercrimes Act, 2018 (Act No. 4 of 2018).

388 The National ICT Policy of 2019.

389 National Cybersecurity Strategy, 2022 - 2027.

reward in exchange for consumer data, consumer protection around cryptocurrency and ICT, inadequate framework regulating data in private hands, and gaps in cybersecurity safeguards and standards.³⁹⁰ Additionally, the Kenyan legislative committee demanded that the businesses' "physical presence in Kenya be suspended until there is a legal framework for regulation of virtual assets and virtual service providers."³⁹¹ Despite the physical ban, Kenyans can still access WorldCoin via the internet. Media reports indicate that the American-based company may resume operations in 2024 after complying with government regulations.³⁹²

This demonstrates a general lack of awareness among Kenyans about their data privacy rights and a need for greater public education and awareness-raising efforts to empower citizens to take control of their personal data. A recent study by the Kenya National Commission on Human Rights found that many Kenyan citizens were unaware of the extent to which their personal information was being collected and processed by various organisations and expressed concern about the possibility of their information being used for unintended purposes or being accessed by unauthorised parties.

Additionally, in July 2023, the eCitizen platform (an online government services provider) was hacked, affecting 5000 government services.³⁹³ According to a report released by the CA in October 2023, Kenya recorded 860 million cyberattacks in 2023, making Kenya among the top three targeted countries in Africa, behind Nigeria and South Africa. During the three months between July and September 2023, the National Kenya Computer Incident Response Team – Coordination Centre (National KE-CIRT/CC) detected 7,514,964 malware threat attempts targeting critical infrastructure service providers.

Digital IDs

In 2023, the Kenyan government announced a new digital identity card that would replace second-generation IDs. Known as the Maisha card, the third-generation ID system was designed to enhance efficiency in the registration of births and deaths. This ID system uses a unique personal identifier that is assigned to a child at birth, used as a school number and subsequently as a national ID when they turn 18. This number will also serve as the National Social Security Fund's (NSSF), National Health Insurance Fund's (NHIF), driver's licence number, and, upon death, the death certificate's number.³⁹⁴ Critics have argued that lack of transparency, inadequate authentication measures and absence of adequate procedural and legal safeguards in the implementation of the Maisha Card could adversely affect citizens' access to essential national documents. They have also raised concerns about the lack of extensive public participation involving the public, civil society, and other stakeholders as provided in the law.³⁹⁵

On December 5, 2023, the High Court sitting in Nairobi stopped the government from rolling out the new digital IDs, also known as Maisha Number, after Katiba Institute challenged the process, arguing that there is no legal basis for the rollout. The lobby group argued that other than a lack of

390 Communications Authority of Kenya (2023) 'CA and Data Commissioner Warn Kenyans Over Worldcoin' <https://www.ca.go.ke/ca-and-data-commissioner-warn-kenyans-over-worldcoin> (accessed 18 December 2023).

391 Reuters 'Kenya Legislative Panel Urges shutdown of Worldcoins Crypto Project within the Country' (2023) <https://www.reuters.com/technology/kenya-panel-urges-shutdown-worldcoins-crypto-project-within-country-2023-10-02/> (accessed on 06 December 2023).

392 Citizen Digital 'Worldcoin In Talks With Gov't To Resume Kenya Operations' (2023) <https://www.citizen.digital/tech/worldcoin-in-talks-with-govt-to-resume-kenya-operations-n333180> (accessed on 14 December 2023).

393 Business Daily Africa 'Demystifying Data Protection and Privacy in Kenya' (2023) <https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/demystifying-data-protection-and-privacy-in-kenya--4422084> (accessed on 06 December 2023).

394 The Star 'What the Unique Personal Identifier Entails' (2023) <https://www.the-star.co.ke/news/realtime/2023-09-28-explainer-what-the-unique-personal-identifier-entails/> (accessed on 05 December 2023).

395 Nation 'Lobby Group Threatens Legal Action over Maisha Namba' (2023) <https://nation.africa/kenya/news/lobby-group-threatens-legal-action-over-maisha-namba-4369134> (accessed on 05 December 2023).

a legal basis for the rollout, there was no adequate data protection impact assessment or extensive public participation from the public and other stakeholders.³⁹⁶

This was not the first time Kenyan courts have ruled against the rollout of Digital IDs. In 2020, there was a similar outcry about the Huduma Number, which was supposed to serve as an identification card. The National Integrated Identity Management System (NIIMS) conducted its registration. The High Court ruled in November 2020 that the government's \$100 million+ Huduma Namba rollout violated the Data Protection Act. In their lawsuit, the Katiba Institute and legal expert Yash Pal Ghai argued that it was unlawful for the government to introduce the Huduma Cards before conducting a data protection impact assessment.³⁹⁷

Development in ICT and Emerging Technologies

Artificial Intelligence

Artificial intelligence (AI) is the simulation of human intelligence processes by computer systems to perform tasks through learning, language translation, self-correction, visual perception, and reasoning.³⁹⁸ AI has become an integral lynchpin in the digital and modern world, globally shaping various aspects of human life. In Kenya, there has been an active search for AI-related information in 2023, showing people's interest in transformational technology. Compared to 2022, Kenya has had a remarkable 270% increase in AI searches and a 400% overall increase since 2017.³⁹⁹ The country is ranked fifth in Africa and ninetyeth globally on AI readiness, with an estimated thirteen billion investments in the last 10 years.⁴⁰⁰

AI is used in various processes pivotal to human prowess and existence. These include agriculture, education, manufacturing, telecommunication, financial services, and healthcare. For instance, the Eneza Education and M-Shule projects, founded in Kenya, provide students with individualised learning opportunities in the education sector.⁴⁰¹ In healthcare, there are two-Kenyan owned AI-powered tools: Ilara Health, an AI-powered tool which analyses medical pictures to enable the early identification and treatment of diseases, and Totohealth, a mobile health app which uses AI to inform parents about their children's health.⁴⁰² The Kenya Revenue Authority also uses AI for tax return and filling automation, predictive analytics and forecasting, auditing, and monitoring tax compliance.⁴⁰³

The government, through the Ministry of Information, Communications, and the Digital Economy, engages in artificial intelligence through its operations and policy directives. Other major private players include The United Nations Educational, Scientific and Cultural Organisation (UNESCO), HUAWEI, and the Microsoft Africa Research Institute (MARI) in Nairobi, Kenya, which, among other

396 Nation 'High Court Puts the Brakes on Kindiki's Plan to Introduce Maisha Namba' (2023) <https://nation.africa/kenya/news/high-court-puts-the-brakes-on-kindiki-s-plan-to-introduce-maisha-namba-4454474> (accessed on 05 December 2023).

397 Business Daily Africa 'High Court Declares Huduma Namba Illegal' (2022) <https://www.businessdailyafrica.com/bd/news/high-court-declares-huduma-namba-illegal--3582926> (accessed on 05 December 2023).

398 A. Joiner 'Artificial Intelligence. Emerging Library Technologies' (2018) <https://sci-hub.se/https://doi.org/10.1016/B978-0-08-102253-5.00002-2> (accessed on 13 December 2023).

399 Citizen Digital 'Search interest for Artificial Intelligence hits all-time high in Kenya' (2023) <https://www.citizen.digital/tech/search-interest-for-artificial-intelligence-hits-all-time-high-in-kenya-n327585> (accessed on 13 December 2023).

400 Business Daily 'Kenya ranked fifth in Africa on AI readiness' (2023) <https://www.businessdailyafrica.com/bd/economy/kenya-ranked-fifth-in-africa-on-ai-readiness--4113928> (accessed on 13 December 2023).

401 Fintech Association of Kenya 'A Comprehensive Application and Use Cases of AI' (2023) <https://www.linkedin.com/pulse/comprehensive-application-use-cases-ai-fintech-association-of-kenya> (accessed on 13 December 2023).

402 Fintech Association of Kenya 'A Comprehensive Application and Use Cases of AI' (2023)

403 Kenya Revenue Authority 'Digital transformation: The emerging use of Artificial intelligence' (2023) <https://www.kra.go.ke/news-center/blog/1997-digital-transformation-the-emerging-use-of-artificial-intelligence> (accessed on 13 December 2023).

roles, offer training on AI technology as well as understanding, building, and deploying innovative cloud and AI technologies.^{404,405}

Although Kenya currently lacks a stand-alone law or policy governing AI, some applicable laws and policies affect AI use. In particular, the Data Protection Act (2019) regulates personal data collection, use, and storage.⁴⁰⁶ The Computer Misuse and Cybercrimes Act of 2018 provides a framework for dealing with digital platform offences. Third, the Copyright Act, Cap 130 of Kenya, focuses on copyright and related rights, infringement and enforcement, exceptions, collective management of copyright, and administrative issues. The Kenya National Artificial Intelligence and Data Analytics Policy of 2019 promotes the development and use of AI and data analytics to ensure they are used ethically and responsibly.⁴⁰⁷ The Kenya Robotics and Artificial Intelligence Society Bill, 2023, seeks to regulate the robotics and AI industry through research and development, training, and education and promote the use of robotics and artificial intelligence for social and economic development.⁴⁰⁸ Some actors in Kenya's tech sector, however, oppose the proposed bill, arguing that it would stifle innovation and put off investors.⁴⁰⁹

AI has positive implications for humanity; however, it may be misused, and existing gaps in regulation may be exploited with potential human rights concerns in various domains. For instance, Samasource Impact Sourcing, Inc. (formerly Sama), an American company headquartered in San Francisco with offices in several African countries, fired 200 Kenyan content moderators after their contract with OpenAI was completed. The workers complained of psychological abuse due to the nature of the work, which involved reading and reviewing graphic content. The workers earned as little as \$1.32 and \$2 per hour, which is less than a third of California's \$7.25 minimum wage.⁴¹⁰ The fired workers filed a petition to the Kenyan government to investigate exploitative working conditions for contractors reviewing the content which powers artificial intelligence programmes.⁴¹¹

Additionally. It is crucial to note the gap in AI copyright recognition, especially with creatives and authors having moral, legal, and ethical questions about intellectual property protection.⁴¹² AI also adversely impacts human rights in Kenya through algorithm bias that can perpetuate existing inequalities and discrimination.⁴¹³ Also, AI adoption could lead to job losses due to automation and serve as a tool for surveillance, infringing upon individual privacy rights.

404 UNESCO 'UNESCO and Huawei 2023 Training on Artificial Intelligence Technology for University Lecturers in the Eastern African Region Closing Ceremony' (2023) <https://www.unesco.org/en/articles/unesco-and-huawei-2023-training-artificial-intelligence-technology-university-lecturers-eastern> (accessed on 13 December 2023).

405 Microsoft 'Microsoft Africa Research Institute (MARI)' (2023) <https://www.microsoft.com/en-us/research/group/microsoft-africa-research-institute-mari/> (accessed on 13 December 2023).

406 Tech Policy 'Kenya Must Update its Regulatory Frameworks to Keep Pace with AI' (2023) <https://www.techpolicy.press/kenya-must-update-its-regulatory-frameworks-to-keep-pace-with-ai/> (accessed on 13 December 2023).

407 ISP.Page 'Kenya's AI Policies and Regulations: Balancing Innovation and Ethics' (2023) <https://isp.page/news/kenyas-ai-policies-and-regulations-balancing-innovation-and-ethics/#gsc.tab=0> (accessed on 13 December 2023).

408 African Women in Technology 'Proposed Legislation for the Establishment of the Kenya Robotics and Artificial Intelligence Society Bill, 2023' (2023) <https://www.africanwomenintech.com/proposed-legislation-for-the-establishment-of-the-kenya-robotics-and-artificial-intelligence-society-bill-2023/> (accessed on 13 December 2023).

409 SEMAFOR 'Kenya's Tech Industry is fighting AI Regulation Plans' (2023) https://www.semafor.com/article/12/05/2023/kenya-ai-regulation?utm_source=nowshare&utm_medium=africa&utm_campaign=semaforstory#c (accessed on 13 December 2023).

410 Quarts 'OpenAI underpaid 200 Kenyans to perfect ChatGPT—then sacked them' (2023) <https://qz.com/open-ai-underpaid-200-kenyans-to-perfect-chatgpt-1850005025> (accessed on 13 December 2023).

411 The Guardian 'It's Destroyed Me Completely': Kenyan Moderators Decry Toll of Training of AI Models' (2023) <https://www.theguardian.com/technology/2023/aug/02/ai-chatbot-training-human-toll-content-moderator-meta-openai> (accessed on 13 December 2023).

412 The Platform 'Machine-Led Copyright in Kenya and the Place of Artificial Intelligence in Intellectual Property' (2023) <https://theplatform.co.ke/machine-led-copyright-in-kenya-and-the-place-of-artificial-intelligence-in-intellectual-property/> (accessed on 13 December 2023).

413 E. Kalya 'The Art of AI in Kenya: Nurturing Innovation, Policy, and Ethical Progress' (2023) <https://www.linkedin.com/pulse/art-ai-kenya-nurturing-innovation-policy-ethical-edward-kip-kalya> (accessed on 13 December 2023).

Blockchain Technologies

Blockchain is a distributed ledger architecture with a database of transaction records often linked cryptographically and maintained by a global network of computers.⁴¹⁴ Kenya has a high cryptocurrency adoption rate and ranks fifth globally in peer-to-peer exchange, with over six million cryptocurrency owners.⁴¹⁵ Kenya holds over \$1.5 billion worth of Bitcoin (2.3% of GDP), indicating acceptance.⁴¹⁶ The growing use of digital currencies in Kenya is attributed to increased internet access and low crypto exchange charges.

Kenya has been a pioneering African country in adopting and embracing cryptocurrencies in recent years, with Bitcoin dominating the conversation. Some Kenyans have leveraged Bitcoin as a method of wealth generation in this constantly changing digital world.⁴¹⁷ Another cryptocurrency, Kotani Pay, is a technology stack that enables blockchain protocols, DApps, and blockchain fintech companies in Kenya to integrate seamlessly into the local payment channels.⁴¹⁸ In the agricultural sector, Etherisc provides about 7,000 Kenyan farmers with blockchain-based parametric insurance platforms that protect the farmers' livelihoods.⁴¹⁹

Currently, there are no specific laws or regulations governing the use of blockchain technology in Kenya. Nevertheless, the Central Bank of Kenya (CBK) regulates cryptocurrencies through Kenya's Money Remittance regulations. Cryptocurrency companies must acquire licensing from Kenyan authorities to offer transmission services within Kenya. There is also the National Payments Systems Act (2011), where the CBK regulates cryptocurrency by overseeing payment service providers and ensuring that platforms are safe for investors.⁴²⁰ Notably, the parliamentary committee presided over by Molo Member of Parliament Kimani Kuria, has approved the proposal to amend the Capital Markets Act, Cap 485 to include digital currencies in the definition of securities. The amendment aims to regulate the trading of cryptocurrencies and guard against the proceeds of crime and terrorism financing.⁴²¹ The Kenya Revenue Authority (KRA), the other governmental player, has introduced a digital service tax on cryptocurrency transactions. Traders are now subject to income taxes at a rate of 1.5%. The KRA has also expressed plans to establish a unique tax agency for cryptocurrency tax collection.²⁷

Despite its instrumental features, such as immutability and cryptography, blockchain has its share of violations. For instance, Kenyan authorities have raised an alarm over the growing use of digital currencies, warning of possible money laundering and terrorism financing risks from cryptocurrency trading.⁴²² Moreover, the Kenyan government passed the Digital Assets Tax into law (an amendment to Kenya's Financial Act 2023), mandating crypto users to pay a 3% tax anytime they exchange or transfer a digital asset.⁴²³ Consequently, centralised exchanges such as Binance could be the most

414 B. Shrimali, & B. Patel 'Blockchain State-of-the-Art: Architecture, Use Cases, Consensus, Challenges, and Opportunities' (2021) <https://www.sciencedirect.com/science/article/pii/S131915782100207X> (accessed on 13 December 2023).

415 MMW Advocates 'Kenya's Conflicted Stance on Cryptocurrency: A Regulatory Puzzle' (2023) <https://mmw.legal/kenyas-conflicted-stance-on-cryptocurrency-a-regulatory-puzzle/> (accessed on 13 December 2023).

416 East African 'How New Technologies are driving Financial Inclusion in Kenya' (2023) <https://www.theeastafrican.co.ke/tea/sponsored/how-new-technologies-are-driving-financial-inclusion-in-kenya-4360016> (accessed on 13 December 2023).

417 Star 'Bitcoin Trading in Kenya: A Road to Financial Freedom' (2023) <https://www.the-star.co.ke/business/2023-09-01-bitcoin-trading-in-kenya-a-road-to-financial-freedom/> (accessed on 13 December 2023).

418 Kotani Pay <https://kotanipay.com/> (accessed on 13 December 2023).

419 Medium 'Etherisc protects another 700 Kenyan farmers as Part of the Lemonade Crypto Climate Coalition' (2023) <https://blog.etherisc.com/etherisc-protects-another-7-000-kenyan-farmers-as-part-of-the-lemonade-crypto-climate-coalition-e169eca3d-6bc> (accessed on 13 December 2023).

420 Freeman Law 'Kenya and Cryptocurrency' (2022) <https://freemanlaw.com/cryptocurrency/kenya/> (accessed on 13 December 2023).

421 Cryptonews 'Kenya's capital markets bill defining crypto assets as securities progresses in parliament' (2023) <https://cryptonews.com/news/kenyas-capital-markets-bill-defining-crypto-assets-as-securities-progresses-in-parliament.htm> (accessed on 13 December 2023).

422 East African 'Alert over Crypto use in Money Laundering' (2023) <https://www.theeastafrican.co.ke/tea/science-health/alert-over-crypto-use-in-money-laundering-4362574> (accessed on 13 December 2023).

423 Mariblock 'Kenya's Digital Asset Tax: Death Knell for Crypto Adoption' (2023) <https://www.mariblock.com/>

hit, leading to a shift from centralised exchanges to decentralised ones beyond the reach of Kenyan government monitoring.

It is essential to underscore that the Kenyan government exhibited laxity in implementing the existing laws. The government allowed WorldCoin's marketing operations, including using public premises such as Kenyatta International Conference Centre (KICC) as retinal scanning points, without assurance of legal authorisation. This way, it contributed to the Worldcoin controversy by failing to ensure that any interference with personal information was per Kenyan laws.⁴²⁴

Blockchain technology impacts Kenya in diverse ways. Blockchain funding and commitment to Web3 technologies and digital currencies is poised to recalibrate the technological and financial landscape, paving the way for unprecedented financial inclusion and digital revolution in Kenya.⁴²⁵ For instance, the Venom Foundation, which supports the acceleration of global Web3 projects, partnered with the Kenyan government in 2023 to create a blockchain hub in Africa. The hub will be of benefit to Kenya by increasing innovation in crucial sectors like financial services, logistics, agriculture, small and medium enterprises, and international trade by working together.⁴²⁶

Furthermore, the rise of digital payments in Kenya has impacted crypto adoption by laying the foundation for a digital-savvy population with established trust and familiarity, as evident in digital payment systems like M-Pesa.⁴²⁷ To address the relatively high cost of healthcare, multiple Kenyan mobile applications have been developed for users to pay for medical services by selling their data through blockchain technology.

Blockchain technology operations in Kenya have had cases of potential breaches of human rights and related concerns. For instance, the WorldCoin controversy placed Kenya in the eye of a digital storm of data trafficking.⁴²⁸ This emerged after more than 350,000 Kenyans sold their irises to the company, exposing the dangers of emerging digital technology. Despite the violations and human rights concerns, various professionals and technology experts believe blockchain can enhance societal and economic development. For instance, the widespread corruption in handling public funds can be tamed with blockchain technology and its Trust protocol, which can transform transactions into a dynamic ledger, offering real-time recording and a comprehensive history of assets and relationships.⁴²⁹ Furthermore, blockchain-based networks can enable small-scale farmers to access global markets, enhance precision agriculture, and foster transparency, accountability, and traceability, ensuring that Kenya's agricultural produce maintains high quality and reliability.⁴³⁰

is-the-kenyan-government-moving-to-tax-crypto-into-oblivion/ (accessed on 13 December 2023).

424 African Legal Studies 'Lessons from Kenyan Government's Response to Worldcoin Biometric Crypto Project' (2023) <https://africanlegalstudies.blog/2023/09/22/lessons-from-kenyan-governments-response-to-worldcoin-biometric-crypto-project/> (accessed on 13 December 2023).

425 Citizen Digital 'Kenya Leads the way in Blockchain Adoption and Digital Innovation Report' (2023) <https://www.citizen.digital/tech/kenya-leads-the-way-in-blockchain-adoption-and-digital-innovation-report-n322300> (accessed on 13 December 2023).

426 S. Bhardwaj 'Venom Foundation and Kenya Unite to build a thriving blockchain and Web3 ecosystem' (2023) <https://www.forbesindia.com/article/cryptocurrency/venom-foundation-and-kenya-unite-to-build-a-thriving-blockchain-and-web3-ecosystem/84887/1> (accessed on 13 December 2023).

427 Star 'Riding the digital wave: Cryptocurrency adoption in Kenya's emerging markets' <https://www.the-star.co.ke/news/2023-08-01-riding-the-digital-wave-cryptocurrency-adoption-in-kenyas-emerging-markets/> (accessed on 13 December 2023).

428 Amnesty International 'Protect Kenyans from Digital Data Trafficking' (2023) <https://www.amnestykenya.org/protect-kenyans-from-digital-data-trafficking/> (accessed on 13 December 2023).

429 Nation 'Use Blockchain to Fight Graft' (2023) <https://nation.africa/kenya/blogs-opinion/blogs/use-blockchain-to-fight-graft-4449098> (accessed on 14 December 2023).

430 Business Daily 'Adopt Blockchain in Kenya Agriculture' (2023) <https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/adopt-blockchain-in-kenya-agriculture--4308532> (accessed on 14 December 2023).

Digital Inclusion

Gender and ICT

While there is an abject need for more comprehensive legislation to bridge the digital gender gap, there are two important policies on digital rights and inclusion: the Computer Misuse and Cybercrime Act 2018 which aims to address technology-facilitated gender-based violence, including the sharing of intimate images, cyberbullying, and online harassment, and the National Digital Inclusion Strategy 2022-2032 seeks to reduce the cost of access to ICT, increase digital literacy and skills, and promote the use of ICT for socioeconomic development.

According to the Mobile Gender Gap Report 2023 published by the Global Association for Mobile Network Operators, GSMA, only 39% of Kenyan women and 59% of men have access to the internet. The report shows that 88% of Kenyan women own mobile phones, compared to 94% of men.⁴³¹ The issue of women's lack of access to digital resources disproportionately affects women and girls with low literacy or low income and those living in rural areas.

A recent study titled "Kenya's Digital Economy: A People's Perspective" found that only 35% of women use advanced digital services compared to 54% of men. It attributed the huge gap to discrimination, harmful social norms, the education divide, geography, and a lack of motivation. These factors create significant barriers for women to fully engage in Kenya's digital economy.⁴³² It is important to note that the continuous underrepresentation of women in the digital space has negative ramifications for Kenya's digital developmental goals. This is due to a lack of access to digital resources, which limits women's opportunities for economic empowerment and social inclusion opportunities.

A 2023 report by the Kenya ICT Action Network (KICTAnet) highlighted that the most prevalent cases of Online Gender-Based Violence (OGBV) include receiving abusive messages, false posts on social media, sexual harassment, sharing of personal information, digital manipulation of images, and identity theft. The report highlighted a worrying trend of the rise of OGBV in rural areas in Kenya. Another interesting finding from the study was that female friends, alongside male friends and unknown attackers, were among the top three sources of online attacks. It was seen that these attacks mainly occurred across Facebook, Whatsapp and Instagram, which are all owned by one company, Meta.⁴³³ In addition, another report by the African Development Bank indicates that women are 27 times more likely to be harassed online than men. The report suggests that up to 70% of women have endured cyber violence. It further indicates that at least one in every five Kenyan women has experienced cyberbullying.⁴³⁴

Both of these reports shed light on the pervasive online harassment that Kenyan women face, thus discouraging their digital participation and undermining their ability to benefit equally from digital services.

Digital inclusion for Persons with Disabilities

Kenya is making tremendous steps towards ensuring that some laws and policies foster digital

431 The Mobile Gender Gap Report (2023) https://www.gsma.com/r/gender-gap/?utm_source=website&utm_medium=blog&utm_campaign=gender-gap-2023 (Accessed on 21 January 2024).

432 The Gendered Challenges of e-Governance in Kenya (2023) <https://genderit.org/feminist-talk/gendered-challenges-e-governance-kenya> (Accessed on 21 January 2024).

433 Unmasking The Trolls - Research on Online V3 (2023) <https://www.kictanet.or.ke/mdocs-posts/unmasking-the-trolls-research-on-online-gender-based-violence-in-kenya/> (accessed on 20 Jan 2024)

434 Women 27 times more likely to be cyberbullied than men - report (2023) <https://www.the-star.co.ke/news/realtime/2023-02-28-women-27-times-more-likely-to-be-cyberbullied-than-men-report/> (Accessed on 21 January 2024).

inclusion for persons with disabilities (PwDs). In particular, the National ICT Policy of 2019 requires the government to ensure that persons with disabilities have complete access to ICT services.⁴³⁵ At the same time, there is the National ICT Policy Guidelines of 2020, seeking to provide an all-inclusive ICT environment that enhances equality and accessibility to persons with disabilities (PwDs).⁴³⁶ To enhance digital inclusion for PwDs, the Kenyan government gazetted a new standard in May 2022, ensuring that public and private sector digital products and services are accessible to PwDs.⁴³⁷ Most importantly, there is the Persons with Disabilities Bill of 2023, which seeks to ensure that every PwD has the right to access information and communication and impart information and ideas electronically.⁴³⁸

Digital inclusion transcends accessibility, as it is a fundamental human right. Unfortunately, according to the Friedrich Naumann Stiftung Foundation, the high cost of data in Kenya excludes lower-income Kenyans (the majority) from benefiting from the digital economy.⁴³⁹ There is also a marked under-inclusion of persons with disabilities in the development of digital platforms where their input would be valuable in developing usable products for persons with disabilities.⁴⁴⁰ PwDs continue to experience difficulty using web-based technologies or accessing digital information services, despite the specific tenets laid out in the National ICT Policy.⁴⁴¹ Indeed, most of these violations are avoidable if the policy frameworks and guidelines regarding digital inclusion for PwDs are fulfilled.

Review of the Universal Service Fund

To support the implementation of Kenya's 2022-2026 USF Strategic Plan, several legal and policy documents have been developed, amended, or adopted. These include the Kenya Information and Communications Act, The (Universal Access and Services) Regulations 2010, Public Procurement and Asset Disposal Act, 2015, Public Procurement and Asset Disposal Regulations, 2020, Universal Service Fund (USF) Operating Manual, 2022, and The Public Finance Management Act, 2012. As such, the implementation of the USF in Kenya undergoes an annual audit by the Office of the Auditor General, complying with the requirements of the Kenya Information and Communications Act and the Public Finance Management Act, 2012.

Financed through mandatory contributions from the Government, grants and donations, the USF is designed to support the development of policies and programmes that seek to close the digital gap and increase internet connectivity. In Kenya, the USF continues to fund various initiatives that contribute to enhancing ICT access and connectivity. Some of these projects include the Cellular Mobile Network Infrastructure and Services Project, National Digital Superhighway Project, Digitization and Dissemination of Agricultural Content, Kenya Education Cloud Open Resource Portal, and Content Development and Provision of Devices for Learners with Special Needs. Among these, the Digitization and Dissemination of Agricultural Content and Content Development and

435 Vellum Kenya 'Kenya ICT Policy 2019 Highlights' (2020) <https://vellum.co.ke/kenya-ict-policy-2019-highlights/> (accessed on 14 December 2023).

436 inABLE 'Digital Accessibility Gap Analysis Report for Kenya 2021' (2022) https://inable.org/wp-content/uploads/2023/09/A11Y_6-SEPT-2023_-DIGITAL-ACCESSIBILITY-GAP-ANALYSIS-BY-inABLE_2022.pdf (accessed on 14 December 2023).

437 Standard 'How Kenya's ICT Accessibility Standards can create more inclusive workplaces' (2023) <https://www.standard-media.co.ke/sports/opinion/article/2001486658/how-kenyas-ict-accessibility-standards-can-create-more-inclusive-workplaces> (accessed on 14 December 2023).

438 The Persons with Disabilities Bill, 2023.

439 Friedrich Naumann Stiftung 'From mobile money to digital cash' (2023) <https://shop.freiheit.org/#!/Publikation/1418> (accessed on 18 December, 2023).

440 KICTANET 'Digital Divides and Inclusion: How are Things?' (2023) <https://www.kictanet.or.ke/digital-divides-and-inclusion-how-are-things/> (accessed on 14 December 2023).

441 Digwatch 'Promoting digital inclusion for persons with disabilities – Kenya's progress' (2023) <https://dig.watch/updates/promoting-digital-inclusion-for-persons-with-disabilities-kenyas-progress> (accessed on 14 December 2023).

Provision of Devices for Learners with Special Needs specifically target women and people living with disabilities in underprivileged communities.

The first phase of USF implementation successfully provided mobile connectivity to 78 sub-locations in 15 counties.⁴⁴² Consequently, the second phase has made substantial progress. The Cellular Mobile Network Infrastructure and Services to the unserved and underserved sub-locations has connected 51 sub-locations out of the 101 targeted sub-locations, marking a significant milestone in bridging the digital divide. However, despite these successes, the implementation of the USF has not been one without challenges. The destruction of telecommunications masts, lack of electricity in target areas, and difficult terrain hindered proper implementation of the fund's objectives in 2023.⁴⁴³

442 Paradigm Initiative 'LONDA Country Report - Kenya' (2022) <https://paradigmhq.org/londa-22/> (accessed on 21 January 2024).

443 Broadband connectivity for schools in Kenya funded by the Universal Service Fund – Assessment report (2023) <https://www.itu.int/hub/publication/d-pref-ef-bb-conn-2023/> (Accessed on 15 January 2024).

▶ Conclusion & Recommendations

Conclusion

In conclusion, this Londa report on Kenya's digital landscape highlights significant progress and persistent challenges in the country's journey towards a more inclusive and secure digital future. Kenya has made remarkable strides in digital infrastructure development, with high internet penetration rates and a sprouting tech sector. However, challenges such as data privacy concerns, cybersecurity threats, gender disparities in digital access, and barriers to inclusion for persons with disabilities remain prevalent.

In light of these gaps and concerns, the following recommendations have been proposed for consideration.

Recommendations

Government

- » Ensure a well-functioning digital infrastructure and adequate digital literacy before rolling out AI and blockchain-enabled registries.
- » Formulate a governance framework led by the Ministry of ICT that fosters regular audits and feedback loops for AI operations in the country.
- » Develop clear and comprehensive supportive frameworks to support the Data Protection Act, aligned with emerging technologies.
- » Formulate comprehensive gendered legislation and policies on data protection, cybersecurity and Online Gender-Based Violence.
- » Enforce regulations that protect women from online harassment and cyberbullying.

Civil Society

- » Advocate for regulations that protect women from online harassment and cyberbullying.
 - » Advocate for a multisectoral approach to address human rights concerns related to AI exploitation involving government agencies, civil societies, and technological companies.
 - » Increase awareness and education regarding personal data privacy issues.
 - » Collaborate with the government, industry, and other stakeholders to address challenges and opportunities presented by big data and personal information privacy.
 - » Advocate for the creation of online spaces for women and girls, including people with disabilities on digital platforms, with accessible
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and transparent reporting and complaint procedures.

- » Promote a change in societal attitude towards people with disabilities to achieve digital inclusion for young PWDs in Kenya.
- » Advocate for the inclusion of PWDs in policy-making processes to enhance their understanding and contribute to bridging the digital gap.

Private Sector

- » Develop clear and comprehensive institutional policies for data protection aligned with emerging technologies.
- » Create partnerships between the government, private sector, and nonprofits to provide affordable internet and digital services and products to women.
- » Collaborate with the government, industry, and other stakeholders to address challenges and opportunities presented by big data and personal information privacy.
- » Create online spaces for women and girls on digital platforms with accessible and transparent reporting and complaint procedures.
- » Ensure blockchain technology features an immutable, decentralised, and tamper-proof ledger to address and curb human rights violations.

Academia

- » Conduct systematic and dynamic assessments of the negative impacts AI possesses on algorithm bias and privacy concerns.
 - » Support digital literacy programmes for PWDs to enhance accessibility and usage.
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Lesotho

EXECUTIVE SUMMARY

Principles of internet freedoms and governance underpin protecting and promoting human rights online in Lesotho. Ensuring internet accessibility and the safety of users is essential for meaningful connectivity. The State has a role in safeguarding free speech and media online, protecting the privacy and data of its citizens through policy and legislative measures. Non-state actors must contribute to promoting digital rights to develop Information Communication Technology (ICT) infrastructure through the Universal Service Fund (USF) and influence its policy to address prevailing socio-economic issues. Similarly, accountability and transparency should be central to measures employed to advance digital rights in Lesotho. Lesotho has adopted various policies and legal frameworks to guarantee digital rights. However, the failure to operationalise legally established mechanisms which are focal to fulfilling such rights, together with inadequate and grey legal provisions, are issues of concern. The lack of accessibility to information and reporting the implementation are an additional issue that this report elicits and makes recommendations. The methodology employed in this report involved a comprehensive desk-based study. Initially,

relevant literature, government reports, and policy documents and statutes were identified and reviewed to gather insights into the subject matter. A thematic analysis was conducted to synthesise the information on the outlined digital rights themes and draw conclusions to draw appropriate recommendations for evidence-based decision-making.

Introduction

Lesotho is one of the Least Developed Countries (LDCs) in Southern Africa with approximately 2.3 million in population and land-locked by South Africa.⁴⁴⁴ With 30 360km² in land area, the country's Gross Domestic Product (GDP) is estimated at 2.3 million USD.⁴⁴⁵ It is a constitutional monarchy with the King as the Head of State, while the Prime Minister is the Head of Government. Human rights in Lesotho are guaranteed by the Constitution of 1993. Chapter two thereof only recognises civil and political freedoms under its Bill of Rights while Chapter three enlists socio-economic and cultural rights as guiding principles of state policy.⁴⁴⁶ The Constitution further establishes the Office of the Ombudsman, whose function includes investigations of actions performed by government officials in the exercise of their administrative function which resulted in injustice.⁴⁴⁷ This institution had been the only established entity with the power to investigate human rights violations to that limited extent. The Ombudsman's scope of work and the lack of enforceability of its findings and recommendations limits its ability to protect the rights of the people of Lesotho (Basotho) in a holistic manner.⁴⁴⁸

In 2011, Parliament amended the Constitution and established the Human Rights Commission to address human rights violations, create awareness among the citizenry and to promote and protect these rights in their totality.⁴⁴⁹ The Data Protection Act was enacted in the same year, which established the Data Protection Commission. The Data Protection Commission is tasked not only to regulate data processing, but to also protect users and enforce privacy values, particularly within the digital landscape.⁴⁵⁰ Internationally, Lesotho has ratified all the core human rights treaties that constitute the International Bill of Rights, but has not ratified the Budapest Convention on Cyber Security, 2001. Lesotho also ratified the African Charter on Human and Peoples Rights by the African Union in 1986. Despite its proactive steps in 2011, Lesotho only ratified the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention), 2014 in December 2023. This followed another milestone of the country being appointed as Chair of the African Union Bureau of Specialised Technical Committee on Communication and Information and Communications Technology (STC-ICT) in November 2023.⁴⁵¹ This development has been most welcome considering that the Computer Crimes and Cyber Security Bill, 2022 has been in the pendulum in Parliament.

444 United Nations Conference on Trade and development, 'UN List of Least Developed Countries' (December 2023) UN list of least developed countries | UNCTAD <https://unctadstat.unctad.org/CountryProfile/GeneralProfile/en-GB/426/GeneralProfile426.pdf> (accessed 5th December 2023).

445 United Nations Conference on Trade and development, 'General Profile : Lesotho' (2022) <https://unctadstat.unctad.org/CountryProfile/GeneralProfile/en-GB/426/GeneralProfile426.pdf> (accessed 5th December 2023).

446 The Constitution of Lesotho, 1993 https://adsdatabase.ohchr.org/IssueLibrary/LESOTHO_Constitution.pdf (accessed 5th December 2023).

447 Section 135 (1) (a) of the Constitution of Lesotho (n3).

448 Hoolo 'Nyane, 'The Binding Nature of the Ombudsman's Remedial Actions in Lesotho: Lessons from South Africa' (2021) Comparative and International Law Journal of Southern Africa (PDF) https://www.researchgate.net/publication/357142429_The_Binding_Nature_of_the_Ombudsman's_Remedial_Actions_in_Lesotho_Lessons_from_South_Africa (accessed 9th December 2023).

449 Chapter XI A of the Constitution of Lesotho (n3).

450 Statement objective of the Data Protection Act, 2011.

451 African Press, 'Lesotho Leads Charge on Digital Agenda' (9th December 2023). <https://www.africa-press.net/lesotho/all-news/lesotho-leads-charge-on-digital-a> (accessed 18th December 2023).

► Country Analysis

INTERNET FREEDOM

Internet access and disruption

According to the International Telecommunication Union (ITU) World Telecommunication/ ICT Indicators Database, only 48% of Lesotho's population use the Internet.⁴⁵² About 30% of the population of Lesotho is located in its urban area, while a greater part of the population is in the rural areas.⁴⁵³ Vodacom Lesotho and Econet Telecom Lesotho (ETL) are the dominant prepaid Internet Service Providers (ISPs), offering a variety of network coverage technologies such as 3G, 4G (Long Term Evolution) LTE, Asymmetric Digital Subscriber Line (ADSL) and fibre.⁴⁵⁴ In 2018 Vodacom launched 5G network coverage to pilot offering connection services with high bandwidth similar to fixed broadband or fibre.⁴⁵⁵ Fixed broadband is available in the urban area with low subscriptions of about 0.236% of the population.⁴⁵⁶ Suburbs in the capital town, Maseru, have full 4G LTE coverage while other major towns across the country have both 3G and 4G LTE connections.⁴⁵⁷ Companies such as Leo and Comnet offer wireless and fibre internet connection services only without prepaid services.⁴⁵⁸

Using the Internet Outage Detection and Analysis (IODA) tool, no irregular internet connection was detected for the greater part of the year 2023.⁴⁵⁹ However, on June 16, 2023, Vodacom Lesotho experienced a service outage for four hours.⁴⁶⁰ According to the Lesotho Communications Authority,⁴⁶¹ the outage was in violation of rule 6(a)(i) of the Lesotho Communications Authority Quality of Services Rules, 2023. The Authority stated that the outage was contrary to the interest of Vodacom Lesotho's subscribers and imposed a Lesotho Loti 1 Million (LSL) (USD52 629) fine. The fine was, however, suspended for a period of one year on condition that the violation is not repeated.

Internet access depends on several factors, such as digital literacy and broadband and device affordability. One of the defining pillars of meaningful connectivity is access to unlimited internet access at work, home and school.⁴⁶² The average cost of an entry-level terminal for fixed broadband

452 International Telecommunication Union (ITU) World Telecommunication/ICT Indicators Database, (2021) <https://data.worldbank.org/indicator/IT.NET.USER.ZS?end=2022&locations=LS&start=2004&view=chart> (accessed 10th December 2023).

453 United Nations Conference on Trade and Development, 'General Profile : Lesotho' (2022) (n2) (accessed 5th December 2023).

454 <https://www.etl.co.ls/about> <http://www.etl.co.ls/about> and <https://www.vodacom.co.ls/about> (accessed 10th December 2023).

455 Reuters, 'South Africa's Vodacom launches 5G internet service in Lesotho' (25th August 2018). <https://www.reuters.com/article/vodacom-grp-lesotho-idUSL8N1VG06F/> (18th December 2023).

456 Pule, N. 'Digital Rights in Lesotho: An analysis of practices in the financial and ICT sector' (2022) Internet Freedom Project Lesotho <https://www.reuters.com/article/vodacom-grp-lesotho-idUSL8N1VG06F/> (accessed 10th December 2023).

457 <https://www.etl.co.ls/> (accessed 10th December 2023).

458 <https://www.leo.co.ls/> and <https://www.comenet.co.ls/> (accessed 10th December 2023).

459 IODA | Internet Outages for Lesotho <https://ioda.inetintel.cc.gatech.edu/country/LS?from=1695204170&until=1702980170> (accessed 20th December 2023).

460 Lesotho Communications Authority Facebook Page, https://m.facebook.com/story.php?story_fbid=pfbid0G9sbbviV2P-fveXZwfXLTvu7MbtNWyxifNAbq2RyxNM8Ktw1gLN3pvNuVmUq9dNWul&id=100053510592304&mibextid=2JQ9oc (accessed 18th December 2023).

461 The Lesotho Communications Authority is legally established as a communications and broadcasting regulator by the Communications Act, 2012. (accessed 15th December 2023).

462 A4AI, 'Advancing Meaningful Connectivity Towards Active and Participatory Digital Societies' (2022) Alliance for Affordable

in Lesotho is 800 LSL(Maloti) (USD 44).⁴⁶³ The general monthly minimum wage in Lesotho as of 2023 is 2005 LSL (approximately USD 111.38)⁴⁶⁴ with smartphones being the most frequently used devices to connect to the Internet.⁴⁶⁵ The most affordable smartphone in Lesotho costs 699 LSL (approximately USD 45.90 USD).⁴⁶⁶ This implies that the most affordable smartphone would cost a minimum wage worker between 41.2% to 43.1% of their monthly outcome.⁴⁶⁷

Free speech and online safety

Section 14 of the Constitution makes provision for the right to freedom of expression and also recognises other rights, such as the right to hold an opinion, and exchange ideas and information without hindrance. Section 12(2) limits this freedom on several grounds, such as national security, public order, or protecting the reputation of others. This proviso is the foundation of criminal defamation in the Penal Code, 2010.⁴⁶⁸ In 2018, the case of Peta v Minister of Law, Constitutional Affairs and Human Rights⁴⁶⁹ made a landmark ruling to the effect of decriminalising defamation on the basis that it was contrary to the values, purpose and importance of the right to freedom of expression.⁴⁷⁰ In this case, the Editor of the Lesotho Times was charged under Section 104 of the Penal code after publishing a satirical column on the erstwhile Commander of the Lesotho Defence Force (LDF) in which the latter was said to be defamed. Based on these facts, the Constitutional Court set out to determine the constitutionality of Section 104.

Additionally, Section 79 of the same Act penalises any act that violates the dignity or reputation of the King and members of his nuclear family. The Peta case emphasises the purpose of safeguarding the right to freedom of expression to foster democracy by holding those in power accountable and encouraging public discussion.⁴⁷¹ However, Section 79, to a great extent, is intrinsically a criminal defamation offence and may impede scrutiny and criticism of the Royal family from the public.⁴⁷²

There are other looming threats to the right to access to information in the Computer Crimes and Cyber Security Bill, 2022. Section 24(2) makes it an offence to intentionally communicate, disclose or transmit information and to receive such information without 'lawful excuse'.⁴⁷³ The broad and vague definition of these offences poses a potential threat to media freedom, whistle-blowing, and public discourse online on such information. The provision therefore raises concerns around information access to public documents, which is still not legally regulated, more so as the Access and Receipt of Information Bill 2000, since its promulgation has not been passed into law.

Lesotho has made some progressive steps regarding online safety. In 2022, Parliament passed the long-anticipated Counter Domestic Violence Act, which makes Technology Facilitated Gender

Internet <https://globaldigitalinclusion.org/wp-content/uploads/2022/12/Advancing-Meaningful-Connectivity.pdf> (accessed 5th November 2023).

463 2023- 2026 Lesotho Communications Authority Strategic Plan

464 Labour Code Wages, 2023.

465 A4AI, 'Meaningful Connectivity: A new target to raise the bar for internet access' (2020) Alliance for Affordable Internet <https://globaldigitalinclusion.org/wp-content/uploads/2022/12/Meaningful-Connectivity.pdf> (accessed 4th November 2023).

466 A4AI, 'Device Pricing 2022 (Dataset)', (2022) Alliance for Affordable Internet <https://a4ai.org/research/device-pricing-2022/> (accessed 15th December 2023).

467 A4AI, 'Device Pricing 2022 (Dataset)' (2022) Alliance for Affordable Internet (n23).

468 Section 104 of the Penal Code, 2010. <https://lesotholii.org/akn/lis/act/2012/6/eng@2012-03-09/source.pdf> (accessed 15th December 2023).

469 Peta v minister of Law and Constitutional Affairs (CONSTITUTIONAL CASE 11 of 2016) [2018] LSHC 3 (18 May 2018). <https://lesotholii.org/akn/lis/judgment/lshc/2018/3/eng@2018-05-18> (accessed 10th December 2023).

470 Paragraph [8] (CONSTITUTIONAL CASE 11 of 2016) [2018] LSHC 3 (18 May 2018) (n26).

471 Paragraph [8] (CONSTITUTIONAL CASE 11 of 2016) [2018] LSHC 3 (18 May 2018) (n26).

472 Hoolo, N. 'Abolition of criminal defamation and retention of scandalum magnatum in Lesotho' (2019) 19 African Human Rights Law Journal 743-762 <http://www.scielo.org.za/pdf/ahrlj/v19n2/10.pdf> (accessed 10th December 2023).

473 Section 24(2)(a) and (c) of the Computer Crimes and Cyber Security Bill, 2022.

Based Violence (TFGBV) an offence.⁴⁷⁴ However, this provision is quite vague as ‘technological abuse’ can encompass an array of nuanced misconduct which need to be elaborately defined.

Media freedom

In the last ten years, Lesotho’s political stability has been of great concern. This has resulted in the country undertaking reforms at the national level under various sectors, such as communication in 2017.⁴⁷⁵ In 2021, the National Reforms Authority (NRA) adopted a National Media Policy and a National Code of Conduct, Behaviour and Practice.⁴⁷⁶ The National Assembly later adopted the policy in November 2021.⁴⁷⁷ In the same year, the erstwhile Minister of Communications, Science and Technology, while officiating a Safety for journalists seminar remarked on how the threats and killings of journalists impacts on free media and stated that the government must curb these challenges.⁴⁷⁸

Nevertheless, these atrocities against journalists continue to manifest. On May 23, 2023, investigative journalist Ralikonelo Joki was gunned down while leaving the radio station at the end of his programme known for initiating public discussion on topics of corruption and governments.⁴⁷⁹ It is alleged that Joki had previously received at least three threats related to his journalistic work on social media from three different accounts between March and April 2023.⁴⁸⁰ The state responded by imposing a curfew between 10 pm and 4 am which was later revoked. Joki’s case follows other reported cases of harassment, threats and torture of other journalists. Journalist ‘Marafaele Mohloboli was attacked at her home by unknown gunmen, while journalist Lebeso Molati was detained and tortured by police.⁴⁸¹

Information disorder and hate speech

The Communications Act, 2012 under Section 44(1)(e), makes it an offence to intentionally modify or interfere with any message sent by means of a communication. Section 28 of the Internal Security (General) Act No. 24, 1984, provides that any person who utters words or acts in a manner which may bring death or injury commits an offence. However, this provision only recognises that the uttered words should result in harm for liability to be imputed and leaves the words subject to further interpretation to include inaccuracy. There is no specific legislation that currently addresses information disorders and hate speech. Should the Computer Crimes and Cyber Security Bill, 2022 be enacted into law, although insufficient, it would offer some protection in that regard. Section

474 Section 3(k) of the Counter Domestic Violence Act, 2022.

475 The Lesotho We Want: Dialogue and Reforms for National Transformation (30th November 2017) <https://www.gov.ls/wp-content/uploads/2019/07/Lesotho-Reforms-Framework-and-Road-Map-Final-Draft-1-30-November-2017.pdf> (accessed 10th December 2023).

476 MISA Lesotho, ‘A gesture viewed as a milestone ahead of WPFDP’ (April 2021) <https://misa.org/blog/lesotho-reforms-authority-adopts-media-policy-code/> (accessed 10th December 2023).

477 MISA Lesotho, ‘Parliament adopts National Media Policy’ (November 2021) <https://lesotho.misa.org/2021/11/30/parliament-adopts-national-media-policy/> (accessed 10th December 2023).

478 MISA Lesotho, ‘Speech by Hon. Minister of Communications, Science and Technology on the safety of journalists seminar organised by MISA Lesotho on the 28th July 2021’ (10th August 2021) <https://lesotho.misa.org/2021/08/10/speech-for-hon-minister-of-communications-science-and-technology-on-safety-of-journalists-seminar-organised-by-misa-lesotho-on-28th-july-2021/> (accessed 10th December 2023).

479 CIVICUS, ‘Journalist Ralikonelo Joki killed after Radio show’ (8th November 2023) <https://monitor.civicus.org/explore/journalist-ralikonelo-joki-killed-after-radio-show/#:~:text=On%2014th%20May%202023%20journalist%20Ralikonelo%20Joki%2C%20known,shot%20at%20least%2013%20times%20by%20unknown%20assailants.> (accessed 10th December 2023).

480 CIVICUS, ‘Journalist Ralikonelo Joki killed after Radio show’ (8th November 2023) (n36)

481 MISA Lesotho, ‘Escalating cases of Harassment of Journalists in Lesotho’ (21st November 2021) <https://lesotho.misa.org/2021/11/17/escalating-cases-of-harassment-of-journalists-in-lesotho/> (accessed 10th December 2023).

38 of the Computer Crimes and Cyber Security Bill, 2022 makes it an offence to digitally transmit several messages with the intention to mislead or deceive others, which only covers disinformation as an information disorder. Information disorder is a cause for concern, especially within the digital space..

Hate speech, similarly, is unregulated. The Computer Crimes and Cyber Security Bill makes provision for hate speech under Section 36. It provides that any person who unlawfully and with intention uses language that incites violence publicly online to an individual or a group based on their social identifiers commits an offence.⁴⁸² Section 35 thereof further makes it an offence to produce, make available, and/or publish any xenophobic, homophobic and racist material. The element of such utterances or publications being 'public' raises concern about hate speech made privately between two individuals.

Privacy and surveillance

Section 44(f) of the Communications Act, 2012 makes it an offence to intercept or trace the communication of a network user without a court order. Similarly, the National Security Service Act of 1998 gives the responsible Minister the power to issue a warrant in respect of any property that may be subject to investigation by the National Security Service (NSS) upon request by the High Ranking official of the institution. Section 8 of the Prevention of Corruption and Economic Offences Act of 1999 prescribes the same in that the Director of Prevention of Corruption and Economic Offences may require a person, through a written notice, to furnish all information in their possession required in an investigation. These prescribed procedures to search and seize information for investigation threaten the right to privacy for accused or suspected individuals. There is an inconsistency and contradiction between these three sections that require harmonisation to prevent further violations of these prescribed procedures.

In July 2023, the Minister in the Prime Minister's office (which serves as the Ministry of Defence and National Security) issued a warrant to search and seize Hon. Machesetsa Mofomobe's phones for an investigation of a murder. Mofomobe and the deceased were running for the position of party leader of the Basotho National Party (BNP) when the deceased was shot and killed. Additionally, Mofomobe was said to be a suspect in the murder of one journalist who was shot and killed earlier in 2023. The Constitutional Court found the warrant to be procedurally invalid and to be in violation of Mofomobe's privacy.

The issue of surveillance of mobile phones had previously been raised in the case of Lipolelo Thabane. Former Prime Minister Thomas Thabane and his wife were charged with the murder of his estranged wife.⁴⁸³ Phone records of the accused from one mobile service provider were submitted to the court without a clear explanation of how they were obtained and obviously in violation of rule 43 (2) of Lesotho Communications Authority (Administrative) Rules, 2016. Another civil case on privacy was lodged with the High Court in December 2023. In this case, Hlahlobo Moruri alleges that Vodacom Lesotho Financial Services, which is a subsidiary of Vodacom Lesotho, violated his privacy when they used his image in an advertisement poster and therefore sought 650 000 LSL (appr. USD 34209) in restitution and damages.⁴⁸⁴ Unfortunately, these cases have not yet been brought to finality at the time of submission of this report.

The National Identity Card Act, 2011, also has an adverse impact on the right of privacy regarding

482 Section 36(a) and (b) of the Computer Crimes and Cyber Security Bill, 2022.

483 CNN, ' Lesotho former PM and wife paid criminal gang to execute his estranged wife, court papers say' (June 2020) <https://edition.cnn.com/2020/06/13/africa/lesotho-lilopelo-thabane-execution/index.html> (accessed 20th February 2024).

484 Staff reporter, 'VCL under fire for privacy breach' (15th -21st December 2023) *Newsday*. Vol. 05 No. 47 <https://newsdayonline.co.ls/vcl-under-fire-over-privacy-breach/> (accessed 20th february 2024).

identification. Section 16 thereof requires anyone who is above the age of sixteen (16) to issue their identification card (ID) to identify themselves to access services. The format of the cards has proven to pose a challenge to non-binary, transgender and certain intersex individuals. The recognition of only two genders has resulted in the aforementioned groups of individuals having their privacy violated.⁴⁸⁵ Not availing other gender markers in identification documents perpetuates this violation and often results in exclusion.⁴⁸⁶

DATA GOVERNANCE

Data protection

Data protection is governed by the Data Protection Act of 2011, which came into effect in 2012. In October 2023 Lesotho signed the African Continental Free Trade Area Agreement (AfCFTA) which intends to create a single free movement intra trade market within the region. This objective of the agreement in itself has some implication in terms of cross boundary data and the need to implement sufficient safeguards. The Data Protection Act establishes the Data Protection Commission⁴⁸⁷ and bestows it with the power to ‘provide for principles for the regulation of the processing of personal information’, and ‘protect and reconcile the fundamental and competing values of personal information privacy’.⁴⁸⁸ This Act stipulates that other sector-specific legislations which offer safeguards on personal information shall prevail.⁴⁸⁹ It is often from the collection, processing and disposal of personal data that data protection issues arise. Section 23 of the Act makes provision for measure when there has been a data breach. The Section provides that such breach or compromise shall be reported to the Data Commission and the Data subject shall also be notified. However, section 23 poses two issues, which are the prescribed time frame to make notice of the breach and limiting the data subject’s right to such notification. Section 23 (2) states that notice of any data breach or compromise should be made ‘... as soon as reasonably possible after discovery...’. Section 23 (3) goes on to provide that the data controller may also ‘delay’, without a specified period, notifying the data subject if national security institutions or the Data Commission is of the view that such notice could impede on investigations being undertaken. These two provisions gravely impact on data subjects’ right to privacy and transparency of the oversight bodies in order to gain public trust and justice.

The National Identity Card Act, 2011 requires the collection of biometric data for the National Identity Register to issue an identity document to eligible individuals.⁴⁹⁰ The Register stores all the collected data, and access thereto is governed by Section 6 of the same Act. Section 6(a) and (b) states that no person shall access, record or amend information in the Registry without authorisation. The Act further imposes the duty to secure the integrity of the data in the Registry from unlawful access by taking appropriate measures.⁴⁹¹ The Act additionally prohibits the publishing or communication of such information except under specific conditions.⁴⁹² This information may be furnished to insurance and finance institutions by the Director upon approval of the Minister of

485 Muller, A., ‘Legal Gender Recognition in Lesotho: An analysis of law and policy in the context of international best practices’ (2020) Southern Africa Litigation Centre, The People’s Matrix Association & Women and Law Southern Africa. <https://www.southernafricalitigationcentre.org/wp-content/uploads/2020/11/Lesotho-Gender-Marker-report.pdf> (accessed 18th December 2023).

486 Pule, N. ‘Digital Rights in Lesotho: An analysis of practices in the financial and ICT sector’ (2022) Internet Freedom Project Lesotho (n 11).

487 Section 6 of the Data Protection Act, 2011. <https://www.southernafricalitigationcentre.org/wp-content/uploads/2020/11/Lesotho-Gender-Marker-report.pdf> (accessed 15th December 2023).

488 Objective statement of the Data Protection Act, 2011. .

489 Section 5(1) and (2) of the Data Protection Act, 2011..

490 Section 4(6) of the National Identity Card Act, 2011. <https://media.lesotholii.org/files/legislation/akn-ls-act-2011-9-eng-2011-03-21.pdf> (accessed 18th December 2023).

491 Section 7 (3)(b) of the National Identity Cards Act, 2011. (n47).

492 Section 7(1) of the National Identity Cards Act,2011. (n 47).

Home Affairs.⁴⁹³

The Communication Act, 2012 stipulates that the Lesotho Communications Authority (LCA) may require communication entities to protect their user information.⁴⁹⁴ This provision is enforced by rule 43 of the Lesotho Communications Authority (Administrative) Rules, 2016, which states that every communications service provider has an obligation to protect their users' privacy and data. Section 29(5) of the Financial Institutions Act, 2012, similarly prohibits the disclosure of user information and imposes a penalty for its contravention. Founded on the Communications Act, 2012, the Communications (Subscriber Identity Module Registrations) Regulations, 2021 imposes on mobile service providers the duty to protect the data collected and to further take reasonable technical and institutional measures to prevent unlawful access and use of such data.

In as much as there seems to be existent legal frameworks on data protection, oversight is currently the biggest hurdle. To date, the Data Protection Commission is not operational, although legally established. Therefore, no complaints are lodged or investigations undertaken on data breaches or reports in this regard.

ICT DEVELOPMENT

2022 marked the end of the Lesotho Communications Authority Strategic Plan and the development of the 2023-2026 Strategic Plan which develops a roadmap to adopting and implementing ICT strategies. Targets in both of these documents align with international, regional, sub-regional as well as domestic development ICT goals. These include the United Nations Sustainable Development Goals 2030, the African Agenda 2060, the International Telecommunication Union Strategic Plan (2020-2023), Southern Africa Development Corporation (SADC) Broadband Targets, and Lesotho's National Strategic Development Plan II (2018-2023).

In 2023, Lesotho only met four out of nine of the SADC Broadband Targets. Among the missed targets is having 50% of households connected to broadband with Lesotho only achieving 3.2%.⁴⁹⁵ In terms of basic digital skills for youth, Lesotho only reached half of the set target by 30%.⁴⁹⁶ Additionally, only 26% of Micro- Small-Medium Sized Enterprise (MSMEs) are connected to the Internet.⁴⁹⁷ In terms of infrastructure, there are 600 network towers across Lesotho.⁴⁹⁸ In an attempt to close the digital divide, the government intends to build an additional 48 towers,⁴⁹⁹ improve network performance and digital skills amongst youth by exceeding the current mark of 30% by the end of 2026, and promote local ICT content in the Sesotho language.⁵⁰⁰

UNIVERSAL SERVICE FUND

The Lesotho Communication Act, 2000 and the Universal Access Rules of 2009 established the Universal Access Fund (UAF). The UAF was later replaced by The Universal Service Fund (USF) by the Lesotho Communications Authority (Universal Service Fund) Rules, 2009. The fund operates as

493 Section 6 (2)(c) of the National Identity cards Act, 2011. (n47).
494 Section 5(1)(n) of the Communications Act, 2012.
495 2023-2026 Lesotho Communications Authority Strategic Plan. <https://media.lesotholii.org/files/legislation/akn-ls-act-2011-9-eng-2011-03-21.pdf> (accessed 20th December 2023)
496 2023-2026 Lesotho Communications Authority Strategic Plan (n52).
497 2023-2026 Lesotho Communications Authority Strategic Plan (n52).
498 LENA, 'Government increases Telecommunications Access' (16th July 2022) <https://www.gov.ls/government-increases-access-to-telecommunications/> (accessed 20th December 2023).
499 LENA, 'Government increases Telecommunications Access' (16th July 2022). (n55).
500 2023-2026 Lesotho Communications Authority Strategic Plan (n52).

a unit within the LCA to provide universal communications services for determined areas.⁵⁰¹ The Act itself does not make express provision for addressing digital divides but makes reference to the universal access and services for telephone communication, internet access, broadcasting and postal services. The LCA is also a contributor and administrator for the revenue generated towards the Fund under section 4(2)(a) of the rules.

These rules further established a Universal Service Committee to manage the Fund, adopt the USF plan, allocate funds for USF projects and report on its annual activities. However, the committee's function is solely for decision making and the operational and implementation aspects of the Fund are allocated to the LCA.⁵⁰² Interestingly, the rules collate the USF priority as voice telephony services and internet access as its secondary object. With the ongoing technology developments, there is a need to re-strategise these priorities and make internet access and inclusion a primary aim. These priorities should be inverted to close the ongoing digital divide; internet access inherently assures voice telephone services. Reports on the USF expenditure are not readily available for public access. Other sources have reported that as of 2022, the USF was used to construct seven network towers.⁵⁰³

501 Section 4 of the Lesotho Communications Authority (Universal Service Fund) Rules, 2009.

502 <https://lca.org.ls/wp-content/uploads/filr/2481/USF%20Operating%20Manual%20%20Final%2004072016.pdf> (accessed 6th March 2024).

503 LENA, 'Government increases Telecommunications Access' (16th July 2022). (n55).

► Conclusion & Recommendations

Conclusion

Lesotho has taken some progressive steps to ensure the digital rights of its people, particularly in getting communications connectivity for under-served communities. There is, however, much to be done to ensure the universal coverage of digital rights domestically.

Recommendations

Government

- » Collaborate with the private sector to ensure meaningful connectivity through affordable broadband for economically vulnerable households.
- » Collaborate with the private sector to improve digital skills for youth and underserved communities.
- » Operationalise the Human Rights Commission and the Data Protection Commission.
- » Pass the Access and Receipt of Information Bill, 2000.
- » Pass the Computer Crimes and Cyber Security Bill, 2022 with the following amendments: Section 24(2) should be amended to ameliorate its vagueness and ambiguity.
- » Amend the Counter Domestic Violence Bill, 2022 to elaborate and expand on Section 3(k) on technological abuse and penalise specific conduct such as Non-Consensual Disclosure of Intimate Images (NCDII) and its distribution, digital voyeurism, deep fakes, online sexual extortion and exploitation.
- » Ensure regular and open access to information about the USF.
- » Abolish laws on crimes of insults and regulate all forms of information disorders, including misinformation.
- » Take further legislative measures to protect media freedom online.

Private sector

- » Consider Public-Private Partnerships for ICT development in schools and health facilities to achieve digital parity, especially in under-served communities.
 - » Invest in innovation tech hubs for youth in Lesotho's major towns.
 - » To mitigate youth unemployment risks, develop programmes to integrate youth with relevant digital skills and experience.
 - » Integrate the United Nations Guiding Principle on Business and Human Rights within their policies.
-

Civil society

- » Raise awareness of the digital divide and how it impacts different social groups.
- » Raise awareness on matters of digital safety and resilience.
- » Advocate for a human rights-centric approach in the regulation and governance of cyberspace.

Academia

- » Conduct and support contextual research on the impact of technological developments and existing digital gaps to inform policy development.
 - » Develop curricula or multidisciplinary programmes on digital rights and various sectors.
-



Malawi

EXECUTIVE SUMMARY

This report sheds light on Malawi's digital rights, emphasising progressive and regressive developments in 2023. Employing a comprehensive approach, the report utilises empirical and desk-research methods to evaluate quantitative and qualitative aspects of digital rights and inclusion. To consolidate essential developments on digital rights in Malawi for 2023, this report dissects three key digital spheres: the Universal Service Fund (USF), Data Protection and Cybersecurity, and Freedom of Expression. It contextualises these thematic areas and provides actionable government and civil society recommendations. The government should review the Data Protection Act of 2023, including the amendment of its sections 4, 8 (b)(vi)(vii), 26 and 42. Additionally, the government should expedite ratification of the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) and review the Electronic Transactions and Cybersecurity Act of 2016 to remove broad and vague provisions and offenses, including sections 24(1) (e) and (f); and repealing defamation and sedition laws in the Penal Code. Guarantee freedom of expression online and media freedoms.

Regulatory Authority (MACRA) should consult with stakeholders regarding the five new bills, notably the Cybersecurity Bill, Cybercrimes and E-Evidence Bill, Start-Ups Bill, Review Electronic Transactions and E-Commerce Bill, and the review of the Communications Act. As watchdogs, the Civil Society Organisations (CSOs) should scrutinise the five new Bills being championed by MACRA to ensure alignment with acceptable international standards. CSOs should also raise public and stakeholder awareness of the Data Protection Act of 2023, advocate for Malawi's ratification of the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention), and advocate for the review of the Electronic Transactions and Cybersecurity Act of 2016; and repealing of defamation and sedition laws in the Penal Code through engagement with authorities, public awareness, and litigation. In addition, CSOs should step up advocacy efforts to decriminalise freedom of expression, including litigation, advocating for repealing repressive laws and monitoring USF operations to ensure transparency, accountability, and effectiveness.

The Malawi Parliament should also allocate funds to the Universal Service Fund (USF) in compliance with section 160(b) of the Communications Act. Crucially, the Malawi

Introduction

In Southern Africa, Malawi shares its borders with Mozambique, Zambia and Tanzania. The country's population is estimated at 20.41 million (2022), with an annual growth rate of 2.6%. 81.8% of the population lives in rural areas, while 18.2% lives in urban centres. Ranked as one of the poorest countries in the world, Malawi's economy is heavily dependent on agriculture, which employs over 80% of the population, and it is vulnerable to external shocks, particularly climatic shocks.⁵⁰⁴ In 2021, the government launched the Malawi 2063 Vision, which aims to transform Malawi into a wealthy, self-reliant, industrialised, upper-middle-income country by focusing on agriculture, commercialisation, industrialisation, and urbanisation. To accelerate short and medium-term results, the first 10-year implementation plan (MIP-1) was rolled out to drive the implementation and realisation of the MW2063.

Despite notable strides in ICT, Malawi faces multifaceted challenges, including weak ICT infrastructure and digital exclusion.⁵⁰⁵ In 2023, internet penetration stood at 24.4%. According to DataReportal, as of January 2023, there were 5.04 million internet users, equivalent to 3.8% of the total population, and around 757,000 social media users aged 18 and above, representing 7.3% of the total population aged 18 and above.⁵⁰⁶ 34.8% of the social media users were women, while 65.2% were men.

Additionally, Kepios reports that internet users in Malawi increased by 126,000(+2.6%) between 2022 and 2023.⁵⁰⁷ Further, only 57.2% of Malawians own a mobile phone, and landline penetration is only around 1%. High digital illiteracy also remains a major setback in Malawi's digital space, with a recent survey by the Malawi Communications Regulatory Authority (MACRA) establishing that 46% of Malawians say they don't use the internet because they don't know what it is, and 2.4% say they don't use it because it is too expensive.

However, in recent years, Malawi has made significant policy and structural reforms in ICT. In 2021, the government rolled out an ambitious five-year Digital Economy Strategy (2021-2026), which sets new targets for different aspects of the digital economy. Among others, on network access, the government intends to expand internet access from 14.6% to 80% of the population and broadband coverage to 95% by 2026. It also seeks to review internet taxes by, among others, cutting out the 10% excise duty on purchasing data and SMS tariffs and scrapping the 3.5% revenue tax for telecom providers, which are significant drivers of high costs of internet and mobile services in Malawi.

In 2023, Malawi achieved notable milestones, including enacting the long-awaited Data Protection Act of 2023, appointing information officers in compliance with the Access to Information Act, and establishing an independent Universal Service Fund (USF) Board. Additionally, the country is drafting five new digital laws, notably the Cybersecurity Bill, Cybercrimes and E-Evidence Bill, Start-Ups Bill, Review Electronic Transactions and E-Commerce Bill, and the review of the Communications Act. Bills are scheduled for enactment in 2024.⁵⁰⁸

Malawi also introduced a National Child Online Protection Strategy aimed at safeguarding children from cyber threats.⁵⁰⁹ MACRA launched various digital interventions, including the Muuni Fund, a research and innovation fund collaborating with 35 district councils to support 105 new startups in the field of information and communication technology (ICT).⁵¹⁰ However, Malawi's restrictive use of criminal defamation laws to curb online freedom of expression remains a significant challenge to digital rights.

504 World Bank <https://www.worldbank.org/en/country/malawi/overview> (accessed 20 January 2024)

505 <https://datareportal.com/reports/digital-2023-malawi>

506 As above.

507 As above

508 Interview with key informant (15 January 2024)

509 MACRA 'Child Online Protection in Malawi' 23 March 2023 (accessed 20 January 2024)

<https://www.mwcert.mw/child-online-protection-strategy-consultation-workshops/>

510 As above

▶ Country Analysis

UNIVERSAL SERVICE FUND (USF)

The Universal Service Fund (USF) plays an important role in narrowing the digital divide, guided by three core principles: the availability, affordability, and accessibility of telecommunication services. These principles underscore the responsibility of telecommunications regulators and government Ministries at the state level to ensure universal access to telecommunications services at affordable rates. While USF models vary across countries, their common objective is to deploy communication infrastructure and promote the adoption of ICT services in rural and underserved areas, even when not economically viable. This reflects a commitment to connecting everyone, regardless of the associated costs. Principle 37(2) of the African Commission on Human and Peoples Rights Declaration on Freedom of Expression and Access to Information (African Commission Declaration) emphasises the necessity of universal, equitable, affordable, and meaningful internet access to realise various human rights. In line with these principles, the 32nd Session of the Human Rights Council (2016) affirmed that rights enjoyed offline should also be protected online, necessitating the availability, affordability, and accessibility of telecommunication services.⁵¹¹

In Malawi, the USF, established under section 157 of the Communications Act of 2016 (Communications Act), aims to promote universal access and services in underserved areas. Section 158 outlines the purposes of the USF, including offering subsidies on a competitive basis, providing financial incentives and assistance, covering administrative expenses, and conducting research related to universal access⁵¹². This aligns with MACRA's statutory obligation to ensure every citizen in Malawi has access to reliable and affordable communication services.⁵¹³

The Communications Act prioritises areas managed by the USF, including access to telecommunications networks, the Internet, public payphones, directory services, emergency services, essential postal services, basic financial services, and broadcasting services. As of 2023, USF supported 16 projects worth around \$3.2 million, increasing access to broadband, information, and computer gadgets. Some of the projects include Connect a School; Community Networks (Yathu Yathu Data); Radio Access Network (Rural Telephony); Connect a Teachers Training College; Grants for Local Digital Content Production; Sign Language Project; PWD; E-Health Project; and E-commerce project. Other USF projects were Connect a Post Office; National Addressing System Project; Last Mile; Virtual Postal App; Curriculum Review; SMEs Digital Skills Training ; and Digital Ambassadors.⁵¹⁴

Malawi's USF operates with a robust governance structure led by MACRA, which establishes a Universal Service Fund Committee (USFC). The USFC oversees the management of the USF, reviewing and approving annual plans and budgets.⁵¹⁵ Section 160 outlines diverse funding sources for the USF, including operators' levies, parliamentary appropriations, grants, subsidies,

511 UN Human Rights Council 'Report of the Human Rights Council on its thirty second session' <https://documents-ddsny.un.org/doc/UNDOC/GEN/G20/008/73/PDF/G2000873.pdf?OpenElement> (accessed on 10 January 2024).

512 Section 158 of the Communications Act

513 Section 6 of the Communications Act

514 Interview with Zadziko Mankhambo, Director of Broadcasting at Malawi Communications Regulatory Authority (15 January 2024)

515 Section 163 of Communications Act

auctions, public access projects, and funds from MACRA⁵¹⁶. According to MACRA, the total annual revenue for USF as of 2023 was \$6.5 million.⁵¹⁷ Despite this legal and policy framework, a critical analysis reveals operational gaps. The delayed launch of the USF until 2022 resulted in a six-year accumulation of \$6.2 million in revenue. This inefficiency is detrimental to a tech-underdeveloped country with low ICT penetration, including 14.6% internet penetration, 76.2% country-wide mobile network, 43.2% mobile phone ownership, and a significant digital divide. Additionally, transparency and accountability concerns arise from MACRA's failure to comply with section 194(c) of the Communications Act regarding the publication of fund details and reporting to Parliament.

Parliament's failure to appropriate funds to the USF further compounds the challenges. Section 160(b) mandates Parliament to appropriate funds to the USF. However, Parliament has never appropriated funds to USF since its inception. According to MACRA, other challenges facing USF include lengthy public procurement procedures affecting the timely utilisation of funds, increased demand for USF projects against limited budgetary allocation, and rigid USF management structure.⁵¹⁸ Further, while USF seeks to bridge the digital divide, the government has maintained prohibitive taxes on ICT services, including 17.5% value-added tax (VAT) on mobile phones, 16.5% on internet services and 10% excise duty on messages and internet data transfers. These exorbitant taxes are shovelled to consumers, further prohibiting access. Addressing these operational gaps is crucial to realising the USF's mission of facilitating ICT services and bridging the digital divide in Malawi.

DATA PROTECTION AND CYBER SECURITY

Data Protection:

The year 2023 marked a significant milestone for Malawi's data protection and cybersecurity landscape. On December 7, 2023, the Malawi National Assembly passed the eagerly anticipated Personal Data Protection Bill of 2023 into law.⁵¹⁹ The new legislation aims to establish a comprehensive legal framework for regulating the processing and transfer of personal data, aligning with internationally accepted data protection principles.

Notably, the law designates the Malawi Communications Regulatory Authority as the Data Protection Authority responsible for overseeing the implementation of the Bill. It outlines key principles governing the processing of personal data, establishes a robust framework for the rights of data subjects, and defines the duties of data controllers and processors concerning personal data processing.

Furthermore, the law addresses cross-border transfer of personal data, regulates data controllers and processors of significant importance, establishes mechanisms for enforcing data subject rights, and grants the Authority the power to issue compliance orders to those contravening the Act. According to a key informant from MACRA, the new law will "build trust and confidence – the fact that individuals will have confidence that the organisation will not abuse their personal information will build trust and confidence between the parties and this will facilitate e-commerce and other digital transactions".⁵²⁰

516 USF Strategic Plan
517 Interview with Zadziko Mankhambo, Director of Broadcasting at Malawi Communications Regulatory Authority (15 January 2024)
518 Interview with Zadziko Mankhambo, Director of Broadcasting at Malawi Communications Regulatory Authority (15 January 2024)
519 MISA Malawi, 'MISA Malawi welcomes passing of Data Protection Bill' 8 December 2023 <https://malawi.misa.org/2023/12/08/misa-malawi-welcomes-passing-of-data-protection-bill/>. Accessed on 15 December 2023
520 Interview with Zadziko Mankhambo, Director of Broadcasting at Malawi Communications Regulatory Authority (15 January 2024)

In response to this development, MISA Malawi commended the data protection law, emphasising its potential to “promote responsible handling of personal data by government agencies, private institutions, and individuals”.⁵²¹ MISA expressed hope that the law would safeguard Malawians and the general public from cyber threats, cybercrimes, and unwarranted surveillance.

However, the new law is not without flaws. Firstly, section 4 designates MACRA as the Data Protection Authority (DPA), potentially compromising the financial, decision-making, and institutional independence of the DPA.⁵²² The Ministry of Information and Digitalisation assured Members of Parliament that this arrangement is temporary until the DPA becomes self-sustaining.⁵²³ According to MACRA, to allay the fears, the regulator intends to put structural and functional arrangements that will ensure the financial, decision, and institutional independence of the DPA. MACRA seeks to set up an autonomous unit within MACRA that will carry out the functions of the DPA.⁵²⁴

Additionally, section 8 (b)(vi)(vii) allows the lawful processing of personal data for “public interest” or “legitimate interests,” terms that are vague and undefined. This could grant data controllers and processors excessive discretion in determining the lawful processing of individuals’ personal data.

Concerns also arise regarding the processing of sensitive personal data. The Act allows for the processing of sensitive personal data under specific circumstances, including “archiving for public interest, research, or statistical purposes”⁵²⁵ or if the data subject intentionally made the data public.⁵²⁶ Such provisions may provide data controllers and processors with unwarranted discretion in processing sensitive personal data.

Moreover, section 26 includes broad exemptions allowing data controllers and processors to disregard data subject rights for “national security,” national economic or financial interests, social security, and regulatory functions. These exemptions could grant excessive discretion to determine when rights may be disregarded.

Fears also exist regarding the suspension or cancellation of a data controller or processor’s registration of significant importance. Section 42 grants MACRA the authority to suspend or cancel the registration of a data controller or processor “of significant importance” based on vague and broad grounds, including not complying “with any provision” of the Act or any term or condition imposed on the registration; or if “there is any other reasonable ground to suspend or cancel the registration”.⁵²⁷ These broad provisions would potentially lead to undue restrictions. Notably, the Act lacks a clear procedure for suspension and cancellation, failing to mandate MACRA to notify affected entities. However, section 42(2) provides that the “Authority shall not suspend or cancel the registration of a data controller of significant importance or data processor of significant importance under subsection 42(1) unless the data controller of significant importance or data processor of significant importance has been given an opportunity to show cause why the registration should not be suspended or cancelled.”

521 MISA Malawi, ‘MISA Malawi welcomes passing of Data Protection Bill’ 8 December 2023 <https://malawi.misa.org/2023/12/08/misa-malawi-welcomes-passing-of-data-protection-bill/>. Accessed on 15 December 2023

522 CIPESA ‘Analysis of the Malawi Draft Data Protection Bill, 2021’ (May 2021) file:///C:/Users/User/Downloads/Analysis-ofthe-Malawi-Draft-Data-Protection-Bill-2021.pdf (accessed on January, 2024)

523 MISA Malawi, ‘MISA Malawi welcomes passing of Data Protection Bill’ 8 December 2023 <https://malawi.misa.org/2023/12/08/misa-malawi-welcomes-passing-of-data-protection-bill/>. Accessed on 15 December 2023

524 Interview with Zadziko Mankhambo, Director of Broadcasting at Malawi Communications Regulatory Authority (15 January 2024)

525 Section 16(g) of the Data Protection Act

526 Section 16(g) of the Data Protection Act

527 Section 42(1) of the Data Protection Act of 2023

Cyber-Security:

In November 2023, MACRA introduced the Cybercrimes Bill, 2023, aiming to address offenses related to computer systems and ICTs. The proposed legislation encompasses provisions for criminalising these offenses, establishing procedures for the investigation, preservation, collection, and use of electronic evidence, allowing admission of electronic evidence in criminal matters, and fostering international cooperation in combating computer and cybercrimes.⁵²⁸

The Bill also outlines a range of offenses, including unauthorised access, unlawful interception of data, unlawful interference with a computer system, unauthorised interference with a computer program or data, misuse of devices and access codes, child pornography, cyber grooming, cyber harassment, cyberstalking, unlawful acts in respect of software or hardware, unlawful use of software and hardware, cyber terrorism, and the dissemination of racist or xenophobic material.⁵²⁹

However, this study uncovered a lack of consultations with key stakeholders, including ICT players, civil society, and the public, during the development of the Bill by MACRA.⁵³⁰ Consequently, the Bill lacks stakeholder input, contradicting the democratic principle of citizen participation in processes that directly impact them. According to MACRA, the regulator circulated the draft Bill “to all stakeholders in the communications sector (licensees, General Public and other relevant Government MDAs) for their comments. “We called for comments through direct emails to our licensees, newspapers, MACRA official website and Facebook page”.⁵³¹ MACRA has plans to hold physical meetings with stakeholders in January 2024.⁵³² The lack of proactive engagement in this legislative process by civil society organisations compounded the problem. There is a clear need for MACRA to initiate public consultations on the Bill before presenting it to Parliament in February 2024. Simultaneously, the civil society in Malawi should remain vigilant in scrutinising the Bill to ensure it aligns with acceptable international standards.

Besides legislative interventions to counter cybercrimes, MACRA reported several interventions, including awareness on safe and responsible internet use and collaborating with 30 community radio stations to broadcast jingles on mobile money fraud prevention. The regulator has also formed a multi-stakeholder task force to fight mobile money fraud comprising MACRA, Reserve Bank of Malawi, National Registration Bureau, Malawi Police Service, Malawi Prisons Service, Financial Intelligence Authority, GiveDirect, Bankers Association of Malawi, as well as Airtel and TNM mobile companies. In addition, MACRA also seeks to introduce the Central Equipment Identity Register, a system that will blacklist phone handsets engaged in criminal activities such as mobile money fraud and those that are stolen. Other interventions by MACRA include conducting school outreach programs to empower school-going children to safely use the Internet as well as providing “training on cybersecurity and cybercrimes to law enforcement authorities, judges, and lawyers”.⁵³³

Despite some significant progress in developing a domestic legal framework on data protection and cybersecurity, Malawi has not adopted the African Union (AU) Convention on Cyber Security and Personal Data Protection (also known as Malabo Convention), a legal framework for addressing cybercrime and data protection on the continent.

FREEDOM OF EXPRESSION

528 Draft Cybercrimes Bill, 2023
529 Part II of the Draft Cybercrimes Bill, 2023
530 Interview with Bram Kudzulani, President of the ICT Association of Malawi
531 Interview with Zadziko Mankhambo, Director of Broadcasting at Malawi Communications Regulatory Authority (15 January 2024)
532 As above
533 As above

According to Freedom House’s “Freedom on the Net 2023,” Malawi witnessed an improvement in individuals’ freedom for online activities in 2023 as its score jumped from 56 to 100.⁵³⁴ Despite the detention of two individuals for their online activity during the year, neither case resulted in a prosecution or conviction.⁵³⁵

Additionally, an attempt by MACRA, the country’s telecommunications regulator, to purchase a new software system to replace the Consolidated ICT Regulatory Management System (CIRMS) remained blocked by Malawi’s Anti-Corruption Bureau (ACB) due to suspected procurement irregularities.⁵³⁶ The ACB restriction order reads, “Whereas the Anti-Corruption Bureau has instituted an investigation in respect of a suspected offence under the Corrupt Practices Act, take notice that you shall not without my written consent, proceed dealing with procurement processes towards the award of the contract about the procurement of Revenue Assurance Module by MACRA”.⁵³⁷

MACRA clarified that it was not upgrading CIRMS but replacing its revenue assurance module with a new Revenue Assurance System (RAS) system. MACRA justified this decision by stating its role in ensuring optimal revenue returns for Communication Service Providers (CSPs) licensed to use regulated resources. However, this isn’t the first time MACRA has been suspected of surveillance attempts. In 2018, the CIRMS system, locally known as the “spy machine,” raised concerns about monitoring mobile phone companies and potential data access without judicial oversight,⁵³⁸ infringing on the right to privacy protected under the constitution.⁵³⁹

Despite the improved record, internet users in Malawi continued to face penalties for online speech, especially when their expression targeted powerful individuals or institutions. In a specific case, journalist Dorica Mtenje of the online publication Maravi Post was arrested and detained for 12 hours in February 2023 over a story she did not write or publish.⁵⁴⁰ Her mobile phone was confiscated, and she was charged with defamation under section 200 of the Penal Code, and “offensive communication” under section 87 of the Electronic Transactions and Cyber Security Act.⁵⁴¹

Similarly, in January 2023, Gracian Lungu, a former civil servant, was arrested for criticising the National Intelligence Bureau in a Facebook post following a complaint from the Bureau’s Director, Dokiso Ngwira.⁵⁴²

This pattern of criminalisation of online speech and climate of intimidation may prompt a degree of self-censorship, especially among media practitioners and social media users. Moreover, section 36 of the Malawi Constitution guarantees freedom of the press. In addition, principle 20(1) of the ACHPR Declaration calls on states to guarantee the safety of journalists and media practitioners,

534 Scores are based on a scale of 0 (least free) to 100 (most free). See the research methodology
535 Freedom House ‘Freedom of the Net 2023’ <https://freedomhouse.org/country/malawi/freedom-net/2023> 2023 (accessed 20 January 2024)
536 J Chauluka ‘Anti-Corruption Bureau Holds off MACRA ICT Deal’ The Times Group, 2 August 2022 <https://times.mw/anti-corruption-bureau-holds-off-macra-ict-deal/>
537 African News Agency ‘Anti-Corruption Bureau holds off Macra ICT deal | African News Agency’ 3 August 2022 <https://www.africannewsagency.com/times-group-malawi/anti-corruption-bureau-holds-off-macra-ict-deal-a74982de-2e89-5e47-8fae-bcb-202cafa1e/> (accessed 15 January 2024)
538 G Gondwe ‘MACRA courts media on spy machine’ 8 November 2011 <https://www.bizcommunity.com/Article/129/78/66853.html> (accessed 15 January 2024)
539 The Constitution of the Republic of Malawi
540 CPJ ‘Malawi Police Detain, Charge Journalist Dorica Mtenje Over Story She Did not Write’ 22 February 2023 <https://cpj.org/2023/02/malawi-police-detain-charge-journalist-dorica-m> (accessed 20 January 2024)
541 Committee to Protect Journalists ‘Malawi police detain, charge journalist Dorica Mtenje over story she did not write’ 22 February 2023 <https://cpj.org/2023/02/malawi-police-detain-charge-journalist-dorica-mtenje-over-story-she-did-not-write/> (accessed 20 January 2024)
542 M Mkandawire ‘Former Agriculture Spokesperson Arrested Over Facebook Post’ Malawi24, 30 January 2023, <https://malawi24.com/2023/01/30/former-agriculture-spokesperson-arrested> (accessed on 20 January 2024)

including freedom from intimidation.⁵⁴³ Further, principle 22(2) of the ACHPR Declaration provides that states must repeal laws that criminalise sedition, insult and publication of false news.

543 African Commission on Human and People's Rights (ACHPR) Declaration on Freedom of Expression and Access to Information <https://www.achpr.org/legalinstruments/detail?id=69> (accessed 15 January 2024).

▶ Conclusion & Recommendations

Conclusion

This report has spotlighted notable strides made by the Government of Malawi in advancing digital rights. Additionally, Malawi witnessed the enactment of the long-awaited Data Protection Act of 2023 and the rolling out of various USF-funded programs by MACRA to bridge the digital divide. The initiation of five new legislative bills by MACRA, namely the Cybersecurity Bill, Cybercrimes and E-Evidence Bill, Start-Ups Bill, Review Electronic Transactions and E-Commerce Bill, and the review of the Communications Act demonstrates the government's interest in digital development. The promulgation of a National Child Online Protection Strategy was also a significant step towards safeguarding children from cyber threats.

The report, however, has highlighted notable challenges facing Malawi's digital space, including the continued criminalisation of online speech, particularly directed at government critics and journalists. Other flaws arise from the newly enacted Data Protection Act of 2023, which contains problematic broad provisions that would undermine human rights. Low internet penetration, limited transparency in managing the Universal Service Fund, and limited public consultations in developing digital legislative bills were also marked as gaps. Given the gaps, opportunities, and recent developments in the digital space in Malawi, recommendations are made to key stakeholders below.

Recommendations

Government

- » The government should stop targeting journalists through arbitrary arrests and seizure of digital tools as they conduct their mandate.
 - » The government should review the Data Protection Act of 2023, including amending sections 4, 8 (b)(vi)(vii) and 26 and Government should review the Data Protection Act of 2023 including amendment of sections 4, 8 (b)(vi)(vii), 26, 42.
 - » The government should expedite ratification of the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention).
 - » The government should repeal repressive provisions, particularly sections 87 and 91, of the Electronic Transactions and Cybersecurity Act of 2016 which are too broad and vague.
 - » The Malawi Parliament should allocate funds to the Universal Service Fund (USF) in compliance with section 160(b) of the Communications Act.
 - » MACRA should consult with stakeholders regarding the five new bills, notably the Cybersecurity Bill, Cybercrimes and E-Evidence Bill, Start-Ups Bill, Review Electronic Transactions and E-Commerce Bill, and the review of the Communications Act.
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Civil Society

- » CSOs should raise public and stakeholder awareness of the Data Protection Act 2023.
 - » CSOs should advocate for Malawi's ratification of the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention)
 - » CSOs should advocate for the repeal of repressive provisions, particularly sections 87 and 91 of the Electronic Transactions and Cybersecurity Act of 2016, which are too broad and vague.
 - » CSO should advocate for repealing defamation and sedition laws in the Penal Code through engagement with authorities, public awareness, and litigation.
 - » CSOs should step up advocacy efforts on decriminalising freedom of expression, including litigation and advocating for repealing repressive laws.
 - » CSOs should monitor the USF operations to ensure transparency, accountability, and effectiveness.
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Mauritania

EXECUTIVE SUMMARY

This report assesses the situation of digital rights in Mauritania during the year 2023. To this end, the report addressed internet access and disruptions, online freedom of expression, privacy and surveillance, data protection and cyber security, and the Universal Service Fund. This report concludes that although the legal frameworks address digital rights, to a limited extent, they can potentially violate digital rights and close the online civic space. This report used an analytical methodology and qualitative research methods for collecting data. The report depends on an intensive desk review, including academic work, research, online articles, and reports. It highly recommends the adoption of specific laws regulating the use and deployment of AI systems. It emphasises a human rights-based approach, protecting personal data and enacting access to information law.

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Introduction

Mauritania is a North African country with an estimated population of 4,862,989 in 2023⁵⁴⁴. In 2023, 61.2% of the population lived in urban areas, while 38.8% lived in rural areas⁵⁴⁵. Generally, and in terms of freedoms, Mauritania is considered a partly free country according to the Freedom House Index⁵⁴⁶. However, regarding digital rights, Mauritania has a history of blocking the Internet during social movements such as presidential elections and exams. Despite the Mauritanian Constitution of 1991 and its following amendments guaranteeing fundamental human rights such as political freedoms and freedom of expression, most laws adopted to regulate digital rights undermine online freedoms, including freedom of expression and opinion. Although Mauritania is considered partly free according to Freedom House indicators and ranked 36 out of 100 in 2023 in terms of general freedoms - political rights and civil liberties-⁽⁵⁴⁷⁾, this does not directly mean it is free in terms of internet freedom. Mauritania is one of the African countries that has resorted to internet shutdowns in the past, with repressive laws that have been adopted undermining online freedom of expression.

It is extremely significant at the beginning of this report to mention that Mauritania is a state party to the most international and regional human rights treaties which constitute the basis of digital rights, such as the International Covenant on Civil and Political Rights (ICCPR) ratified in 2004, the International Covenant on Economic, Social and Cultural Rights, ratified in 2004, the Convention on the Rights of Persons with Disabilities (CRPD), ratified in 2010 and the Convention on the Rights of the Child. Other treaties include the International Convention on the Elimination of All Forms of Racial Discrimination, the African Charter on Human and Peoples' Rights, the African Charter on Democracy, Elections and Governance and the African Union Convention on Cybersecurity and Personal Data Protection (Malabo Convention 2014), adopted in 2023. The adoption of the Malabo convention brought the treaty into force on 8 June 2023 after Mauritania ratified it on 9 May 2023.⁵⁴⁸

The ratification of the International frameworks is meant to promote digital rights and inclusion in Mauritania. Article 80 of the Constitution gives the ratified treaties supremacy over the ordinary laws. This means the laws should not contradict human rights conventions. In case of contradiction, the legal provisions should immediately be suspended in favour of the provisions in the conventions. Under Article 80 of the Constitution, all international human rights treaties are considered integral parts of the Mauritania legislative structure. The government should deal with them as part of the country's national laws.

544 Worldometers, Mauritania , <https://www.worldometers.info/demographics/mauritania-demographics/#pop>

545 Worldometers, Mauritania , <https://www.worldometers.info/demographics/mauritania-demographics/#pop>

546 . Freedom house, freedom in the world 2023, Mauritania. <https://freedomhouse.org/country/mauritania/freedom-world/2023>

547 . Freedom House, Freedom In The World 2023, Mauritania. <https://freedomhouse.org/country/mauritania/freedom-world/2023>

548 African Union <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>

► Country Analysis

Internet access and disruptions

According to the International Telecommunication Union (ITU), by July 2023, 113 mobile-cellular subscriptions per 100 inhabitants were recorded.⁽⁵⁴⁹⁾ Regarding the population with a fixed broadband telephone subscription, only 1 per 100 inhabitants are subscribers⁽⁵⁵⁰⁾. Moreover, 62% of the population has active mobile broadband subscriptions⁽⁵⁵¹⁾. According to The Speedtest Global Index, the fixed broadband speed in Mauritania by November 2023 was 21.44 Mbps, ranking 136 globally⁽⁵⁵²⁾. Regarding connectivity, in 2021, only 59% of the population used the Internet⁽⁵⁵³⁾. In terms of mobile network coverage, in 2022, 97% of the population are covered. However, only 44% of the population is covered by 3G mobile networks.⁽⁵⁵⁴⁾ In January 2023, 17.1% of the population were social media users.⁵⁵⁵ These figures show that there is still more to be done to ensure more people access the internet and engage on social media platforms.

From March 6-12, 2023, Mauritanian authorities shutdown and blocked mobile internet access.⁵⁵⁶ According to Access Now, “Mauritanian authorities cut off mobile internet access on March 6, 2023, immediately after four prisoners, described as “terrorists” by the Interior Ministry, escaped from a jail in Nouakchott”⁵⁵⁷. The internet shutdown targeted mobile internet while fixed internet (WiFi) remained functional⁽⁵⁵⁸⁾. This deliberate restriction on internet access followed two days of widespread protests ignited by the killing of a young man at the Sebkhya police station”⁽⁵⁵⁹⁾. This was not the first time Mauritanian authorities resorted to internet shutdowns, as the government blocked internet access before social movements such as after the presidential election in 2019.⁽⁵⁶⁰⁾ The government has shut down the internet during exam periods between 2017 to 2020.⁽⁵⁶¹⁾

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- 549 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Mauritania . P1. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_MRT.pdf
- 550 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Mauritania . P1. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_MRT.pdf
- 551 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Mauritania . P1. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_MRT.pdf
- 552 Speedtest Global Index. <https://www.speedtest.net/global-index/egypt#mobile>
- 553 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Mauritania . P1. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_MRT.pdf
- 554 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Mauritania . P2. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_MRT.pdf
- 555 DataReportal , Digital 2023: Mauritania, <https://datareportal.com/reports/digital-2023-mauritania>
- 556 Netblocks <https://netblocks.org/reports/mobile-internet-disrupted-in-mauritania-following-prison-break-3An41by2> .
- 557 Access Now, KeepItOn in Mauritania: authorities must restore internet connectivity, <https://www.accessnow.org/press-release/keepiton-in-mauritania/>
- 558 Access Now, Internet shutdown in Mauritania: stop the abuse, turn it on, Published: 31 MAY 2023. <https://www.accessnow.org/press-release/internet-shutdown-in-mauritania-stop-the-abuse-turn-it-on/>
- 559 Access Now, Internet shutdown in Mauritania: stop the abuse, turn it on, Published: 31 MAY 2023. <https://www.accessnow.org/press-release/internet-shutdown-in-mauritania-stop-the-abuse-turn-it-on/>
- 560 Access Now, Internet shutdown in Mauritania: stop the abuse, turn it on, Published: 31 MAY 2023. <https://www.accessnow.org/press-release/internet-shutdown-in-mauritania-stop-the-abuse-turn-it-on/>
- 561 Waleed Ahmed, Abed Kataya, Mauritania: The drawbacks of disrupting mobile internet after prisoners escape, SMEX, 10 Mar 2023. <https://smex.org/mauritania-the-drawbacks-of-disrupting-mobile-internet-after-prisoners-escape/>

Online Freedom of Expression

Principle 1 of the African Commission on Human and Peoples' Rights (ACHPR) Declaration of Principles on Freedom of Expression 2019⁵⁶² stressed the importance of freedom of expression and access to information, stipulating that "The respect, protection and fulfillment of these rights is crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights"⁵⁶³

Article 10 of the 2012 Constitution of Mauritania stipulates that "The state guarantees to all citizens public and individual freedoms, in particular, freedom of movement and residence in all parts of the territory of the Republic, freedom of opinion and thought and freedom of expression." Online freedom of expression is guaranteed under the law No.006-2016 Directive law on information society⁵⁶⁴. Article 7 of the latter law explicitly states that "the principle of freedom guarantees the individual the right and freedom to express, communicate, and participate in the creation and take advantage of digital information resources.". The same article stipulates that "...every individual has the right and freedom to create, use, receive, exchange and obtain information across borders." However, this legally binding article did not prevent Mauritanian authorities from using internet shutdowns on many occasions in the country.

Despite freedom of expression and opinion being entrenched in the Constitution and different legislation, the Mauritanian parliament enacted provisions that hinder online freedom of expression. Article 21 of law No. 007-2016 on Cybercrimes issued in 2016 criminalises posting photos, phrases or voice or text messages containing prejudice to Islamic values. It is vague what Islamic value refers to, or what is considered to be against Islamic values. Article (27) of the law stipulated that "any doubt in this law should be interpreted to the interest of freedom of expression". This article establishes the principle of benefit from doubt, as the priority will be given to the freedom of expression unless the freedom of expression prejudices the holy Islamic principles. This means any thoughts contradicting Islam will not be considered freedom of thought and expression. Furthermore, article 23 of the same law has criminalised using the Internet to post messages, photos or thoughts that are incitement to hatred or crimes against humanity. While hate speech is not condoned, without clarity on what is considered as incitement to hatred, this might have adverse impacts on freedom of opinion and thoughts. Article 13 of the same law clearly states that the practice of freedom of expression must respect the applicable laws and not harm the freedoms of others or public order or good manners. The law is vague and includes no provisions or list of actions that harm public order and good manners. This is, in essence, a violation of freedom of expression.

In November 2021, the Mauritanian Parliament adopted a law No.021-2021⁵⁶⁵ concerning protecting national symbols and criminalising attacks on the prestige of the State and the honour of the citizen. Article 1 of this law stipulated, "This law aims, without prejudice to the provisions stipulated in other laws, to criminalise and punish acts committed intentionally using digital media and communication technologies, and social media platforms, related to harming the prestige of the state and its symbols, national security, civil peace, social cohesion, personal life, and the honour of the citizen". This provision contains several undefined, vague, and elastic terms such as national security and social cohesion. What constitutes exact acts considered as harm to the

562 African Commission on Human and Peoples' Rights, The Declaration of Principles of Freedom of Expression and Access to Information in Africa 2019 <https://achpr.au.int/en/node/902#:~:text=The%20Declaration%20establishes%20or%20affirms,to%20express%20and%20disseminate%20information.> .

563 African Commission on Human and Peoples' Rights, The Declaration of Principles of Freedom of Expression and Access to Information in Africa 2019 <https://achpr.au.int/en/node/902#:~:text=The%20Declaration%20establishes%20or%20affirms,to%20express%20and%20disseminate%20information.> .

564 Law No.006-2016 directive law on information society. <https://mtnima.gov.mr/sites/default/files/loi201606orientationso-cietecivil.pdf>

565 Islamic republic of Mauritania Ministry of general secretariat of government ,[https://www.msgg.gov.mr/sites/default/files/2022-04/J.O.1499F DU 15.12.2021 V A.pdf](https://www.msgg.gov.mr/sites/default/files/2022-04/J.O.1499F%20DU.15.12.2021%20V.A.pdf)

prestige of the state and to states' symbols is not defined. This provision undoubtedly undermines digital rights in general and freedom of expression and opinion.

In December 2023, this law was used to sentence blogger Mohamed Vall Abdallah to one year of suspended imprisonment, coupled with a fine of one million Ouguiyas for the charge of offensive conduct and insulting the President of the Republic.⁵⁶⁶ According to SMEX, this provision is similar to provisions such as article 21 of Law No. 2016-007 on Cybercrime and the controversial article 306 of the Penal Code that has a mandatory death penalty for “blasphemous speech” and “sacrilege,” with no possibility of appeal. Such laws have a chilling effect on freedom of expression⁵⁶⁷. These two provisions already restrict the activities of journalists and human rights defenders and are more broadly incompatible with Article 19 of the ICCPR.⁽⁵⁶⁸⁾ In addition, this provision contradicts the principle of legal certainty, which demands a person knows in advance without any doubt what action constitutes an offense at law.

Privacy and Surveillance

Article 13⁵⁶⁹ of the Constitution explicitly mentions that the State must safeguard the right to privacy and the sanctity of person, property, and correspondence. In addition, article 24 of Cybercrime Law No.007-2016 criminalised the abuse of the right to privacy. Article 24 stipulates that it is considered intentional abuse of private life, recording voices, text, and images for persons by using any means and without their knowledge. A person who records any private information shall be punished by imprisonment for one month to one year and a fine from 100.000 ouguiya (USD 2500) to 1 million ouguiya (USD 25000). The same article also added that a person who intentionally published the recording should be imprisoned for two months to one year and a fine from 200.000 ouguiya (USD 5000) to 2 million ouguiya(USD 50000). Article 13 of the Directive Law of the Information Society, Law No.006-2016, clearly states that personal data must be processed without prejudice to the private lives of citizens. The law safeguards data and ensures that individual privacy is not at risk.

Article 83 of the electronic communication law No. 25-2013 states that “ operators and their employees are required to respect the confidentiality of correspondence via electronic communications and the conditions for protecting the private lives and personal data of users, provided that they respect obligations related to public security, national defense, and the powers of the judicial authority”. Article 84 of the same law prohibits listening, intercepting, disclosing, and recording correspondence transmitted via electronic communications without prior permission from the investigating judge or public prosecutor in accordance with the law within the framework of a judicial or administrative investigation aimed at national defense or public security. It is clear from the latter provision that it includes some safeguards that may protect the right to privacy and combat the arbitrary surveillance practices in Mauritania. However, Article 85 of the same law limits privacy in pursuance of a criminal investigation and for the requirements of public order, national defense, and public security.

Furthermore, in January 2020, blogger Mohamed Ali Abdel Aziz was arrested for publishing a social media video criticising President Ould Ghazouani; authorities claimed the video included insulting and racist language. Later that month, journalist Cheikh Ould Mami and video producer Abdou Ould Tajeddine were arrested concerning the video's publication. All three were released

566 The Media Foundation for West Africa (MFWA), Mauritania: court sentences blogger over comments on social media <https://www.mfwa.org/country-highlights/mauritania-court-sentences-blogger-over-comments-on-social-media/>

567 SMEX, Mauritania: New law on protection of national symbols threatens free speech, 03 Dec 2021

568 . SMEX, Mauritania: New law on protection of national symbols threatens free speech, 03 Dec 2021.

569 This article was added to the constitution in 2012 by the constitutional law No.015-2012. <https://www.wipo.int/wipolex/ar/text/587662>

later that month ⁽⁵⁷⁰⁾. This statement by Freedom House indicates existing surveillance practices in Mauritania. Generally, the right to privacy is protected under national legislation in Mauritania. However, the above-mentioned practices illustrate that internet surveillance practices are present in Mauritania.

Data Protection and Cyber Security

In 2016 and 2017, the Mauritanian Parliament enacted Cybercrime Law No.007-2016 and Law No. 020-2017 on the protection of personal data, respectively. In terms of cybercrime law, as discussed early in this report. Regarding personal data protection, article 64 of the Data Protection Law No. 020-2017 states that “An authority shall be established to protect personal data and charged with ensuring that personal data is processed in accordance with the provisions of the law. It acquires legal personality and becomes independent”. In 2023, the Parliament passed law No.02-2023⁵⁷¹, according to which Mauritania ratified The African Union Convention on Cybersecurity and Personal Data Protection (Malabo Convention). Mauritania’s ratification of the convention on May 9, 2023 came as the 15th ratification, accordingly bringing the Malabo convention into force per article 36 of the Convention.⁵⁷²

Universal Service Fund

According to article 1/26 of Electronic Communications Law No. 25-2013, the Universal Service Fund comprises of “financial resources derived from, among other sources, contributions from operators and allocated to finance for universal access to services.” Effectively, the main source of the USF is the financial contribution of operators. Article 70 of the same law states that universal access is aimed at ensuring access to electronic communications services of good quality and acceptable prices, including the establishment of communications networks throughout Mauritania”. The law prioritises serving groups such as people with limited income, persons with disabilities and people in remote and isolated areas. Article 71 of the law stipulated that “to ensure universal access, upon the request by the Minister, the regulatory authority can take special measures to ensure that the telecommunications needs of some social groups and populations are met, including people with limited income, residents of isolated areas, and people with disabilities.

This measure is not mandatory and not under the responsibility of the regulator as long as this measure is only taken upon request from the Minister not as one of the main tasks of the regulatory authority. Furthermore, Article 4 of Decree No. 132 of 2020, which sets directions and priorities for universal access to electronic communications services, generally refers to the main usage of the USF. Article 4 of the decree states that comprehensive service programs must be implemented in areas that do not have electronic communications services or were not planned to be covered to ensure access to comprehensive service. Article 5 of the same decree added that the universal service is to provide all residents, regardless of their geographical location, at affordable prices and without interruption, with a set of electronic communications services, including the provision of fixed or mobile services, data transmission, access to high-flow Internet, installations of public telephone stations and communications centers.

570 . Freedom House, Freedom In The World 2021, Mauritania. <https://freedomhouse.org/country/mauritania/freedom-world/2021>.

571 Law No.02-2023 in concern of ratification of Malabo convention <https://msgg.gov.mr/sites/default/files/2023-07/J.O 1535 F du 15.06.2023.pdf>

572 ALT Advisory <https://dataprotection.africa/malabo-convention-set-to-enter-force/>

▶ Conclusion & Recommendations

Conclusion

Conclusion and Recommendations

Although Mauritania has a range of legislation promoting digital rights, the same laws bear the seeds that may contribute to breaching them. The different laws highlighted in this report contain vague terms which open the door to breach of digital rights. The discussion throughout the report reveals an existing gap concerning available and reliable information surrounding digital rights in Mauritania. The following recommendations are pertinent.

Recommendations

Government

- » To make information related to the USF available via governmental websites.
- » Issuing annual reports on the activities of the USF and funded projects to illustrate to what extent the USF contributes to filling the digital gap and reducing the digital divide.
- » To refrain from shutting down the Internet.
- » To desist from the practice of attacking freedom of expression using vague laws.
- » To amend the mentioned problematic laws and give a clear definition to avoid vague terms violating fundamental rights.

Academia

- » To conduct evidence-based research on digital rights in Mauritania and avail information in practice using qualitative methods to collect information, particularly interviews with human rights defenders, activities, specialised lawyers, and journalists.

Civil Society

- » To monitor, document and report on digital rights abuse.
 - » To engage more in regional events linked to digital rights, such as the Digital Rights and Inclusion Forum (DRIF) and Forum on Internet Freedom in Africa (FIFAfrica), learning regional trends and strategies to improve capacity to address cited challenges.
 - » Regional and international NGOs should invest in building the capacity of human rights defenders and activists in Mauritania to promote and defend digital rights.
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Mozambique

EXECUTIVE SUMMARY

This report looks at the digital space, its evolution, and its challenges in Mozambique. In particular, the report analysed topics related to freedom of expression, cyber security, and surveillance, as well as data protection, given that Mozambique does not have specific legislation protecting users on the Internet. Using desk research and a qualitative approach, it considered evidence from reports and news published throughout 2023 on different issues of relevance to the use of technology in Mozambique. In addition to that, some interviews were also carried out in December 2023 with users from different projects implemented by the Universal Service Fund (USF/FSAU) in Mozambique, although there are limitations given interview restrictions. Considering USF as the main topic of this report, as part of its recommendations this report states that the government should equip the relevant Ministry in the area of technology to be rigorous in monitoring and supervising the use of the Fund through the National Communications Institute of Mozambique (INCM). Likewise, the Regulatory Authority should promote transparency in the

use of the Fund by regularly publishing reports on funds and activities carried out, in accordance with the law. It also recommends promoting more connectivity by expanding the network and improving quality service in Mozambique. There is also a need to guarantee the exercise of fundamental freedoms - freedom of expression and assembly - via the Internet.

Introduction

Mozambique, a Portuguese-speaking country, is located in Southern Africa and has more than 30 million inhabitants.⁵⁷³ In general, the country faces challenges on access to information and human rights, both offline and online. The public discourse is shaped by traditional media outlets, which include a wide range of newspapers, radio stations, and television channels,⁵⁷⁴ but worries about political power and media independence continue. Around the world, social media platforms have developed into effective means of expression, but they also bring up concerns about hate speech, fake information, and online censorship.

In Mozambique, the telecommunications market is organised around three vertically integrated operators: TMcel, a merger between Mozambique's former telecommunication state-owned enterprise (TDM) and cellular network provider (Mcel); Vodacom, a private company primarily owned by South Africa's Vodacom Group; and Movitel, a joint venture between the Viettel Group of Vietnam and the country's ruling party, Frelimo. With a nearly 50% market share, Vodacom is the leading mobile phone provider in Mozambique; nevertheless, TMcel is the only company that still provides integrated fixed line service.⁵⁷⁵

Governments worldwide are looking for strategies to promote connectivity by expanding the internet network through local projects. For example, through the Universal Service Fund (USF), Mozambique has been carrying out some projects to expand connectivity.⁵⁷⁶ However, as this report shows, the lack of information and specific data on the use of this Fund is a challenge. In addition, privacy is becoming a major concern as Mozambique incorporates digital technologies into many facets of communication, trade, and governance. Significant issues concerning the protection of people's right to privacy are brought up by the gathering and use of personal data by media organisations.⁵⁷⁷

573 Britannica "Mozambique" <https://www.britannica.com/place/Mozambique>, accessed on 28 December 2023.

574 Freedom House "Freedom in Mozambique 2022" <https://freedomhouse.org/country/mozambique/freedom-world/2022>, accessed on 28 December 2023.

575 Logistics Cluses "Telecommunications Overview" <https://dlca.logcluster.org/35-mozambique-telecommunications>, accessed on 28 December 2023.

576 Universal Service Fund (FSAU Mozambique) "Instalar uma praça digital em cada município e sede distrital" [Install a digital square in each municipality and district headquarters] <http://www.fsau.gov.mz/index.php/imprensa/noticias>, accessed on 28 December 2023.

577 MISA Mozambique "MISA Moçambique e Assembleia da República comprometem-se em promover a cibersegurança e os direitos digitais" [MISA Mozambique and the Assembly of the Republic commit to promoting cybersecurity and digital rights], accessed on 28 December 2023.

► Country Analysis

Internet access and disruptions

Sources⁵⁷⁸ indicated that in January 2023, there were 6.92 million internet users in Mozambique. At the beginning of 2023, 21% of Mozambique’s population was online. According to Keipos,⁵⁷⁹ Mozambique’s internet user base grew by 848,000 (or 14%) between 2022 and 2023. According to Ookla’s data, Mozambique’s median mobile internet connection speed climbed by 5.01 Mbps (+35.5%) in the 12 months leading up to the beginning of 2023. In the meantime, Mozambique’s fixed internet connection speeds rose by 0.03 Mbps (+0.5%) over the same period.

The degree of connectedness in urban and rural areas differs significantly. Although Maputo is the largest and most well-connected city in Mozambique, the country’s connectivity is severely limited by issues with pricing, market maturity, and infrastructure. Furthermore, it is costly to send data out of Maputo. As a result, data prices in the north of the country have increased relative to those in the south.

Two underwater cables presently link Mozambique namely Meta-led and 2Africa. Facebook has stated that it intends to install the 2Africa cable system in the country’s north sometime in 2023 or early 2024.⁵⁸⁰ Similarly, in early 2022, Mozambique granted Starlink,⁵⁸¹ the satellite internet service provider owned by SpaceX, its first licence to operate in Africa. In June 2023 the “Internet in Schools” initiative was initiated by the National Institute of Communications of Mozambique (Instituto Nacional de Comunicações de Moçambique, INCM) as part of a public-private cooperation with the SpaceX satellite broadband service Starlink.⁵⁸² The project seeks to link around 300 educational institutions nationwide.

Some sources⁵⁸³ indicate that major obstacles to internet connectivity include the expensive cost of equipment, particularly smartphones, a low literacy rate of 48%, and lack of acquaintance with the Internet. Moreover, rural households are still plagued by the huge connectivity gap that exists between rural and urban areas, which is fueled by limited access to financial services and energy. On the other hand, new energy and mining initiatives continue to propel investments in ICT infrastructure in rural areas.

There are no regular cases of internet disruptions in Mozambique. However, the primary internet providers in the country, most notably Movitel, which is the provider most

578 Keipos – DataReportal “2023 Mozambique Digital” <https://datareportal.com/reports/digital-2023-mozambique>, accessed on 28 December 2023.

579 Op Cit., Keipos.

580 International Trade Administration “Information and Communications Technology (ICT)” <https://www.trade.gov/country-commercial-guides/mozambique-information-and-communications-technology-ict>, accessed on 28 December 2023.

581 Comms Update “Starlink arrives in Mozambique” <https://www.commsupdate.com/articles/2023/06/07/starlink-arrives-in-mozambique/>, accessed on 28 December 2023.

582 Comms Update “Mozambique kicks off schools project in cooperation with Starlink” <https://www.commsupdate.com/articles/2023/10/31/mozambique-kicks-off-schools-project-in-cooperation-with-starlink/>, accessed on 29 December 2023.

583 Op Cit., International Trade Administration.

frequently utilised in rural and northern areas, went off⁵⁸⁴ on October 11, 2023, right before the country's municipal elections were about to end.⁵⁸⁵ Accessing social media and disseminating information regarding the polls closing and the vote total was rendered difficult by the internet disruption. Incidentally, at exactly 9 pm that same evening, Movitel resumed the service.⁵⁸⁶

Online Freedom of Expression

Article 48 of the Constitution states that “All citizens have the right to freedom of expression, freedom of the press, as well as the right to information. In 2014, the Assembly enacted a law on access to information. In the digital arena, there are no specific laws guaranteeing the exercise of this right, but in 2023, several cases were reported of attempted persecution of citizens who used digital tools as a means of communication.

For example, in September 2023, the Judicial Court of Inhambane Province sentenced⁵⁸⁷ an agent of the Rapid Intervention Unit (UIR) to 13 years in prison for inciting a coup d'état and disobedience via WhatsApp groups, even though this was not proven given the clear absence of a cybersecurity law regulating this matter in Mozambique. Also, in 2023, the Mozambican police command issued a note banning its members from using social media.⁵⁸⁸

Privacy and Surveillance

Mozambique has a vague framework for privacy and monitoring citizens in the digital space, even if on November 22, 2022, the National Institute of Information and Communication Technologies (INTIC) released a draft Cybersecurity Bill. The bill intends to secure the security of persons and institutions and protect digital networks, information systems, and vital infrastructures in cyberspace. Furthermore, if implemented, the law would create the National Cyber Security Council, which would be chaired by the Minister of Information and Communication Technology and would be responsible for ensuring the alignment of cybersecurity policies, strategies, and other guiding documents. The measure is presently up for public comment, but no filing date has been set.

584 All Africa “Mozambique: Internet Shutdown as Polls Close” <https://allafrica.com/stories/202310120129.html>, accessed on 28 December 2023.

585 Tsandzana, D. Global Voices Advox “Mozambique: Digital landscape and internet disruption in the context of elections” <https://advox.globalvoices.org/2023/12/28/mozambique-digital-landscape-and-internet-disruption-in-the-context-of-elections/>, accessed on 29 December 2023.

586 Council on Foreign Relations “A Foreboding Set of Local Elections in Mozambique” <https://www.cfr.org/blog/foreboding-set-local-elections-mozambique>, accessed on 28 December 2023.

587 Folha de Maputo “Agente da PRM condenado a 13 anos de prisão por incitação a golpe de Estado” [PRM agent sentenced to 13 years in prison for inciting coup d'état] <https://www.folhademaputo.co.mz/pt/noticias/nacional/agente-da-prm-condenado-a-13-anos-de-prisao-por-incitacao-a-golpe-de-estado/>, accessed on 28 December 2023.

588 A Carta “PRM proíbe membros de se expressarem nas redes sociais” [PRM bans members from expressing themselves on social media] <https://www.cartamz.com/index.php/politica/item/14210-prm-proibe-membros-de-se-expressarem-nas-redes-sociais>, accessed on 28 December 2023.

Gendered Disinformation

Little is known about gendered disinformation in Mozambique, since the country does not have any legislation specifically focused on fake news, even if both the Penal Code and the 1991 Press Law – which may be replaced by the Proposed Social Communication Law – include restrictions on fake news. Recently Mozambique passed a law to counter-terrorism.⁵⁸⁹ The law establishes the procedures to designate individuals, groups and entities associated with terrorist crimes and to freeze their funds and assets. It seeks to embargo the movements of individuals associated with terrorism or suspected of financing terrorism.⁵⁹⁰

The Law for Preventing and Combating Terrorism Financing does not focus on activities violating or interfering with content, such as online hate speech, but it focuses on misinformation and disinformation with regard to terrorism. Article 11(d) of that Law defines a terrorist to be anyone who “communicates information of which he has knowledge that is false, thereby endangering the safety of an aircraft in flight or on the ground”. The same article 11(w) also defines an act of terrorism as “disseminating information, which is known to be false, thereby endangering the safe navigation of a ship.”

However, of controversy is article 20, which provides that “a Mozambican, foreigner or stateless person living or being in the Republic of Mozambique makes or reproduces publicly statements relating to terrorist acts which she/he knows to be false or exaggerated, with the intent to create public panic, disturbance, insecurity, and disorder shall be punished with imprisonment for a term of two to eight years”. The Media Institute of Southern Africa (MISA-Mozambique) has criticized this law, arguing that some provisions are not in line with the Constitution of the Republic.⁵⁹¹

Data Protection and Cyber Security

There is one data protection law in Mozambique. Although there is no national data protection law, there are several sector-specific laws as well as the Republic of 2018 Mozambique’s Constitution (referred to as “the Constitution”),⁵⁹² which contains pertinent sections regarding computerised data and privacy. For example, e-commerce requirements are provided by the Electronic Transactions Law (Law no. 03/2017, of 9 January).⁵⁹³ Furthermore, regulations pertaining to the banking and telecommunications industries specify responsibilities for issues like data security. Additionally, Mozambique signed the African Union Convention on Cyber Security and Personal Data Protection, popularly known as “the Malabo Convention on June 26, 2018.”

The Mozambican government and the business sector are among the end-users that the country’s digital transformation has exposed to new risks. The online storing of peoples’ personal data

589 Law for Preventing and Combating Terrorism Financing, Law 13/2022 of 8 July 2022.

590 Tsandzana, D., AfricaLaw “Freedom of expression and combating terrorism in Mozambique: the challenge of enacting laws in a context of conflict” <https://africlaw.com/2023/02/06/freedom-of-expression-and-combating-terrorism-in-mozambique-the-challenge-of-enacting-laws-in-a-context-of-conflict/>, accessed on 29 December 2023.

591 MISA Mozambique “Proposta de Lei “Anti-Terrorismo” restringe Liberdades de Expressão e de Imprensa em Moçambique” [Proposed Anti-Terrorism Law Restricts Freedoms of Expression and the Press in Mozambique] <https://www.misa.org.mz/index.php/destaques/noticias/141-proposta-de-lei-anti-terrorismo-restringe-liberdades-de-expressao-e-de-imprensa-em-mocambique>, accessed on 29 December 2023.

592 Constitution of the Republic of Mozambique <https://platform.dataguidance.com/legal-research/constitution-republic-mozambique>, accessed on 28 December 2023.

593 Electronic Transactions Law (Law no. 03/2017, of 9 January) https://platform.dataguidance.com/sites/default/files/electronic_transactions_law.pdf, accessed on 28 December 2023.

presents impending threats and concerns for public entities.⁵⁹⁴ Because of this, the Mozambican government has decided to make cybersecurity a top priority in the nation's digital transformation process. The National Cybersecurity Strategy created a multi-sectoral council whose mission is to coordinate a governance structure and plans to implement 25 projects by 2025.

Digital IDs

Prior research has demonstrated that,⁵⁹⁵ despite references to a national integrated digital identity system in existing legislation, several sectors have developed separate digital identification systems to address sectoral needs, and there is little to no coordination between them. For instance, different procedures are in place for social security, adult identity card issuance, passport issuance, and birth registration: the Electronic System of Civil Registration and Vital Statistics.

On 21 April 2023, news sources⁵⁹⁶ reported that the Regulatory Authority for Communications of Mozambique (INCM) plans to implement new regulations over the following six months pertaining to the registration of SIM cards for all 15 million users of telecommunication services in Mozambique. In order to improve service quality and security in telecommunications networks, the new regulations are designed to encourage the responsible use of related equipment and public telecommunications services.

Decree 13/2023 of April 11, which authorises the Regulation on the Registration of Telecommunications Services, lends support to the regulations. The new Regulation sets forth requirements for telecommunications service operators, their distributing agents, resellers, and other public and private entities, as well as individuals who use and own communication devices, to follow when it comes to subscriber registration.

Digital Inclusion of Persons with Disabilities

There is no specific development on digital inclusion of persons with disabilities, but the Forum of Mozambican Associations of People with Disabilities (FAMOD)⁵⁹⁷ – an umbrella organization for CSOs working to support, coordinate and promote the human rights and well-being of persons with disabilities in Mozambique – is working on a project funded by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) to reduce digital exclusion of Persons with Disabilities.⁵⁹⁸

Universal Service Fund

In Mozambique, the Universal Service Fund (USF/FSAU), in accordance with the revised Regulation approved by Decree 62/2017 of 9 November,⁵⁹⁹ is an autonomous body under

594 International Trade Administration "Information and Communications Technology (ICT)" <https://www.trade.gov/country-commercial-guides/mozambique-information-and-communications-technology-ict>, accessed on 28 December 2023.

595 Research ICT Africa "Digital Identity in Mozambique" https://researchictafrica.net/wp/wp-content/uploads/2021/11/Mozambique_3.11.21.pdf, accessed on 28 December 2023.

596 Club of Mozambique "Biometric registration of SIM cards and other changes on their way" <https://clubofmozambique.com/news/biometric-registration-of-sim-cards-and-other-changes-on-their-way-mozambique-236230/>, accessed on 28 December 2023.

597 FAMOD <https://www.famod.org/>, accessed on 28 December 2023.

598 CIPESA "Boosting Web Accessibility for Persons with Disabilities in Mozambique" <https://cipesa.org/2023/03/boosting-web-accessibility-for-persons-with-disabilities-in-mozambique/>, accessed on 29 December 2023.

599 Universal Service Fund (FSAU) Mozambique, Decree 62/2017 of 9 November, Available on <https://www.incm.gov.mz/index.php/mercado/documentos-telecomunicacoes/168-regulamento-do-fundo-do-servico-de-acesso-universal/file>, accessed on 29

the management of the National Communications Institute of Mozambique (INCM), the Regulatory Authority. It was created by Decree 69/2006 of 26 December. All entities licensed or registered to provide public telecommunications services contribute 1% of their gross revenue from the previous year to the USF/FSAU to implement their projects.

In November 2017, the Minister of Transport and Communications inaugurated a free internet signal in the city of Maputo, installed by the communications regulator, INCM, in collaboration with Maputo City Council, as part of the implementation of the digital squares project. At the time, the Minister said that the operation of the free internet signal was aimed at attracting the public to the Tunduru Garden, especially students, thus promoting digital inclusion.

In addition to the Tunduru Garden, free internet signal was installed in 18 squares across the country: Poets' Park (Matola); Workers' Square (Inhambane), Town Hall Square and 3 February Square (Beira); Valentine's Garden and Municipal Swimming Pool Garden (Quelimane), Gúrué Square (Gúrué); Av. Eduardo Mondlane and Jardim Parque (Nampula City); Jardim Josina Machel, Posto de Turismo, Jardim do Museu, Jardim da Escola Secundária da Iha de Moçambique and Fortaleza (Ilha de Moçambique); Praia de Wimbe (Pemba); Praça da Paz (Mueda); Praça da Liberdade (Lichinga).

In September 2023, in partnership with the Fund, Vodacom Mozambique launched an internet installation project in schools and public venues.⁶⁰⁰ However, throughout the research, we noted the lack of detailed information on the use of the Fund and the evolution of what has been done, but we did note that six years after the installation of the free internet signal in public squares, several users complained of not being able to access it in the Tunduru Garden. We conducted some interviews that proved this:

"I can't access the Internet from this place! Whenever I'm here I use my private internet. That's the only way I can work and do other things..."⁶⁰¹

User 2⁶⁰² said that he has been visiting Jardim Tunduru [Tunduru Garden] regularly for more than five years. At first, he had access to the free internet signal, but he stopped using it when it started to get very slow due to the high number of users, in 2018. And he is not sure when the free internet signal stopped working.

"Lately, I've seen people complaining that they can't access the internet here, but I do not know when it started..."⁶⁰³

December 2023.

600 AIM News "Mercados e praças públicas beneficiam de internet gratuita" [Markets and public squares benefit from free internet] <https://aimnews.org/2023/09/15/mercados-e-pracas-publicas-beneficiam-de-internet-gratuita/>, accessed on 29 December 2023.

601 Interview with a user of the "Digital squares project" in Maputo, December 2023.

602 We have codified the real name of the user.

603 Interview with a user of the "Digital squares project" in Maputo, December 2023.

According to a Jardim Tunduru [Tunduru Garden] employee, the free internet signal worked properly for a year in 2018. And in the subsequent years it worked with difficulties, until it permanently stopped.

“When the internet started fluctuating, we told our management, but we did not get a satisfactory response, so we are still without a free signal...”⁶⁰⁴

The implementation of the digital plazas project had an initial cost of 1,200,000.00 Mozambique meticaïs (USD18,000). Of this amount, about half was the cost of purchasing the equipment, and the other half was for installation services. A total of around 665,000.00 meticaïs (\$10,300) would be spent annually on internet services, with a monthly cost of 55,401.85 meticaïs (\$844). For one year, the project was to be financed by the government after which the municipal council that benefited from the project would continue financing.

Nothing is publicly known about the use of these funds, since there are no audit or implementation reports. The last time updates of the digital plazas and different projects were published on the Fund’s website was in September 2020.⁶⁰⁵ Throughout the research, the Fund’s managers were not open to talking about the activities carried out over the last years, even though the regulator’s latest report published in 2021 dedicated half a page, updating where the digital plazas had been installed.⁶⁰⁶

Article 26, which creates the Fund’s regulations, stipulates that the rules relating to the principles of budgetary and accounting management are the same as the state institutions; it also states that the FSAU’s accounts are subject to an audit, the report of which must form an integral part of the annual report on the FSAU’s activities, to be submitted to the Regulatory Authority’s Board of Directors for approval. However, these reports are not public, and little is known about how the money received is used by the Fund’s managers.

Article 27 stipulates that the Board of Directors of the Regulatory Authority shall submit the annual report on the activities of the FSAU to the Minister who oversees the communications area and shall have it published at the end of each fiscal year. The annual report also includes financial statements, indicators of service availability and quality, inspected by independent auditors. However, none of what the law stipulates could be verified during the research, either through interviews or the public information on the Fund’s website.

Article 28 states that the FSAU’s accounts for each financial year shall be submitted to the Administrative Court for judgement by the Board of Directors of the Regulatory Authority, while article 29 states that the Regulatory Authority shall supervise the deployment of infrastructure and the provision of the universal access service and take the necessary measures for the proper functioning of the service. During our research, all these provisions of the law have not been verified as being duly implemented by the authorities.

604 Interview with the employee, December 2023.

605 Universal Service Fund (Mozambique) <http://www.fsau.gov.mz/index.php/imprensa/noticias>, accessed on 29 December 2023.

606 Regulatory Authority 2021 <https://www.incm.gov.mz/index.php/sala-de-imprensa/postal-2/256-relatorio-de-regulacao-das-comunicacoes-2021-pt/file>, accessed on 29 December 2023.

Developments in ICT and Emerging Technologies

Mozambique does not have specific legislation on artificial intelligence (AI). However, the Ministry that will be responsible for AI governance is the Ministry of Science, Technology and Higher Education (Ministério da Ciência, Tecnologia e Ensino Superior). Other Ministries (Education, Culture, Health) may also be involved. Mozambique is among the nine countries selected by UNESCO to carry out a diagnosis on the ethics and use of artificial intelligence in the country.⁶⁰⁷

▶ Conclusion & Recommendations

Conclusion

Governments around the world are looking for strategies to promote connectivity by expanding the internet network through local projects. Such as through the Universal Service Fund (USF), Mozambique has been carrying out some projects to expand connectivity. However, this report shows the lack of information and specific data on the use of this Fund is a challenge.

The report also shows that over the last few years there has been an increase in connectivity in the country, but the digital divide between rural and urban areas persists. The report also noted that the implementation of the Fund was an opportunity that allowed for the creation of digital plazas, which brought a lot of enthusiasm to Mozambicans. However, the hope of free connection has given way to frustration, as little is known about what has been done with the money provided to the Fund via the mobile phone operators.

Recommendations

Government:

- » Provide capacity and independence/autonomy to the relevant Ministry in the area of technology to be rigorous in monitoring and supervising the use of the Universal Access Fund through the National Communications Institute of Mozambique (INCM).
 - » Promote digital rights, expanding Internet access through quality connectivity and projects that reach less accessible areas in Mozambique.
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Regulatory Authority:

- » Promote transparency in the use of the Universal Access Fund through the regular publication of reports on expenditure made and activities carried out, in accordance with the law establishing the Fund itself.
 - » Supervising violations of digital rights and personal/user data, given that Mozambique does not yet have a specific data protection law.
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Civil Society

- » Monitor the use of the Universal Access Fund through advocacy actions and demand transparency on the use of the money that is allocated annually by mobile phone operators.
 - » Promoting the use of the Internet as a tool for expanding users' digital rights, not only through civic movements, but also through political pressure.
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Academia:

- » To document through research the activities carried out by the Universal Access Fund, putting forward some recommendations for good international practice in line with the regulations established by the competent authorities.
 - » To document all digital rights abuses that are committed, as well as to propose scientific solutions to guarantee an inclusive information society in Mozambique.
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Namibia

EXECUTIVE SUMMARY

This research provides an overview of digital rights and inclusion in Namibia in 2023 by taking a policy analysis approach, reviewing key highlights during 2023, looking at actions and initiatives as documented by relevant authorities and monitoring the news and publicly available documentation. The report provides specific recommendations as guided by thematic findings. With a special focus on Universal Access as the overarching theme, the report also discusses specific issues of Internet Access and Disruptions, Online Freedom of Expression, Privacy and Surveillance, Gendered Disinformation, Data Protection and Cyber Security, Digital IDs, Digital Inclusion of Persons with Disabilities, Universal Service Fund as well as other general developments in Information and Communication Technologies (ICTs) and Emerging Technologies in Namibia.

Introduction

The year 2023 saw several highlights on digital rights and inclusion matters in Namibia. This is presented through a mixed bag of actual actions, policy intentions, and pronouncements on various issues related to the intersectional relationship between technology and society. The full implementation of Part 6 of the Communications Act (8 of 2009), dealing with SIM registration, opened a can of worms that, to a certain extent, led to biometrics harvesting, done without legal guardrails.

The Parliament of Namibia passed an Access to Information Act (8 of 2022) and provided a commendable dedicated budget of \$10 million (N\$20 Million) to establish the Information Commission during the 2023/24 financial year. This paved the way for the country's attempt to implement the Access to Information framework within public offices fully. Furthermore, more engagements have surfaced related to various technology-related issues ranging from the passing of various Financial Technology (fintech) related laws and regulations to further public consultations on the Data Protection Bill and the Cybercrime Bill, which are set to be passed into laws in the year 2024.

Furthermore, the country has seen a continuation of implementing the Digital Identity system and intense deliberations on the rollout of the 5G network. The country's national assessment on internet development using UNESCO's ROAM-X assessment⁶⁰⁸ and the latest development stages of the digital strategy⁶⁰⁹ deemed to provide comprehensive national insights is a welcome development.

While acknowledging all these developments, Namibia still lags in realising its implementation of the Universal Access Service Fund and is yet to meaningfully engage in emerging technologies investment and regulation. More work needs to be done on the cost of connectivity in Namibia, as well as making significant efforts in closing the digital divide, in addition to enhancing the development of the ICT sector by means of public investment to transform the Namibian economy.

608 Namibia first to launch ROAM-X in Southern Africa, Windhoek Observer, July 2023, <https://www.observer24.com.na/namibia-first-to-launch-roam-x-in-southern-africa/>

609 MICT TO DEVELOP NATIONAL DIGITAL STRATEGY, NBC NEWS, SEPTEMBER 2023, <https://nbcnews.na/node/102969>

► Country Analysis

Internet access and disruptions

The World Bank⁶¹⁰ indicated that Namibia's internet penetration is 53%. This is estimated at 1.33 million internet users in the country by January 2022.⁶¹¹ Reports indicate that "no less than 370,000 Namibians have no access to 4G connectivity network, owing to the slow development of network infrastructure".⁶¹² Ranked 112 out of the 134 in the 2023 Network Readiness Index⁶¹³, amongst the weakest indicators, mobile broadband internet traffic within the country at 117, international internet bandwidth at 129 as well as cybersecurity at 127. With scanty data available for 2023, it is important to highlight several challenges contributing to low access to the internet in Namibia. As a vast country with a low population, Namibia's dynamic geography has been highlighted as one of the key challenges hindering increased connectivity in the country⁶¹⁴, which has led to a scenario where "majority of Namibian mobile phone owners do not have access to the Internet" and leaving the Internet to be considered as a luxury in the country⁶¹⁵.

Internet access has furthermore been hindered by general lack of public investment⁶¹⁶ in the ICT sector and this has been highlighted as a challenge in ensuring proper development of the sector. This matter has previously been highlighted by the Presidential 4IR Task force in its assessment as needing urgent attention⁶¹⁷.

However, the country has set itself to advance digital inclusion, with the Minister of ICT quoted as saying Namibia is set to provide broadband speeds of at least two Megabits per second (2Mbps) to 95% of the population by 2024 in order to "enhance its digital infrastructure and to empower marginalised citizens in a rapidly evolving digital world as well"⁶¹⁸. The Minister highlighted the increase in 3G and LTE infrastructure, with 3G covering 89% while LTE is accessible to 79% of the population. In the meantime, around 25% of the population⁶¹⁹ had previously been reported to have no access to 4G connectivity.

Furthermore, international satellite internet services provided by Starlink, Amazon and

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610 Individuals Using the Internet, Namibia, World Bank, 2022, available at <https://data.worldbank.org/indicator/IT.NET.USER.ZS?end=2021&locations=NA&start=1990&view=chart>

611 Namibia, Data Portal, available at <https://datareportal.com/reports/digital-2022-namibia>

612 Namibia Moves To Ditch 2G & 3G, Launches Next-Gen Spectrum Auction, <https://weetracker.com/2023/02/23/namibia-next-gen-spectrum-auction/>

613 Namibia, Network Readiness Index 2023, available at <https://download.networkreadinessindex.org/reports/countries/2023/namibia.pdf>

614 Namibia needs N\$300m to provide free internet, The Brief, available at <https://archive.thebrief.com.na/component/k2/item/3652-namibia-needs-n-300m-to-provide-free-internet>

615 Internet Access is a luxury in Namibia, Erongo News, 22 December 2022, available at <https://www.erongo.com.na/technology-ero/internet-access-still-a-luxury-in-namibia2022-12-22>

616 Namibia needs N\$300m to provide free internet, The Brief, available at <https://archive.thebrief.com.na/component/k2/item/3652-namibia-needs-n-300m-to-provide-free-internet>

617 Taskforce of the Fourth Industrial Revolution, Final Report, Pg 13, available at https://hpii.gov.na/storage/2023/04/4IRTF-Final-Report_2022-10-19_final.pdf

618 Namibia is advancing digital inclusion, Windhoek Observer, November 2023, available at <https://www.observer24.com.na/namibia-is-advancing-digital-inclusion/>

619 370 000 Namibians have no access to 4G - The Namibian, Ground News, 2022, <https://ground.news/article/370-000-namibians-have-no-access-to-4g-the-namibian>

OneWeb have shown keen interest in the Namibian market⁶²⁰, with many anticipating that these services may meet the connectivity needs of unconnected Namibians.

Regarding the quality of internet access, the country has made efforts to abandon 2G & 3G connectivity as announced at its Next-Gen Spectrum Auction⁶²¹ held in February 2023. This upgrade favouring 4G and later generation of connectivity, may herald a new era of quality internet connectivity in the country. While the future might be promised to be better off, the current state of the internet has remained largely unstable during the past 2 years due to ageing infrastructure, including the WACS⁶²² cable, which has been frequently reported as the cause of constant internet disruptions⁶²³. That and the cost of devices and cost of services are known as the core price pushers for connectivity in Namibia, leading to the country being ranked third⁶²⁴ most expensive on data costs amongst the Southern African Development Community (SADC), according to the Africa affordability Rankings and 5th highest amongst African countries with high internet costs⁶²⁵ in southern Africa. Attempts to welcome a third mobile telecommunications player into the market previously led to dominant player Mobile Telecommunications Company (MTC) refusing to comply⁶²⁶ with infrastructure sharing policy directive⁶²⁷, pushing that player out of the market. This becomes a lead reason to keep the cost of connectivity high⁶²⁸ with a 1GB monthly prepaid usage costing around N\$124.5 (USD8.3) in the first quarter of 2021.

Despite the cost of data, the technology sector reportedly rakes in high revenues into state coffers as the government is the majority shareholder amongst the ICT players. State dividend was reported to have increased from N\$4.8 billion in 2019 to N\$5.1 billion in 2020⁶²⁹, while in 2023, the state holding company for telecommunications declared dividends of over N\$3.1 billion⁶³⁰ over the last two financial years, 2021/22 and 2022/23. Despite ICT being a high economic player in Namibia, alternative funding to ensure internet accessibility for those without access has not been realised. In addition to lack of state funding and investment into the sector, as referred to earlier, the Universal Service and Access Fund has never been operationalised, despite a policy⁶³¹ being in place since 2012 and legally provided for through Part 4 of the Communications Act. While some plans were announced as part of the implementation of the UASF in 2022⁶³², nothing much has

620 Startlink, Amazon and OneWeb eye Namibian market, The Namibian, October 2023, available at <https://namibian.com.na/starlink-amazon-and-oneweb-eye-namibian-market/>

621 Namibia Moves To Ditch 2G & 3G, Launches Next-Gen Spectrum Auction available at <https://weetracker.com/2023/02/23/namibia-next-gen-spectrum-auction/>

622 Poor connectivity due to WACS and SAT-3 Fibre Break, Telecom Namibia, August 8, 2023, available at <https://www.telecom.na/media-centre/732-poor-connectivity-due-to-wacs-and-sat-3-fibre-break>

623 Telecom Namibia Faces Service Disruptions Due to Undersea Cable Breaks, Tech Africa News, August 9th, 2023, <https://www.techafrikanews.com/2023/08/09/telecom-namibia-faces-service-disruptions-due-to-undersea-cable-breaks/>

624 Namibia's data cost third-highest in SADC, The Namibian, July 2023, available at <https://ww2.namibian.com.na/mtc-refuses-to-budge-on-infrastructure-sharing/>

625 Namibia fifth among African countries with high mobile, Nampa, 2022, available at <http://www.nampapr.com.na/?p=11012>

626 MTC refuses to budge on infrastructure sharing, The Namibian, July 2023, available at <https://ww2.namibian.com.na/mtc-refuses-to-budge-on-infrastructure-sharing/>

627 MTC, CRAN BUTT HEADS IN COURT AGAIN, Namibian Sun, September 2022, available at <https://www.namibiansun.com/local-news/mtc-cran-butt-heads-in-court-again-2022-09-20?fbclid=IwAR2TXJW5TUhZTvkWG38ruLfqBMExjmVWm4CIS8RS36jaSNmCMgw9d48VQg>

628 Lack of competition makes data expensive in Namibia – CRAN, Eagle FM, June 2022, available at <https://www.eaglefm.com.na/news/lack-of-competition-makes-data-expensive-in-namibia-cran/>

629 Lack of competition makes data expensive in Namibia – CRAN, Eagle FM, June 2022, available at <https://www.eaglefm.com.na/news/lack-of-competition-makes-data-expensive-in-namibia-cran/>

630 NAMIBIA POST & TELECOM HOLDINGS DECLARE EXTRAORDINARY DIVIDEND OF N\$600 MILLION FOR 2023, NBC NEWS, JUNE 2023, available at <https://nbcnews.na/node/101252>

631 Universal Access and Service Policy for Information and Communications Technologies, National Planning Commission, available here <https://www.npc.gov.na/wp-content/uploads/2022/06/Universal-Access-and-Service-Policy-for-Info-and-Comm-Technologies-May-2012.pdf>

632 Namibia starts work on Universal Internet Connectivity Access Fund, The Brief, September 2022, available at <https://archive.thebrief.com.na/index.php/component/k2/item/1713-namibia-starts-work-on-universal-internet-connectivity-access-fund>

come out of it, and the fund remains non-operationalised as operators have refused to contribute to the Fund, as demonstrated by consistent legal challenges against the Regulator⁶³³. This precedence has been set by the 2018 Supreme Court ruling that levy contribution to the Universal Fund was unconstitutional⁶³⁴. The Supreme Court decision amongst others, ruled that, given the absence of guidelines and limits for the Regulator’s exercise, “In its present form ... section 23(2)(a) of the Act constitutes the outsourcing of plenary legislative power to CRAN ... (inadvertently)...The legislature has failed to guard against the risk of an unconstitutional exercise of a discretionary power by CRAN and the result is that s 23(2)(a) of the Act is unconstitutional and liable to be struck down, as must the impugned regulation.”

Online Freedom of Expression

With its diverse media landscape, Namibia has consistently been recognised as one of Africa’s beacons in freedom of the press⁶³⁵, topping the African countries list in the Reporters without Borders Index in 2023⁶³⁶. Media freedom is known to thrive, with cases of self-censorship reported to be common amongst state media⁶³⁷. With the internet reportedly gone mobile in Namibia, freedom of expression online has consistently become contentious⁶³⁸ to users in Namibia, with women in particular⁶³⁹ reported to have been exposed to online violence, harassment, and threats. As safety online increasingly becomes a challenge⁶⁴⁰, female journalists have been reported to practise various forms of self-censorship as a form of self-preservation in a country that still lacks cyberharassment or data protection legislation⁶⁴¹ that would provide for the protection of journalists. Data Guidance⁶⁴² in their analysis highlighted: “The lack of legislative responses to communication technology-facilitated abuse leaves victims of misogynistic online abuse—in particular prominent women, journalists, girls, the LGBT+ community, and other minority groups—without adequate legal recourse.” As a result, several defamation cases^{643,644,645} related to Online Freedom of speech has been brought to court, many of which seemed to discourage free speech. Academic research⁶⁴⁶ highlights a need for a human security centered social media policy. Overall, the country is considered to have no adequate⁶⁴⁷ oversight mechanisms to create

- 633 Mobile Telecommunications Ltd v Communications Regulatory Authority of Namibia (HC-MD-CIV-MOT-GEN-2020/00526) [2022] NAHCMD 443 (31 August 2022) <https://namiblii.org/akn/na/judgment/nahcmd/2022/443/eng@2022-08-31/source.pdf>
- 634 CRAN v Telecom Namibia Ltd and Others (62 of 2016) 2018 NASC 18 (11 June 2018) available at <https://namiblii.org/akn/na/judgment/nahcmd/2022/443/eng@2022-08-31/source.pdf>
- 635 <https://www.namibian.com.na/namibia-reclaims-top-spot-on-press-freedom-index-in-africa/#:~:text=On%20the%20occasion%20of%20World,by%20the%20Seychelles%20last%20year>
- 636 Namibia, RSF, available at <https://rsf.org/en/country/namibia>
- 637 Namibia, Freedom House, 2022, available at <https://freedomhouse.org/country/namibia/freedom-world/2023>
- 638 Namibia: Free Online Expression Still Contentious, New Era, April 2022, available at <https://allafrica.com/stories/202204250590.html>
- 639 Namibia: An overview of the draft Data Protection Bill, November 2022, “Journalistic purposes to be included on the list of exclusions” <https://www.dataguidance.com/opinion/namibia-overview-draft-data-protection-bill>
- 640 ONLINE VIOLENCE AGAINST WOMEN AND GIRLS IN NAMIBIA - A country situational assessment, Internet Society Namibia Chapter, 2022, available at <https://isocnamibia.org/wp-content/uploads/2022/05/Ovaw-Digital.pdf>
- 641 NAMIBIA, DATA PROTECTION FACTSHEET available at <https://dataprotection.africa/namibia/>
- 642 Namibia, 2022, Data Guidance available at <https://www.dataguidance.com/jurisdiction/namibia>
- 643 Geingos v Hishoono (HC-MD-CIV-ACT-OTH- 538 of 2021) [2022] NAHCMD 48 (11 February 2022)
- 644 Tjivikua v Tjaronda (HC-MD-CIV-MOT-GEN-2018/00369) [2019] NAHCMD 405 (14 May 2019)
- 645 Lawyer wins social media libel case, The Namibian, June 2022, <https://www.namibian.com.na/lawyer-wins-social-media-libel-case/>
- 646 Towards a strategy for social media implications on human security in Namibia: Case study of Windhoek , UNAM (2020) https://repository.unam.edu.na/bitstream/handle/11070/2999/shipena_2020.pdf?sequence=1&isAllowed=y
- 647 Southern Africa, Press Freedom Report, MISA, (2021) <https://www.mediasupport.org/wp-content/uploads/2021/05/>

a balance for legitimate, proportionate, and necessary surveillance in the digital age. The country has not experienced any internet shutdown or any cases of throttling, even though the government is a major shareholder of the country's leading internet service providers. This has shown positive restraint by the government towards an open internet access.

Privacy and Surveillance

Privacy in Namibia is guaranteed by Article 13 of the Constitution⁶⁴⁸. However, as technology blurs privacy lines in a digital and physical world, privacy regulations in Namibia have not yet attempted to deal with its context in a digital age. Key concerns on privacy have been raised over the years and more recently in the wake of the mandatory SIM registration⁶⁴⁹, which came into effect through the enforcement of Part 6 and Chapter 5 of the Communications Act⁶⁵⁰ (no 8 of 2009). Specific concerns have been raised about the collections of biometrics⁶⁵¹ by a mobile network provider, MTC, who used this as part of SIM registration. While the harvesting of biometrics has been questioned⁶⁵² by civil society players, and consequently ordered to be discontinued by the Regulator, the operator continued defying^{653,654} the Regulator's directive until late December 2023. The harvesting of biometrics, which began in 2022, has been seen to have taken advantage of the country's absence of personal data protection⁶⁵⁵ regulations to build related business innovation without compliance with, amongst others, transparency of use for users. The operator's system, which collects facial scans and fingerprints, has been linked to "similar systems used by authoritarian states for mass biometric surveillance and political repression, through the tracking, blocking and shutting down of telecommunications and the internet of targeted individuals and groups.... such systems have been rolled out where weak or no data-protection safeguards are in place."⁶⁵⁶ The lack of protection of personal data from SIM registration, as well as other related data, has been criticised by public interest technologists.⁶⁵⁷

Revised-SAPFR-2019-2020.pdf

648 Namibia Constitution available at <https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf>

649 Namibia starts mandatory SIM registration process, Connecting Africa, January 2023, https://www.connectingafrica.com/author.asp?section_id=816&doc_id=782804

650 Communications Act of the Republic of Namibia, available at <http://www.lac.org.na/laws/annoSTAT/Communications%20Act%208%20of%202009.pdf>

651 AI, Biometrics and no protection from abuse, ACTION Namibia, 2021 available at <https://action-namibia.org/ai-biometrics-and-no-protection-from-abuse/>

652 Namibia's Biometric Verification Travesty, The Namibian, June 2023, available at <https://www.namibian.com.na/namibias-biometric-verification-travesty/>

653 MTC defies CRAN, Windhoek Observer, May 2023, available at <https://www.observer24.com.na/mtc-defies-cran/>

654 MTC defies Cran on biometrics directive, The Namibian, May 2023, available at <https://namibian.com.na/mtc-defies-cran-on-biometrics-directive/>

655 MTC defends collection of fingerprint and facial biometric data , One Africa, January 2023, available at https://fb.watch/psTf_8Ad7D/

656 AI, Biometrics and no protection from abuse, Action Coalition, 2021 <https://action-namibia.org/ai-biometrics-and-no-protection-from-abuse/>

657 Governing Data For Public Interest In Namibia: A Private Sector Perspective, Mozilla, June 2023, available at <https://foundation.mozilla.org/en/blog/governing-data-for-public-interest-in-namibia-a-private-sector-perspective/>

Gendered Disinformation

Gendered disinformation continues in Namibia due to the absence of protection of women from digital crimes. In a high-level case that went to the High Court in August 2023⁶⁵⁸, the Deputy Minister of Finance took politician and former Mayor of the City of Windhoek to court, seeking recourse in a case of gender disinformation where the latter was accused of using sexually charged innuendos on his 2021 social media posts, that the Deputy Minister claims were intended to defame her. Through the Facebook post that is reported to have garnered 511 comments, 2 800 reactions and it was shared 39 times, the Minister is claiming the former Mayor has implied that she is a “bitter sugar mommy”. The post is claimed to have created the narrative that the Deputy Minister is a ‘cougar’ and that she wanted to have a sexual relationship with him, and when he refused, she retaliated by suing him⁶⁵⁹. Furthermore, in an academic study⁶⁶⁰ on Online Gender-Based Violence in the Namibian media, Zvivita and Mare (2023) highlight the presence of gendered disinformation saying “the safety and well-being of female journalists has not been spared... In the case of gendered disinformation campaigns, these often lead to the silencing and retreating of female journalists into the private sphere.” The Internet Society Namibia Chapter further also produced a country situational analysis of Online Violence amongst women and girls,⁶⁶¹ which narrates cases of gendered misinformation, highlighting cases where prominent women and journalists have suffered from gendered misinformation.

Data Protection and Cyber Security

The status of personal data protection and general protection in the cyberspace has been attempted through legislation since 2013, with efforts repeatedly stalled without much clarity over the last decade. The latest efforts to ensure total protection for users in the digital age took place in August 2023, when the last validation⁶⁶² of the Data Protection Bill took place. The current Bill is expected to address vulnerabilities associated with data and establish clear guidelines for the collection, processing, transmission, storage, and utilisation of personal data to foster trust and confidence in the digital era. However, the current bill is reported to be no fit for purpose⁶⁶³ by civil society holding reservations that, amongst others, “falls short of international and regional standards and does not do justice to the opportunity for Namibia to develop a digital policy that both matches and advances these standards”⁶⁶⁴. In the meantime, the need to pass the Data Protection Bill has become more urgent as different entities have begun with biometric data harvesting⁶⁶⁵ haphazardly in the absence of the law. However, the status of the Bill, as slated to be amongst legislative pieces to be passed in 2024, brings hope.

658 Hinda-Mbuende, Amupanda lawsuit trial commences, New Era, August 2023, available at <https://neweralive.na/posts/hinda-mbuende-amupanda-lawsuit-trial-commences>

659 AMUPANDA TARGETED HINDA-MBUENDE, ANGULA CLAIMS, NAMIBIAN SUN, OCTOBER 2023, available at <https://www.namibiansun.com/justice/amupanda-targeted-hinda-mbuende-angula-claims2023-10-19>

660 Zvivita, I., & Mare, A. (2023). Same threats, different platforms? Female journalists’ experiences of online gender-based violence in selected newsrooms in Namibia. *Journalism*, 0(0). <https://doi.org/10.1177/14648849231183815>

661 Online Violence Against Women and Girls in Namibia – a country situational assessment, 2022, available at <https://isocnamibia.org/wp-content/uploads/2022/05/Ovaw-Digital.pdf>

662 MICT Holds Validation Workshop to Strengthen Data Protection Bill, Namibia Daily News, August 2023, available at <https://namibiadailynews.info/mict-holds-validation-workshop-to-strengthen-data-protection-bill/>

663 Data Protection Bill: Not Fit For Purpose Key Sections Need To Be Reconsidered, IPPR, December 2022, <https://ippr.org.na/publication/data-protection-bill-not-fit-for-purpose/>

664 Data Protection in the Age of Mass Surveillance – Part I, IPPR, August 2023, available at <https://ippr.org.na/blog/data-protection-in-the-age-of-mass-surveillance-part-1/>

665 Questionable Harvesting Of Biometric Data, IPPR, January 2023, available at <https://ippr.org.na/blog/questionable-harvesting-of-biometric-data/>

Furthermore, Namibia launched⁶⁶⁶ a National Cybersecurity Strategy and Awareness Creation Plan 2022-2027 in March 2023. The plan, approved by Cabinet in 2022, is aimed at safeguarding the National Critical Information Infrastructure, educating and creating awareness, and collaborating on cybersecurity to improve the safety of internet users. However, the country still lacks a particular policy or strategy⁶⁶⁷ dealing directly with cybercrime, as the Cybercrime Bill has been in draft format without much progress since 2014. It has recently undergone a redrafting process⁶⁶⁸ and is positioned for parliamentary tabling⁶⁶⁹ in 2024. Insights highlighting the challenges of cybercrime in Namibia by TransUnion reports⁶⁷⁰ a 19.5% increase in suspected digital shopping fraud attempts in Namibia.

Digital IDs

The year 2023 saw the Namibian Cabinet approving the introduction of digital identity documents⁶⁷¹, in an effort that is seen to be “still in its embryonic stages” yet growing at a relatively fast pace due to political commitment, support from its international partner and the active involvement of the private sector⁶⁷². While making progress in this regard, the introduction of digital IDs (also known as Smart ID cards and encompassing all national documents consisting of a microchip that will store the necessary biometric data unique to every individual) has led to analysts⁶⁷³ calling for existing legal frameworks to provide for operational mandates and assign specific responsibilities to institutions responsible for identity and identity management.

The operationalisation of Digital IDs in Namibia has been credited to its partnership⁶⁷⁴ with Estonia, which dates back to 2014. This partnership has also translated into Estonia’s Open-Source system, X-Road, an e-government interoperability framework being rolled out in Namibia that enables standardised methods for transferring information between the data systems of private and public sector organisations. Furthermore, the Ministry of Home Affairs, Immigration, Safety and Security launched⁶⁷⁵ an online application for passports and short-term employment permits, following on previous introduction of e-passports as well as visa-on-arrival in 2018. Despite Namibia’s effecting changes to digitise its national identification management system, the country’s Identification Act remains outdated and requires updates that reflect digital ID and related aspects. Efforts⁶⁷⁶

666 MICT LAUNCHES CYBERSECURITY CAMPAIGN, ERONGO NEWS, APRIL 2023, AVAILABLE AT <https://www.erongo.com.na/technology-ero/mict-launches-cybersecurity-campaign2023-04-01>

667 Namibia Cybercrime Policies/strategy, Council of Europe, https://www.coe.int/en/web/octopus/country-wiki-ap/-/asset_publisher/CmDb7M4RGb4Z/content/namibia/pop_up

668 Namibia’s Cybercrime Bill undergoes redrafting, Windhoek Observer, September 2023, available at <https://www.observer24.com.na/namibias-cybercrime-bill-undergoes-redrafting/>

669 Cyber Crime Bill to hit parliament next year, New Era Newspaper, October 2023, available at <https://neweralive.na/posts/cyber-crime-bill-to-hit-parliament-next-year>

670 19.5% Increase in Suspected Digital Shopping fraud in Namibia, The Economist, November 2023, available at <https://economist.com.na/84908/retail/19-5-increase-in-suspected-digital-shopping-fraud-attempts-in-namibia-during-the-festive-shopping-season-report/>

671 INTRODUCTION OF CONTACTLESS MICROCHIP ID APPROVED, NBC NEWS, available at <https://nbcnews.na/node/102208>

672 Digital ID systems in Africa: Challenges, risks and opportunities, ECDPM, <https://ecdpm.org/application/files/5517/0254/4789/Digital-ID-systems-in-Africa-ECDPM-Discussion-Paper-360-2023.pdf>

673 Digital ID systems in Africa: Challenges, risks and opportunities, available at <https://ecdpm.org/application/files/5517/0254/4789/Digital-ID-systems-in-Africa-ECDPM-Discussion-Paper-360-2023.pdf>

674 Governmental Interoperability in Namibia, <https://ega.ee/project/governmental-interoperability-in-namibia/>

675 Home affairs embraces e-governance...online passports, work visa applications launched, New Era, March 2023, available at <https://neweralive.na/posts/home-affairs-embraces-e-governanceonline-passports-work-visa-applications-launched>

676 Namibian lawmakers examine bill to streamline civil registration, lower age for ID cards, Biometric Update, June 2023 available at <https://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=9637356> <https://www.biometricupdate.com/202306/>

on this have only enabled provisions for biometrics collection to be introduced in the process of enrollment for a national ID card.

Civil Society⁶⁷⁷ players have called for the Namibian authority to comply with Malabo convention provisions to ensure transparency and oversight mechanisms saying, “Namibia identity authentication systems, which do not have strong data protections in place to deal with the collection and processing of biometric data, also lack appropriate and effective oversight and transparency mechanisms”. Institute for Public Policy and Research (IPPR) in a blog, suggests it would be good for Namibia to enable the public to hold the state and corporate entities accountable for how they handle the personal data of ordinary Namibians.

In their research on Digital ID Systems in Africa, the European Centre for Development Policy Management (ECPDM)⁶⁷⁸ puts a recommendation forward for “Namibia to find innovative solutions to create the demand for digital ID across its least densely populated territory to keep the already expensive digital ID systems operationally sustainable as well as inclusive of rural communities.” In the meantime, The Namibia Financial Institutions Supervisory Authority (NAMFISA) also signed a partnership agreement⁶⁷⁹ on the usage of digital IDs with Nigeria-based digital identity and selfie biometrics provider Prembly to set up a regulatory sandbox that will enhance digital innovation for tech startups. It is reported that, under the deal, the partners will maximise opportunities to help drive innovation by building an inclusive and interoperable digital ID framework for Namibia that is favourable for advancing its digital economy pursuits.

Digital Inclusion of Persons with Disabilities

Explicit details on how Namibia deals with digital inclusion for persons with disabilities have not been made available except for vague reference within the Broadband Policy and Implementation of 2019⁶⁸⁰ articulated towards an inclusive approach for successful advocacy and dissemination and reading, “Proper outreach of this policy will ultimately entail rollout of tailored approaches ... from children to the less educated, to those with disabilities.” The National Disability Council conducted a nationwide consultation⁶⁸¹ in 2023 to discuss the Persons with Disabilities Draft Bill and the National Policy on Disability first established in 1997. Furthermore, the National Disability Act of 2004 does not mention dealing with the Internet and digitisation as a means of empowering the Persons With Disabilities (PWD) community, amongst others. It is not clear at this point if consultations were conducted with the ICT cluster to deal with digital inclusion issues. However, a Children’s Fund⁶⁸² is one of the proposal suggestions. While it is understood that all government website development is standardised to meet the needs of persons living with disabilities, guidelines for this are not publicly available. Finally, with no Universal Access and Service Fund in place in the country, it is not clear

namibian-lawmakers-examine-bill-to-streamline-civil-registration-lower-age-for-id-cards

677 Namibia’s Unfolding ‘Identity Crisis’, IPPR, December 2023, <https://ippr.org.na/blog/namibias-unfolding-identity-crisis/#:~:text=These%20concerns%20now%20dog%20Namibia%27s,enable%20the%20public%20to%20hold>

678 About us, ECPDM, <https://ecdpm.org/about/about-us/who-we-are>

679 Namibia’s financial regulator partners with Prembly on digital ID regulatory sandbox, Biometric Update, May 2023, available at

<https://www.biometricupdate.com/202305/namibias-financial-regulator-partners-with-prembly-on-digital-id-regulatory-sandbox>
680 National Broadband Policy for the Republic of Namibia (2018-2022) available at <https://www.npc.gov.na/wp-content/uploads/2022/06/NamibiaBroadband-Policy-2018.pdf> (pg. 16).

681 Disability Council tackles outdated policy , New Era, November 2023, available at <https://newerlive.na/posts/disability-council-tackles-outdated-policy>

682 Day 2 of the NDCN legislative Review Project in Rundu , NDCN, November 15th, available at <https://fb.watch/puh7u0VT8d/>

what special provisions are in place for procuring ICT-related devices for school or university-going populations and other specialised ICT equipment for those needing it. Seemingly, the excessive cost for this is carried by users with disabilities.

Universal Service Access Fund

With a policy in place for “Universal Access and Service Policy for Information and Communications Technologies”⁶⁸³ and provision stipulating the provision of universal service as well as Universal Service Fund under Chapter 5, Part 4 of the Communications Act (8 of 2009)⁶⁸⁴, the Universal Service and Access Fund has never materialised in Namibia. While it was initially set up to operate under the Communication Regulatory Authority, attempts to operationalise it have suffered several judicial setbacks over the years, with a Supreme Court ruling of 2018 calling the levy collection unconstitutional⁶⁸⁵. However, the gazetted regulations⁶⁸⁶ prescribing the provisions for the Universal Service Fund by telecommunications companies make provisions for subsidies for licensees to meet the needs of persons with disabilities and for licensees to make services available to registered and recognised organisations representing persons with disabilities. The regulations further make provisions for organisations representing people with disabilities to be amongst those qualified to receive subsidies from the Fund. The Deputy Minister of ICT was quoted⁶⁸⁷ in 2020 saying that MICT was working with players to operationalise the Universal Internet Connectivity Access Fund to improve network connection around the country, including for schools and clinics, and was expected to come into effect during the 2023/24 financial year, to date, nothing much has come out of this.

Developments in ICTs and Emerging Technologies

The development of ICTs and Emerging Technologies domestically has been quite limited. Over the years, the startup and digital entrepreneurship ecosystem has been driven by international partners such as the Southern Africa Innovation Support (SAIS)⁶⁸⁸ and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)⁶⁸⁹ with some government support. Consequently, the few existing small and micro enterprises hardly exploited the opportunities within the digital sector to create employment opportunities to relieve the large unemployed youth sector. German Federal Ministry for Economic Cooperation and Development (BMZ), in their report, highlighted that “the level of training is low in the ICT innovation sector and as a result, the few digital companies not only lack qualified personnel, but innovations rarely reach market maturity, and many start-ups fail in the launch phase.”⁶⁹⁰

683 Universal Access and Service Policy for Information and Communications Technologies , National Planning Commission, available at <https://www.npc.gov.na/wp-content/uploads/2022/06/Universal-Access-and-Service-Policy-for-Info-and-Comm-Technologies-May-2012.pdf>

684 Communications Act 8 of 2009, <http://www.lac.org.na/laws/annoSTAT/Communications%20Act%208%20of%202009.pdf>

685 CRANvsTelecom, 2018

686 REGULATIONS PRESCRIBING THE PROVISION OF UNIVERSAL SERVICE BY TELECOMMUNICATIONS SERVICE

LICENSEES: COMMUNICATIONS ACT, 2009, Government Gazette, May 2018, <https://archive.gazettes.africa/archive/na/2018/na-gov-ernment-gazette-dated-2018-05-08-no-6589.pdf>

687 Namibia starts work on Universal Internet Connectivity Access Fund, The Brief, September 2022, available at <https://archive.thebrief.com.na/index.php/component/k2/item/1713-namibia-starts-work-on-universal-internet-connectivity-access-fund>

688 Southern Africa Innovation Support, <https://saisprogramme.org>

689 Start-Up Namibia: improving the country’s start-up ecosystem, 2021 , <https://www.giz.de/en/worldwide/77863.html>

690 Digital Transformation Center Namibia, GIZ, <https://www.bmz-digital.global/en/initiatives/>

Nonetheless, some engagement by the government has recently begun with digital entrepreneurship at the national level through the recently created Board for Investment Promotion⁶⁹¹ working with the Ministry of Trade and cross-level ordinations.

Furthermore, the presence of emerging technology-based services in the cab hailing^{692,693} and food delivery sector⁶⁹⁴ are indicators of some business stimulation of technology development, particularly as the country became one of the few countries to have introduced a Digital Nomad Visa⁶⁹⁵ to lure skilled remote workers to work from Namibia. Other applications and use of emerging technology, including Artificial Intelligence, have been reported to be in use in Namibia⁶⁹⁶ within the Agriculture, Labour, Education, Mining, and Manufacturing sectors altogether. Furthermore, considering the interest in the 5G network, Namibia awarded 5G spectrum to licensees in October 2023, which has been reported to have generated approximately N\$ 28.55 million,⁶⁹⁷ \$1.5 Million equivalent. It is unclear if these funds could be allocated to fulfil universal access to digital inclusion. From a Fintech perspective, Namibia has passed a crypto bill named Namibia's Virtual Assets Act of 2023⁶⁹⁸, which was passed six years after the country had outlawed the exchange of virtual currencies. The law is said to focus on protecting consumers and mitigating money laundering and terrorism financing risks and "intends to do so with the establishment of a regulatory authority that will be charged with supervising Virtual Asset Service Providers (VASPs)," the media reported.

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691 Namibia Investment Promotion and Development Board (NIPDB), available at <https://nipdb.com/2022/12/15/nipdb-launches-know2grow-nextgen-entrepreneurs-trade-fair/>

692 LEFA completes over 100 000 rides in Windhoek, New Era, 2021, <https://neweralive.na/posts/lefa-completes-over-100-000-rides-in-windhoek>

693 AB INBEV AND INDRIVER PARTNER TO GET NAMIBIANS HOME SAFELY, ECONOMIST, MAY 2022, <https://economist.com.na/70644/community-and-culture/ab-inbev-indriver-partner-on-road-safety/>

694 Tap-a-Meal, <https://tapameal.com.na>

695 NAMIBIA DIGITAL NOMAD VISA, NIPDB, <https://nipdb.com/nomadvisa/>

696 Landscape study of AI policies and use in Southern Africa: executive summary, UNESCO 2020, AVAILABLE AT [HTTPS://UNESDOC.UNESCO.ORG/ARK:/48223/PF0000382651.LOCALE=EN](https://unesdoc.unesco.org/ark:/48223/pf0000382651.LOCALE=EN)

697 Namibia Awards 5G Licenses to Telecom Namibia, MTC, and Loc8 Mobile, Telecom Talk, October 2023, <https://telecom-talk.info/namibia-5g-licenses-telecom-namibia-mtc-loc8mobile/882249/#>

<https://blockworks.co/news/namibia-new-crypto-law>

698

▶ Conclusion & Recommendations

Conclusion

Given the Namibian digital rights and inclusion landscape, the following recommendations must be implemented to enable a digital rights and inclusion environment.

Recommendations

The government:

- » Undertake all concerted efforts to operationalise the Universal Service Fund as per the provision of the Act.
- » Hold stakeholder engagements to strengthen and articulate the national priorities in policies and through the Namibia Internet Governance.
- » Hold training for the judiciary and government actors on digital inclusion as an aspect of human rights, driving awareness of how USF and other related levies would enhance people's digital access and drive the achievement of national and global development goals.
- » Find innovative solutions to keep the already expensive digital ID systems operationally sustainable and inclusive of rural communities.
- » Passing the Data Protection Bill and the Cybercrime law will demonstrate the country's commitment to digital rights and inclusion of its citizens, and these must be supported by strong regulations that follow regional and international standards.
- » Enactment of relevant policy ensuring digital inclusion for persons with disabilities and women.
- » Cybersecurity training and awareness and the driving of the national digital literacy programmes.

The private sector:

- » Contributing through funding, reduced data costs and increasing broadband access for marginalised communities.

Civil Society

- » Collaborate with the government to raise digital rights and cybersecurity awareness and roll out digital literacy programmes.
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Nigeria

EXECUTIVE SUMMARY

This report thoroughly examines Nigeria's digital landscape following the 2023 elections, offering insights into internet freedom, media liberties, data governance, and emerging technologies. The report underscores the nation's unique moment for positive transformation, recognising challenges such as limited internet access, media censorship concerns, and transparency issues within the Universal Service Provision Fund implementation. Despite hurdles, notable advancements include the Nigeria Data Protection Act 2023 and the growth of the Fintech sector. The report concludes with recommendations for improving internet infrastructure, strengthening media freedoms, enhancing data governance, ensuring transparency in fund utilisation, and supporting the burgeoning Fintech industry. These recommendations aim to guide Nigeria towards a more inclusive and rights-respecting digital future.

Introduction

Nigeria is a multi-ethnic and culturally diverse federation of 36 autonomous states and the Federal Capital Territory. It boasts of the largest economy and population in Africa.⁶⁹⁹ The political landscape is partly dominated by the ruling party, the All Progressives Congress (APC), which controls the executive arm of government, holds majority seats in both the Senate and House of Representatives, and has the highest number of state governors. The most significant marker of the year in view was that general elections were held in February and March 2023, which brought in a new administration sworn in May 2023 with the mantra, “Renewed Hope”.⁷⁰⁰ Following this change, the country has a unique opportunity to improve and change its path to be one that respects and upholds rights while creating sustainable solutions for inclusion.

699 World bank, (2023), Country overview: Nigeria. Available at: <https://www.worldbank.org/en/country/nigeria/overview#1> (Accessed January 4th 2024)

700 APC News, (2023) First Inaugural Speech by President Bola Ahmed Tinubu. Available at: <https://apc.com.ng/home/first-inaugural-speech-by-president-bola-ahmed-tinubu-29-may-2023/> (Accessed November 1st 2023)

► Country Analysis

Access and Affordability

The country's current National Broadband Plan of 2020–2025 aims to expand broadband penetration to 70% by 2025.⁷⁰¹ Three years into implementation, as of August 2023, the Nigerian Communications Commission (NCC) reported a broadband penetration rate of 45.57%.⁷⁰² The 2022 Londa Nigeria Report highlighted the launch of 5G network in the country after public bidding by internet service providers. Despite the presence of the service with the capacity of delivering up to 20 Gigabits-per-second (Gbps), 60.47% of all subscribers in the country only have access to 2G networks, 9.5% utilise 3G networks, 29.13% use 4G and only 0.83% have been able to tune into the use of the 5G network.⁷⁰³

In January 2023, SpaceX's Starlink launched in Nigeria. Its availability brought competition and innovation to the country's sector and potentially means higher-quality internet connectivity.⁷⁰⁴ Despite former President Buhari's assertions that Starlink's deployment raised Nigeria's internet penetration rate to 100%⁷⁰⁵, the effect on connection is still uncertain. Upon its launch, the hardware was stated to go for \$600 with a monthly subscription of \$43. This comes alongside the World Bank's report of an estimated 84 million Nigerians living below the poverty line⁷⁰⁶, making it too costly for most Nigerians to access. Additionally, while there are complaints of all other internet service providers having network downtimes, Starlink seemed to have joined the fold due to complaints of irregular service during bad weather.⁷⁰⁷

Internet access has always been expensive in Nigeria and was ranked 108th⁷⁰⁸ in the world in terms of affordability in 2023, costing \$46.4 per month on average for 100 Mbps.⁷⁰⁹ Various factors have contributed to these statistics such as regular power outages, which compromise the quality of internet service providers' offerings. News outlets report that 75% of the entire country relies on generators in Nigeria.⁷¹⁰ In 2023, another major hindrance to internet access was vandalism and the destruction of communication infrastructure, which was described as one of the reasons for complete network outages by Nigeria's Minister of ICT and Digital Economy.⁷¹¹

701 Nigerian National Broadband Plan 2020-2025. Available at: <https://ngfrepository.org.ng:8443/bit-stream/123456789/3349/1/NIGERIAN%20NATIONAL%20BROADBAND%20PLAN%202020-2025.pdf> (Accessed January 4th 2024)

702 NCC Statistics & Reports on Industry Statistics Available at: <https://www.ncc.gov.ng/statistics-reports/industry-overview> (Accessed November 16th 2023)

703 See n4

704 The Cable News: Elon Musk's Starlink now active in Nigeria- first in Africa Available at: https://www.thecable.ng/elon-musks-starlink-now-active-in-nigeria-first-in-africa#google_vignette (Accessed December 7th 2023)

705 Premium Times, Buhari Excited about Starlink, says Nigeria's broadband penetration now 100% Available at: <https://www.premiumtimesng.com/business/business-news/579615-buhari-excited-about-starlink-says-nigerias-broadband-penetration-now-100.html> (Accessed November 3rd 2023)

706 See n1

707 Nairametrics, Starlink Users in Nigeria lament poor connectivity whenever it rains. Available at: <https://nairametrics.com/2023/03/07/starlink-users-in-nigeria-lament-poor-connectivity-whenever-it-rains/> (Accessed November 24th 2023)

708 <https://surfshark.com/dq/2023/insights?country=NG>

709 Picodi.com Reports and Analytics Bargain Hunting, Worldwide Comparison of Internet Prices in 2023- How much does internet cost in Nigeria? Available at: <https://www.picodi.com/ng/bargain-hunting/internet-prices-2023#:~:text=Nigeria%20ranked%20in%20the%20upper,us%20%2446.4%2Fmonth%20on%20average> (Accessed November 4th 2023)

710 Punch Newspaper, Nigeria relies on generators for 75% electricity. Available at: <https://punchng.com/nigeria-relies-on-generators-for-75-electricity-report/#:~:text=ABOUT%2075%20per%20cent%20of,and%20Climate%20Advisers%20Network%2C%20showed> (Accessed January 4th 2024)

711 Channel Television, Minister Blames drop calls, poor network on vandalism. Available at: <https://www.channelstv>

Internet Disruptions

To remind the Nigerian government of the significance of an open and unrestricted internet, Civil Society Organisations (CSOs) from all over the world co-signed an advocacy letter before the March 2023 Presidential Elections.⁷¹² Press conferences and stakeholder engagements were arranged by CSOs hosting government officials, social media platforms, and interested parties to advocate for the preservation of internet access and the upholding of freedom of expression.⁷¹³ As a result, despite widespread reports of election violence,⁷¹⁴ the government did not impose technological or legal controls over internet connectivity during the polls and throughout the year.⁷¹⁵

Media freedoms and Misinformation

The 2021 and 2022 Nigeria Londa reports observed that progressively the extent of the Nigerian security services' surveillance⁷¹⁶ and interception powers have come to light through huge government budgets and others, it also reported self-censorship getting worse in the country. Reports have previously noted how users, ranging from journalists to digital content creators, have been arrested repeatedly for their online activities under the 2015 Cybercrime Act. In 2023, Reporters without Borders noted that during the elections, journalists were often monitored, attacked and arbitrarily arrested. Still, some journalists continue to work in spite of possible consequences.⁷¹⁷

The Nigerian election of 2023 was marred by disinformation both before and after the election. Online misinformation was spread by political influencers, trolls, and bots in addition to candidates, staff(s) of the Independent National Electoral Commission (INEC) and supporters of various political parties. Numerous organisations launched an effort to fact-check and lower the spread of false information.⁷¹⁸

In a ruling on October 23, 2023, the ECOWAS Court declared that Articles 9(1) & (2) of the African Charter on Human and Peoples' Rights (ACHPR) are violated by Articles 3(1)(1) and (2), as well as 15(2)(1) and Article 15(5)(1) of the Amendments to the Nigeria Broadcasting Code (6th Edition). Nigeria is bound by the provisions of the ACHPR since it has ratified and signed it. According to Article 3(1)(1) of the Code, broadcasters are not allowed to show any material that is "disrespectful to human dignity," "encourages or incites crime, leads to public disorder or hate," "repugnant to public feelings," or makes offensive references to "any person or organisation, alive or dead." The Nigerian government was also directed by the ECOWAS Court to harmonise these clauses with

com/2023/12/05/minister-blames-drop-calls-poor-network-on-vandalism/ (Accessed December 5th 2023)

712 Accessnow Report, Open Letter: The Government of Nigeria must keep the internet and the social media platforms open and secure during the 2023 general election and beyond Available at: <https://www.accessnow.org/press-release/keepiton-nigeria-elections-open-letter/> (Accessed November 10th 2023)

713 Leadership Newspaper, 2023: Stakeholders demand robust freedom of expression. Available at: <https://leadership.ng/2023-stakeholders-demand-robust-freedom-of-expression/> (Accessed November 15th 2023)

714 BTI Transformation Index, Nigeria: Widespread violence overshadows election. Available at: <https://blog.bti-project.org/2023/02/24/nigeria-widespread-violence-overshadows-election/> (Accessed November 23rd 2023)

715 Nairametrics, Nigeria escaped as sub-Saharan Africa lost \$1.74 Billions to internet shutdown in 2023 .Available at: <https://nairametrics.com/2024/01/08/nigeria-escaped-as-sub-saharan-africa-lost-1-74-billion-to-internet-shutdo/> (Accessed January 2nd 2024)

716 PremiumTimes, Special Report: Heightened surveillance by security operatives puts Nigerian journalists under a Climate of fear. Available at: <https://www.premiumtimesng.com/news/headlines/591048-special-report-heightened-surveillance-by-security-operatives-puts-nigerian-journalists-under-climate-of-fear.html>wns-in-2023-report/ (Accessed December 13th 2023)

717 Reporters Without Borders Report, Nigeria is one of West Africa's most dangerous and difficult countries for journalists, who are often monitored, attacked and arbitrarily arrested, as was the case during the 2023 elections. Available at: <https://rsf.org/en/country/nigeria/> (Accessed December 10th 2023)

718 International Center for Journalists Report, Combating Disinformation Around Nigeria's 2023 Election. Available at: <https://www.icfj.org/news/combating-disinformation-around-nigerias-2023-election/> (Accessed November 20th 2023)

its international commitments and to stop implementing them until they are consistent with the safeguards of freedom of expression found in the ACHPR. The outcome of the case has been hailed by civil society actors as a much-needed victory for media freedom and freedom of expression in Nigeria and throughout Africa. It underscores that nations are obligated to safeguard and promote these fundamental rights at the international and regional levels.⁷¹⁹

Data Governance

Section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) establishes the fundamental right to privacy, which serves as the foundation for data protection in Nigeria. Nigeria's primary data protection law is the Nigeria Data Protection Act 2023 (NDPA), passed into law in June 2023 by the newly elected President and has remained in force ever since.

Before the NDPA came into force, the National Information Technology Development Agency (NITDA) published the Nigerian Data Protection Regulations (NDPR), 2019, which served as the de facto data protection policy even though it was a subsidiary legislation. There was also no established authority to supervise data protection in the country specifically. As such, the Nigerian Data Protection Bureau (NDPB) was created to assist with the data protection oversight role that NITDA took upon itself. It could be argued that neither of the organisations had legislative powers to take on that role. This anomaly was fixed when the NDPA was passed and the Nigeria Data Protection Commission (NDPC) was established to supervise data protection in Nigeria. The NDPB has become a part of the NDPC by virtue of Section 64 of the NDPA.

The new NDPA lists the following as its objectives “(a) safeguard the fundamental rights and freedoms, and the interests of data subjects, as guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 ; (b) provide for the regulation of processing of personal data ; (c) promote data processing practices that safeguard the security of personal data and privacy of data subjects ; (d) ensure that personal data is processed in a fair, lawful and accountable manner ; (e) protect data subjects’ rights, and provide means of recourse and remedies, in the event of the breach of the data subject’s rights ; (f) ensure that data controllers and data processors fulfil their obligations to data subjects ;(g) establish an impartial, independent, and effective regulatory Commission to superintend over data protection and privacy issues, and supervise data controllers and data processors ; and (h) strengthen the legal foundations of the national digital economy and guarantee the participation of Nigeria in the regional and global economies through the beneficial and trusted use of personal data.”⁷²⁰

The Act covers the inclusion of legitimate interest as a lawful basis for processing personal data, the processing of data of children and individuals lacking legal capacity, cross-border data transfers, and others.⁷²¹ The NDPC since its establishment reports that it has undertaken investigations of major banks and issued them fines worth over 200 million naira⁷²².At the time of this report, it was undertaking investigations on major players on privacy concerns such as Opay, DHL, and Meta.⁷²³

719 International Press Institute Report , Nigeria: IPI welcomes ECOWAS Court decision protecting freedom of expression standards. Available at: <https://ipi.media/nigeria-ipi-welcomes-ecowas-court-decision-protecting-freedom-of-expression-standards/> (Accessed November 30th 2023)

720 Nigeria Data Protection Act, 2023, ACT No. 37, A 723, Laws of the Federation of Nigeria, https://ndpc.gov.ng/Files/Nigeria_Data_Protection_Act_2023.pdf Available at: (Accessed January 2024)

721 Aellex Law Firm, Highlights of the Data Protection Act, 2023 | Nigeria. Available at: <https://www.aellex.com/highlights-of-the-data-protection-act-2023-nigeria/> (Accessed November 7th 2023)

722 Techpoint.africa Report, Nigerian banks and institutions fined over N200 million for data privacy violations. Available at: <https://techpoint.africa/2023/06/20/nigerian-banks-fined-200-million-data-privacy-violations/> (Accessed November 18th 2023)

723 Techcabal, OPay, DHL, Meta may face steep fines as NDPC begins investigation into alleged data privacy violations. Available at:

<https://techcabal.com/2023/10/10/opay-dhl-meta-risk-fines-as-ndpc-begins-privacy-investigation/> (Accessed December 8th 2023)

Review of Universal Service Provision Fund

The Nigerian Communications Act (2003) conferred on the President of the Federal Republic of Nigeria the power to constitute an 11 member Universal Service Provision Board to, among other functions, provide broad policy directions for the management of the Universal Service Provision Fund (USPF). The USPF was established by the Federal Government of Nigeria to facilitate the achievement of national policy goals for universal access and universal service to information and communication technologies (ICTs) in rural, un-served and under-served areas in Nigeria. Londa, 2022 reported Universal Service Provision Fund published only its annual reports of the years 2011, 2012 and 2018 on its website, making it at the time the only accessible reports to the public on how the fund had been used since its inception. The USPF has, since publishing this report, updated its website with the reports from 2011 until 2021⁷²⁴. The 2021 Nigeria USPF report⁷²⁵ reiterates the fund's mandate of providing quality and affordable access to ICT to all Nigerians. It reported establishing 72 Digital Nigeria access centres⁷²⁶ which are an avenue to help in the training of students to acquire ICT skills and bridge the digital divide in all 36 states of the country under its access program. In 2021, six similar centres were established in tertiary institutions as well as others, according to the Fund. The 2021 USPF report also noted some major challenges to implementation such as lack of critical infrastructure facilities, non-availability of power supply, non-cooperation from stakeholders, the COVID-19 pandemic, security concerns and inflation. That year recorded a total revenue of \$6,784,645 compared to the 2020 revenue of \$8,514,247 and a total expenditure in 2021 of \$13,612,009 compared to the total expenditure of \$1,212,635⁷²⁷ according to the published reports.

While undertaking this research, Paradigm Initiative wrote to the NCC and the Chairman of the USPF board under Nigeria's Freedom of Information Act⁷²⁸ in an FOI request acknowledged by both recipients dated December 4th 2023, noting the legal requirement to respond to Freedom of Information requests in seven days.⁷²⁹ Paradigm Initiative received a response in a letter dated January 12, 2024 with the following, outlining our questions and NCC response:

S/N	Request	Response
1.	What has the fund been used for since 2021	Facilitating the provision of Access and Connectivity programme.
2.	Are there other places where the USPF report is available to the public?	Yes, on the USPF website (www.uspf.go.ng).

724 Universal Service Provision Fund Publication, Available at: <https://www.uspf.gov.ng/media-centre/publications>(Accessed November 2023)

725 Universal Service Provision Fund Report 2021. Available at:<https://www.uspf.gov.ng/images/files-temp/USPF-Annual-Report-2021.pdf> (Accessed November 2023)

726 Universal Service Provision Fund, Digital Nigeria Centers. Available at: <https://www.uspf.gov.ng/2014-09-20-22-37-38/2014-09-30-15-59-52/12-dnc-digital-nigeria-centres/> (Accessed November 2023)

727 Exchange Rates, Central Bank of Nigeria, Available at:

728 Freedom of Information Act, 2011 <https://www.cbn.gov.ng/rates/exchratesbycurrency.asp> (Accessed January 2024)

729 Section 4(7) Freedom of Information Act, 2011

3.	What was the revenue of the 2022 and 2023 fund considering the steady increase in internet penetration? Has there been increase or decrease in revenue?	USPF revenue is based on the NCC collection of the Annual Operating Levy (AOL).
4.	What was the fund focused on in 2022 and 2023	To facilitate the extension of Access and Connectivity interventions to rural, unserved, and underserved communities in Nigeria.
5.	Was there a focus on disadvantaged groups or areas? If yes, which ones?	Yes, the USPF E-Accessibility Intervention Programme, was designed to accommodate the physically challenged in the society, eg the visually impaired, deaf, and dumb.
6.	How many individuals have been beneficiaries of the access programme, connectivity programme and social & economic benefits programme and to what extent, in the year 2022-2023	USPF targets are mainly toward groups and associations, etc. Several Communities & learning institutions across the six (6) geopolitical zones of the Country have benefitted from various USPF interventions.
7.	To what Extent has the USPF achieved its strategic focus and what is the next strategic focus starting from 2023?	The fund is consistently striving to attain major targets consistent with its guiding policy documents (HM-FMCIDE blueprint. Strategic Management Plan. However, some challenges (see No.8 below) are hindering speedy roll out of some interventions by the USPF.
8.	What were the major challenges of 2022-2023 in the implementation of the fund?	<ul style="list-style-type: none"> • Funding Gaps. • Delays in obtaining Right of Way Permits for USPF projects. • Security issues and vandalism of ICT equipment. • High cost of Bandwidth. Inadequate network infrastructure. (Access Gaps). • Inadequate public power supply. • Inflation and exchange rate volatility. • Difficulty in securing Forex for equipment importation by implementers. • Multiple levies and taxes on telecom infrastructure & services. • Deficiency in basic ICT skills among end users.

9.	What are the opportunities and areas of collaboration for the implementation of the fund in the coming years?	<ul style="list-style-type: none"> • Intensify sensitivity & awareness programmes on the importance of USPF interventions. • Explore other sources of funding from multi-national donor organisations. • Partner with relevant stakeholders to ensure sustainability of USPF interventions.
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The questions were answered very broadly and careful not to reveal in depth detail. For instance, as at the time of writing, the 2022 and 2023 USPF reports were not accessible on the website and question three and six mentioned no specific numbers. The response to question two shows that the only place the information on the Fund is accessible is its website, proving the disservice it does to the public by not publishing yearly and in a timely manner. The response does, however, highlight the challenges the Fund has faced especially in living up to its own strategic plan.

Emerging technologies

The Information and Communication Technology sector in Nigeria has seen significant growth and development in recent years. The sector contributed 15.97% to Nigeria’s real Gross Domestic Product (GDP) in Q3 2023, according to the National Bureau of Statistics (NBS).⁷³⁰

Projections for 2023 in Nigeria by news outlets predicted the growth of the Fintech sector due to its undeniable rise as an industry in the country.⁷³¹ The Fintech sector today includes a wide range of areas, including regulatory compliance, credit, and blockchain, having grown far beyond payment services. The widespread use of digital financial services and enhanced industry cooperation to promote innovation have been the main drivers of this expansion. True to those projections, as of August 2023, Fintech ventures represented over 40% of all startups in Nigeria, as shown by the data, and these startups had garnered 42% of the total funds secured by tech ventures in the country. Lending and financing accounts for 20% of Nigerian Fintech startups followed closely by 13%, 9.5% to investech, and personal finance taking 8%.⁷³² The Fintech sector has the capacity to reduce the digital divide and provide financial inclusion for all. However, despite the robust growth the Nigerian Fintech sector has seen thus far and the enormous potential of the field to address societal and financial challenges, a number of barriers are impeding the sector’s expansion in the nation, including infrastructure, investment funds, data security, regulatory issues, and consumer management.

730 National Bureau of Statistics Report. Available at: <https://www.nigerianstat.gov.ng/> (Accessed December 2023)

731 Punch Newspaper, Nigeria’s ICT sector. Available at: <https://punchng.com/nigerias-ict-sector-in-2023/> (Accessed November 2023)

732 Fintech News Africa, Despite Growth and Potential, Fintech Development Faces Challenges in Nigeria. Available at: <https://fintechnews.africa/42741/fintech-nigeria/despite-growth-and-potential-fintech-development-faces-challenges-in-nigeria/> (Accessed November 2023)

▶ Conclusion & Recommendations

Conclusion

Nigeria's 2023 report provides a nuanced exploration of Nigeria's digital landscape, emphasising the need for continued efforts to enhance internet accessibility, protect media freedoms, ensure robust data governance, and address challenges hindering technological advancements. The report also shows that the 2023 elections served as a backdrop for the ongoing struggle to balance technological progress with safeguarding fundamental rights.

Recommendations

Government

- » Allocate resources and implement policies to enhance broadband infrastructure, meeting the targets outlined in the National Broadband Plan.
- » Collaborate with stakeholders to address power outages and infrastructure vulnerabilities affecting internet service.
- » Strengthen legal protections for journalists and content creators to foster an environment of free expression, including immediate implementation of ECOWAS court judgments. .
- » Develop and implement measures to combat disinformation while preserving freedom of speech during election periods and beyond.
- » Ensure full compliance with the Nigeria Data Protection Act, addressing any legislative or regulatory gaps.
- » Enhance transparency and accountability in the operations of the Nigeria Data Protection Commission (NDPC), and support its independence as established by law.
- » Respond promptly to Freedom of Information requests to uphold transparency in the Universal Service Provision Fund (USPF).
- » Publish comprehensive reports on Fund utilisation, strategic focus, and achievements to keep the public informed.

Private Sector

- » Collaborate with the government to invest in and expand broadband infrastructure, contributing to the achievement of National Broadband Plan targets.
 - » Explore innovative solutions to provide affordable and reliable internet access, especially in underserved areas.
 - » Establish partnerships with media organisations to support and protect journalists, fostering an environment conducive to free expression.
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- » Engage in self-regulation to combat disinformation, promoting responsible content dissemination.
 - » Invest in robust data security measures to ensure compliance with the Nigeria Data Protection Act (NDPA).
 - » Collaborate with the NDPC to establish industry best practices for data protection and privacy.

Civil Society

- » Continue advocacy efforts to encourage the government to prioritise and invest in improving internet access nationwide.
 - » Strengthen media watchdog initiatives to monitor and report instances of censorship, surveillance, and attacks on journalists.
 - » Collaborate with fact-checking organisations to counter disinformation during election periods and beyond.
 - » Conduct awareness campaigns to educate the public about their rights under the NDPA.
 - » Advocate for the NDPC to maintain independence and receive adequate resources for effective oversight.
 - » Advocate for transparency within the USPF, urging prompt responses to Freedom of Information requests and the regular publication of comprehensive reports.
 - » Engage in public awareness campaigns to highlight the importance of transparency in the allocation and utilisation of universal service funds.
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Rwanda

The Rwandan Patriotic Front (RPF)-led government has overseen Rwanda's economic recovery since the 1994 genocide against the Tutsi and Rwanda. It has enjoyed an annual Gross Domestic Product (GDP) growth of more than 6%⁷³³ since 1994. The service sectors have been growing rapidly and the share of services has increased from 29% to over 47%⁷³⁴ in 2015, particularly the Information and Communication Technology (ICT) sector, which currently contributes up to 3% of the national GDP.⁷³⁵ Thus, there can be little doubt that the Rwandan government has worked hard, particularly regarding internet broadband, mobile network coverage and digital transformation. The government has also heavily invested and delivered an impressive nationwide internet 4 Generation (4G) LTE infrastructure. Rwanda has been in the limelight. However, the spotlight similarly means more attention is drawn to the Rwandan regime's flawed human rights record. For instance, the state-controlled telecommunications infrastructure and the legislative framework has enabled the national intelligence, the security service and the Rwanda national police to conduct indiscriminate mass digital surveillance of the population. This is a great source of concern given the current absence of effective judicial checks and effective oversight of Rwanda's surveillance agencies, as power is largely left in the

hands of the executive.

Nevertheless, on 15th October 2021, President Kagame signed and promulgated law no 058/2021, which relates to protecting personal data and privacy. With the passing of this law, the country became the third country in East Africa to enact comprehensive legislation on data protection and privacy, following Uganda and Kenya. Although the law spells out the various rights of the data subject, the law remains silent on certain aspects, as it does not elaborate on the modalities for processing personal data for surveillance and law enforcement purposes. provide any significant limitations to the authorities' capacity to intercept communications.

In addition, it is uncertain whether the data protection supervisory authority will execute its mission independently without yielding to external pressure, especially from the executive power, which is also the appointing authority in this case. This situation is particularly concerning, given the fact that RPF has been tightening its grip on power by cracking down on human rights online and offline.

Introduction

Rwanda is a small, landlocked, hilly and highly elevated country bordered by Uganda, Tanzania, Burundi and the Democratic Republic of Congo (DRC). Its hilly landscape earned it the sobriquet: “land of a thousand hills”. Rwanda is the 14th most densely populated country in the world⁷³⁶ and as of 2022, the population of Rwanda was above 13 million.⁷³⁷ The population is young and predominantly rural. Kinyarwanda is the principal and national language, with English, French and Swahili as additional official languages. Although Rwanda is not well endowed with natural resources, the country has made remarkable progress in the socio-economic sphere, especially after the 1994 genocide. With the support of the World Bank and other Western donors and the Rwandan regime’s good technocratic governance, the country registered a GDP growth of about 8%. During the decade from 2000-2010 the country’s per capita GDP increased from \$264 to US\$360 billion.⁷³⁸ Economic growth is mostly driven by tourism revenues, heavy public investments and agriculture production.⁷³⁹

The government has displayed vision and ambition in the context of ICT and digital innovation. The country adopted robust policies to advance the digital agenda and position Rwanda as a regional innovation hub. In 2021, Rwanda passed a new data protection law, allowing individuals and institutions to employ processes that ensure personal data is handled in a trusted, lawful and secure manner. The country is also amongst African states that have pioneered strategies and policies related to emerging technologies and Artificial Intelligence (AI). On 31 March 2023, a Centre for the Fourth Industrial Revolution (C4IR) was launched in Kigali. In May 2023, it was announced that Kigali would host the headquarters of TIMBUKTOO, the new UNDP’s technology innovation financing facility. Also, Norresken Kigali house, a start-up that opened in December 2021 and construction scheduled for completion by March 2024, aims to become a continental entrepreneurship support infrastructure - commissioned by the Swedish Norresken Foundation.⁷⁴⁰ Despite the progressive digital policies, the government has been criticised for the use of technology for surveillance and censorship, which violates fundamental human rights.

736 <https://worldpopulationreview.com/countries/rwanda-population>

737 NISR: Rwanda’s population reaches 13,2 million in 2022 available at https://www.statistics.gov.rw/publication/Rwanda_population_2022#:~:text=Rwanda’s%20population%20has%20reached%2013%2C246%2C394,data%20collected%20in%20August%202022.

738 World bank Group: Rwanda Economic Update; Inclusiveness of Foreign Direct Investment in Rwanda, June 2023, Ed no21, P.2 available at <https://openknowledge.worldbank.org/server/api/core/bitstreams/982206fa-fa03-4083-820d-39171ca6f80b/content#:~:text=Inflation%20has%20eased%20but%20remained,remittances%20outweighing%20rising%20import%20prices>.

739 Ibid,

740 Kagire, E: “President Kagame officially opens Norresken Kigali House, calls on young innovators to be more daring”, Kigali Today, 2023 available at <https://www.ktpress.rw/2023/11/president-kagame-officially-opens-norresken-kigali-house-calls-on-young-innovators-to-be-more-daring/>

► Country Analysis

ACCESS TO INTERNET AND DIGITAL INFRASTRUCTURE

Despite its small size, Rwanda has distinguished itself as a country that has bet big on digitisation, as a means to accelerate economic growth and reduce poverty. The country's expansion in digital infrastructure has been impressive, especially with the roll out and the expansion of the national fiber optic backbone network. The 3G network coverage is now at 93,5% compared with a regional average of 76%.⁷⁴¹ Furthermore, by leveraging a public-private partnership, the Rwandan government was able to deliver a nationwide 4G network. Currently, Rwanda's 4G coverage officially stands at 96,6%⁷⁴² and is one the highest rates on the continent.⁷⁴³

Rwanda has also progressed in digitising public records, by expanding the use of management information systems and rolling out shared cloud-based infrastructure, for instance "Irembo", an e-government platform⁷⁴⁴. Irembo, which means gateway in Kinyarwanda, is an e-citizen portal designed for the provision of various government services to the public. The portal is managed by Rwanda Online Company Limited which is a local public and private partnership technology company. The Irembo portal has enabled most state agencies to digitise their services by drastically eliminating paperwork thereby improving government's public services delivery. Public services in sectors such as family, social affairs, immigration, identification, civil registration, land, health, education offer services on the platform. Since its launch, the platform has processed over 25 million applications worth US\$300 million.⁷⁴⁵ Further, in the decade 2010-2018, ICT was the fastest growing service sub sector and currently it represents about 1.4% of Rwanda GDP.⁷⁴⁶ This dynamism was mainly driven by mobile phone penetration and it is estimated that 74,3 % of the population has access to a mobile device.

In terms of digital infrastructure, while the national expansion has been impressive, the actual use of the Internet is estimated to be much lower. This is due to various factors related to low digital literacy, affordability and the quality of service. Despite at least 74,3% of current Rwandan mobile subscribers, tangible efforts to boost local manufacturing, including the launch of the Mara group's local smartphone production and assembly plant, the cost of smartphones is still high and those in the low income bracket are most affected. This is also due to the urban-rural divide that is still acutely pronounced.⁷⁴⁷ At least 26% of all individuals living in urban areas report being computer literate compared to rural folks who stand at a paltry 6,8%.⁷⁴⁸ In addition, Rwanda's online gender gap is much higher than that of its peers in the East African region. As of January 2023, 35,5% of Rwanda's social media users were women and 63,5% were men.⁷⁴⁹ Lastly, human development is

741 P, Behuria: between Party Capitalism and Market reforms; Understanding sector differences in Rwanda, p.12, available at <https://research.manchester.ac.uk/en/publications/between-party-capitalism-and-market-reforms-understanding-sector->

742 Rwanda Digital Acceleration Project ; available at <https://documents1.worldbank.org/curated/en>

743 Rwanda Economic Update: Regional Integration in Post Covid-19era available at <https://www.worldbank.org/en/news/pressrelease/2022/02/rwanda-economic-update-regional-integration-in-posy-covid-era>. (accessed on 12 december,2023)

744 https://irembo.gov.rw/home/citizen/all_services

745 Cipesa: Patient Data Privacy in the age of telemedicine : case studies from Ghana, Rwanda, and Uganda available at <https://cipesa.org/fr/2023/12/patient-data-privacy-in-the-age-of-telemedicine-case-studies-from-ghana-rwanda-and-uganda/>

746 Op Cit Rwanda Economic Update: regional Integration in Post-covid era.;

747 Ministry of Infrastructure : Joint Sector Review 2019/2020, Urbanization and Rural settlement sector, October 2020 available at <https://www.minecofin.gov.rw/index.php?eID=dumpFile&t=f&f=56169&token=5ed71d63556d31bcd75395a7f86e33a1e515809a>

748 Op Cit NISR: Rwanda's population reaches 13,2 million in 2022

749 <https://foundation.mozilla.org/en/blog/narrowing-the-online-gender-gap-in-rwanda/>

very low and the country ranks 160th out of 189 on the Human Development Index⁷⁵⁰ (HDI Ranking). Furthermore, it's also important to highlight Rwanda has not experienced restrictions on internet connectivity or shutdown.

ONLINE FREEDOM OF EXPRESSION

Free Speech and Media Freedoms in 2023

Almost three decades after the 1994 genocide, the ruling party has consolidated its dominance over the political space. As a result of this hegemony is the clear absence of political competition, the restrictions on personal freedom as well as the state's tight control over the society. The Constitution of Rwanda includes the Bill of Rights.⁷⁵¹ Article 38 provides for freedom of expression, including for members of the press and other media "in conditions prescribed by the law". However, the practice is different as the state routinely continues to police the public narrative about the country and interferes in journalistic work in a very subtle manner, such as the use of censorship, unjustified arrests and prosecution of journalists and YouTube bloggers. Although there is no evidence that the government filters internet content, most Rwandan journalists often practise self-censorship to avoid government's interferences.

However, the journalists or political commentators who express views deemed critical of the government policies, especially on sensitive topics are often threatened, harassed or arrested.⁷⁵² Authorities continue to harass and prosecute YouTube bloggers, like the former computer science lecturer Karasira Aimable who is in detention and currently accused of genocide denial, and the case of Yvonne Idamange, who is serving a 15-year jail term since 2021 after accusing President Paul Kagame of being an autocrat and using the genocide of the Tutsi for political manipulations and recuperations vis-à-vis of the international community forum, via her YouTube channel.⁷⁵³ Three journalists of Iwacu web TV⁷⁵⁴ were acquitted by the High Court of Kigali after they were arrested and prosecuted in October 2018 for inciting insurrection and spreading false information. They spent four years in pre-trial detention which contradicted Rwanda's obligations under the international human rights law.⁷⁵⁵

In November 2023, the intermediate court of Nyarugenge in Kigali ordered the release of the YouTube blogger Manirakiza Theogene⁷⁵⁶, after he had been arrested a month earlier and charged with corruption and blackmail among other accusations. He was arrested a few weeks after he allegedly published on his YouTube Ukwazi web TV damaging allegations of corruption involving a senior public official and an influential city lawyer who conspired to grab a citizen's property. It is also common to observe digital threats and harassment through social media and public smear campaigns on the web, where government-affiliated trolls and social media accounts regularly mobilise against individuals who are critical of the government. These social media 'trolls' call themselves #TeamPK, known for systematically harassing and discrediting opponents online. Besides, pro-government accounts also use mass reporting as a silencing tactic. A prominent Rwandan dissident alleged that Rwandan pro-government accounts reported his Facebook posts as violating META's community standards and META removed his posts from the platform before

750 https://hdr.undp.org/sites/all/theme/hdr_themes/hdr_theme/country-notes/RWA.pdf. (accessed on 10 December, 2023)

751 The Constitution of the Republic of Rwanda of 2003 as revised in 2015 available at <https://www.constitutionproject.org/constitution/Rwanda-2015.pdf?lang=en> (accessed on 12 December, 2023)

752 <https://www.afrikareporter.com/rwandan-journalist-arrested-over-tax-evasion-story/>. (accessed on 12/12/2022)

753 <https://www.africanews.com/2021/10/01/rwandan-govt-critic-on-youtube-sentenced-to-15-years/>

754 <https://www.theeastafrican.co.ke/tea/rest-of-africa/rwanda-acquits-three-journalists-detained-for-four-years-3975044>

755 Principle 38: Body of principles for the protection of all persons under any form of detention or imprisonment.

756 Ufitwabo, A: Media self-Regulatory body speaks out on journalists 'arrest in the New Times, 2023 available at <https://www.newtimes.co.rw/article/11636/news/rwanda/media-self-regulatory-body-speaks-out-on-journalists-arrest>

reinstating them after he submitted an appeal.⁷⁵⁷

GENDERED DISINFORMATION

The Internet has been lauded for advancing access to information and enhancing freedom of expression. It has also been plagued by issues like online violence, misinformation, and hate speech, which are gender-discriminatory tendencies mirroring offline patriarchal and societal structures. Despite Rwanda's legal and constitutional guarantees of the right to freedom of opinion and expression, especially article 10 regarding the fundamental principles of the constitution on gender equity and its international and regional obligations in the International Covenant on Civil and Political Rights. Many Rwandan women are still subjected to gender-based violence, including harassment, bullying, false information, and psychological violence.

Despite the country's stellar performance on gender metrics at the global level during the last two decades, gendered disinformation still constitutes a serious source of concern amongst Rwandan female online users. In Rwanda, gendered disinformation has been mostly used as a deterring factor for young women who take up a political career, especially in the opposition movement. For instance, in 2017, a few days after Diane Rwigara's public announcement of her plans to contest for the presidency, photoshopped nudes of her became viral on social media. This was a tactic to discredit her political ambitions.

The operational patterns are often similar: female politicians are targets of image-based disinformation, as these images are used to sexualise them and to create false narratives in order to shift the public focus from the main political discourse. More recently, Ingabire Victoire Umuhoza, a Rwandan opposition politician, was subjected to an aggressive online harassment campaign following her public criticisms of the UK-Rwanda migration deal.⁷⁵⁸ The smear campaign was of extreme violence against Ingabire Victoire Umuhoza. The smear campaign consisted of sexual slurs and memes. She was also accused of being a witch. The ultimate aim was to destroy her reputation as a woman and a politician.

The same tactic has been often used to demonise feminism and feminist activists. Rwandan feminist activist Sylvie Nsanga, has been regularly exposed and targeted online by vile and sexist content marred with insults and obscene threats. She is constantly bullied and the character assassination seeks to diminish her credibility.⁷⁵⁹ Online users claimed that Sylvie and other feminist activists are pushing for a "feminist agenda" and conducting a "witch-hunt" against prominent Rwandan men. Lastly, the case of Rwandan socialite Lilian Mugabekazi is worth noting. Lilian was arrested and charged in August 2022 for "public indecency" after pictures of her wearing a sheer dress while attending a concert in Kigali became viral on social media. The incident⁷⁶⁰ caused a social media uproar while some online users supported her and called for her release, others attacked her with sexual slurs and memes accusing her of being a prostitute.

In this regard, it is critical for the Rwandan government to launch awareness and educational campaigns about the dangers of gender misinformation in its various forms, especially hate speech and violence based on gender and campaigns of defamation of women. In parallel with launching awareness campaigns that will bring about much needed changes in our social and cultural attitudes.

757 [Medium.com/@david.himbara_27884/kagames-social-media-army-got-facebook-to-block-my-posts-days-later-facebook-to-block-my-posts-days-later-facebook-apologizer-9a3316b47d2](https://medium.com/@david.himbara_27884/kagames-social-media-army-got-facebook-to-block-my-posts-days-later-facebook-to-block-my-posts-days-later-facebook-apologizer-9a3316b47d2)
758 <https://www.theguardian.com/uk-news/2023/dec/14/rwanda-politician-criticised-sunak-bill-fears-for-her-safety>
759 <https://www.africa-press.net/rwanda/all-news/safer-internet-day-is-it-possible-to-make-the-internet-safe-for-all>
760 <https://nation.africa/africa/news/rwanda-woman-faces-two-years-in-jail-for-shameful-dress-3919316>

PRIVACY AND SURVEILLANCE

Understanding the practice of mass surveillance in Rwanda

Electronic systems in the digital era have created an environment of pervasive surveillance, where most if not all, communications channels are monitored in some capacity. Digital surveillance is pervasive, and the Internet is the primary ground of the battle. Given the Rwandan context, the most prevalent surveillance actors are the state and, to a lesser extent, corporate entities. State security agencies mostly target mass surveillance of telephone metadata and call content.

The Constitution and the Bill of Rights guarantee the right to privacy. However, the reality is the opposite of the letter of the law. Article 23 of the Constitution guarantees privacy protections to Rwandan citizens in their homes, correspondence, and telephone conversations. However, public surveillance in Rwanda takes the form of telecommunications backdoor requirements. Based on the provisions of Article 7 of law no 60/2013 regulating the interception of communications, telecommunications corporations are required to grant access to national security agencies. Additionally, under the provisions of law no 73/2013 determining the powers, mission, organisation and functioning of the National Intelligence and Security Services (NISS), the NISS is authorised to receive and collect information to carry out its mission, including protecting national security. Therefore, based on the mandate granted by the law, the NISS has sweeping access to all communications in Rwanda without the need to seek approval from the public prosecutor.⁷⁶¹

In 2017, the Rwandan government allocated five billion Rwandan Francs⁷⁶² (approximately US\$5 million) to procure and deploy CCTV cameras in Kigali and other main towns nationwide. The official government explanation was that the CCTV cameras were meant to prevent and detect crime. Every single footage and data being recorded by the CCTV network is stockpiled by the Rwanda national police, and all of these measures have been implemented in the absence of sufficient legal safeguards and guidelines. For instance, persons subjected to cyber and phone surveillance are not notified, and there are no effective legal remedies in case of violations.

Lastly, the recent proliferation of biometrics and other forms of data collection in everyday life for accessing essential services such as banking, access to workplaces, or mobile phones may also have a corrosive effect on privacy, especially due to the sensitivity of data collected without proper control or oversight. The right to privacy is not absolute. It may be interfered with to advance legitimate state and public interests, such as national security or to combat terrorism. However, this interference must be lawful, necessary and proportionate. Nevertheless, there is a critical need for legal reform as the current Rwandan legal framework regulating the NISS surveillance activities fails to satisfy international law's legality and proportionality standards.

DATA PROTECTION AND CYBER SECURITY

The Constitution of Rwanda reaffirms the respect for privacy as Article 23 of the Constitution states that every person has the right to privacy, which includes the right not to have information relating to their family unnecessarily acquired or revealed. Besides the Constitution, other relevant laws like the Law no 04/2013 relating to access to information, the Organic Law Instituting the Penal Code of Rwanda (14 June 2012) and the Law No. 18/2010 of 12/05/2010 relating to Electronic Messages, Electronic Signatures and Electronic Transactions (the Telecommunications Law) recognise and

⁷⁶¹ Article 09 of the law no 60/2013 provides: if required by "urgent public security interests" the interception warrant can be issued by the national prosecutor verbally but this must be followed by a written warrant within 24 hours or the interception will be presumed illegal.

⁷⁶² The New Times: Rwf 5Bn earmarked for CCTV surveillance system in Kigali available at: <https://www.newtimes.co.rw/news/rwf5bn-earmarked-cctv-surveillance-system-kigali>

provide for guidelines regarding the protection of privacy and personal data information.

In 2021, Rwanda enacted its first data protection legislation, which gives effect to Article 23 of the Constitution on the right to privacy. Law No. 058/2021 of 13 October 2021 relating to the Protection of Personal Data and Privacy⁷⁶³ (the Law) is modelled after the EU General Data Protection Regulation (GDPR). It aims to protect the fundamental rights of natural persons that may be jeopardised during the processing of personal data by public and private bodies. It applies to manual and electronic processing of personal data and to data handlers and processors residing inside or outside the country. The law is instructive on data protection principles, including the rights of data subjects and the duties and obligations of data collectors, controllers, and processors. This clarity will facilitate the processing of personal data within the confines of the law.

In this regard, the law provides Rwandans with the strongest safeguards of their right to privacy as it sets out the norms and the standards for the State and private actors to provide for the protection and sovereignty of personal data. In the context of surveillance, the law places a positive obligation on the State to set up adequate safeguards for the right to privacy, including where justifiable targeted surveillance has been undertaken in crime prevention and the investigation and enforcement of laws for a legitimate aim. The law buttresses privacy as a fundamental human right for Rwandans. It provides certainty on the enforcement of data and privacy rights by providing for the duties and obligations of the respective parties.

Nevertheless, it should be noted that it falls short in certain aspects, such as individual autonomy over personal data, as it is more concerned with regulation than rights and their enforcement by the data subject. In addition, it is also important to mention that concerning rules for processing personal data for surveillance purposes, the law remains silent on this specific aspect as it does not make elaborate provisions on the modalities for processing personal data for surveillance or law enforcement purposes.

On a positive note, Rwanda is a party to the African Union Convention on Cybersecurity and Personal Data Protection (the Malabo Convention). It domesticated the Convention by enacting data protection legislation in October 2021⁷⁶⁴. Law no 058/2021, relating to the protection of personal data and privacy, allows individuals and institutions to adopt mechanisms that ensure personal data is processed in a lawful manner. This legislation also provides guidance for notification in case of personal data breaches and cross-border data transfers. In terms of exemptions, it provides for the processing of personal data for national security purposes. The law also establishes the office of the data supervisory authority, whose mandate is to oversee the enforcement of the data protection legal framework. The data protection office was officially launched by the National Cyber Security Authority (NCSA) in March 2022. The role of the data protection office is to oversee the following: registration of data controllers and data processors in Rwanda; the conduct of data compliance audits; investigation of complaints; research on data processing and computer technology; and exercise control on personal data protection.

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Existence and Functioning of Data Protection Supervisory Authority

Article 27 of law no 058/2021 relating to the protection of personal data and privacy provides for the establishment of a supervisory authority. In October 2021, the Ministry of Information Communication and Innovation announced⁷⁶⁵ and designated the National Cyber Security Authority (NCSA) as the supervisory authority in charge of the enforcement of the law. On March 31st 2022, the

763 file:///C:/Users/Kigali%20Attorneys/Downloads/personal_data_protection_and_privacy_law.pdf

764 <https://www.risa.gov.rw/index.php?elD=dumpFile&t=f&f=65369&token=15e7fad700949646dd7c1faae89f9663048f4f92>

765 MICT Press Release : “Rwanda Passes new law Protecting personal data”, October 21, 2021 available at <https://www.minict.gov.rw/index.php?elD=dumpFile&t-f=30553&token=d44bb5a417c65872b4b0ece892e5d8ba34c8c91> (accessed on 12 December, 2023)

government through the National Cyber Security Agency⁷⁶⁶ officially launched the data protection supervisory office, an implementation move that is aimed at the effective implementation of the personal data governance framework. In terms of the law, the supervisory authority has the following powers:

1. To monitor compliance and sanction data protection law violations.
2. To create further regulations for implementation.
3. To receive complaints and claims relating to the processing of citizens' personal data.
4. To authorise processing operations that involve high risk to the rights and freedoms of individuals.

However, the law does not make elaborate provisions for the organisation and the operational structure of the supervisory authority.

The Data Protection Supervisory Authority

On October 17th, 2022, a few days after the cabinet enacted the law relating to the protection of personal data and privacy, the Minister in charge of ICTs announced that concerning the law, she designates the National Cyber Security Authority (NCSA) as the supervisory authority charged with the enforcement of this piece of legislation. Further, on March 31, 2022, the cabinet officially launched the data protection office through the National Cyber Security Authority as an implementation move aiming at effective data governance. In addition, it's important to note that the Rwanda Data Protection Office is not an independent agency but operates under the supervision of the national cyber security authority. The NCSA chief executive officer is appointed and removed from office by a presidential order.

Lastly, as the data protection and privacy law is being implemented, it's important to keep in mind that it is uncertain whether the supervisory authority will execute its mission independently and without yielding to external pressure.

1. Is there relevant case law regarding privacy or data protection in Rwanda?

So far, no data protection litigation or public interest petition has been initiated under Article 23 of the Constitution before domestic courts in Rwanda. However, mentioning a series of ongoing litigation cases pending before the High Court of the United Kingdom (UK) and their future impacts on the Rwandan data protection law is important.

On April 14, 2022, the Rwandan government announced a pilot plan of relocating migrants and asylum seekers to Rwanda to address the UK's continuing refugee crisis.⁷⁶⁷ The Memorandum of Understanding (MoU)⁷⁶⁸, provides for: "the transfer of asylum seekers whose claims are not being considered by the UK to Rwanda, which will process their claims and settle individuals after their claim is decided". However, the implementation phase of this controversial deal has been the subject of a series of public interest petitions lodged before the UK Supreme Court by individuals selected for relocation seeking to challenge their removal. Amid legal challenges⁷⁶⁹,

766 <https://www.cyber.gov.rw/about/>

767 A, Iliza: "Rwanda gets \$157m in deal with UK to host migrants, asylum seekers" in the East African, April 14, 2022 available at <https://www.theeastafrican.co.ke/tea/news/east-africa/rwanda-uk-in-deal-to-host-migrants-3782012> (accessed on 15 December, 2023)

768 Memorandum of Understanding between the UK and Rwanda for the provision of an asylum partnership arrangement available at <https://www.publications.parliament.uk/pa/ld5803/ldselect/ldintagr/71/71.pdf> (accessed on 10 December, 2023)

769 AAA v.SSHD Rwanda Judgement, available at <https://www.judiciary.uk/wp-content/uploads/2022/12/>

the UK jurisdictions may proceed towards a data protection impact assessment and standards adequacy for the exchange of the information between the UK Home Office and Rwanda general directorate of emigration and immigration as well as how envisaged data transfers would likely work in practice under the MOU.

Following these petitions, the Supreme Court should assess whether the MOU is data protection compliant, particularly with regards to reliance on Article 49(1)(d) of the UK Data Protection Act⁷⁷⁰ as the basis for the international transfer; such as what the mechanisms that have been put in place to prevent the information being shared where it may cause the relocated individual or their family to be placed at risk of serious harm. On November 15, 2023, the UK Supreme Court⁷⁷¹ struck down the key government's policy to send migrants to Rwanda. In the application of AAA (Sudan) and others v. Secretary for the Home Department, the UK Supreme Court held that the Secretary of State's policy to remove protection seekers to Rwanda was unlawful. Further, the UK Supreme Court then applied the correct test amongst the evidence it had on the general human rights situation in Rwanda and the lack of adequacy and appropriate safeguards for the transfer of personal data⁷⁷² between Rwanda's Directorate of Emigration and Immigration and the UK Border force, as well as the lack of independence concerning the judiciary and the court system in Rwanda.

CYBERSECURITY

Vulnerability and Threats Landscape

Rwanda's cybersecurity landscape is evolving as disruptive technologies such as AI and digital spyware facilitate state mass surveillance and pose significant societal challenges and specific threats in human and digital rights. A 2020 study by SYSEC Limited, a UK cybersecurity and threat intelligence firm, found that the majority of Rwandan firms are vulnerable to cyber threats.⁷⁷³ Only 26 out of 750 firms' systems were reviewed as good. The largest vulnerabilities were found through email scams such as phishing. According to the Rwanda Investigation Bureau, the rate of cybercrimes increased by 30% during the last quarter of 2022, and mobile money frauds were particularly on the rise.⁷⁷⁴ Further, in February 2020, threat actors targeted a data centre that hosted, among others, government servers that went offline for several hours.⁷⁷⁵

The Rwandan government has allegedly acquired state-of-the-art spyware from Israel to spy on citizen's email and other internet communications.⁷⁷⁶ The 2018 report by the Canadian-based Citizen Lab⁷⁷⁷ disclosed that Israeli-based cyber warfare vendor NSO's group allegedly sold surveillance technologies such as "Pegasus spyware", a mobile phone spyware, to Rwanda and to many other African countries designed to spy on their own citizens' mobile⁷⁷⁸ and internet communication.

AAA-v-SSHD-Rwanda-judgement.pdf/ (accessed on 19/11/2023)

770 Data Protection Act 2018

771 Voice of America; UK Court reject deal to send migrants to Rwanda available at: <https://www.voaafrica.com/a/uk-court-rejects-deal-to-send-illegal-migrants-to-rwanda-/7355684.html>

772 Judgement (on Application of SAA(Sudan) respondent v. Secretary for the Home Department(Appellant) available at <https://supremecourt.uk/cases/UKSC-2023-0097.html>

773 Mwai, The new Times(2020): Cybersecurity: Majority of Rwandan SMEs vulnerable available at <https://www.newtimes.co.rw/news/cybersecurity-majority-rwandan-smes-vulnerable>

774 <https://www.newtimes.co.rw/article/173528/News/fifteen-arrested-in-mobile-money-scam-crackdown>

775 Taarifa(2020) Government Data center goes down-president's website off, available at <https://taarifa.rw/government-data-center-goes-down-presidents-website-off>

776 Financial Times: Inside the WhatsApp hack how an Israeli technology was used to spy available at:<https://www.ft.com/content/d9127eae-f99d-11e9-98fd-4d6c20050229>

777 Citizen Lab :Hide and Seek: Tracking NSO Group's Pegasus spyware operations in 45 countries, Op cit P.8.

778 S,Maphumulo:"Hunt for super-spy machines"(IOL,27 August2015)available at :https://mg.co.za/news/hunt-for-super-spy-machines-1906508#.Vd7X7nvV_BE

Pegasus can be installed on a target phone in many ways: first, by sending infected links (phishing) or through social engineering. This malware is designed to penetrate security features on the phone and install Pegasus without the users' knowledge and permission.⁷⁷⁹ It can also avoid detection by anti-virus software and can be removed only by its operators.⁷⁸⁰ Once Pegasus is installed, it contacts the operator command servers to receive and execute the operator's command and send back the target's private data, such as contact lists and text messages; it can screenshot the device screen, record live voice calls from popular social media such as WhatsApp and Facebook messenger⁷⁸¹ and take full control of a device.⁷⁸² In addition, this spyware enables the state security services to conduct real-time surveillance and remote, geo-localization, tracking, and monitoring of citizens and political dissidents.⁷⁸³ This situation raises significant extraterritoriality concerns as these practices can endanger individuals living across different states and jurisdictions.⁷⁸⁴ Also, this has significantly boosted the state security services' capacity and ability to conduct transnational repression.

Overview of Rwanda's Cybersecurity Legislative Framework

Currently, Rwanda's primary laws governing cybersecurity policy are Law No 60/2018 and Law No 24/2016. Law no 60/2018 prevents cybercrime offences and provides the judiciary and law enforcement agencies with the legislative framework to investigate cybercrime and spell out the penalties. In addition, the law also lays the foundation for state entities and the private sector to collectively combat cybercrimes affecting Rwanda. Law 28/2017 defines the National Cyber Security Authority's (NCSA) mission and responsibilities. The law officially established the NCSA as the national regulatory entity in charge of cybersecurity in Rwanda. Law no 24/2016 establishes the framework for ICT policy and regulation.

DIGITAL AND BIOMETRIC IDENTITY

Around the world, states and business entities are increasingly using systems that rely on collecting and using biometric data, such as DNA, facial geometry, retina and fingerprints. Some countries have created centralised databases that store such information for various purposes,⁷⁸⁵ including national security and criminal investigations and the provision of public services such as education or finance.

Since 2008, the National Identification Agency (NIDA) has been collecting citizen's biometric data. Every person who applies for a national ID card is requested to submit their biometric data, such as two fingerprints and a photograph. This practice has been done for over a decade without a clear legal operational mandate, as biometric data have been collected since 2008 without an enabling legal framework. Additionally, the current legal framework (law no 14/2008 governing registration of the population and issuance of the national identity card, which was amended in 2018) does not provide for or define clearly the nature of data to be collected. Rather, the law delegates powers

779 Citizen Lab: Hide and Seek, Op Cit.
780 Ibid.
781 Ibid.
782 Ibid.
783 Ibid.
784 Ibid.

785 Human Rights Council: the Right to privacy in the Digital Age, report of the United Nations High commissioner for Human Rights, available: https://www.ohchr.org/Documents/Issues/DigitalAge/ReportPrivacyinDigitalAge/A_HRC_39_29_EN.pdf

to the Minister of Interior and Local Government to determine the specifications of the national ID card and the fee structure related to national identification services.

However, it's important to note that on April 3, 2023, the Cabinet pushed for legislative amendments for formally and legally implementing a digital ID ecosystem in Rwanda. These reforms seek primarily to adjust NIDA's operations under the scope of the law. The reforms are envisaged to expand the scope of eligible persons under the 2008 law governing population registration in order to include stateless persons. While defending the Bill before Parliament, the Rwandan Cabinet Minister in charge of innovation and ICT explained that the digital ID card will come in two versions: a physical card fitted with a machine-readable QR code⁷⁸⁶ containing biometric data and an online version that will use biometrics to access the ID.

Additionally, one of the innovative features of this project is the ID number assigned to children during their birth registration data. The same numbers can also be used when the child attains the legal age to carry a national ID. However, it's important to keep in mind that the Rwanda Digital ID project is still in its nascent phase and there are still no clear indications from the Ministry regarding the timelines and modalities of its implementation. The World Bank will fund the project at the tune of US\$40 million.

The Rwandan Cabinet tabled the national digital ID proposal for debate in Parliament; however, many questions are pending, especially cybersecurity concerns related to biometrics and the critical question of consent. There are also fears that without clear rules on data governance, the digital system can be politicised and the incumbent government can make unilateral decisions on the use and sharing of data. Here lies the tough and challenging issue of consent. Consent is critical in the ethical and legal use of personal information. Unfortunately, the cabinet policy is vague and does not address the question of consent in the context of this digital ID project. Therefore, it is crucial to ensure the protection of Rwandan citizens' privacy and rights, together with clear limitations and definition of access, withdrawal or removal of consent in cases of changes of identity. While changing one's passport or driving licence is possible, this does not apply to biometric data. Also, as the policy is tabled before Parliament, it is important to involve users in the decision-making processes through public consultations and participation, especially towards the implementation phase of the digital ID, which can contribute to more ethical and user-centric solutions.

The National Universal Service Fund

The National Universal Service Fund (NUSF) is a funding mechanism to incentivise expanding internet services in remote and underserved locations of Rwanda. NUSF was established in 2004⁷⁸⁷ and was previously managed by the Rwanda Utilities Regulatory Authority (RURA). The Presidential order no 025/01 of 12/05/2023 was enacted to regulate the management of the fund.⁷⁸⁸ The NUSF is financed through mandatory contributions from telecommunications. The law⁷⁸⁹ provides that all telecommunication services providers operating in Rwanda should deduct a 2,5%⁷⁹⁰ levy from their gross annual revenues and the interconnection fee between licensed telecommunications operators. The legislation also allows funds to be raised through donations and grants from international donors and development partners. The funds are allocated through a

786 Sabiiti, D :Stateless Persons and Newborns to get Rwandan Digital ID, KT Press,2023 available at <https://www.ktpress.rw/2023/04/stateless-persons-newborns-to-get-rwandan-digital-id/>

787 Presidential Order no 05/01/ of 15/03/2004 determining the functioning of the universal access fund and public operator's contributions available at <https://www.rura.rw/fileadmin/documents/docs/pl05.pdf> (accessed on 24 December, 2023)

788 Presidential order no 025/01 of 12/05/2023 governing universal funds available at <https://www.minijust.gov.rw/index.php?eID=dumpFile&t=f&f=68425&token=81ce3dba53d7971109768f42004ca74470789f9d>

789 Ibid.

790 Article 7: Every licensee referred to in Article 3 of this Order pays to the Fund an annual contribution which must not exceed 2.5% of the turnover of each category of regulated service

competitive bidding process.

Priorities and what the Fund has achieved to date

The priorities of the NUSF include internet connectivity to all districts, especially those located in rural areas, police stations, army barracks, immigration and border posts, public and private universities, and primary and secondary schools. Through the NUSF, the government invested in a number of projects to support connectivity in rural areas. Some of the achievements include:

1. The funding and the implementation of the government flagship one laptop per child program in rural areas.
2. The connectivity of 45 secondary schools located in remote and rural areas.
3. The 2016 provision of financial support to Ms Geek Africa, a competition which aims to encourage and sensitise girls to participate in science and technology.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

ARTIFICIAL INTELLIGENCE NATIONAL STRATEGY

The future of AI in Rwanda looks promising. Rwanda hosts world-class universities such as the Carnegie-Mellon University–Africa and the African Institute of Mathematical Studies which have their campuses based in Kigali. At the same time, these institutions attract a substantial number of regional and global talents, which positions the country as a potential leading destination for IT and AI education on the continent. Additionally, the country recently launched the Centre of the Fourth Industrial Revolution and the Rapid Innovations (C4IR) on March 31, 2023.⁷⁹¹ The Centre will focus on data governance, artificial intelligence and machine learning. It will work with the government on the development of new policies and strategies in technology governance that enable agile implementation and to foster inclusive innovation. This project is a partnership between the government of Rwanda through the Ministry of Innovation and ICT and the World Economic Forum.⁷⁹² In addition, the government of Rwanda in coordination with key stakeholders launched the national AI policy. The national AI policy identifies five priority policy areas:⁷⁹³

1. Positioning Rwanda as Africa’s AI lab.
2. Creating an open data ecosystem as an enabler of the AI revolution, by increasing storage infrastructure and high-performance computer resources.
3. Driving public sector transformation to accelerate AI adoption.
4. Accelerating responsible AI adoption in the private sector in order to intensify the application of AI to boost productivity and efficiency in key sectors of the economy.
5. Building AI literacy and 21st-century skills with the objective of positioning Rwanda as a leader in AI higher education and research in Africa.

⁷⁹¹ Ingabire, P: How can Rwanda leverage the fourth Industrial Revolution to strengthen post-covid-19 resilience available at <https://www.weforum.org/agenda/2022/03/rwanda-leveraging-the-fourth-industrial-revolution-to-strengthen-post-covid-resilience/> (accessed on 14/12/2023)

⁷⁹² <https://www.c4ir.rw>

⁷⁹³ How Rwanda AI Policy helps to shape the evolving AI ecosystem available at <https://www.digicenter.rw> (accessed on 17/12/2023)

In addition, the policy advocates for creating open public sector data to reduce entry barriers. As the country's AI ecosystem is growing, there are tangible developments in the use of AI in the public domain, particularly in sectors such as public health, transport, and immigration. Since 2016, Zipline International has been operating in Rwanda, in partnership with the government. It uses drone technology to deliver blood and medicines to remote health centres across the country. In 2019, the Rwanda General Directorate for Immigration and Emigration introduced the E-gates to FastTrack immigration formalities at the major entry points of the country. E-gates were deployed at the Kigali International Airport and Rubavu border post on Rwanda's western border with DRC to facilitate immigration and customs processes.⁷⁹⁴

794 Musoni, E; Kigali Airport gets Ultra-modern electronic gates in the New Times, in the New Times, February 20, 2020 available at <https://www.newtimes.co.rw/article/68080/national/kigali-airport-gets-ultra-modern-electronic-gates> (accessed on 13 December, 2023)

▶ Conclusion & Recommendations

Conclusion

Rwanda is positioning itself as a leading African country that fosters innovation, especially in embracing digital transformation. Meanwhile, the actions of the government are clearly in contradiction with the progressive digital policies that are promoted by the same state. The government is still rightly criticised for online censorship and self-censorship. During and after the COVID-19 pandemic, the government, through its farm trolls and law enforcement entities, has been aggressively harassing journalists, dissidents, bloggers and media outlets. The clampdown has dramatically forced many independent media outlets to close down. This situation, coupled with mass surveillance of communications metadata and the acquisition of spyware, has substantially worsened the climate of fear and self-censorship among the public. Therefore, recommendations are proposed for different stakeholders in this context of restrictions.

Recommendations

Government

- » Publicly express its commitment to freedom of expression by significantly amending the laws and penal code.
 - » Create a conducive environment for the free flow of information in the country.
 - » Review the past convictions of journalists and bloggers convicted on vague public disorder charges to ensure compliance with human rights.
 - » Reform the training of Rwanda Investigation Bureau staff and public prosecutors on investigating accusations so that freedom of expression is protected on paper and in practice.
 - » Refrain from the general tendency of state security agencies to rely on mass surveillance for intelligence purposes, which violates the principle of legality, necessity and proportionality under International law.
 - » Review all laws and regulations to ensure that they do not impose requirements of blanket, indiscriminate retention of communications data on telecommunications and internet services provider companies operating in Rwanda.
 - » Invest at least 50% of the funds of NUSF in projects that target gender inclusion and women's internet use.
 - » Increase transparency of the NUSF, especially in regard to disbursements and operations, as the current legal framework lacks clear rules of operations of the allocations of USAF funds between the bidders and the USAF.
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- » Reform and strengthen the policy and legal mechanisms for the independent authorisation and oversight of state surveillance to ensure that those mechanisms are competent and adequately resourced to monitor the legality of surveillance measures.
 - » Policies on the digital ID must reflect the country's socio-economic context through a deep analysis of the country's challenges, with a clear understanding of what the intended system will solve and how the citizens will benefit from the digital ID system.
 - » Conducting meaningful public participation so citizens can be educated about the benefits and risks of digital ID systems.
 - » A digital ID system must be developed under a strong regulatory framework that protects citizen data and provides a clear mandate and accountability mechanism.

Civil society

- » Coordinate their actions to create awareness and monitor online and offline human rights violations.
- » Conduct public awareness and sensitisation against online gender disinformation.
- » Streamline the flow of information between the different community grassroots organisations and NGOs to build effective domestic human rights monitoring mechanisms.
- » Build the capacity of their members in the detection, investigation and policy advocacy against human rights violations.
- » Hold the State accountable through public interest litigation.
- » Collaborate with open-sourced technologies that provide strong encryption protocols for vulnerable and targeted members of the civil society (journalists, public dissidents and human rights workers, and HRDs).

Private Sector

- » Internet Service Providers and Telecommunications companies should be transparent and publish state security services surveillance requests and must disclose the types of devices and tools being used in monitoring citizens to advance transparency and public confidence
- » ISPs and Telcos should tackle the gender digital divide through ambitious and more conscious corporate social responsibility policies, with more generous access to broadband for gender equity.
- » Through corporate social responsibility actions, provision should be made for financial assistance in establishing e-learning and e-services centres in rural areas to provide access to affordable ICT services to rural communities.

Media

The media should shift the narrative and focus on the following :

- » Covering legal developments related to the national digital ID project. The publicity is essential in informing the public about their rights and, more importantly, on the available safeguards, such as the regulatory framework which protects personal data.
- » Holding public authorities accountable through genuine public debate by reporting and highlighting instances of digital rights violations in the country.
- » Raising awareness by bringing the general public's attention to privacy breaches and targeted surveillance abuses using spyware, including Pegasus.
- » Shaping the national opinion on digital rights issues through investigative journalism and expert-based content which provides in-depth analysis of the loopholes in the regulatory framework and advocates for bold policy reforms that protect citizens' right to privacy, freedom of expression and access to information.

Academia

The academia should play a crucial role in promoting digital rights and internet freedom through:

- » Conducting multidisciplinary approach research on emerging technologies in partnership with civil society; especially on emerging technologies such as AI, digital spyware and their impacts on society.
 - » Building a national momentum for promoting the right to freedom of expression online, access to information and digital rights through a series of public engagements and forums to disseminate knowledge to disseminate knowledge and citizen's informed consent.
 - » Leading public reforms through policy advocacy by providing evidence-based recommendations to stakeholders and policymakers, including developing AI ethical guidelines.
 - » Contributing to the resilience of the Rwandan civil society ecosystem through providing capacity building, technical support and engaging in joint research projects.
 - » Contributing to national efforts towards digital literacy by producing educational materials that empower Rwandan citizens to navigate the digital landscape responsibly.
 - » Building international collaboration with regional and international partners such as think-tanks, higher learning institutions and academics in order to significantly contribute to the advancement of digital rights in Rwanda and across the continent.
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Senegal

EXECUTIVE SUMMARY

The Republic of Senegal is undergoing a digitalisation reform with the introduction of 5G mobile network technology, which allows mobile internet access speeds to be developed with complete reliability. This technology guarantees users a speed of 100 Mbits/s, an incredible improvement compared to 4G/LTE. This report analyses some of the measures taken by the government in the Information and Communications Technology sector (ICT). These measures are part of the program for digitising civil status documents initiated by the National Civil Status Agency (ANEC) “NEKKAL” running under the slogan “My civil status my citizenship”. The digitisation of civil status services will allow for better traceability of births and data reliability. In a pre-electoral context, Senegal’s report on digital rights and inclusion will review several key elements, including access to the Internet and social networks, Internet shutdowns, freedom of expression online, privacy, disinformation, and emerging technologies for 2023. The report ends with recommendations made to Senegalese stakeholders that work to strengthen human rights in the digital age. The methodology adopted for this report includes documentary research and data available from libraries, documentation centers, and information sites.

Introduction

Senegal is a country located in West Africa. The country is bordered by Mauritania to the North, Mali to the East, Guinea and Guinea-Bissau to the South, with the Atlantic Ocean being to the West on a coastline of 500 kilometers and Gambia being right in the center of it. The capital, Dakar, is located on the Cape Verde peninsula facing the islands of the same name¹. With an area of 196,710 Km², the national coverage rate of the fifth general population and housing census is 96.2%. This results in a resident population of 18,032,473 inhabitants. This census is carried out following article 18 (new) of statistical law 2004-21 of July 21, 2004, amended and supplemented by law 2012-03 of January 3, 2012, to the third national strategy for the development of statistics (NSDS-III, 2019-2023) and the recommendations reiterated in United Nations Economic and Social Council resolution 2015/10².

Senegal has adopted a strategy called “Digital Senegal (2016-2025)”³. In this strategy, several sectors whose development is essential to achieving a united society and the rule of law have been identified, including the digital economy. As such, ICT undoubtedly constitutes a pivotal role in the modernisation of public services. This modernisation of administration through the use of technologies constitutes an important pillar in the process of economic and social development in Senegal. It is an essential aspect for multiplying productivity gains and increasing the competitiveness of all sectors of the economy, through the supply of digital goods and services⁴.

“Promote the development and modernisation of electronic communications networks and services in Senegal through the creation of an effective, flexible, and transparent legal framework”⁵, this is what emerges from law 2018-28 of December 12 establishing the new Code on electronic communications⁶.

It was deduced that Senegal has taken a big step in terms of digital rights and inclusion in its ambitions to make the digital sector a lever in the creation of wealth and growth. This rule is justified by the innovations brought by the Electronic Communications Code⁷, in particular through the relaxation of the conditions for providing access to the Internet.

In addition, the State plans to better connect the administration by dematerialising procedures, reducing costs and delays in transactions and administrative operations to bring the administration closer to users in their respective localities.

¹ History of the Internet in Senegal from 1989 to 2004, by Olivier Sagna, Christophe Brun and Steven Huter, available on: https://nsrc.org/sites/default/files/archives/case-studies/SenegalBook_French_Final.pdf, (Accessed December 10, 2023).

² Preliminary report of the fifth General Population and Housing Census (RGPH-5), October 2023, available on: https://www.ansd.sn/sites/default/files/2023-10/RAPPORT-PRELIMINAIRE-RGPH-5_2023-.pdf, (Accessed November 23, 2023).

³ In 2016, Senegal launched its “Digital Senegal 2025” strategy.

⁴ https://www.adie.sn/sites/default/files/lois/Numerique%202025_0.pdf.

⁵ Article 5 of the Electronic Communications Code.

⁶ <https://www.sec.gouv.sn/publications/lois-et-reglements/code-des-communications-electroniques>.

¹² New internet restriction in Senegal: AfricTivistes calls on the government! <https://www.africtivistes.com/fr/nouvelle-restriction-de-linternet-au-senegal-africtivistes-interpelle-le-gouvernement>.

► Country Analysis

According to the third quarterly report 2022 on the electronic communications market from the Telecommunications and Post Regulatory Authority (ARTP)⁸, the internet penetration rate in Senegal is estimated at 99.03%, compared to 95.28% in the previous quarter, an increase of 3.75 points. The broadband internet penetration rate is 79.30%. In 2023, the internet penetration rate in Senegal exceeded the 100% mark and is estimated to be at 101.69%, an increase of 3.66 points mainly attributed to the rapid growth of the mobile internet base. The high-speed internet penetration rate (3G/4G) is 83.44%.⁹

Furthermore, it should be noted that access to the Internet remains a challenge. According to the annual Digital Quality of Life Index (DQL) study, Senegal ranked 92nd in the world in terms of Internet connectivity. Senegal is ahead of only a few countries concerned by this ranking, ranking 110. As per this study, in Africa, Senegal is ninth out of 19 countries.¹⁰ Conversely, access to the Internet is limited in Senegal due to internet shutdowns and the absence of a law on access to information. Internet shutdowns have become a norm in Senegal. Internet disruptions occurred in 2021¹¹ and 2023 in response to protests against the arrest of the most popular opponent, Ousmane Sonko.

On the 1st of June 2023, restrictions on access to certain instant messaging platforms or social networks such as WhatsApp, X (formerly Twitter), Facebook, Instagram, and YouTube, were noted after the conviction of the opposition leader.

Conversely, in a press release published on t July 31, 2023, the Ministry of Communication, Telecommunications, and the Digital Economy announced the temporary suspension of the mobile data internet. The reason given was to stop “the dissemination of hateful and subversive messages relayed on social networks”¹².

Also, Senegal chose to temporarily suspend the TikTok application instead of deleting illegal content. According to the Minister of Communication, Telecommunications, and the Digital Economy, “the TikTok application is the social network favoured by people with ill intentions to spread hateful and subversive messages threatening the stability of the country”.¹³

In this case, the government could have explored alternative and less restrictive means to prevent the broadcast of speech identified as violent. Companies operating in the information and communication technology sector (RESTIC) estimated that internet cuts in Senegal caused losses of \$12 billion per day for the formal and informal economy, yet the digital sector contributes up to 12% of Senegalese GDP.¹⁴

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The enforced internet shutdowns do not meet regional and international standards for freedom of expression. Principle 37 entitled ¹⁵ “Access to the Internet” of the Declaration of Principles on Freedom of Expression and Access to Information in Africa indicates that: “States shall promote the enjoyment of the rights to freedom of expression and access to online information and the means necessary to exercise these rights. States recognise that universal, equitable access, affordable and meaningful access to the Internet is necessary for the realisation of freedom of expression

¹³ Press release from the Minister of Communication, Telecommunications and the Digital Economy, August 2, 2023.

¹⁴ <https://www.socialnetlink.org/2023/06/06/restriction-de-linternet-au-senegal-le-restic-depose-une-plainte-contre-les-op-erateurs-de-telecommunications/>.

¹⁵ Adopted by the African Commission on Human and Peoples' Rights during its 65th Ordinary Session held from October 21 to November 10, 2019 in Banjul, Gambia,

file:///C:/Users/HP/Downloads/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_FRE_2019.pdf .

and access to information and the exercise of other human rights.” Internet shutdowns have an impact on digital rights including the right to access the Internet, the right to information, freedom of expression, the right to privacy, etc.

FREEDOM OF EXPRESSION ONLINE

Freedom of expression is guaranteed by article 10 of the Constitution of Senegal of 2001¹⁶. The article states that “Everyone has the right to freely express and disseminate their opinions by word, pen, image, peaceful march, provided that the exercise of these rights does not harm the honour and the consideration of others, nor public order.” Moreover, article 5 paragraph 2 of Law No. 2008-10 of January 25, 2008, on the Information Society Orientation Law goes on to say that¹⁷ “the principle of freedom carries with it the fundamental right of every person to communicate, the right of every citizen to participate effectively in the information society, the right to free expression and the right to carry out electronic commerce actions and to receive information across borders following the laws and regulations in force”.

Freedom of expression is a fundamental right for any democratic society. Several instruments that guarantee the right to freedom of expression have been ratified by Senegal, such as article 19 of the International Covenant on Civil and Political Rights, article 9 of the African Charter on Human Rights and Peoples, and the Declaration of Principles on Freedom of Expression in Africa¹⁸. However, given the string of incidents that occurred between 2021 and 2023, it is evident this right is not fully protected in Senegal. For example: out of a total of 180 countries, Senegal was ranked 49th in 2021, 73rd in 2022, and 104th in 2023. This is Senegal’s rank in the 21st edition of the World Press Freedom Index established by Reporters Without Borders (RSF)¹⁹.

In the space of two years, Senegal fell 31 places down in terms of press freedom. This democratic decline is justified, among other things, by the affairs of journalists Pape Ndiaye, Pape Alé Niang and Babacar Touré.

The journalist Pape Ndiaye, legal columnist at Walf TV, was prosecuted for broadcasting false news, provoking a crowd, contempt of court, endangering the lives of others, speech bringing discredit to a judicial act, intimidation and reprisals against a member of the justice system.

Pape Alé Niang, publishing director of Dakar Matin, was arrested on November 6, 2022 for disseminating false news and endangering national security after publishing an article in which he cited military sources. The journalist referred to a document indicating that a military investigation had exonerated a prominent politician who was on trial for rape.²⁰

As for Babacar Touré, boss of the Kewoulo information site, he was charged with defamation, dissemination of false news, and endangering the lives of others; above all, he was placed under judicial supervision²¹.

¹⁶ LAW N° 2001-03 OF JANUARY 22, 2001 ON THE CONSTITUTION, AMENDED: (JORS, special number 5963 of January 22, 2001, p. 27): <https://www.sec.gouv.sn/publications/lois-et-reglements/loi-ndeg-2001-03-du-22-janvier-2001-portant-constitution-modifiee>

¹⁷ JORS, n°6406 of May 3, 2008, p. 419 et seq.

¹⁸ Adopted during the 32nd Ordinary Session, from October 17 to 23, 2002 by the African Commission on Human and Peoples’ Rights: <https://www.article19.org/data/files/pdfs/igo-documents/declaration-of-principles-ua-french.pdf>.

¹⁹ 104th in the 2023 world press freedom ranking: Senegal in the red, available on: <https://www.sudquotidien.sn/104e-au-classement-mondial-de-liberte-de-la-presse-2023-le-senegal-dans-le-rouge/>

²⁰ Imprisoned Senegalese journalist passes 100 days behind bars <https://www.mfwa.org/fr/issues-in-focus/un-journaliste-senegalais-emprisonne-franchit-la-barre-des-100-jours-derriere-les-barreaux/>, (Accessed February 26, 2024).

²¹ In Senegal, one more journalist charged with “spreading false news”, https://www.lemonde.fr/afrique/article/2023/05/04/au-senegal-un-journaliste-de-plus-inculpe-de-diffusion-de-faussesnouvelles_6172040_3212.html#:~:text=Babacar%20Tour%C3%A9%2C%20patron%20du%20site%20d'informations%20Kewoulo%2C%20%C3%A9tait,selon%20l'avocat%20

PRIVACY AND SURVEILLANCE

The right to privacy is guaranteed by Article 13 of the Constitution of Senegal. According to this article, “the secrecy of correspondence, postal, telegraphic, telephone and electronic communications is inviolable. Restrictions on this inviolability may only be ordered by the law.” In the age of information and communication technologies, protecting privacy is much more important. In this sense, law 2008-12 of January 25, 2008 on the protection of personal data protects the private lives of individuals.²² It is a fight against attacks on privacy likely to be caused by the collection, processing, transmission, and storage of personal data, as well as mass surveillance.

Following Law No. 2020-28 of July 7, 2020, there was the introduction of wearing electronic bracelets, amending the Penal Code²³ and establishing placement under electronic surveillance as a means of reducing sentences. In addition to this, Law No. 2020-29 of July 7, 2020 was added to the Code of Criminal Procedure,²⁴ introducing house arrest with electronic surveillance as an alternative to pre-trial detention.

Only three years later, in 2023, the law became applicable by establishing a monitoring center for people wearing electronic bracelets. The electronic bracelet is a wearable electronic device around the wrist or ankle. The bracelet is equipped with a GPS tracking system or a radio frequency monitoring system to monitor the person’s movements and activities in real-time and report any violation of the conditions imposed by the Court.²⁵ It is important to note that people with such a technological device may be exposed to the processing of their personal data through geolocation, surveillance, and mass data collection.

More precisely, concerning surveillance, article 10 of law no. 2016-33 of December 14th, 2016 relating to intelligence services,²⁶ provides that special intelligence services when they have clues relating to one of the threats provided in Article 2²⁷ and in the absence of any other means, may use technical, intrusive, surveillance or localisation processes to collect information useful for neutralising the threat. This text gives these special services the possibility of practising new methods of surveillance, such as geolocation, in the absence of consent of the person targeted in the implementation of this process. In this sense, surveillance may appear disproportionate, illegitimate, or even unethical concerning the principles that guarantee privacy.

The collection and processing of personal data within the meaning of Article 35 paragraph 2 of the Personal Data Act “must be adequate, relevant and not excessive about the purposes for which they are collected and subsequently processed”.²⁸ Furthermore, in its public service mission, the administration is increasingly considered a collector of personal data through the introduction of sponsorship of candidates in the presidential election.²⁹ To this end, political parties, coalitions of parties and independent movements wishing to present candidates for the presidential election of February 25, 2024, have officially started collecting sponsorships^{30 31}.

Law No. 22/2018 of February 4, 2018 revising the Electoral Code³² establishing sponsorship, provides in its article L 57 that: “Any candidacy for an election, presented by a legally constituted

Moussa%20Sarr, (Accessed February 26, 2024).

²² Law No. 2008-12 of January 25, 2008, on the protection of personal data (JORS, No. 6406, of May 3, 2008, p.434).

²³ <https://justice.sec.gouv.sn/wp-content/uploads/2020/11/J.O-7342-special-du-lundi-27-juillet-2020-publiant-lois-relatives-modification-code-penal-et-aux-bracelets-electroniques.pdf> .

²⁴ Idem.

²⁵ Introduction of the electronic bracelet in Senegal:

<https://legal-doctrine.com/edition/Instauration-du-bracelet-%C3%A9lectronique-au-S%C3%A9n%C3%A9gal/#:~:text=Loi%20n%C2%B02020%2D29,mode%20d'am%C3%A9nagement%20des%20peines>.

²⁶ Law No. 2016-33 of December 14, 2016, relating to Intelligence Services, OJ No. 6984 of Saturday, January 7, 2017, p.

²⁷ Law No. 2016-33 of December 14, 2016, relating to intelligence services, cited above, Art. 2: “The intelligence services are also responsible for implementing specific means intended to hinder the threats referred to in Article 1 or to prevent or thwart interference activities directed against national interests.”

²⁸ Law No. 2008 – 12 on the Protection of Personal Data.

political party, by a coalition of legally constituted political parties or an entity bringing together independent persons is required to sponsor by a list of voters. The arrangements for organising the collection of signatures are determined by this Code.”

However, this sponsorship system can infringe on the digital rights of voters. Progressively, the ECOWAS Court of Justice in a judgment rendered on April 28, 2021³³ stated that “the Senegalese Electoral Code, as amended by Law No. 2018-22 of February 4, 2018, violates the right to free participation in elections.” Consequently, it ordered the State of Senegal to “remove all obstacles to free participation in the elections resulting from this modification by removing the electoral sponsorship system”.³⁴

Gendered Misinformation

Access to digital technologies strengthens women’s economic empowerment. But digital platforms can be a source of violence against women. For example, direct or indirect threats, physical or sexual violence, harassment, invasion of privacy and disinformation are also types of violence that women experience online. These abuses aim to create a hostile cyber environment for women to be humiliated, degraded, demeaned and ultimately silenced. In addition to low digital literacy rates, Senegalese women are victims of different forms of online violence, such as cyberbullying and misinformation.

To this end, Senegalese positive law sanctions the dissemination of false news through article 255 of Law No. 77-87 of August 10, 1977 amending the Penal Code of 1965³⁵ in these terms: “The publication, dissemination, disclosure or reproduction, by any means whatsoever, of false news, fabricated, falsified or falsely attributed documents to third parties, will be punished by imprisonment of three (3) years and a fine of 100,000 to 1,500 000 FCFA when the publication, dissemination, disclosure, reproduction, whether or not made in bad faith, will have resulted in disobedience to the laws of the country or harmed the morale of the population, or brought discredit on public institutions or their functioning”.

However, this provision does not clearly define “fake news” or specify the threshold required to determine whether public institutions have been discredited. This article is contrary to international standards for the protection of fundamental rights and freedoms.

Also, article 13 of the Press Code helps combat the spread of false news.³⁶ Journalists and media technicians must not “distort the facts; publish information, documents, images, and sounds whose origin is not known to them; distort a text, a document, an image, and a sound, or the opinion of others; give the unconfirmed news very precisely as such. They must report image edits, sound edits and archive images.”

Sexist or gendered disinformation is a form of identity-based disinformation that threatens people’s digital, political rights, safety and security. It is used to justify human rights violations and reinforce repression of women and minorities³⁷.

Sexist disinformation is also a means of redirecting the debates of women politicians, activists and human rights defenders by reducing their space for expression. This online violence has a negative social, economic and political impact on women. For example, it may discourage women from participating in public and political affairs online as Senegalese prepare for the 2024 presidential

²⁹ Constitutional Law No. 2018-14 of May 11, 2018, revising the Constitution established the system of sponsorship of the candidate in the presidential election by voters.

³⁰ Decree No. 2023-339 of February 16, 2023, setting the date of the next presidential election.

³¹ PRESIDENTIAL 2024 | SPONSORSHIP COLLECTION STARTED: [HTTPS://WWW.RTS.SN/ACTUALITE/DETAIL/A-LA-UNE/PRESIDENTIELLE-2024-LA-COLLECTE-DES-PARRAINAGES-ENTAMEE](https://www.rts.sn/actualite/detail/a-la-une/presidentielle-2024-la-collecte-des-parrainages-entamee).

³² <https://www.juriafrica.com/lex/loi-2018-22-04-juillet-2018-48979.htm>

³³ <http://www.courtecowas.org/wp-content/uploads/2021/08/ARRET-ECW-CCJ-JUD-10-21-LUnion-Sociale-Liberale-USL-c->

election.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

In 2023, the Ministry of Communication, Telecommunications and the Digital Economy (MCTEN) initiated a process of formulating two strategies.³⁸ These are the national strategy for artificial intelligence (AI) and the national strategy for data in perfect alignment with the “Digital Senegal 2025” strategy and the Emerging Senegal Plan (PSE), the only repository for public policies in Senegal, through the three strategic pillars: inclusive growth, human development and good governance.

Senegal’s vision on AI is “For an AI of ethics and trust, a catalyst for the Emerging Senegal Plan, youth employment, economic performance, public transformation, sovereignty and of the attractiveness of Senegal.”³⁹

As for data, Senegal wants to “Make data a driver of socio-economic growth, inclusiveness, innovation and international openness, by 2028 in Senegal.”⁴⁰

Moreover, the launch of the Single Port Window constitutes a major innovation in the ecommerce sector⁴¹. It is a digital platform that will facilitate and secure international trade operations for the competitiveness of the Autonomous Port of Dakar.

According to the Director of Customs Information Systems⁴², “This platform complements the already existing system concerning firstly pre-customs clearance with Obus, the actual customs clearance through the GAINDE system. Today with the single port window, we can complete the missing links.”

Emerging technologies like AI, robotics and other internet aspects are evolving in Senegal. This is the case in agriculture, education, health and the environment.

UNIVERSAL SERVICE FUND

The State of Senegal in its policy of territorial equity and digital inclusion, uses the universal service fund to reduce the digital divide. Law No. 2018-28 of December 12th, 2018, relating to the Electronic Communications Code, introduced the concept of universal access or service defined as: “the minimum set of electronic communications and ICT services of good quality which..... accessible to the entire population under affordable pricing conditions.”

The 2018 law provides for the creation of the Universal Telecommunications Service Development Fund (UTSDF)⁴³ whose management, missions, and objectives are set by Decree No. 2019-593 of February 14, 2019. The UTSDF aims to break down social differences and create conditions of equity. It was launched on December 14, 2023, an ergonomic room at the Verbo Tonal Center

Etat-du-SENEGAL-28_04_21.pdf

³⁴ Removal of sponsorship: The motivations of the ECOWAS Court of Justice: <https://lequotidien.sn/suppression-du-parrainage-les-motivations-de-la-cour-de-justice-de-la-cedeao/> ³⁵ JORS, n°3767 of September 6, 1965, p. 1009 et seq.

³⁶ Law No. 2017-27 of July 13, 2017, relating to the Press Code OJ No. 7036 of Saturday, August 19, 2017, <https://www.cnra.sn/do/wp-content/uploads/2021/08/Code-de-la-presse-version-officielle-du-JO.pdf>

³⁷ Gendered disinformation: 6 reasons why liberal democracies must respond to this threat, <https://fr.boell.org/fr/2023/03/24/la-desinformation-genree-6-raisons-pour-lesquelles-les-democraties-liberales-doivent-1>

³⁸ Decree No. 2022-1814 of September 26, 2022, relating to the responsibilities of the Minister of Communication, Telecommunications and the Digital Economy.

³⁹ Summary of the National AI Strategy: <http://www.numerique.gouv.sn/mediatheque/documentation/la-strat%C3%A9gie-ia>

⁴⁰ Summary of Senegal’s National Data Strategy: <http://www.numerique.gouv.sn/mediatheque/documentation/synth%C3%A8se-de-la-strat%C3%A9gie-nationale-des-donn%C3%A9es-du-s%C3%A9n%C3%A9gal>

⁴¹ For greater performance and competitiveness: the Pad is equipped with a one-stop port window, official launch, Wednesday, December 6, 2023: <https://www.sudquotidien.sn/>

in Dakar, dedicated to improving the learning conditions of students⁴⁴. It is important to note that the Ergonomic Room is set up as part of the FSUD “handi concept” program, equipped with LCD screens, computers and tablets for students with disabilities and teaching staff.

In total, 20 multimedia rooms are equipped per year thanks to the Fund, 300 children are introduced to STEM, 75 teachers are trained, and 200 students are trained in web development⁴⁵. Senegal benefited in 2023 from funding of 100 million USD to improve telecoms services in border areas⁴⁶ for the implementation of a program called “Universal Digital Access”. This program is part of the Senegalese government’s actions to improve the quality and coverage of telecommunications services nationwide to accelerate digital transformation. According to statistics from the Senegal Telecommunications and Postal Regulatory Authority (ARTP), the country had 21.9 million subscriptions to mobile telephone services at the end of the second quarter of 2023 (April-June)⁴⁷ Therefore, the Universal Service Fund is designed as a means of reducing the digital divide, improving the quality and coverage of telecom services, and contributing effectively to the digital development of the territory.

[pour-plus-de-performance-et-de-competitivite-le-pad-se-dote-dun-guichet-unique-portuaire/](#)

⁴² Colonel Abdourahmane Wade, Director of Customs Information Systems.

⁴³ <https://fdsut.sn/salles-multimedias/>

⁴⁴ <https://fdsut.sn/inauguration-des-salles-informatiques-du-centre-verbo-tonal-et-du-cem-blaise-diagne/>

⁴⁵ <https://fdsut.sn/#:~:text=Le%20Fonds%20de%20d%C3%A9veloppement%20du,%2C%20d%C3%A9di%C3%A9%20%C3%A0%20l'am%C3%A9lioration%E2%80%A6>

⁴⁶ <https://www.agenceecofin.com/investissement/2011-113840-senegal-100-millions-usd-pour-ameliorer-les-services-telecoms-dans-les-zones-frontalieres> .

⁴⁷ <http://www.osiris.sn/Senegal-100-millions-USD-pour.html>

▶ Conclusion & Recommendations

Conclusion

This study has shown that the right to access the Internet, the right to information and freedom of expression remain fundamental principles for any democratic society. Citizens must, therefore,, be able to express themselves freely online and offline and access quality, high-speed Internet without restriction. Restrictions on the right to access the Internet come from the lack of will power by the government to promote internet access. In this sense, the State is infringing on digital rights through Internet shutdowns, arrests, and blocking of Internet access. Meanwhile, the Senegalese legal framework guarantees freedom of expression, freedom of opinion, and freedom of the press.

Furthermore, it appears from the report that protection of personal data is a fundamental right for every citizen and a state responsibility. It is therefore necessary to strengthen the legal and regulatory framework to better protect citizens' privacy. The following recommendations are therefore formulated to improve access and use of the Internet, freedom of expression online, the protection of personal data and the fight against gendered disinformation.

Recommendations

Government

- » The Senegalese State must guarantee the right to Internet access. Internet restrictions or shutdowns must be done in accordance with interantional law standards.
- » Any restrictions on freedom of expression on the Internet must be done within the law and must be proportional, legitimate, and necessary in a democratic society. The State must not undermine citizens' freedom of expression online and offline.
- » The State must adopt the bill on access to information to better guarantee freedom of expression online, freedom of information, and opinion on all communication media.
- » The State must modify the Electoral Code to establish sponsorship for better protection of voters' personal data.
- » The State, in its policy of making digital a trusted, secure, and resilient cyberspace for all, must develop a specific law on artificial intelligence following data protection and international standards.
- » The government must involve more civil society players in developing laws and regulations focused on the digital ecosystem for a better guarantee of digital rights.

Private Sector » The private sector, like telecommunications operators and Internet service providers, must ensure access for users and ensure that all citizens can benefit from high-speed internet connection.

» Private companies must take into account and respect digital rights, such as the protection of privacy in collecting and processing personal data.

Civil Society » Civil society must work hand in hand with stakeholders, such as the government, the private sector, the media, and the general public, to promote the right to access the Internet and information and the right to freedom of expression.

» Civil society must lead awareness and advocacy campaigns to strengthen digital rights and inclusion in Senegal.



South Africa

EXECUTIVE SUMMARY

South Africa has one of the highest numbers of internet users on the continent.⁷⁹⁵ This, coupled with the country heading into a critical general election in 2024, has informed key trends concerning digital rights in 2023. There have been a few court decisions that, at their core, concern the tension between freedom of expression and other rights. Pushback on the Prevention and Combating of Hate Crimes and Hate Speech Bill, the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Bill, and the General Intelligence Laws Amendment Bill indicate concerns around law reform and public participation. Structural changes to the Universal Access and

Service Fund are underway, following government measures to streamline the Fund's administration. These are some of the topics covered in this report. In its conclusion, the report presents high-level recommendations for government stakeholders, the private sector and/or industry, the civil society and the media.

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⁷⁹⁵ Statista 'Number of internet users in selected countries in Africa as of January 2023, by country (in millions)' (2023) <https://www.statista.com/statistics/505883/number-of-internet-users-in-african-countries/> (accessed on 11 December 2023).

Introduction

South Africa has been described as a country where strong institutions and massive inequalities collide.⁷⁹⁶ Its Constitution provides a plethora of rights that enable, for example, public participation, freedom of expression, and access to information. Nevertheless, some challenges have cropped up this year, which, if unresolved, may undermine the hard-fought gains. The upcoming general elections have been described as a watershed moment for South Africa's democracy, and perhaps they provide some context for the legislative changes discussed throughout this report. The population is estimated to be 60,6 million people.⁷⁹⁷ A significant portion of the population is online. As of January 2023, there were 43.4 million users.⁷⁹⁸ However, the rural-urban digital divide continues to exacerbate inequality.⁷⁹⁹ Persistent power outages pose a serious barrier to consistent, meaningful access to the Internet.⁸⁰⁰ On a more positive note, civil society actors, media practitioners, and activists continue to champion digital rights even under trying circumstances.

796 B Levy et al "South Africa: When Strong Institutions and Massive Inequalities Collide" (2021) <https://carnegieendowment.org/2021/03/18/south-africa-when-strong-institutions-and-massive-inequalities-collide-pub-84063> (accessed on 14 December 2023).

797 StatsSA '60.6 million people in South Africa' (2022) <https://www.statssa.gov.za/?p=15601> (accessed on 14 December 2023).

798 Above n 1.

799 Wyrzykowski 'Rural-urban digital divide still poses a challenge in South Africa' Open Signal <https://www.opensignal.com/2023/12/13/rural-urban-digital-divide-still-poses-a-challenge-in-south-africa> (accessed on 15 December 2023).

800 P Colmer 'The power crisis is widening South Africa's digital divide' TechCentral (2023) <https://techcentral.co.za/the-power-crisis-is-widening-south-africas-digital-divide/221637/> (accessed on 15 December 2023).

▶ Country Analysis

ONLINE FREEDOM OF EXPRESSION

The right to freedom of expression, enshrined in the Constitution,⁸⁰¹ consists of two parts. The first part, section 16(1), safeguards the right to freedom of expression, which includes freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research. The second part, section 16(2), notes that the right does not extend to propaganda for war, incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender, or religion and that constitutes incitement to cause harm.⁸⁰² One would be remiss to discuss freedom of expression in South Africa without acknowledging its complex history of segregation, the remnants of which are still felt today.⁸⁰³ Unsurprisingly, this is evident from engagements on- and offline. Some key jurisprudential and legislative developments are highlighted below.

Jurisprudential developments

In recent years, several seminal judgments relating to freedom of expression and hate speech have been handed down by the South African judiciary, including South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another,⁸⁰⁴ Qwelane v South African Human Rights Commission and Another,⁸⁰⁵ and Afriforum v Economic Freedom Fighters and Others.⁸⁰⁶ While elements of these judgments provide some guidance on the parameters of lawfully protected free speech, other aspects raise further questions regarding, for example, the test for liability in such matters.⁸⁰⁷

In 2023, the South African Human Rights Commission (SAHRC) reached an out-of-court settlement with Afrikaans singer, Steve Hofmeyr, following his remarks made on Facebook.⁸⁰⁸ Hofmeyr remarked that the LGBTQIA+ community engaged in bestiality following Disney's efforts to create more inclusive characters. Following a complaint by an LGBTQIA+ non-profit organisation (NPO), OUT LGBT Well-being, the SAHRC instituted proceedings at the Equality Court and sought an order declaring that the cause of action arose where the impugned content is accessed and read; a written apology from Hofmeyr; that R500,000 to be paid to an LGBTQIA+ NPO, 20 hours of

801 Constitution of the Republic of South Africa, 1996 (the Constitution).

802 Id. A further limitation may be conducted in accordance with section 36.

803 Freedom House 'Freedom in the World 2023: South Africa' (2023) <https://freedomhouse.org/country/south-africa/freedom-world/2023> (accessed on 11 December 2023).

804 South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another (CCT 14/19) [2022] ZACC 5 (accessed on 12 December 2023).

805 Qwelane v South African Human Rights Commission and Another (CCT 13/20) [2021] ZACC 22 <https://www.saflii.org/za/cases/ZACC/2021/22.html> (accessed on 12 December 2023).

806 Afriforum v Economic Freedom Fighters and Others (EQ 04/2020) 2022 (6) SA 357 (GJ) <https://www.saflii.org/za/cases/ZAGPJHC/2022/599.html> (accessed on 12 December 2023).

807 See, for example, B Winks 'Hate Hurts: Qwelane and the Lingering Obscurity in South Africa's Hate Speech Law' Constitutional Court Review Vol. 13 No. 1 (2023) <https://doi.org/10.2989/CCR.2023.0005> (accessed on 12 December 2023).

808 South African Human Rights Commission, 'South African Human Rights Commission Reaches Out of Court Settlement Agreement with Steve Hofmeyr on Hate Speech Matter' (2023) <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/3469-south-african-human-rights-commission-reaches-out-of-court-settlement-agreement-with-steve-hofmeyr-on-hate-speech-matter> (accessed on 26 January 2024).

community service at a centre assisting and promoting the rights of the LGBTQIA+ community, and that Hofmeyr participates in a diversity and inclusivity workshop.⁸⁰⁹ The terms of the settlement agreement are not publicly accessible. However, Hofmeyr's apology has been shared online.⁸¹⁰

A further significant case, pending before the Constitutional Court, is *Botha v Smuts*.⁸¹¹ The key issue in the case is the balance between the right to freedom of expression and the right to privacy. Briefly, the case relates to Facebook posts by Bool Smuts,⁸¹² a wildlife conservationist, about animal trapping practices used by Herman Botha on his farm. The posts shared Botha's personal information, such as the location of the farm, his contact details, his home address, and an image of his six-month-old daughter. In response, Botha filed an urgent application for an interdict prohibiting Smuts and Landmark Leopard from publishing defamatory statements about him. The High Court ruled that while Smuts and Landmark Leopard were entitled to publish photographs and comment on them, they were not entitled to share Botha's personal information given his right to privacy. The matter proceeded to the Supreme Court of Appeal (SCA), which set aside the High Court's order. According to the SCA, the posts constituted fair comment and were shared in the public interest. Consequently, Botha has filed an appeal to the Constitutional Court to set aside the SCA's order. The matter was heard by the Constitutional Court on 9 November; judgment is yet to be handed down.

Legislative developments

From a legislative standpoint, a key point of contention has been the re-introduction and acceleration of the Prevention and Combating of Hate Crimes and Hate Speech Bill towards becoming law. Commonly referred to as the Hate Speech Bill, it criminalises certain conduct which constitutes hate speech or hate crime. Notably, the Hate Speech Bill has received mixed responses from different stakeholders – some regard it as a significant step forward in tackling hate speech;⁸¹³ others have described it as a regressive measure that will breed censorship.⁸¹⁴ One of the overarching concerns is the Bill's broad definition of hate speech. Under section 4(1), a person is guilty of hate speech if they intentionally publish, propagate, advocate, make available, or communicate anything to one or more persons in a manner that could be reasonably constructed to demonstrate a clear intention to (1) be harmful or to incite harm and (2) promote or propagate hatred based on a protected characteristic.⁸¹⁵ Despite a high influx of submissions opposing the Bill,⁸¹⁶ in March 2023, it was passed by the National Assembly and in November, passed by the

809 South African Human Rights Commission, 'SA Human Rights Commission wants R500k from Steve Hofmeyr for LGBTQIA+ comments' (2022) [https://www.sahrc.org.za/index.php/sahrc-media/speeches/itemlist/user/557-sahrc?start=670#:~:text=SA%20Human%20Rights%20Commission%20wants%20R500k%20from%20Steve%20Hofmeyr%20for%20LGBTIQ%2B%20comments&text=The%20SA%20Human%20Rights%20Commission%20\(SAHR\)%20is%20investigating%20Afrikaans%20singer,comments%20about%20the%20LGBTIQ%2B%20community](https://www.sahrc.org.za/index.php/sahrc-media/speeches/itemlist/user/557-sahrc?start=670#:~:text=SA%20Human%20Rights%20Commission%20wants%20R500k%20from%20Steve%20Hofmeyr%20for%20LGBTIQ%2B%20comments&text=The%20SA%20Human%20Rights%20Commission%20(SAHR)%20is%20investigating%20Afrikaans%20singer,comments%20about%20the%20LGBTIQ%2B%20community) (accessed on 11 December 2023).

810 U Nkanjeni 'Steve Hofmeyr apologises for LGBTQIA+ remarks' TimesLive (2023) <https://www.timeslive.co.za/tshisa-live/tshisa-live/2023-03-13-steve-hofmeyr-apologises-for-lgbtqia-remarks/> (accessed on 11 December 2023).

811 Herman Botha v Bool Smuts and Another CCT 40/22 <http://hdl.handle.net/20.500.12144/38290> (accessed on 12 December 2023).

812 The posts were made on a Facebook page belonging to the Landmark Leopaord, a conversation non-governmental organisation.

813 Centre for Human Rights 'CHR supports the National Assembly's passing of the Prevention and Combatting of Hate Crimes and Hate Speech Bill' (2023) <https://www.chr.up.ac.za/latest-news/3262-chr-supports-the-national-assembly-s-passing-of-the-prevention-and-combating-of-hate-crimes-and-hate-speech-bill> (accessed on 6 December 2023).

814 T Ngema 'Human Rights Commission and Steve Hofmeyr reach out-of-court settlement agreement over LGGBTIA+ matter' IOL (2023) <https://www.iol.co.za/dailynews/news/human-rights-commission-and-steve-hofmeyr-reach-out-of-court-settlement-agreement-over-lgbtiq-matter-a521f01e-8ae1-409a-9a67-6d4cb95f07d1> (accessed on 11 December 2023).

815 The protected characteristics listed in the Bill are: age; albinism; birth; colour; culture; disability; ethnic or social origin; gender or gender identity; HIV status; language; nationality, migrant or refugee status; occupation or trade; political affiliation or conviction; race; religion; sex, which includes intersex; or sexual orientation.

816 Parliamentary Monitoring Group 'Meeting Summary: Prevention and Combatting of Hate Crimes and Hate Speech

National Council of the Provinces (NCOP) as well.⁸¹⁷ At the time of writing, it was awaiting signature by President Cyril Ramaphosa.

Emergent concerns about media freedom

Media freedom in South Africa is protected. In fact, in 2023, it received an improved ranking of 25 out of 180 countries in the 2023 World Freedom Index (in 2022, it was ranked 35).⁸¹⁸ The Index describes the media landscape as “sturdy, diverse, and dynamic”. Nonetheless, some challenges have arisen. President Ramaphosa has acknowledged the difficulties faced by some media institutions in transitioning to digital platforms, a shift in the way members of the public engage with the media, and the lingering effects of COVID-19.⁸¹⁹

In line with global trends, in 2023, the Competition Commission began its Media and Digital Platforms Market Inquiry (MDPMI), which assesses the distribution of media content on digital platforms, including search, social media, and news aggregation platforms.⁸²⁰ Google and Meta are identified in the final terms of reference as dominant players in the advertising technology (ad tech) stack. These platforms, amongst others, participate in practices that allow them to benefit from the copyright content of South African news publishers. Ultimately, the MDPMI will dissect the impact of digital platforms on the domestic news media sector. Several stakeholders filed submissions in response to the statement of issues and scope of the MDPMI.⁸²¹

Legal attacks and gendered disinformation campaigns were prevalent in 2023, most notably in the matter of Maughan v Zuma in terms of which former South African President Jacob Zuma sought to silence journalist Karyn Maughan by trying to have her criminally charged. This was found to be a strategic lawsuit against public participation (SLAPP) suit.⁸²² This case highlighted that it was not just weaponisation of the courts that sought to silence and intimidate Maughan, but the case itself fuelled online bullying and attacks against her.⁸²³ This was further evidenced by social posts that intended to dehumanise and insult her and to incite physical violence.⁸²⁴

A further emergent issue is the attack on members of civil society. A pertinent example is the online harassment of Nicole Fritz, a director of the Helen Suzman Foundation (HSF). HSF, along with the Consortium for Refugees and Migrants in South Africa, has been leading litigation pertaining to the Zimbabwean Exemption Permit (ZEP)⁸²⁵ following the Department of Home Affairs’ decision to

Bill & International Crimes Bill: briefing with Minister and Deputy Minister’ (2023) <https://pmg.org.za/page/Prevention%20and%20Combating%20of%20Hate%20Crimes%20and%20Hate%20Speech%20Bill%20&%20International%20Crimes%20Bill:%20briefing,%20with%20Minister%20and%20Deputy%20Minister> (accessed on 6 December 2023).

817 See Media Release by Parliament of the Republic of South Africa ‘National Council of Provinces passes the Prevention and Combatting of Hate Crimes and Hate Speech Bill’ (2023) <https://www.parliament.gov.za/press-releases/media-release-national-council-provinces-passes-prevention-and-combating-hate-crimes-and-hate-speech-bill> (accessed on 6 December 2023).

818 Reporters without Border ‘World Press Freedom Index 2023: South Africa’ (2023) <https://rsf.org/en/country/south-africa> (accessed on 6 December 2023).

819 Media Release by President Cyril Ramaphosa ‘A thriving democracy needs a free media’ (2023) <https://www.gov.za/blog/thriving-democracy-needs-free-media> (accessed on 14 December 2023).

820 Competition Commission ‘Final Terms of Reference: Media and Digital Platforms Market Inquiry’ (2023) https://www.compcom.co.za/wp-content/uploads/2023/09/Media-and-Digital-Platforms-Market-Inquiry_FinalTOR_Sep2023.pdf (accessed on 14 December 2023).

821 Competition Commission ‘Media and Digital Platforms Market Inquiry: Stakeholder Submissions on Statement of Issues’ (2023) <https://www.compcom.co.za/stakeholder-submissions-on-statement-of-issues/> (accessed on 14 December 2023).

822 Maughan v Zuma and Others [2023] ZAKZPHC 59, accessible here.

823 Bird, ‘Moti vs amaBhungane ruling – there is much to celebrate, but we need more’ Daily Maverick (4 July 2023) accessible here.

824 Former political spokesperson posted about Maughan, that “we must keep on kicking this dog harder so that her owner who pays her comes out.” The Tweet is accessible here.

825 The Zimbabwean Exemption Permit (ZEP) was created by the Department of Home Affairs in 2017 to enable amnesty to undocumented Zimbabwean nationals and allow them to live and work in South Africa as a result of economic and political instability in

terminate these permits. The decision has been declared unlawful, unconstitutional, and invalid by the High Court. Be that as it may, the proceedings have sustained conversations about xenophobic rhetoric in South Africa.⁸²⁶ Concerningly, Fritz has been the subject of abuse and harassment online – mostly on X.⁸²⁷ In an opinion piece penned by a colleague of Fritz, Ezekiel Kekana writes, “Through Fritz’s experience, we need to not only see online harassment and abuse against women for what it is, but we must also hold X to account for remaining a platform that continues to be a haven of abusers and a fertile ground for gender-based violence in our society.”⁸²⁸

PRIVACY AND SURVEILLANCE

Legislative developments

In 2023 two new Bills were tabled before South Africa’s Parliament that would alter the legal framework for state surveillance: the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Bill (the RICA amendment bill) and the General Intelligence Laws Amendment Bill (the GILAB).

The RICA amendment Bill emanates from the Department of Justice and Correctional Services. Its purpose is to amend South Africa’s existing interception law, the Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA), following the Constitutional Court’s declaration in 2021 that key aspects of RICA were unconstitutional, and that Parliament should enact reforms by February 2024. The grounds for these reforms were: (1) that RICA should provide for post-surveillance notification; (2) that the appointment of judges to oversee surveillance discussions should ensure their independence; (3) that there should be safeguards to address the fact that surveillance hearings are necessarily *ex parte* (one party is absent); (4) that RICA should provide for standards and guidelines for the handling, storage, and deletion of any data acquired through surveillance; (5) that RICA should provide additional protections where the subject of surveillance is a lawyer or journalist. The Court also ruled that any ‘bulk interception’ by the state – mass surveillance capabilities that involve generalised monitoring of communications networks – are not enabled by RICA and are, therefore unlawful.

Though the amendment Bill largely meets the minimum requirements of the court order, it has been criticised for not undertaking other long-promised reforms to surveillance law.⁸²⁹ The State had convinced the Court to suspend its declaration of unconstitutionality for three years to allow for a comprehensive reform process that would address a broader range of problems with RICA beyond those put before the Court. These include the need to close off parallel surveillance powers that exist in other laws, generally with even lower oversight and safeguards than exist in RICA, the need for more institutional capacity for oversight judges, and the need for higher standards for oversight and reporting.⁸³⁰ Due to the late tabling of the Bill – just a few months ahead of the Court’s deadline – the Department of Justice and Constitutional Development has pledged to defer these issues to a later policy review. Even so, critics have questioned whether the Bill as it stands meets

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Zimbabwe. The ZEP replaced the Dispensation of Zimbabwean Project (DZP) and the Zimbabwean Special Dispensation Permit (ZSP).
826 AJazeera ‘South Africa’s Operation Dudula vigilantes usher in new wave of xenophobia’ (2023) <https://www.aljazeera.com/features/2023/9/26/south-africas-operation-dudula-vigilantes-usher-in-new-wave-of-xenophobia> (accessed on 14 December 2023).
827 GroundUP ‘Twitter threats to litigants in Zimbabwe Exemption Permit court case’ (2023) <https://www.groundup.org.za/article/twitter-threats-to-litigants-in-zimbabwean-exemption-permit-court-case/> (accessed on 14 December 2023).
828 E Kekana ‘Disagree with Helen Suzman Foundation if you want, but stop attacking its director’ News 24 (2023) <https://www.news24.com/news24/opinions/columnists/guestcolumn/opinion-disagree-with-helen-suzman-foundation-if-you-want-but-stop-attacking-its-director-20230920> (accessed on 14 December 2023).
829 M Hunter ‘RICA bill misses the chance for real reform’ (2023) <https://www.groundup.org.za/article/rica-bill-misses-chance-for-real-reform/> (accessed 29 November 2023).
830 Intelwatch ‘Comment on the RICA Bill’ (2023) <https://intelwatch.org.za/2023/10/06/intelwatch-submission-rica-bill/> (accessed 29 November 2023).

the Court's order: for example, the Bill attempts to resolve the 'ex parte' issue by providing for a second oversight judge to review all surveillance decisions of the first judge – but it is unclear how this addresses the ex parte issue identified by the Court, as it remains a one-sided process based on the same limited set of facts.⁸³¹ Parliament, facing a looming deadline to enact reforms meeting the minimum requirements of the court order, appears likely to pass the Bill largely as received; it passed through the National Assembly with only one change in October 2023 and through the National Council of Provinces without any changes in November 2023.

Separately, the Presidency, which now oversees South Africa's State Security Agency (SSA), tabled the GILAB. The stated purpose of the GILAB is to enact recommendations of two previous inquiries – a judicial commission of inquiry into systemic 'state capture', including within the intelligence agencies, and an expert panel appointed by the President to assess dysfunction and unlawful conduct in the State Security Agency specifically – and to address the Constitutional Court's findings on mass surveillance.

While there is a clear need for reform to the intelligence agencies' powers and mandate, the GILAB has also been roundly criticised on the basis that it fails to address nearly any of the recommendations of the above-mentioned inquiries which would introduce safeguards against future abuses of power, and instead significantly expands the powers and mandate of the intelligence agencies.⁸³² Its provisions relating to mass surveillance are especially concerning, as these effectively serve to legalise the bulk interception powers that the Constitutional Court shut down in the amaBhungane judgment without providing for meaningful protections for privacy and freedom of expression.⁸³³ The Bill would establish a parallel surveillance framework to that of RICA, specifically for the state to conduct 'bulk interception' or mass surveillance.⁸³⁴ The Bill would establish a judge with nominal oversight powers but fall short of all of the standards that the Court said should apply to RICA: the judge is appointed by the Executive rather than the Judiciary; there is little guidance on the judge's powers; there is no provision for post-surveillance notification, or procedures or safeguards on the appropriate management, storage, or destruction of any data collected through surveillance operations; and no clear requirement that protections for privacy, freedom of expression, and other rights should be taken into account in mass surveillance operations.⁸³⁵ As a separate issue relating to privacy and freedom of expression and association, the Bill would also mandate the state security structures to conduct vetting of any "person or institution of national security interest".⁸³⁶ Given that earlier versions of the Bill suggest that this provision would be directed specifically at NGOs and religious organisations, nearly 50 civic groups have called for the Bill to be withdrawn in its entirety.⁸³⁷ The National Assembly is expected to hold public hearings on the Bill in early 2024 and to vote on whether to pass it by March 2024.

Surveillance policy

Some state policymaking on surveillance has been more promising. In May 2023, the Department of Justice issued a license for police to acquire and make use of IMSI catchers, which can mimic

831 J Duncan 'Comments on RICA Amendment Bill' (2023) https://intelwatch.org.za/wp-content/uploads/2023/11/231013Jane_Duncan.pdf (Accessed 29 November 2023).

832 Intelwatch 'Briefing note: General Intelligence Laws Amendment Bill (GILAB)' (2023) <https://intelwatch.org.za/2023/11/17/briefing-note-general-intelligence-laws-amendment-bill-gilab/> (accessed 4 December 2023).

833 Mass surveillance, as opposed to targeted surveillance, is any form of interception of data which is not directed at a specific person who is subject to an investigation, but which collects large amounts of information in bulk from telecommunications or internet networks relating to whole populations of people. In the AmaBhungane judgment, the court ruled that the state's existing mass surveillance practices were not provided for or regulated by RICA or any other law and were therefore unlawful.

834 General Intelligence Laws Amendment Bill 2023, section 2(b) (accessed on 4 December 2023).

835 Above n 39.

836 Above n 40 at section 3(a).

837 'Civil society joint statement on the General Intelligence Laws Amendment Bill' (2023) <https://intelwatch.org.za/2023/12/06/endorse-gilab-statement/> (accessed 13 December 2023).

a cellular tower in order to track and monitor cellular devices in a particular area.⁸³⁸ While initial coverage framed this as an expansion of police spying powers,⁸³⁹ the development arguably represents a more nuanced initiative to develop better oversight over existing surveillance powers. Police have made extensive use of IMSI catchers in the past, seemingly outside of the procedures and safeguards provided for in RICA.⁸⁴⁰ The license issued by the Department of Justice introduced for the first time a set of safeguards and oversight and transparency measures to the use of this technology, including that the technology may only be used in terms of RICA, and with the prior authorisation of a RICA oversight judge, and there must be a detailed paper trail and record-keeping of any such devices the police acquire, where they are stored, which officials have accessed them, and when and for what purposes the devices are used.⁸⁴¹

DATA GOVERNANCE

Data Protection and relevant decisions by the Information Regulator

While South Africa's data protection law, the Protection of Personal Information Act (POPIA), still faces implementation challenges, the Information Regulator continued to develop and advance as the agency charged with the implementation and enforcement of the Act in 2023. This included significant improvements in meeting its own performance targets, from 68% of targets met in 2022/23 to 91% in 2022/2023.⁸⁴² More substantively, the Regulator announced a series of investigations and decisions relating to government bodies and high-profile businesses which demonstrated its independence as a regulatory body and willingness to act on non-compliance. Notably, this included issuing an enforcement decision, and later a R5-million fine, to the Department of Justice & Constitutional Development for contravening POPIA and failing to comply with the Regulator's findings.⁸⁴³ As the Department has administrative responsibility for the Information Regulator, the decision signalled the Regulator's intention to act without fear or favour. Other decisions include launching an inquiry into the Department of Health's compliance with POPIA in its COVID-era data collection policies,⁸⁴⁴ and a range of findings relating to private businesses.⁸⁴⁵

838 Department of Justice and Constitutional Development, 'Certificate of Exemption' Government Gazette No. 48627 (2023) https://www.gov.za/sites/default/files/gcis_document/202305/48627rg11584gon3424.pdf (accessed 13 December 2023).

839 P de Wet 'After 13 years of trying, SAPS can now legally use mass-surveillance cellphone grabbers' News24 (2023) <https://www.news24.com/news24/southafrica/news/after-13-years-of-trying-saps-can-now-legally-use-mass-surveillance-cellphone-grabbers-20230523> (accessed 13 December 2023).

840 S Swingler 'Meet the Grabber: How government and criminals can spy on you (and how to protect yourself)' Daily Maverick (2016) <https://www.dailymaverick.co.za/article/2016-09-01-meet-the-grabber-how-government-and-criminals-can-spy-on-you-and-how-to-protect-yourself/#.V8fhVJN96Hp> (accessed 13 December 2023).

841 H Swart 'State surveillance in SA just got a legal boost, but it's not an unrestricted licence to intercept' Daily Maverick (2023) <https://www.dailymaverick.co.za/article/2023-05-30-state-surveillance-in-sa-just-got-a-legal-boost-but-its-not-an-unrestricted-licence-to-intercept/> (accessed 13 December 2023)

842 Information Regulator of South Africa 'Annual Report 2022/2023' (2023) https://static.pmg.org.za/Information_Regulator_Annual_Report_2023.pdf (accessed 13 December 2023)

843 Information Regulator of South Africa 'Media Statement: Infringement notice and R5 million administrative fine issued' (2023) <https://infoeregulator.org.za/wp-content/uploads/2020/07/MEDIA-STATEMENT-INFRINGEMENT-NOTICE-ISSUED-TO-THE-DEPARTMENT-OF-JUSTICE-AND-CONSTITUTIONAL.pdf> (accessed 13 December 2023)

844 Information Regulator of South Africa 'Media Statement: Information Regulator refers national Department of Health to the Enforcement Committee regarding personal information collected during COVID-19' (2023) https://infoeregulator.org.za/wp-content/uploads/2020/07/Media-Statement_Information-Regulator-Refers-NDOH-to-the-Enforcement-Committee.pdf (accessed on 15 December 2023)

845 Information Regulator of South Africa 'Media Statement: Information Regulator shares outcomes of complaints investigated and assessments conducted in relation to PAIA and POPIA' (2023) https://infoeregulator.org.za/wp-content/uploads/2020/07/pdf-Final-Version_MEDIA-BRIEFING-OF-INFORMATION-REGULATOR-ON-OUTCOMES-OF-RECEIVED-COMPLAINTS-003.pdf (accessed on 13 December 2023).

Cybercrime and cybersecurity

Broadly, reports indicate that cyber-attacks are on the rise.⁸⁴⁶ South Africa was not spared from this trend as state institutions reportedly experience data breaches and cyber-attacks – although these do not appear to have been officially confirmed or disclosed, suggesting both a lack of adequate security and a worrying lack of transparency. By way of example, in August 2023, the South African Defence Force’s (SANDF) computer systems were breached and the personal data of several officials was leaked.⁸⁴⁷ In response to the incident, the Department of Defence (DoD) released a statement declaring that its, “...preliminary investigations confirm it had not been hacked.”⁸⁴⁸ By happenstance, the State Security Agency (SSA) was also hacked in August prior to the BRICS summit.⁸⁴⁹ The Minister in the Presidency Khumbudzo Ntshavheni declined to comment on the incident.⁸⁵⁰

THE UNIVERSAL SERVICE AND ACCESS FUND

Overview and administration of the fund

The Universal Service and Access Fund (USAF) is overseen by the Universal Service and Access Agency of South Africa (USAASA), which forms part of the Department of Communications and Digital Technologies (DCDT). While the USAASA was initially established in terms of the now-repealed Telecommunications Act,⁸⁵¹ its authority presently lies in the Electronic Communications Act. From a management perspective, a board of up to seven individuals is meant to provide oversight of and guidance to the agency.⁸⁵² The Chairperson is Daphne Kula-Rantho with Chwayita Madikizela as the Acting Chief Executive Officer.⁸⁵³ The purpose of the fund is to, through levies from individuals and Electronic Communications Network Service (ECNS), Electronic Communications Service (ECS), and Broadcasting Service (BS) licensees, generate income for the construction and extension of ICT infrastructure in under-serviced communities and to promote universal access to electronic communications and broadcasting services.⁸⁵⁴ The collection of levies is administered with the assistance of the Independent Communications Authority of South Africa (ICASA). Expenditure for the USAF is expected to decrease significantly from R2.9 billion in 2022/23 to R67.4 million in 2023/24. This is reportedly due to the retention of funds from previous years. From a legal standpoint, Selloane Motloug, a former secretary at USAASA who allegedly made protected disclosures against Madikizela was dismissed.⁸⁵⁵ In August 2023, Motloug challenged

846 See, for example, Sophos ‘State of Ransomware Report 2023’ (2023) <https://assets.sophos.com/X24WTUEQ/at/c949g7693gsnjh9rb9gr8/sophos-state-of-ransomware-2023-wp.pdf> (accessed on 15 December 2023).

847 Daily Maverick ‘SNATCHed – SANDF data leaked in cyberattack appears to be authentic, says cybersecurity analysts’ (2023) <https://www.dailymaverick.co.za/article/2023-09-06-snatched-sandf-data-leaked-in-cyberattack-appears-to-be-authentic-say-cyber-security-analysts/> (accessed on 15 December 2023).

848 DefenceWeb ‘SA Defence Dept not hacked – DoD spokesman’ (2023) <https://www.defenceweb.co.za/featured/sa-defence-dept-not-hacked-dod-spokesma> (accessed on 15 December 2023).

849 Laurence SSA hacked? South Africa’s ‘top secret security breach’ TechCentral <https://techcentral.co.za/ssa-hacked-south-africa-security-breach/232774/> (accessed on 13 December 2023).

850 Id.

851 Act no. 103 of 1996 https://www.gov.za/sites/default/files/gcis_document/201409/act103of1996s.pdf (accessed on 14 December 2023).

852 Act no. 36 of 2005 <https://www.gov.za/documents/electronic-communications-act> (accessed on 14 December 2023).

853 A list of the Agency’s Ex-Co Members may be found here <http://www.usaasa.org.za/about/exco-members.html> (accessed on 14 December 2023).

854 See National Government of South Africa ‘Public Entities: Universal Service and Access Agency of South Africa’ webpage (undated) <https://nationalgovernment.co.za/units/view/193/universal-service-and-access-agency-of-south-africa-usaasa> (accessed on 14 December 2023).

855 Bhengu ‘Former USAASA employee who made protected disclosures against CEO to challenge dismissal at CCMA’ News24 (2023) <https://www.news24.com/news24/southafrica/news/former-usaasa-employee-who-made-protected-disclosures-against-ceo-to-challenge-dismissal-at-ccma-20230814> (accessed on 26 January 2024).

the dismissal at the Commission for Conciliation, Mediation, and Arbitration (CCMA), a regulatory body which oversees labour disputes. It is unclear whether the matter has been finalised. This is perhaps reflective of the various concerns regarding the administration of the fund.

Annual performance

There are a couple of notable highlights from the USAF Annual Performance Plan for the 2023/24 financial year. First, the USAF's strategic focus is confirmed as being three-fold: (1) to provide connectivity to primary health facilities, educational institutions, and communities in need (2) to incentivise network licensees to construct, operate and maintain networks in under-served areas and (3) to broaden access to digital broadcasting services by qualifying households.⁸⁵⁶ Further, an overarching focus of the USAF appears to be the Broadcasting Digital Migration (BDM). The USAF appears to be providing subsidies to support the roll-out of BDM, following a Constitutional Court decision regarding the switch-off of the analogue signal in the country.⁸⁵⁷ Lastly, the USAF has seen improvement with respect to its targets, although further details are not provided. In the second quarter of 2022/23, it achieved a 75% performance level compared to 61% in the second quarter of 2021/22.⁸⁵⁸ Inadequate financial and human resources have been identified as key challenges at the Fund.⁸⁵⁹ Further, the USAF has seemingly received a disclaimed audit due to substantial regulatory non-compliance.⁸⁶⁰

Disestablishment of the USAASA

To streamline roles and responsibilities at the DCDT, the USAASA is in the process of being disestablished; a process that is expected to conclude by 2025/25.⁸⁶¹ The process is reportedly being completed on the basis of the National Integrated ICT Policy White Papers of 2016 and the National Treasury's Estimates of National Expenditure (ENE) document. This was confirmed during a Parliamentary session in May 2023, where the Minister advised that the USAASA, "...is in the process of being dissolved due to a duplication of roles". Additionally, the transfer of the USAASA functions to the DCDT is, on the face of it, an interim measure while the government formalises the corporatisation of the South African Postbank.⁸⁶²

856 'The Universal Service and Access Fund: 2023/24 Annual Performance Plan' (2023) https://pmg.org.za/files/USAF_-_2023-24_Annual_Performance_Plan_-__.pdf (accessed on 14 December 2023).

857 e.tv (Pty) Limited v Minister of Communications and Digital Technologies and Others; Media Monitoring Africa and Another v e.tv (Pty) Limited and Others [2022] ZACC 22 <https://www.saflii.org/za/cases/ZACC/2022/22.html> (accessed on 14 December 2023).

858 Above n 62.

859 Above n 62.

860 Above n 62.

861 S Mzekandaba 'USAASA to be 'disestablished' ITWeb (2023) <https://www.itweb.co.za/content/raYAyMorbVg7J38N> (accessed on 11 December 2023).

862 See Parliamentary Monitoring Group 'Questions to the Minister of Communication and Digital Technologies' (2023) <https://pmg.org.za/committee-question/22137/> (accessed on 11 December 2023).

▶ Conclusion & Recommendations

Conclusion

This report reflects that 2023 has been marked by several important cases and law reform processes that have a bearing on digital rights. In closing, the following recommendations are proposed for various actors who have the power to safeguard democratic principles.

Recommendations

Government

- » Decidedly, effective and meaningful public participation includes the consideration of the public's views before a public decision is made. The report demonstrates instances in which concerns have been raised about the proposed law and the continued failure to address recommendations by different voices. Therefore, the government should strengthen its public participatory processes to sustain active citizenry.
- » In creating laws such as the Prevention and Combating of Hate Crimes and Hate Speech Bill, the government must consider international best practices in, for example, establishing a threshold for expressions which may be considered as criminal offences. Further, and of equal importance, vague definitions which may result in legal uncertainty should be avoided.
- » There is a clear need for more transparent processes, particularly on cybersecurity matters. There is a duty on government stakeholders to provide accurate information to members of the public and not to be seen as above the law in matters concerning personal information leaks.
- » While the USAF's Annual Reporting provides a glimpse into the workings of the Fund, it is not fully clear what its impact has been and how ongoing structural changes may affect targeted communities. Thus, the USAAS should take measures to improve its reporting to the public and update, for example, its website as a port of first call.

The private sector / industry

- » Mindful of the forthcoming elections, social media platforms must exert their efforts in curbing online harms whether they manifest as hate speech, online harassment, and/or mis- and disinformation. This is especially important when one considers actors who may be at risk for such attacks, such as female journalists and members of civil society.
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- » In terms of the latest annual report by the USAF, it does not have public-private partnerships. This may present an opportunity for private sector actors in the ICT sector to support the Fund's mandate.

**Civil society
and the media**

- » The significant legislative changes highlighted in the report speak to the importance of continued public participation and dissent where necessary. The work of CSOs in championing rights-based causes and media practitioners in disseminating information to the public continue to be powerful tools for accountability.
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Sudan

EXECUTIVE SUMMARY

This report discusses the digital rights issues and the state of digital inclusion in Sudan in the year 2023. The report provides recommendations to the government including the Sudanese Armed Forces (SAF), Rapid Support Forces (RSF), civil society and the media. 2023 is considered one of the worst years for digital rights in Sudan. The authorities practised several digital authoritarianism features, especially during the conflict between SAF and RSF, such as network disruption, censorship, information manipulation and legal abuse. Both conflicting parties violated citizens' privacy, disrupted the Internet, and used information manipulation as a military deceptive technique. The conflicts caused a disaster to the ICT infrastructure in the country, but some government institutions tried to resume their work using alternative digital platforms. Also, the Universal Service Fund (USF) had little

activity due to the war. To demonstrate some of the key developments, this report relies on desktop research, interviews, as well as insights from the practical experience of working on digital rights in Sudan.

Introduction

Sudan lies at the crossroads of Sub-Saharan Africa and the Middle East, located in northeastern Africa. It is bounded on the north by Egypt, on the east by the Red Sea, Eritrea, and Ethiopia, on the south by South Sudan, on the west by the Central African Republic and Chad, and on the northwest by Libya.⁸⁶³ Since the ousting of the authoritarian regime of Al-Basheir in 2019, which ruled Sudan for 30 years, the Sudanese people gained hope to build a democratic country after the last revolution.⁸⁶⁴ However, the military did not let this hope move forward as Sudan is now ruled by a military regime since October 25, 2021, when Lt. Gen Burhan led a military coup against his partners in the transitional government which came after the Sudan uprising. To date, the Sudanese people have been living in a bad situation since the fierce war broke out between SAF and RSF.⁸⁶⁵

As of January 2023, Sudan's total population was 47.49 million. However, 13.49 million citizens use the Internet, which leads the internet penetration to stand at 28.4%.⁸⁶⁶ According to data from GSMA Intelligence, there were 32.59 million cellular mobile connections in Sudan at the start of 2023.⁸⁶⁷ There are four main Internet Service Providers (ISPs) in Sudan, three of which are foreign-owned (Zain, MTN, and Canar) and the fourth is Sudatel, whose board of directors includes a member of the Transitional Sovereign Council, the Head of State, and the Minister of Finance.⁸⁶⁸ To demonstrate some of the key developments, this report predominantly relies on desktop research as well as insights from the practical experience of working on digital rights in Sudan. This report focuses on key developments related to Internet freedom, privacy and surveillance, developments in ICT and emerging technologies, and a review of the Universal Service Fund.

863 Britannica, "Sudan", <https://www.britannica.com/place/Sudan>, (accessed on 15 November 2023).

864 BBC, "Omar al-Bashir: Sudan's ousted president", <https://www.bbc.com/news/world-africa-16010445>, (accessed on 12 November 2023).

865 Aljazeera, "100 days of conflict in Sudan", <https://www.aljazeera.com/news/2023/7/24/100-days-of-conflict-in-sudan-a-timeline>, (accessed on 20 December 2023)

866 Data Portal, "DIGITAL 2023: SUDAN", <https://datareportal.com/reports/digital-2023-sudan>, (accessed on 21 November 2023).

867 Data Portal, "DIGITAL 2023: SUDAN", <https://datareportal.com/reports/digital-2023-sudan>, (accessed on 21 November 2023).

868 Sudatel, Board of directors, <https://www.sudatel.sd/investor-relations/governance/board-of-directors/>, (accessed on 21 November 2023).

Country Analysis

Internet Freedom

The internet space in Sudan is under the state's control as the internet freedom index continues to fall. According to the Freedom On The Net 2023 report, Sudan's score for internet freedom is 30 out of 100, which is classified as "Not Free".⁸⁶⁹ This ranking covers the second half of 2022 and the first half of 2023. The first half of 2023 witnessed numerous events that limited internet Freedom and violated the citizens' digital rights, including network disruptions, censorship, and state-based disinformation.

Internet access and disruptions

Sudanese people are used to internet shutdowns as the authorities usually use internet shutdowns during political or civil unrest and during the national exams.⁸⁷⁰ On April 16, 2023, the Telecommunication and Postal Regulation Authority (TPRA), the sector regulator, sent a shutdown order to MTN Sudan, before cancelling it later.⁸⁷¹

In 2023, internet connectivity was unstable due to complications of the ongoing conflict. Most of the reported internet disruptions were due to logistical issues, including the inability to deliver fuel to feed power generators because of frequent power outages.

The lack of fuel and unstable power supply led to service outages in May for two major ISPs in Sudan. MTN Sudan announced a blackout on their service as they were unable to deliver fuel to their data centres.⁸⁷² Sudani (Sudatel) also announced that their service was unreliable due to the instability in the power supply.⁸⁷³ In addition, the Canar company witnessed almost 83 hours of outage between April 21 and 25 April, 2023. Also, Zain Sudan experienced a 10 hour outage on April 24.⁸⁷⁴ The cities of Algenena, Zalinge, and Nyala, also witnessed long internet disruption periods due to the conflict there.⁸⁷⁵

There may be other internet disruptions in several areas in Sudan due to the conflict, but it is hard to verify this information using internet measurement tools.

869 Freedom House, "Freedom On The Net 2023, Sudan", <https://freedomhouse.org/country/sudan/freedom-net/2023>, (accessed on 21 November 2023).

870 CIPESA, "Sudan Conflict Affects Digital Communications and Critical Services Delivery", <https://cipesa.org/2023/06/sudan-conflict-affects-digital-communications-and-critical-services-delivery/>, (accessed on 22 November 2023)

871 Reuters, "UPDATE 1-Sudanese telecoms provider MTN restores internet service - MTN official", <https://www.reuters.com/article/sudan-politics-internet-idUSL1N36J071>, (accessed on 21 November 2023)

872 Facebook, MTN Sudan, [https://www.facebook.com/mtnsudan1/posts/pfbid0RuTMk8uFU2XMDFy2fsdXvq9BeaqqEHpe4G-mrHzbfp2mmFnsmgJ1iTp7BAiutnEiZl?__cft__\[0\]=AZUyUk-ahByzx-jtUl8pejKEKIZzipfIgTLzBEMWpj8Mc_ZD4a5nvm2pRmIA1sibGvKnN-uTSANHttSs21KeR4voYbMrNih0UCbP-hk-PeG1oWW4CrmkT_90sJhoDmEkr3koyvWDzGonSAdVD5kktOWkb&__tn__=%2CO%2CP-R](https://www.facebook.com/mtnsudan1/posts/pfbid0RuTMk8uFU2XMDFy2fsdXvq9BeaqqEHpe4G-mrHzbfp2mmFnsmgJ1iTp7BAiutnEiZl?__cft__[0]=AZUyUk-ahByzx-jtUl8pejKEKIZzipfIgTLzBEMWpj8Mc_ZD4a5nvm2pRmIA1sibGvKnN-uTSANHttSs21KeR4voYbMrNih0UCbP-hk-PeG1oWW4CrmkT_90sJhoDmEkr3koyvWDzGonSAdVD5kktOWkb&__tn__=%2CO%2CP-R), (Accessed on 21 November 2023)

873 Facebook, Sudani, [https://www.facebook.com/SUDANI.SD/posts/pfbid0sxhpzevYFHj1aJYt5ziiBW7kxJQgAAcEZVacuGm5g-TRDjfiUiWs9LFEMAZXjPWR1MI?__cft__\[0\]=AZX3eB9z8MDWxyNUVTZHeMPY35hNAPkX7viGF88-qQzITJRwzjTll_nhVVP0TZeQW3g5jQD-qNTLD2vGmRyP0b5roKWBBcu3xjkH1qTWasgyTjih81VloxS_daTlgVFhnyUc&__tn__=%2CO%2CP-R](https://www.facebook.com/SUDANI.SD/posts/pfbid0sxhpzevYFHj1aJYt5ziiBW7kxJQgAAcEZVacuGm5g-TRDjfiUiWs9LFEMAZXjPWR1MI?__cft__[0]=AZX3eB9z8MDWxyNUVTZHeMPY35hNAPkX7viGF88-qQzITJRwzjTll_nhVVP0TZeQW3g5jQD-qNTLD2vGmRyP0b5roKWBBcu3xjkH1qTWasgyTjih81VloxS_daTlgVFhnyUc&__tn__=%2CO%2CP-R), (accessed on 21 November 2023)

874 CloudFlare, "Effects of the conflict in Sudan on Internet patterns", <https://blog.cloudflare.com/sudan-armed-conflict-impact-on-the-internet-since-april-15-2023/>, (accessed on 21 November 2023)

875 Freedom House, "Freedom on the net in Sudan 2023", <https://freedomhouse.org/country/sudan/freedom-net/2023>, (accessed on 22, November 2023)

Online Freedom of Expression

The Sudanese authorities used to block websites that had political influence or covered human rights issues. In 2023, there have been no reported website blockages, except for the taking down of the Rapid Support Forces website, according to their claims⁸⁷⁶. Moreover, the authorities used to arrest journalists, activists, and digital rights advocates to silence their voices against violations. This year, numerous arrest cases have been reported. On April 11, the Sudanese police arrested Yasir Mirghany, the head of the Sudanese Consumer's Protection Society (SCPS), due to claims of corruption related to European Union (EU) funds received by the SCPS in 2012. Earlier, the society's registration was cancelled and its bank account was suspended, making it harder to pursue its activities. SCPS was known for fighting against internet shutdowns using legal instruments.⁸⁷⁷

In January 2023, Azza Aira, an activist from Eastern Sudan, posted on Twitter (now X) that she received a threat from the Governor of the Red Sea State, Mohamed Adroub Kalmoub.⁸⁷⁸ In addition, in March 2023, while documenting the demolition of houses in Khartoum, journalist Ikhlas Nimir, who occasionally shares her work on her public Facebook page and has previously worked for online media outlets, was beaten and arrested for 10 hours, the Sudanese Journalists Syndicate said.⁸⁷⁹ Also, on May 30th, 2023, journalist Nader Shulkawi, who posted clips that he took in Omdurman and uploaded on YouTube, was arrested in the Omdurman area, western Khartoum, by the RSF.⁸⁸⁰

Despite residing outside Sudan, authorities have relentlessly pursued online activists. In March 2023, the General Intelligence Service (GIS) filed a lawsuit against Dalia al-Tahir, a Sudanese journalist based in Libya, alleging that she had spread "false information" regarding the strained relationship between the RSF and the GIS.⁸⁸¹

Privacy and Surveillance

The state-based surveillance and privacy violations in Sudan have a bad record as the authorities have used different technologies from several vendors in different eras. In the previous decade, reports indicated that Sudanese authorities imported spyware including Remote Control System (RCS) from the Italian company "Hacking Team" and surveillance tools from the Canadian company, Blue Coat.

Two privacy violation cases were reported in 2023. Mubarak Ardol, the former manager of the Sudanese Mineral Resources Company (SMRC) and a leader in the Social Justice Democratic Coalition political party, claimed that his phone was being tapped by the RSF using the "Predator" spyware, which RSF imported in 2022.⁸⁸² In Addition, Diaeldin Bilal, a journalist based in Qatar,

876 Twitter, @RSFSudan, <https://twitter.com/RSFSudan/status/1648793014876139523>, (accessed on 25 November 2023)

877 Front Line Defender, "HUMAN RIGHTS DEFENDER YASIR MIRGHANI RELEASED ON PERSONAL GUARANTEE", <https://www.frontlinedefenders.org/en/case/human-rights-defender-yasir-mirghani-released-personal-guarantee>, (accessed on 25 November 2023)

878 Twitter, @azaa_aira, https://twitter.com/azaa_aira/status/1620158627054223360, (accessed on 25 November 2023)

879 Facebook, Sudanese Journalists Syndicate, "Statement of Public Opinion: Sudanese Union of Journalists condemns the police targeting the fellow journalist Ikhlas Tiger of physical harm and forced detention, in Khartoum today, Sunday," Facebook, <https://www.facebook.com/sdjsofficial/posts/pfbid021v8S5x6J57Prq1BP6AEno8FkcsTDb91iUX3oxyn477u44cMijQmMC9RrrjHaPzG-mI>, (accessed on 25 November 2023)

880 CPJ, "", <https://cpj.org/2023/06/sudanese-paramilitary-soldiers-detain-journalist-nader-shulkawi/>, (accessed on 25 November 2023)

881 Sudan Today, "????????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? [The intelligence raised a lawsuit against Al-Hirak newspaper and a female journalist, and coordinates to bring her by Interpol]", March 4, 2023, <https://sudan2day.net/archives/16204>, (accessed on 25 November 2023)

882 Facebook, Mubarak Ardol, <https://www.facebook.com/mubarak.ahmed.359/posts/pfbid035uCwdVMgwxkPgkKa5We-8gUrahHDEb12GJZSSBoJcUie3ojyjsBHxrmL5JxUuXy6I>, (accessed on 27 November 2023)

announced that his SIM card was hacked and called on people not to engage with any messages or requests received in his name.⁸⁸³

Furthermore, the authorities in Sudan used to inspect citizens' phones to get data. During the ongoing conflict, it was reported that RSF was inspecting citizens' phone contents to ensure that they were not in conflict with any intelligence service.⁸⁸⁴

Data Protection

Sudan currently lacks a comprehensive data protection law.⁸⁸⁵ Despite this absence, Article (20-1) of the 2013 Regulation for Organizing Payment Systems mentioned that payment service providers must take necessary measures to protect and preserve user data.⁸⁸⁶ However, the Electronic Banking System's (EBS) failure to provide electronic banking clearing services has given rise to an unregulated market, allowing bank customer transactions to proceed without government oversight.⁸⁸⁷

E-banking users in Sudan have faced irregular outages, causing disruptions to their financial transactions. This struggle opened a space for a digital currency parallel market -a black market- as some IT specialists developed two online platforms to assist e-banking users in Sudan. The first platform provides real-time updates of the status of each bank application, while the second provides transactions between bank accounts using their personal accounts, taking commissions regarding this service. The Central Bank of Sudan or EBS does not have any control over the flow of money through this platform.⁸⁸⁸

Development in ICT and Emerging Technologies

Despite the impact of the conflict on the digital infrastructure in Sudan, Sudanese governmental institutions worked to mend the issue by providing digital services to citizens. According to the TPRS website, Sudan has three long-term plans for digital inclusion that include the Quarter-Century National Strategy for Communications Plan, the General National Telecommunication Emergency Plan (GNTEP), and the Broadband Plan.⁸⁸⁹ The above-mentioned plans were developed early on but as of the end of 2023, Sudan still needed a national strategy or plan to develop Artificial Intelligence (AI) applications.

However, numerous government services have dropped due to the RSF takeover of the Telecommunication Building in eastern Khartoum, which contains the government's data centres. The Internet Society Chapter of Sudan reported that only 12% of the Sudanese Country Code Top Level Domain (ccTLD) websites and services were functional as of June 2023.⁸⁹⁰ Due to

883 Nabd AlSudan, "????? ???? ???? ???? [Anonymous one hacked a phone of a famous journalist]", <https://nabdsudan.com/archives/85949>, (accessed on 27 November 2023)

884 SMEX, Internet and Telecom Shutdowns in Sudan: Who is responsible?, <https://smex.org/internet-and-telecom-shutdowns-in-sudan-who-is-responsible/>, (accessed on 27 November 2023)

885 Data protection Africa, "Sudan", <https://dataprotection.africa/sudan/>, (accessed on 1 December 2023)

886 Central Bank of Sudan, "Regulation for Organizing Payment Systems", <https://cbos.gov.sd/ar/content/%D9%84%D8%A7%D8%A6%D8%AD%D8%A9-%D8%AA%D9%86%D8%B8%D9%8A%D9%85-%D8%A3%D8%B9%D9%85%D8%A7%D9%84-%D9%86%D8%B8%D9%85-%D8%A7%D9%84%D8%AF%D9%81%D8%B9>, (accessed on 1 December 2023)

887 Consultative Group to Assist the Poor, "Sudan Dispatch: Inclusive Finance in Times of Crisis", <https://www.cgap.org/blog/sudan-dispatch-inclusive-finance-in-times-of-crisis>, (accessed on 1 December 2023)

888 Global Voices, The ongoing conflict's impact on ICT and digital transformation efforts in Sudan", <https://advoc.globalvoices.org/2023/10/21/the-ongoing-conflicts-impact-on-ict-and-digital-transformation-efforts-in-sudan/>, (accessed on 1 December 2023)

889 TPRS, "Plans", <https://tpra.gov.sd/regulation-issues/publications-2/qos-reports-3-2-4/>, (accessed on 26 December 2023).

890 Twitter, @ISOCsd, <https://twitter.com/ISOCsd/status/1669695388541128705?s=20>, (accessed on 2 December 2023)

this, several government online platforms became nonfunctional. However, some government institutions created alternative platforms to resume service provision, including but not limited to the Medical Council, Police, and the Spokesperson.⁸⁹¹ Moreover, the Ministry of Higher Education directed higher education institutions and universities to resume the education process via digital platforms.⁸⁹² On April 17, a fire broke out at the Ministry of Higher Education building, including in the data centre. The fire caused significant damage to the building and its contents.⁸⁹³ Good news came later as the Sudanese Certificate data was securely backed up in a cloud storage system, which means that student records and exam results were safe and accessible.⁸⁹⁴

It is clear from the above that the GNTEP was not implemented optimally, as the plan mentioned that government entities and commercial service providers must “replace basic physical communication infrastructures that have been damaged or destroyed; installing mobile phones or Tetra mobile stations that could rapidly deliver telecommunications services in less than 24 hours (16 hours for the main cities); and providing new facilities for telecommunications services”.⁸⁹⁵ In November 2023, the Minister of Telecommunication and Digital Transformation mentioned that the Ministry is working to create a new National Data Center in Portsudan, the interim capital of Sudan.⁸⁹⁶

Despite the conflict complications, the Civil Registry Administration was the most distinctive government entity in the digital sphere. The central passport printer was damaged due to the conflict in Khartoum, but services continued to operate due to the online passport platform, which allows citizens to schedule appointments for passport applications and submit their paperwork without having to visit the passport office.⁸⁹⁷ The Civil Registry sends appointment confirmations to citizens via WhatsApp. The platform allows citizens in eight cities in Sudan and six cities in five other countries to apply for and renew their passports. As such, the Sudanese citizens who fled the country due to the conflicts can renew their passports from remote locations and visit the passport office to provide their biometric data. This development resolved the passport crisis because many citizens inside the country could not travel abroad because they had lost their identification when they fled during the conflict.

Internet legal framework

The internet-related legal framework in Sudan has many laws that fully and partially govern data and the Internet. Sudan has ratified key international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸⁹⁸, and the African Charter on

891 Global Voices, “The ongoing conflict’s impact on ICT and digital transformation efforts in Sudan”, <https://advoc.globalvoices.org/2023/10/21/the-ongoing-conflicts-impact-on-ict-and-digital-transformation-efforts-in-sudan/>, (accessed on 2 December 2023)

892 Nabd AlSudan, “[Guidelines for starting education in higher education institutions]”, <https://nabdsudan.com/archives/81713>, (accessed on 1 December 2023)

893 Twitter, @AJArabic, <https://twitter.com/AJArabic/status/1647880074887065604?lang=ar>, (accessed on 3 December 2023)

894 Hodhod news, “[Education.. Sudanese certificate information collected under an electronic cloud]”, <https://hodhodnews.net/%D8%A7%D9%84%D8%AA%D8%B1%D8%A8%D9%8A%D8%A9-%D9%85%D8%B9%D9%84%D9%88%D9%85%D8%A7%D8%AA-%D8%A7%D9%84%D8%B4%D9%87%D8%A7%D8%AF%D8%A9-%D8%A7%D9%84%D8%B3%D9%88%D8%AF%D8%A7%D9%86%D9%8A%D8%A9-%D9%85%D8%AC/>, (accessed on 3 December 2023)

895 TPRA, “Sudan National Telecommunication Emergency Plan”, <https://web.archive.org/web/20220709164158/https://tpra.gov.sd/wp-content/uploads/2022/03/NETP-Sudan-june-30.pdf>, (accessed on 1 December 2023)

896 Nabd AlSudan, “[Establishing a national data center in Port Sudan to restore electronic services]”, <https://nabdsudan.com/archives/89551>, (accessed on 30 December 2023)

897 Sudan Passports, “[General Administration of Passports and Immigration electronic reservation system]”, <https://passports.gov.sd/>, (accessed on 3 December 2023)

898 United Nations, “View the ratification status by country or by treaty, Sudan”, https://tbinternet.ohchr.org/_layouts/15/

Human and Peoples' Rights (ACHPR)⁸⁹⁹, which guarantee the right to freedom of assembly, freedom of expression, and the right to receive, impart and disseminate information. On March 15 2023, Sudan signed the African Union Convention on Cyber Security and Personal Data Protection.⁹⁰⁰

However, the Interim Constitutional Charter of 2019 guarantees the right to access the Internet with some limitations as it stipulates: "Every citizen has the right to access the internet, without prejudice to public order, safety, and morals under what is determined by law."⁹⁰¹ Most of Sudan's internet-related laws have terms that are vague, non-defined, and may be misused by the government. The Telecommunication and Postal Regulation Authority Act (TPRA) mentions that "anyone may not access telecommunication or eavesdrop on or monitor it without permission from the prosecutor or a competent judge."⁹⁰²

Furthermore, the Cybercrimes law has undergone several modifications since its first draft in 2007, replaced by a brand new law in 2018, and then amended in 2020. In November 2022, the Cabinet -Council of Ministers passed a new amendment that criminalised insulting state leaders and agencies and obliged the authorities to impose imprisonment and a fine against offenders.⁹⁰³ The full text of the law had not been published by the time of writing this report.

However, the current Cybercrimes law gives the so-called "competent authority" the right to violate the citizens' privacy. The law imposes punishment through imprisonment, a fine or both for anyone who violates the privacy of the citizens. However, the same article considered the same actions not a crime if they came under the authorisation of the public prosecutor, judicial or competent authority. The term "competent authority" is a broad term, making the law subject to misuse.⁹⁰⁴

The National Security Law has some repressed articles. One of them is Article 25 because it gives unlimited power to the General Intelligence Service (GIS) to violate citizens' privacy. It stipulates: "The security service has the right to request information, data, documents or things from anyone to check it or take it". The law gives the Sudanese GIS full authority to do this without any court order, which exposes citizens to violations under the pretext of security.⁹⁰⁵

The Sudanese National Council, or Parliament, passed the "Right to Access Information Act" in 2015. This is the first law related to information accessibility in Sudan. Even though the law has been legislated, it remains idle. For example, the law mandates the establishment of "The Commission for the Right to Access Information" as the regulator for accessing information at any public institution but nothing has been done to set up this Commission, which means citizens still cannot exercise

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TreatyBodyExternal/Treaty.aspx?CountryID=165&Lang=en, (Accessed on 23 January 2024)

899 African Union, African Charter on Human and Peoples' Rights, <https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights>, (Accessed on 23 January 2024)

900 African Union, "LIST OF COUNTRIES WHICH HAVE SIGNED, RATIFIED/ACCEDED TO THE African Union Convention on Cyber Security and Personal Data Protection", https://au.int/sites/default/files/treaties/29560-sl-AFRICAN_UNION_CONVENTION_ON_CYBER_SECURITY_AND_PERSONAL_DATA_PROTECTION.pdf, (accessed on 27 November 2023)

901 Constitute Project, "Sudan's Constitution of 2019", art. 57 (2) https://www.constituteproject.org/constitution/Sudan_2019.pdf?lang=en, (Accessed on 1 December 2023).

902 TPRA law, art 74, <http://tpra.gov.sd/wp-content/uploads/2018/06/Telecommunications-and-Postal-Regulation-Act.pdf>.

903 Sudan spokesperson platform, "Approval of the Anti Cybercrimes law for the year 2022", <https://web.archive.org/web/20230203065147/https://spokesperson.gov.sd/?p=2565>, (accessed on 1 December 2023)

904 Combating Cybercrimes law, art 23, <https://moj.gov.sd/files/download/204>.

905 National Security Law, art 25, <https://menarights.org/sites/default/files/2016-11/Sudan%20National%20Security%20Act%202010%20%28AR%29.pdf>.

their right to information.⁹⁰⁶

The law has many defects that limit the freedom of access to information because it lists 12 types of categorised information that are restricted from citizens, including information related to “national security” and “foreign policy”. As mentioned in the above laws, these terms are ambiguous, which allows the authorities to limit the people’s ability to fully access information, which restricts the path to transparency and accountability. Article 10(g) further undermines citizens’ ability to access information by empowering any public institution to enforce fees on citizens requesting information. The Act does not oblige the information holders any duty to proactively disclose information in their possession.⁹⁰⁷

The Regulation on Filtering and Blocking Websites and Web Pages on the Internet, for the year 2020, gave the TPRA the right to block websites without judicial order while requiring the citizens to go to court to unblock the websites. Broad terms such as “belief” have been mentioned in the regulation to justify website blocking. The regulation didn’t define what “belief” is.⁹⁰⁸

However, despite these negative aspects of the legal framework in Sudan, there are some encouraging provisions such as those mentioned in the Regulation of Filtering and Blocking Websites and Web Pages on the Internet, and the Regulation for Licensing and Regulating the Work of Financial Institutions for Mobile Payment. The first regulation requests that ISPs block all child pornography websites, weapons websites, and all sites that spread hate speech, racism and religious discrimination. The second regulation requires mobile payment service providers to encrypt all transactions with End-to-End Encryption.

Universal Access Fund

The Universal Access Fund project started in Sudan in 2003 when the Information Technology Development Council was formed. It was then incorporated into the Information Technology Development Fund in the year 2005, and finally, the Universal Access Fund was established in the year 2018, according to TPRA law.⁹⁰⁹

The regulator, TPRA, conducts annual surveys for the comprehensive service project. As of 2018, the survey targeted, for the first phase, 55 areas not covered by communication networks, in order to collect correct data and then classify them in terms of economic feasibility (17 feasible areas and 38 non-feasible areas). Economically unfeasible areas are covered with the support of the Universal Service project. As for the economically feasible areas for the operators, they are covered by the operators by including them in their annual coverage plans.⁹¹⁰

As mentioned above, the RSF took over the TPRA tower in Khartoum, which contains the main governmental data centres, including the government web servers. So, the TPRA website -which contains the USF information- was not accessible for information.

Reports of two USF-funded projects have been found online, both posted before the conflict in

906 Advox, “Unfreedom Monitor Report: Sudan”, <https://advox.globalvoices.org/2022/08/04/unfreedom-monitor-report-sudan/>, (accessed on 1 December 2023).

907 Global Voices, “The case for reforming the Sudanese Access to Information Act”, <https://globalvoices.org/2019/08/28/the-case-for-reforming-the-sudanese-access-to-information-act/>, (accessed on 1 December 2023)

908 Advox, “How the government in Sudan legalized internet categorizing and content filtering”, <https://advox.globalvoices.org/2022/08/02/how-the-government-in-sudan-legalized-internet-categorizing-and-content-filtering/>, (accessed on 3 December 2023).

909 TPRA, “Universal Service Fund”, <https://tpra.gov.sd/wp-content/uploads/2018/06/Universal-Service-Fund.pdf>, (accessed on 4 December 2023).

910 TPRA, “Universal Service Fund”, <https://tpra.gov.sd/regulation-issues/%d8%a7%d9%84%d9%85%d8%b4%d8%a7%d8%b1%d9%8a%d8%b9/universal-service/>, (accessed on 14 December 2022).

Sudan. The first project is the first phase of the “Development of National Data Center” project, which is a data centre planned to provide all digital government services such as applying admission requests to universities, applying for Islamic religious rituals including Hajj and Umrah, the Sudanese certificate (national secondary exams), the primary school certificate, governmental fees collection, and the national mail, in addition to the website hosting service for governmental institutions. The project was reported by the Sudan official news agency without declaring how much of the Fund’s money was used.⁹¹¹

The second USF-funded project, reported by the Director of the Research, Development and Quality Control Department in the Ministry of Higher Education and Scientific Research⁹¹² was the development of the infrastructure of the Sudanese Research and Education Network (SudREN). SudREN was supported by two ISP-scale routers, in addition to a licence that enables the routers to provide transmission bandwidth up to 10 Mbps, which represents 10 times the old bandwidth. SudREN also known as “Universities Network”, is a network that connects most of the higher education institutes in Sudan. The TPRA General Director was contacted for comment about the USF projects and the fund amount in 2023 and shared that there were no projects in 2023 due to the war.

911 Sudan News Agency, “[The first phase of the National Data Center Development Project has been completed]” <https://suna-sd.net/posts/%D8%A7%D9%83%D8%AA%D9%85%D8%A7%D9%84-%D8%A7%D9%84%D9%85%D8%B1%D8%AD%D9%84%D8%A9-%D8%A7%D9%84%D8%A3%D9%88%D9%84%D9%89-%D9%85%D9%86-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D8%AA%D8%B7%D9%88%D9%8A%D8%B1-%D9%85%D8%B1%D9%83%D8%B2-%D8%A7%D9%84%D8%A8%D9%8A%D8%A7%D9%86%D8%A7%D8%AA-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A>, (accessed on 7 December 2023)

912 Facebook, [The first phase of the National Data Center Development Project has been completed], <https://www.facebook.com/hebo5/posts/pfbid0vX8PBqqsLNIYwFEKu1F3J2foEgFVmp-4mgemdcwyMxExJ5mb12XEpwEBiXZ4CgZmgl>, (accessed on 8 December 2023)

► Conclusion & Recommendations

Conclusion

The ongoing conflict in Sudan has a major negative impact on ICT infrastructure. Numerous government digital services were disrupted, while some governmental institutions created alternative platforms to provide their services to citizens. Both RSF and SAF do not allow citizens to practise their digital rights using different tools, including network disruptions, online information manipulation, and physical electronic device inspection. Reports show authorities arresting and verbally warning activists and politicians for online criticism of the government. The conflict's impact on the ICT infrastructure, government platforms, and the citizens' data made the dream of digital inclusion and transformation a distant one. However, the government has no plans to keep up with modern technologies such as Artificial Intelligence (AI). Sudan's government did not mention any preparation for any AI plans or regulations.

Recommendations

The government (including SAF) should do the following:

- » Stop issuing network disruption orders.
- » Amend the laws of (Combating Cybercrimes, 2018 (amendment of 2020, and the non-published amendment of 2022), Press and Press Publications of 2009, Telecommunication and Post Regulation Authority, 2018 and National Security of 2010 (amendment of 2020), which contain vague terms and imposing harsh and disproportionate punishments on the state workers.
- » Implement the Access to Information Act to increase access to information, reducing the spread and impact of disinformation.
- » Reduce the telecommunication tax, ensuring affordable data.
- » Derive benefits from the reduced telecommunication tax by using it to develop the ICT sector in the post-conflict era.
- » Provide the resources that will assist the telecommunications companies in providing accessibility to the conflict areas.
- » Refrain from targeting citizens, journalists, and activists based on online activities.

To the Rapid Support Forces (RSF):

- » Stop targeting ICT infrastructure.
 - » Refrain from targeting citizens, journalists, and activists based on their online activities.
 - » Stop targeting telecommunications engineers and workers working under conflict circumstances.
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- » Refrain from targeted surveillance and impunity through stealing citizens' phones and other electronic devices.
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**To the Civil
Society
Organisations:**

- » Push against digital authoritarianism practices by encouraging regional and international support and mobilising the resources to pressure the government to stop repressing human rights.
 - » Raise awareness through training and media campaigns.
 - » Provide digital safety training to targeted people with spyware or physical inspection campaigns.
-

Media:

- » The media and press in Sudan should continue their efforts to detect and document digital authoritarianism incidents.
 - » Press institutions should work to protect their staff by building strong coalitions and pushing against the laws used to repress journalists.
 - » The Syndicate of Journalists should provide digital safety training to its members.
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Tanzania

EXECUTIVE SUMMARY

This report identifies the state of digital rights and inclusion in Tanzania. It notes that despite efforts made through legislation of important laws, there is still room for improvement. The government of Tanzania still needs to review laws and address critical issues, such as penalties associated with violating certain laws. It is important to note that most rights, though granted, are not exercised holistically; this is evident in rights such as access to information. It has been reported that some specific sites have been blocked and were only accessible via a virtual private network (VPN), making access to information difficult and content censored. On October 13, 2023, the Tanzania Communications Regulatory Authority (TCRA) banned VPN usage. With this new regulation, one requires a permit from TCRA to use a VPN. Failure to comply with this leads to 12 months of imprisonment. Society deemed this an infringement of their fundamental right to privacy. Many aspects of the personal data protection legislation in November 2022⁹¹³ are to be applauded. However, concerns have been raised about data governance in collecting biometric information in making national digital IDs (NIDA) and electronic passports. This report aims to shed light on what currently exists, identify the gaps, and make

recommendations to help Tanzania's digital space thrive. This report has gained insights from desktop research on existing laws, policies, policy briefs, news, other reports and commentaries from different stakeholders.

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Introduction

According to the national census conducted in 2022 by the Tanzania National Bureau of Statistics, the population of Tanzania is 61 million, with a majority of that population residing in rural areas.⁹¹⁴ Adaptation of technology has been growing over the years, with TCRA recording an increase of internet users to a total of 34 Million internet subscribers as of September 2023. This is a 3 million increase compared to the 31 Million of 2022.⁹¹⁵ Tanzania's private sector has also not been left behind in embracing digital transformation and businesses have invested heavily in new technologies to improve operations and hence, increase in profit. Nonetheless, the government has managed to reduce time wastage through digitisation. The government has given considerable support to digitalisation by developing initiatives like the national broadband and Tanzania e-government strategies. The private sector has not been left behind in ICT development. Vodacom Tanzania has successfully created digital initiatives like the Mpesa mobile money platform and invested heavily in cloud computing and big data to improve customer service and network ability.

NMB also launched the NMB Mobile Banking Application and invested heavily in AI to improve its fraud detection capabilities. In addition to efforts made by the private sector, the government has gained recognition and ranked first in East Africa, third in Africa and 23rd globally on the GovTech maturity index (GTMI) by the World Bank. All these achievements came about through the establishment of supportive policy and legal framework, including enactment of the Personal Data Protection Act of 2022. Currently, the Tanzania government is in the process of developing the National Enterprise Service Bus (NESB) as stated by the Minister of ICT so as to facilitate data sharing between public and private sectors.⁹¹⁶

However, the government of the United Republic of Tanzania has been facing challenges that hinder the growth of the sector, such as digital taxation, cybersecurity concerns and gaps in data governance despite the Personal Data Act being passed in November 2022. This Act sought to make a minimum requirement for the collection and processing of personal information to protect the right to privacy. The Act includes the registration of data collectors and processors, procedures for data subject to obtain rights in the collection and processing of personal data, procedure of exporting personal data, complaint handling regulations, investigation and dispute resolution and complaint hearing procedures.

914 National Sensus 2022. <https://sensa.nbs.go.tz/> (accessed on 14 December, 2023)

915 TCRA, Communications Statistics quarter ending 30th September, 2023. https://www.tcra.go.tz/uploads/text-editor/files/TCRA%20Communications%20Statistics%202023%20-2024-Q1_1698210303.pdf (accessed on 13 December, 2023)

916 Tanzania Digest 'Digitizing Tanzania: A leap for private sector progress and national prosperity' (2023) <https://www.digest.tz/a-leap-for-private-sector-progress-and-national-prosperity/> (accessed on 13th December, 2023)

► Country Analysis

Internet access and ICT development

While the government has made efforts to remove VAT from imported smartphones and removing the TCRA licence for selling mobile phones⁹¹⁷ the government has restricted access by restricting access to some websites (adult content and some applications), platforms that can be accessed only through the use of VPN. For example a gossip App by Activist Mange Kimambi has been banned in Tanzania, only accessible via VPN.⁹¹⁸ The restricting of porn sites was publicly acknowledged by the Minister in early February 2023 during a parliamentary debate. The Minister of Finance, in the 2022- 2023 budget speech, announced a 2% tax on the revenue from non-resident digital platforms which was received with a lot of criticism both internally and by international partners. On the Research ICT Solutions (RISs) Next-Generation Internet Index, Tanzania is ranked last in East Africa and 31st in Africa, with an index stating that this is because the internet in Tanzania is slow, expensive and laggy instead of improving affordability and rolling out new digital infrastructure, especially fiber.⁹¹⁹ Announcing digital taxes affects the growth of startups in the country and widely marginalised groups such as women and youth who have sought jobs in digital marketing and selling products via social media. This tax is visible through the taxing of online ads such as Facebook ads for Tanzanians.

Digital Tanzania Programme

The Digital Tanzania Project (DTP) is a project being implemented by the Ministry of Information, Communication and Information Technology (MICIT) in collaboration with the President's Office, Public Service Management and Good Governance (PO-PSM). This program is funded by the World Bank and is set to be implemented in two phases with the first phase running from 2021 -2025 and the second from 2026-2030. Its aim is to increase access to affordable, high-quality internet services for government, businesses and citizens to improve the government's capacity to deliver digital public services. However, there are major concerns that the law won't match the practice due to acts that have preceded it such as the stifling of the private sector through introduction of taxes on digital marketing through digital platforms.

The gender digital divide is still a huge challenge for Tanzania. At a Women in Technology conference held in March 2023 The Minister of ICT Hon. Nape Nuye stated that Tanzania was working to bridge the gender digital gap. He informed the public that Tanzania is in the final process of developing a nationwide digital economy strategy and he said this would encompass representation of women to ensure no one is indeed left behind.⁹²⁰ For a country whose female population comprises 51% of the entire population it is critical that gender gaps such as access to skills and technology are

917 Vatupdate 'Tanzania to remove VAT on smartphones to boost access to internet', available at <https://www.vatupdate.com/2021/06/17/tanzania-to-remove-vat-on-smartphones-to-boost-access-to-internet/>, (accessed on December 14, 2023).

918 Instagram post by Mange Kimambi on instructions on using VPN to access her app https://www.instagram.com/mangekimambi_/p/CzOsUUELTrd/ (accessed on 18 December, 2023)

919 RIS Articles Digital services tax in Tanzania' (2022) https://researchictsolutions.com/home/dst_tanzania/ (accessed on 10 December 2023)

920 The Citizen 'Government comes up with plan to bridge digital gender divide' (2023) <https://www.thecitizen.co.tz/tanzania/news/national/government-comes-up-with-plan-to-bridge-digital-gender-divide-4152152> (accessed on 8 december, 2023)

addressed. While access is a huge gap the challenges of policy still leave a lot of women vulnerable to technology with most of them withdrawing due to online gender based violence and a lack of specific instruments and laws that address gender concerns in technology.

Freedom of Expression

Any individual has a universal right to exercise freedom to express themselves online and to access information. The right to speak, to be heard and to participate in political, artistic and social life, which includes the right to know, their right to seek, receive and share information via media. The government has been using provisions of the Media Services Act ,2015⁹²¹ and the Electronic and Postal Communications Regulations, 2020 to suspend licences and punish numerous media organisations as well as arrest individuals such as opposition party members and activists. Tanzania’s freedom of expression has been clouded by the government controlling the internet through putting government surveillance on internet activities and making sure the content suits the government’s interest.

In September 2023, there were 34 million internet users in Tanzania. Tanzanians’ internet usage has been growing over the years however, there is still a huge rural vs urban digital divide. Moreover, there have been restrictions to access information under the Statistics Act of 2015,⁹²² mandatory registrations and accreditation of journalists as well as harsh penalties under the Media Services Act of 2015, which criminalises offences related to computer systems and ICT. The government of Tanzania in February 2023, through TCRA, restricted access to adult content that is considered immoral and against Tanzanian ideals.⁹²³ Many online magazines and applications were blocked and cannot be accessed in Tanzania except through the use of VPN, which was also banned as of October 2023.⁹²⁴

The Media Services Act, 2016 has hampered the constitutional right of journalists and media houses to execute their mandate, which has been a violation of the right to freedom of expression. The provisions that have been required for authorisation and registration of social media as a condition for operation need to be amended. The Act has brought about intimidation, harassment and attacks against media houses, journalists, human rights defenders and bloggers.⁹²⁵

The Electronic and Postal Communications (Online Content) Regulation, 2020 : The regulation also offers no protection to citizens Data.⁹²⁶ According to a report by Zaina Foundation the Online Content Act despite having been progressively amended to integrate more changes consecutively in 2018, 2020 and in 2021, there is still a wide room for it to be wrongly utilised. This includes the excess power granted to the licensing authorities without oversight. In regulation 8, TCRA is given the authority to suspend or revoke the licence without following legal procedures on the right to be heard, which fosters the violation of human rights. Furthermore, the provider is not allowed to seek

921 The Media service act 2016, <https://www.parliament.go.tz/polis/uploads/bills/1474021216-A%20BILL%20-%20%20%20THE%20MEDIA%20SERVICES%20ACT,%202016.pdf>

922 The statistics Act 2015 <http://parliament.go.tz/polis/uploads/bills/acts/1452062087-ActNo-9-2015-Book-1-10.pdf>

923 The Citizen ‘Tanzania to tighten access to pornography’ (2023) <https://www.thecitizen.co.tz/tanzania/news/national/tanzania-to-tighten-access-to-pornography--4119142> (Accessed on 7 december, 2023)

924 Speaker ‘Tanzania Imposes ban on VPN usage’ (2023) [https://www.spreaker.com/episode/tanzania-imposes-ban-on-vpn-usage--57254634#:~:text=Residents%20and%20citizens%20must%20fill,implement%20regulations%20on%20VPN%20usage.\(accessed on 14 December, 2023\)](https://www.spreaker.com/episode/tanzania-imposes-ban-on-vpn-usage--57254634#:~:text=Residents%20and%20citizens%20must%20fill,implement%20regulations%20on%20VPN%20usage.(accessed%20on%2014%20December,2023))

925 Civicus ‘Amendments on the Media Services Act of 2016 of Tanzania’ (2022) <https://www.civicus.org/index.php/media-resources/news/5553-amendments-on-the-media-services-act-of-2016-of-tanzania/>

926 The Electronics and Postal Communications Act (EPOCA) 2020 <https://www.tcra.go.tz/uploads/documents/sw-1619088125-The%20Electronic%20and%20Postal%20Communications%20%28Online%20Content%29%20Regulations,%202020.pdf>

redress after suspension or revocation.⁹²⁷

PRIVACY AND SURVEILLANCE

The Constitution of Tanzania under Article 16 guarantees the right to privacy. This is further reinforced by the Electronic and Postal Communications Act 2010 and the Data Protection Act 2022. However, several sections of the Act are used by the government to restrict the right to privacy. The laws provide information disclosure procedures which have no adequate safeguard against possible abuse by law enforcement agencies. For example the Cybercrime Act provides penal sanctions which violate privacy and data protection. The Act has persecuted online users perceived as critical of the President and other powerful individuals. It also empowers police officers to demand information from service providers without stating the procedure, interfering with privacy with no judicial oversight.⁹²⁸ The Personal Data Protection Act, 2022 allows personal data transfer to other authorities under certain conditions, requiring clarification regarding content when transferring data out of the country. When TCRA imposed a ban on VPN usage, it raised concerns. In contrast, the action was against universal human rights to seek, receive and impart information hence infringement of fundamental human rights to privacy.

The Personal Data Protection Act, 2022, in section 35, prohibits the processing of personal data for direct commercial advertising purposes. Despite the prohibition, it's still unclear whether the section data handlers can trade the personal data of their data subjects; also, procedures for handling data breaches should be outlined in the Act as these are unclear. The Act also grants consent to bodies that collect, process, store or use personal data outside Tanzania's borders. As data subjects have not been accorded the power of consent the data is prone to misuse. Part 6 of the Act, Section 34(4), gives full legal rights to an heir, meaning they could consent to process private information on behalf of another party.

After many years of the government of Tanzania being reluctant to enact data protection law, in November 2022, the Personal Data Protection Bill was passed by Parliament. Despite the act covering many necessary areas, there are some areas of concern: The Act does not have procedures for handling breaches that involve unauthorised access and loss of personal data. Also, the Act allows personal data transfers to other authorities under certain conditions therefore, clarification is needed regarding the consent. This act coupled with the Electronic and Postal Communication Regulations 2020, states that to register a SIM card, one needs to submit biometric information (sensitive data). The government allows sensitive personal data to be taken and shared without proper legal procedures to protect personal data. Digital IDs are governed by the Registration and Identification of Persons Act 1986. NIDA administers the Act. Through the Act, NIDA has the authority to collect biometric information from the citizens. The fingerprints are taken when processing both IDs and travel passports under the Passport and Travel Document Act, 2002l. The information collected by NIDA is also shared with other service providers e.g. financial institutions, telecommunication companies and the police force.

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UNIVERSAL COMMUNICATIONS SERVICES FUND

The Universal Service Fund was established and is governed by the Universal Communications

927 Zaina Foundation 'Analysis of electronic and post(Online content) regulations 2022 <https://zainafoundationtz.org/analysis-of-electronic-and-post-online-contents-regulation-2022/#:~:text=Regardless%20of%20the%20progressive%20amendments,United%20Republic%20of%20Tanzania%20and>

928 The Cybercrimes Act (2015) <https://www.parliament.go.tz/polis/uploads/bills/acts/1452061463-ActNo-14-2015-Book-11-20.pdf>

Services Access Fund Act, 2006. In Tanzania, it is known as UCSAF, which facilitates access to communication services. UCSAF does a lot of work in the construction of communication infrastructures and services.⁹²⁹ It is reported that 94% of Tanzanian citizens have been able to get communication services as of January 2023 and 66% of Tanzania have communication services available due to the work of UCSAF. The geographical coverage of 2G is 69%, 3G 55% and 4G 36%, and they are working on upgrading the 2G to 3G.⁹³⁰ The UCSAF donated 35 CCTV cameras to Muhimbili National Hospital in April 2023 to improve security for patients, their relatives, doctors and all hospital staff with the project estimated cost being 10 million Tanzanian Shillings (TZS).⁹³¹

On 13th May 2023, Tanzania’s President Samia Suluhu Hassan oversaw the signing of agreements for rural telecommunication projects aimed at providing communication services to 8.5 million previously unconnected individuals by building 758 new communication towers worth TZS 275.55 billion.⁹³² In November 2023, an agreement was made between UCSAF and Tanzania telecom operators for the development of network infrastructure, whereas UCSAF will cover 40% of TZS 265.3 billion and network operators to cover 60% of 265.3 billion. UCSAF is working aggressively in partnership with the private sector and government to decentralise the Internet, which has had a significant impact in terms of widening access to the internet to communities in Tanzania. At the end of August 2023, about 42 towers were erected in Zanzibar, and, courtesy of UCSAF, they serviced 211,601 people. This project cost 6.9Billion TZS.⁹³³

EMERGING TECHNOLOGIES

In 2023 major efforts were placed to digitise Tanzania’s economy during the 7th annual ICT conference, which took place in October 2023, organised by the National ICT Commission (ICTC). It came to a close with reachable reflections on ICT changes during the year 2023 and government directives for the ICT sector.⁹³⁴ The Permanent Secretary of the Ministry of ICT stated government efforts to develop ICT, the enacted laws governing ICT, the establishment of authorities and information centres and investment in the education and training of ICT professionals. The establishment of Govnet, the government ICT network, the national ICT broadband backbone, and the national fiber optic infrastructure have led to an integrated government service delivery platform.

As stated by Nape Nnauye, Minister for ICT in Tanzania, during a brief discussion with Forbes Africa, “latest technology trends such as the National Digital Economy framework embrace key technologies of the fourth industrial revolution: cybersecurity, cloud computing, and AI. They have yielded significant benefits in healthcare, energy and education.”⁹³⁵ The major focus is research and investment in emerging technologies like 3D printing, augmented reality, IoT, and blockchain. The key policies implemented to promote the adoption and use of technologies include the National ICT Policy 2016,⁹³⁶ the National Broadband Strategy, the National Digital Economy Framework, the

929 UCSAF (2023) <https://www.ucsaf.go.tz/>

930 Daily News ‘TZ makes major strides in communication sector’(2023) [https://dailynews.co.tz/tz-makes-major-strides-in-communication-sector/\(accessed on 15 december,2023\)](https://dailynews.co.tz/tz-makes-major-strides-in-communication-sector/(accessed on 15 december,2023))

931 Daily News ‘UCSAF donates CCTV cameras to MNH’(2023) [https://dailynews.co.tz/ucsaf-donates-cctv-cameras-to-mnh/\(accessed on 15 december,2023\)](https://dailynews.co.tz/ucsaf-donates-cctv-cameras-to-mnh/(accessed on 15 december,2023))

932 DigWatch ‘Tanzania signs agreements to extend telecommunications services to millions in rural areas’(2023) [https://dig.watch/updates/tanzania-signs-agreements-to-extend-telecommunications-services-to-millions-in-rural-areas \(accessed on 15 december,2023\)](https://dig.watch/updates/tanzania-signs-agreements-to-extend-telecommunications-services-to-millions-in-rural-areas (accessed on 15 december,2023))

933 UCSAF ‘UCSAF opens up Zanzibar through ICT’(2023) https://www.ucsaf.go.tz/uploads/press_releases/en1699273397-UCSAF%20Zanzibar.pdf

934 Daily News ‘The 7th ICT Conference 2023:Major strides towards digital development in Tanzania’(2023) [https://dailynews.co.tz/the-7th-ict-conference-2023-major-strides-towards-digital-development-in-tanzania/\(accessed on 13 december,2023\)](https://dailynews.co.tz/the-7th-ict-conference-2023-major-strides-towards-digital-development-in-tanzania/(accessed on 13 december,2023))

935 Forbes ‘Driving Tanzania’s Digital Future’(2023) [https://www.forbesafrica.com/brand-voice/2023/08/14/driving-tanzania-digital-future/\(accessed on 15 december,2023\)](https://www.forbesafrica.com/brand-voice/2023/08/14/driving-tanzania-digital-future/(accessed on 15 december,2023))

936 National ICT policy (2016) <https://www.ega.go.tz/uploads/publications/sw-1574848612-SERA%202016.pdf>

National Cybersecurity Strategy, the enactment of the Personal Data Protection Act of 2022, and the development of the national guidelines to regulatory sandbox framework.

▶ Conclusion & Recommendations

Conclusion

The revised National ICT Policy 2023 aims at developing citizen-centric digital infrastructure that fosters seamless, affordable and accessible delivery systems throughout the country. The ICT policy for 2023 aims to create a robust policy environment and strengthen the research and innovation ecosystem, encouraging individuals and innovators to generate creative solutions for addressing cybersecurity and development of future-ready ICT human resources in the country.⁹³⁷ The government of Tanzania has made a progressive shift to advance digitalisation for sustainable development by enacting the data protection law in 2022. The implementation needs to promote privacy. Tanzania is rapidly increasing its digital presence through various projects. Various efforts have been made by the Universal Communications Services Access Fund (UCSAF) to bridge the digital divide between rural and urban populations. Despite all the efforts, there is no specific legislation on digital rights in Tanzania.

937 Daily News 'Digital Transformation:Tanzania On track'(2023) <https://dailynews.co.tz/digital-transformation-tanzania-on-track/>(accessed on 12 december,2023)

Recommendations

The Government

- » Should stop attacks on the media and unjustified withdrawal of media licences
- » Should strengthen internet infrastructure to enable the full realisation of digital rights
- » Should amend the Personal Data Protection Act, 2022, Media Services Act 2016, the Cybercrime Act, 2015, and the Postal communication (online content) regulations, 2020 to strengthen protection of the right to privacy and freedom of expression
- » Should comply with the existing human rights in the constitution hence translating into promotion of digital rights
- » T Should prevent unnecessary data collection and processing.

The Private sector:

- » Should work with the government to ensure internet access in rural areas
 - » Should come up with community projects to advance the digital economy and digital access
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**The Civil
Society
Organisations:**

- » Should advocate for the amendment of laws on digital rights such as the data protection act to be more inclusive of privacy concerns as well as the Cybercrime act 2015.
 - » Should conduct awareness programs and training on digital rights
 - » Should conduct strategic litigation on cases of digital rights violations
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Togo

EXECUTIVE SUMMARY

The state of digital technology in Togo in 2023 reflects significant progress, particularly in the implementation of the “Togo Digital 2025” strategy. This strategy focuses on several key aspects such as the digitalisation of the economy, the modernisation of public administration, and strengthening the regulatory framework for electronic transactions. The Togolese government’s effort to secure digital transactions and promote cybersecurity, as well as its focus on training young people in the digital field, marks significant progress in the country’s technology sector. Regarding digital inclusion, efforts are being made to digitise public services, to facilitate citizens’ access to these services. However, the government’s approach focuses on rapid technological advancements rather than a long-term, multi-stakeholder and inclusive process. This direction risks limiting the reach and sustainability of the country’s digital initiatives.

The methodology adopted for this report included a review of relevant literature, an in-depth review of nearly 42 government projects in the digital field, as well as discussions and interviews with national stakeholders and experts. These methodological approaches made it possible to obtain an informed overview and valuable awareness of the current state and prospects of digital technology in Togo, thus

enriching the analysis with an empirical and contextual dimension.

Moreover, the situation regarding freedom of expression online in Togo remains worrying. Reports indicate that journalists and activists continue to be arrested and imprisoned for their opinions expressed online. This situation suggests significant challenges to digital rights and freedom of expression in the country. Although the government strengthened legislation in 2020, there appears to be a gap between regulation and the effective protection of individual freedoms online. Finally, although progress is notable in the technology sector, there is a mismatch between the government’s strategic plans and concrete achievements, revealing a gap between ambitions and actual results. Togo’s digital strategy, focused on rapid technological leaps, could benefit from deeper thinking and long-term planning to ensure a truly inclusive and sustainable digital transformation.

Introduction

Located in West Africa on the Gulf of Guinea, Togo, bordered to the west by Ghana, to the east by Benin, and to the north by Burkina Faso, is a narrow country with great linguistic diversity, a complex religious history, and an interesting political history. The majority of the population lives in small rural villages, while Lomé, the largest urban center, stretches along the coast. Togo has significant phosphate reserves, around 60 million tonnes, making it the 19th largest mineral producer in the world. The country also has untapped potential to produce minerals such as limestone, gold, diamonds, iron ore, bauxite, manganese, zinc and rutile. However, low market prices for Togo's main exports, combined with the volatile political situation of the 1990s and early 2000s, had a negative impact on the economy.

The country, which has gone through various political periods, continues to face political challenges, particularly in terms of governance and respect for human rights. The government announced that legislative and regional elections will be organised in Togo by April 2024¹. The last legislative and regional elections took place in 2018 and were boycotted by the opposition which denounced irregularities in the electoral census. The current Head of State has been in power since 2005 after succeeding his father, Gnassingbé Eyadéma, who ruled the country with an iron fist for 38 years.

Digitally, Togo has made significant progress with 3.13 million internet users, an internet penetration of 35%, and nearly 776,000 social network users.

Mobile connections have also increased, reaching 68.7% of the population. However, these digital advances contrast with persistent socio-economic challenges such as poverty, unemployment and social inequalities.

¹ Official, T. (2023, November 28). The next elections must be held “at the latest at the end of the first quarter of 2024”. Official website of Togo, Togolese Republic. <https://www.republiquetogolaise.com/politique/2811-8646-les-prochaines-elections-devront-se-tenir-au-plus-tard-a-la-fin-du-1er-semester-2024>

² 3 Ecofin, A. (2022, September 4). In Togo, Canalbox targeted by a sanction procedure led by Arcep, for recurring malfunctions. Ecofin Agency. <https://www.agenceecofin.com/communication/0409-100852-au-togo-canalbox-vise-par-une-procedure-de-sanction-conduite-par-l-arcep-pour-dysfonctionnements-recurrents>

⁴ RFI, (2023, November 19). Togo: The CPJ calls for the release of journalists Loïc Lawson and Anani Sossou. <https://www.rfi.fr/fr/>

► Country Analysis

Digital Rights, Artificial Intelligence and Privacy

Togo appears to be embarking on ambitious technological initiatives without consulting all stakeholders, raising concerns about sustainability and respect for digital rights. Despite various stakeholders, such as government, legislature, regulator, Internet service providers, academic community and civil society, public consultation and stakeholder participation in government projects are rare, or even non-existent.

A striking example of this approach is the launch of the “e-ID Togo” project. This project aims to provide an identity to all people residing in Togo and to guarantee access to basic social services. However, this initiative was adopted without consulting the diversity of internet stakeholders, leading to the hiring of foreign companies like ATOS and IDEMIA to build the country’s biometric identification system. This decision shows a preference for the systematic importation of skills rather than locally developing a strong community of practice around the problems addressed, even if it means resorting to capacity building and improving digital inclusion.

In addition, the use of biometric technology in this project raises concerns regarding the protection of personal data, particularly in the absence of an adequate regulatory framework to govern the collection of this data. Although the government intends to accelerate social inclusion and economic development through digital technology, it appears to be neglecting the implementation of appropriate regulations to protect citizens’ digital rights and privacy.

Another area of concern is the use of artificial intelligence (AI) without a clear legal or regulatory framework in Togo. Agencies have already used artificial intelligence for initiatives such as the Novissi program, raising questions about the transparency and ethics of these practices. The machine learning algorithms used to determine eligibility for the Novissi fund are based on telephone metadata and telephone surveys, without appropriate safeguards in place to avoid causing harm to vulnerable groups.

Finally, the use of artificial intelligence to establish proof of life by the National Social Security Fund (CNSS) through the Biosécu² application also raises questions about the protection of citizens’ digital rights.

In summary, Togo appears to be opting for short-term technological approaches without adequately consulting all stakeholders and without putting in place the necessary regulations to protect digital rights and privacy. This risks compromising the long-term sustainability of these initiatives and endangering the human and digital rights of citizens.

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Internet access and disruptions

In 2023, Togo did not experience a major internet outage. The rare disruptions that have been reported have been dealt with rigorously by the regulatory authorities, and severe sanctions have been imposed on the operators and suppliers responsible. The Regulatory Authority for Electronic Communications and Posts (ARCEP) has taken measures in response to recurring problems linked

to the availability of services on optical fiber Canalbox, by opening a sanctions procedure against the Group operator Vivendi Africa Togo (GVA Togo)³.

Civil society demonstrated to prevent any major disruption during the next elections, to avoid repeating the episodes of internet cuts that affected the country during the previous elections in 2018 and 2020. Access to the Internet and the preservation of the free flow of information during electoral periods can be protected through such protests and demands made by civil society.

DATA GOVERNANCE

In Togo, the issue of data is governed by Law No. 2019-14 of October 29, 2019 relating to the protection of personal data. This law came into force as soon as it was promulgated in 2019.

According to the recommendations of Additional Act A/SA.1/01/10 relating to the protection of personal data and the Malabo Convention on cybersecurity and the protection of personal data, the law on the protection of personal data has established an authority. This is the Personal Data Protection Authority or IPDCP. It is the national board responsible for the protection of personal data.

It is responsible for ensuring that the processing of personal data is carried out under the provisions of the law on the protection of personal data. It ensures that ICT does not threaten public freedoms and privacy by informing data subjects and data controllers of their rights and obligations.

The National Board has very significant powers of action concerning those responsible for data processing, such as the ability to search (under the conditions provided for by law and in compliance with procedures), control, injunction and sanction, but also the capacity to take emergency or precautionary measures when the processing or exploitation of personal data causes damage or harm.

However, even if the institutional framework of the law on the protection of personal data may seem attractive, it will be necessary to wait for a decree to be issued before it comes into force. The organisational and operating rules of the Personal Data Protection Authority are established by decree of the Council of Ministers. The decree is still pending since the law was promulgated.

DIGITAL IDENTITY

A law is in place to identify people in Togo (“e-ID Togo”). It was approved by parliament on September 3, 2020. It establishes a legal framework for biometric identification data. This law provides for the system’s supervision mechanisms. This is, for example, a national identification organisation responsible for guaranteeing the security, confidentiality and respect of data. Thus, the second law governing personal data after Law No. 2019-014 of October 29th, 2019 relating to the protection of personal data is “e-ID Togo”.

The “e-ID Togo” biometric national identification project aims to assign a unique identification number (NIU) to any person of Togolese nationality or resident in Togo based on their demographic

⁶ ARCEP, T. (Ed.). (2018). Decree 2018-070 governing the Universal Service Fund (USF) in Togo. ARCEP - TOGO. https://arcep.tg/wp-content/uploads/2020/11/Decret_n2018-070-PR_relatif_au_service_universel_des_communications_electroniques_du_21-01-19_n066.pdf MENTD, M. Economy N. and T. D. (Ed.). (2022, June). Togo Digital Plan 2025. Togo Digital Agency. <https://digital.gouv.tg/wp-content/uploads/2023/05/FR-Strategie-Togo-Digital-June-2022.pdf>

⁷ MENTD, M. Economy N. and T. D. (Ed.). (2022, June). Togo Digital Plan 2025. Togo Digital Agency. <https://digital.gouv.tg/wp-content/uploads/2023/05/FR-Strategie-Togo-Digital-June-2022.pdf>

and biometric data. The NIU and this data will make it possible to create a central, secure and reliable database that will serve as a reference to verify the identity of beneficiaries of public, private or social services. The Togolese government claims that this system, which is inspired by the Aadhaar identification model in India, will allow each Togolese citizen to obtain a distinct proof of identity, regardless of their origin or place of residence.

The “e-ID Togo” project benefits from the support of the World Bank through the Unique Identification for Regional Integration and Inclusion (WURI) program in West Africa. This program aims to provide unique identification credentials recognised by governments to all individuals present in project-participating countries, regardless of their nationality, legal status or place of residence. The program includes Ivory Coast, Guinea, Benin, Burkina Faso, Niger and Togo.

Online freedom

In Togo, the State recognises and protects freedom of the press. Since 2004, the custodial sentence is no longer provided for in the Press Code. However, social networks are not part of the scope of this Code, which means that the comments disseminated by these journalists fall under the Penal Code and cannot benefit the guarantees of sectoral texts.

During the year 2023, two journalists were convicted and then imprisoned following their use of social networks in the context of processing information⁴. Following a publication on social networks, the publishing director of the newspaper Flambeau des Démocrates, Loïc Lawson, and the independent journalist Anani Sossou were prosecuted for “defamation”, “attack on honour” and “incitement to revolt”. On his X account (formerly, Twitter), the first report was that Kodjo Adedze, Minister of Urban Planning, Housing and Land Reform, had been the victim of a theft of 400 million CFA francs (around USD 650,000)

The second journalist took this amount and also questioned its source on Facebook. The Minister then filed a complaint against the journalists, even though he had declared that he had been the victim of a burglary to the police without disclosing the amount.

In the previous year, the same Minister had imprisoned two other journalists. In March 2023, the Lomé high court sentenced two Togolese journalists to three years in prison and a fine of 3 million CFA francs (approximately USD 5000) for “contempt of authority” and “dissemination of false comments on social networks” due to complaints from two Ministers, Kodjo Adedze being one of them. Journalists Ferdinand Ayité and Isidore Kouwonou, who were placed under an arrest warrant in 2021 and then released, left Togo at the beginning of 2023 to avoid conviction and a permanent prison sentence.

DIGITAL INCLUSION

Togo launched the Digital Work Environment (ENT) project in 2018, as part of its digitisation and digital inclusion strategy, particularly in the education sector. This project aims to integrate information and communication technologies (ICT) into educational establishments, in an effort to address the economic and social needs of the country, for all students, regardless of their place of residence. or their origin. This project, in harmony with the sectoral policy of the Ministry of

Posts and the Digital Economy, highlights the crucial importance of the integration of ICT in the educational field.

The ENT project is structured into four main components. The first concerns the installation of the necessary IT equipment in schools. The second is capacity building for teachers and administrators in the use of ICT. The third component consists of supporting the actors in the conduct and implementation of the project, both at the establishment level and at the institutional level. The fourth and final component is the creation of a sampling platform, facilitating access to educational resources.

An important component of the project is the training of teachers and learners in the effective use of ICT in education. Several teachers successfully participated in the Level One Certification of the Mooc CERTICE Scol, offered by the Agence Universitaire de la Francophonie in partnership with the University of Cergy-Pontoise, UNESCO and RIFEFF. This program aims to train and certify teachers in the effective use of ICT, especially in developing French-speaking countries.

These initiatives are an integral part of Togo's broader digitalisation efforts. They aim to improve digital infrastructure and connectivity, as well as integrate digital technologies in various sectors, including education, to promote digital inclusion and boost the socio-economic development of the country.

However, the biggest challenge remains full coverage of the territory. The majority of initiatives are concentrated in urban areas, which raises the question of equitable access to digital technologies in rural areas. Achieving true digital inclusion therefore requires particular attention to the extension of these services and infrastructure to underserved regions, thereby ensuring that the benefits of digitalisation are shared more uniformly across the entire Togolese territory.

THE UNIVERSAL SERVICE FUND

Togo's digitalisation strategy, supported by ARCEP5 and the government, is constantly strengthening with the revision of the decree governing the Universal Service Fund (FSU). This fund, which was expanded to cover technological developments, now encompasses a wider range of communications services, including access to the Internet at a minimum speed and the provision of public access points, to ensure complete communication coverage on the national territory⁶.

The reform introduced by decree 2018-070, particularly through articles 10 and 11, establishes a precise regulatory framework for the Fund. This revision led to creating a special account, explicitly intended to finance operations linked to universal service, managed directly by the regulatory authority. This account is funded by various sources, including and in particular, contributions from operators and network operators, subject to licenses or authorisations, as well as by donations, legacies, subsidies from development partners, and a contribution from the regulatory authority itself.

However, it is important to note that the decree does not explicitly specify the contribution percentages required from operators and contributors. The terms of recovery of these contributions are referred to another regulatory text, without providing precise details on the applicable rates or percentages. In addition, a crucial element is missing in this equation: transparency in the management of the FSU. To date, neither the Fund manager nor the Ministry, which authorises

expenditure, explicitly mentions the management of these funds in the strategic documents or the annual reports. This omission is concerning because it raises questions about governance and accountability in the use of resources allocated to such a crucial project.

The absence of detailed impact reports and mention of the Fund in documents as important as the 2020-2025 government roadmap, highlights a lack of transparency in the management of the FSU⁷. This gap hinders a clear and objective assessment of the effectiveness of the Fund and its contribution to Togo's digitalisation strategy.

For a successful and truly inclusive digital transformation, enhanced transparency and better accountability are essential. The clarity in the management of the FSU is not only a question of financial accountability; it is also crucial for gaining and maintaining public trust in digitalisation initiatives. In the absence of such transparency, it is difficult to ensure the optimal use of resources and maximise the impact of investments and the achievement of the country's ambitious digitalisation goals.

▶ Conclusion & Recommendations

Conclusion

In conclusion, the state of digital technology in Togo in 2023 presents a picture of progress and challenges. On the one hand, the implementation of the “Togo Digital 2025” strategy demonstrates a clear desire to promote digitalisation and integrate digital technologies in various sectors, thus aiming to improve access to public services and stimulate socio-economic development.

Conversely, concerns about freedom of expression online, consultation of stakeholders, protection of personal data, and transparency in the management of funds highlight the importance of a more inclusive approach and regulation to guarantee the digital rights and privacy of citizens. To effectively navigate the digital future, Togo must balance its technological ambitions with the principles of democratic governance, inclusion, and respect for human rights, thereby ensuring sustainable digital transformation.

Recommendations

Government:

- » Strengthen public knowledge and understanding of Togo’s digital projects;
 - » Legally regulate technological and digital innovations such as the use of artificial intelligence;
 - » Promote multi-stakeholder governance of the Internet;
 - » Invest in infrastructure to expand internet coverage and mobile connectivity in rural areas, to reduce the digital divide between urban and rural areas;
 - » Propose well-structured training programs with clear objectives in information and communication technologies for teachers, students, and professionals in the public and private sectors, to develop digital skills at all levels ;
 - » Encourage digital entrepreneurship and support technological start-ups, in particular through tax incentives, subsidies, and support programs;
 - » Continue and intensify the digitalisation of public services to make administration more efficient and more accessible, in particular by developing online platforms for government services;
 - » Establish and strengthen partnerships between the public sector and private companies in the technology sector to promote innovation and knowledge sharing;
 - » Strengthen laws, institutions and infrastructure regarding cybersecurity
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and the protection of personal data, to build trust in the use of digital services;

- » Ensure that digital initiatives take into account the needs of marginalised groups, including women, people with disabilities, and populations in remote areas, to ensure full digital inclusion;
- » Improve transparency in the management of the universal service fund by regularly publishing detailed reports on the use of funds, the projects financed and their impact on communities, to increase public confidence and the effectiveness of the resource use;
- » Explicitly integrate the management of the universal service fund into government strategic documents and annual reports, to ensure that the objectives of the fund are aligned with national digitalisation strategies and that their implementation is appropriately monitored and evaluated;
- » Strengthen collaboration with telecommunications operators and other stakeholders to ensure widespread and equitable coverage of communications services, including in rural areas, by encouraging innovation and investment in communications infrastructure.

Civil Society:

- » Raise awareness and educate the community on the benefits and risks of digitalisation, particularly in terms of data security and responsible use of technologies;
- » Actively collaborate with local authorities to identify and respond to the specific needs of communities in terms of connectivity and access to digital technologies;
- » Encourage innovation and digital entrepreneurship within the community, in particular by supporting local initiatives and creating spaces for collaboration and learning;
- » Demand total transparency in the management of the universal service fund, by requesting the regular publication of detailed reports on the use of resources;
- » Encourage the active participation of citizens in the supervision of universal service fund projects to ensure efficient use of funds and equitable digital coverage;
- » Establish digital literacy programs to raise awareness and train local communities in the use of technologies, thereby strengthening the impact of universal service fund initiatives.

Private Sector:

- » Invest in training employees to improve their digital skills and adapt to technological developments;
- » Collaborate with the public sector and other businesses to share resources, and knowledge and drive innovation in the digital domain;
- » Develop solutions and products adapted to local needs, focusing on

accessibility and social impact in rural and urban areas;

- » Increase investments in the expansion of communications infrastructure, particularly in rural areas, to contribute to national digital coverage;
 - » Encourage partnerships with the government to support the deployment of fiber optics and other advanced technologies, while ensuring equitable and affordable access for all;
 - » Promote innovation by developing digital solutions adapted to local needs, while investing in workforce training to meet the growing needs of the ICT sector.
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Tunisia

EXECUTIVE SUMMARY

This report assesses Tunisia's digital landscape, highlighting advancements and challenges in internet access, freedom of expression, privacy, and cybersecurity. The employed methodology involved a multi-faceted approach, which included a thorough review of government reports, media sources, existing literature, and analysis. This approach combined empirical and desk research methods to comprehensively evaluate quantitative and qualitative aspects of digital rights and inclusion in the country. In 2023, Tunisia witnessed notable progress in expanding internet access and connectivity projects, including initiatives like the national education network, satellite internet trials, and efforts to bridge connectivity gaps in underserved areas. Simultaneously, advancements in public digital services facilitated remote access to administrative services. Despite this notable progress in connectivity and digital transformation projects, concerns arise over declining freedom of expression and potential privacy infringements. Therefore, it is recommended that the government prioritise transparency, fortify data protection frameworks, and uphold freedom of expression. In addition, fostering digital literacy and collaborative efforts between different stakeholders

in cybersecurity are crucial. Civil society is urged to advocate for privacy rights and data protection and promote digital literacy to empower citizens in navigating the evolving digital environment. Overall, this country report provides an overview of the advancements, challenges, and tensions in Tunisia's digital rights landscape.

Introduction

As of 2023, Tunisia, the North African country home to a population of 12 million, continues its digital journey, reporting an internet penetration of 79%.⁹³⁸ By the end of the second trimester of 2023, the mobile data penetration rate reached 93.5%.⁹³⁹ As per the National Telecommunications Authority (INT), 99.9% of the Tunisian population is covered by mobile network coverage, utilising fourth-generation (4G), third-generation (3G), or second-generation (2G) technologies. Notably, the 4G network extends its reach to 94.9% of the population.⁹⁴⁰ This report aims to capture the evolving dynamics, achievements, and challenges that define Tunisia’s digital landscape in 2023.

938 Simon Kemp, “Digital 2023: Tunisia,” Data Reportal, February 14, 2023, <https://datareportal.com/reports/digital-2023-tunisia?rq=Tunisia> .
939 INTT, “Tableau de bord trimestriel TR2- 2023”, INTT, 2023, <http://www.intt.tn/upload/files/Rapport-TR2-2023.pdf>
940 INTT, “Revue Internationale des Télécommunications Positionnement international de la Tunisie en 2020 [International Telecommunications Review Tunisia’s international positioning in 2020],” INTT, 2020, <http://www.intt.tn/upload/files/RIT-2020.pdf>.

► Country Analysis

Internet access and disruptions:

Tunisia has a relatively high internet penetration rate compared to other countries. However, it is important to note that there are still disparities in internet access within the country. According to a survey on digital inclusion in Tunisia conducted by the United Nations Development Programme (UNDP), while both genders surveyed show very similar scores across the user population, the level of digital inclusion differs the most between individuals according to their level of education, age, and household income as well as geographical habitation.⁹⁴¹ Following the national strategic plan “Digital Tunisia 2021-2025”, various regulatory measures and infrastructure projects have been initiated to enhance internet connectivity throughout Tunisia.

In October 2023, a three-month trial period commenced following an agreement between the Tunisian National Frequency Agency and American SpaceX. This agreement allowed SpaceX to provide internet services via satellite in three governorates.⁹⁴² This undertaking aligns with pursuing technical solutions to deliver high-speed internet services to areas lacking terrestrial communication networks. Although satellite internet services are already accessible to certain economic institutions in remote locations, such as oil and industrial companies in desert areas, expanding public access can narrow the digital gap between regions.⁹⁴³

Further endeavours to connect remote areas involved extending the coverage of the “white zones” project to an additional 112 counties, as announced by the Ministry of Communication Technologies in January 2023. The initial phase, concluded in April 2022, connected 164 schools, 59 basic health centres, and 180,000 inhabitants across 94 underserved areas to the telephone and internet network.⁹⁴⁴

The national education network, “Edunet 10,” was also launched in 2023 to connect 3,307 educational institutions and 1.5 million students to high-speed fibre optic internet, backed by a budget exceeding 132 million Tunisian dinars (over 43 million US dollars). This initiative will contribute to developing the national digital infrastructure, expanding the high-flow fibre optic network by approximately 10%, thus enhancing service quality and meeting the Ministry of Education’s digital service requirements.⁹⁴⁵

As part of implementing the national plan for adopting 5G technologies and IoT systems, Tunisia transitioned to the sixth version of the Internet Protocol. The use of IPv6 addresses surpassed 7% by the year-end, marking the highest percentage in the North African region.⁹⁴⁶ The Ministry of Communication Technologies granted permission for the three main telecom companies

941 UNDP, “Indice d’inclusion numérique de la Tunisie – PNUD et MTC (2023) 3 / 196”, https://www.undp.org/sites/g/files/zsk-gke326/files/2023-03/IIN_Full.pdf

942 Mosaïque FM, “Internet par “Starlink” en Tunisie...”, Mosaïque FM, September 29, 2023 <https://www.mosaïquefm.net/amp/fr/actualite-high-tech-tunisie-monde/1194601/internet-par-starlink-en-tunisie>

943 Ministère des Technologies de la Communication, Press release, Facebook, October 2, 2023 <https://www.facebook.com/MinistereICTD/posts/pfbid02HEzr1FtfE7wsSontDsBhFukCv38PU6cYf8XUCWUZsEwpsg3oS44u52frdh6pdcRbl>

944 Agence Ecofin, “Tunisie : le ministère des Télécoms a engagé la seconde phase du projet de « couverture des zones blanches »”, January 31, 2023 <https://www.agenceecofin.com/telecom/3101-105021-tunisie-le-ministere-des-telecoms-a-engage-la-seconde-phase-du-projet-de-couverture-des-zones-blanches>

945 Mosaïque FM, “Internet haut débit: Lancement du projet Edunet 10”, March 11, 2023 <https://www.mosaïquefm.net/amp/fr/actualite-high-tech-tunisie-monde/1143299/internet-haut-debit-lancement-du-projet-edunet-10>

946 APNIC, “Use of IPv6 for Tunisia (TN)”, <https://stats.labs.apnic.net/ipv6/TN?o=cXBw30x1r1>

to conduct tests preceding the official commercial launch of 5G service, now postponed until 2024.⁹⁴⁷ Regarding affordability, Tunisia ranks 119 out of 237 countries for mobile data costs, with an average price of \$1.28 for 1GB of data.⁹⁴⁸

Online Freedom of Expression

Tunisia has experienced a notable decline in freedom of expression over the past few years. In 2023, both human rights organisations and the UN High Commissioner for Human Rights expressed apprehension regarding the erosion of freedom of expression in Tunisia.⁹⁴⁹ Despite calls from civil society groups urging the implementation of Decree Law 115 on freedom of the press, which aligns more closely with international standards, convictions, arrests, and prosecutions against journalists, as well as social media users, persistently rely on provisions from the Criminal Code, the Telecommunications Code, and Decree-Law No. 2022-54.

In May 2023, journalist Khalifa Guesmi received a five-year prison sentence from a Tunis appeals court for an article reporting the arrest of a group of terrorism suspects published on Mosaique FM's website. This sentence represents the longest prison term ever issued against a journalist concerning their profession since independence, as reported by the National Union of Tunisian Journalists.⁹⁵⁰ Numerous social media users and critics of authorities have also faced prosecution under Decree-Law No. 2022-54, which prescribes prison terms of up to 10 years for disseminating false news, among other speech-related offences. According to the National Union of Tunisian Journalists, there are currently over 20 ongoing trials against journalists based on Decree-Law No. 54 since its adoption in September 2022.⁹⁵¹ National human rights groups have urged the Tunisian Parliament to reject Decree-Law No. 54 and have called for a national campaign to suspend its application.⁹⁵²

Efforts to intimidate dissenters and online critics are pervasive. In February 2023, Nouredine Boutar, the Director of Mosaique FM, a private radio station with a prominent online presence, faced extensive questioning about the outlet's funding and editorial stance when being apprehended on charges of money laundering and detained for over three months before being released on bail and subjected to a travel ban.⁹⁵³ In September 2023, cartoonist Taoufik Omran was arrested for interrogation after publishing two satirical cartoons of the Head of government on his Facebook page.⁹⁵⁴

In addition to prosecutions and arrests, critics and vulnerable groups have been continuously targeted by defamation and intimidation campaigns online. A study by the UN women on violence against women and girls found that 54 % of women internet users in Tunisia report feeling unsafe online.⁹⁵⁵ In its annual report, the monitoring unit at the national syndicate of Tunisian journalists

947 Mosaique FM, "Nizar Ben Neji : La 5G déployée en 2024", Mosaique FM, November 28, 2023, <https://www.mosaiquefm.net/amp/fr/actualite-high-tech-tunisie-monde/1215096/nizar-ben-neji-la-5g-deployee-en-2024>

948 Cable.co.uk, "Worldwide mobile data pricing: The cost of 1GB of mobile data in 237 countries", <https://www.cable.co.uk/mobiles/worldwide-data-pricing/#speed>

949 Office of the high commissioner for human rights, "Tunisia: Crackdown on media freedoms", ohchr, June 23, 2023, <https://www.ohchr.org/en/press-releases/2023/06/tunisia-crackdown-media-freedoms>

950 Business News, "SNJT : la décision prononcée à l'encontre de Khalifa Guesmi est la plus élevée de l'histoire de la presse tunisienne", Businessnews, May 16, 2023, <https://www.businessnews.com.tn/snjt-la-decision-prononcee-a-lencontre-de-khalifa-guesmi-est-la-plus-elevee-de-lhistoire-de-la-presse-tunisienne,520,129194,3>

951 Zeineb Ben Ismail, "En Tunisie, le décret 54 veut faire taire les voix de l'opposition", Inkyfada, July 2023 <https://inkyfada.com/fr/2023/07/18/decret-54-opposition-tunisie/>

952 Article 19, "Tunisia: Government must drop policy of undermining press freedom", Article 19, April 11, 2023, <https://www.article19.org/resources/tunisia-government-drop-policy-of-undermining-press-freedom/>

953 AP News, "Tunisian court releases prominent radio director from prison," AP News, May 25, 2023, <https://apnews.com/article/tunisia-radio-director-released-bail-prison-d1aa144a4118086b446a13e671e98a8b>

954 Article 19, "Tunisia: Drop prosecution of cartoonist Taoufik Omran", Article 19, September 25, 2023, <https://www.article19.org/resources/tunisia-drop-prosecution-of-cartoonist-taoufik-omran/>

955 Besma Essoussi,, "I Now Have the Tools Human Interest Story (Tunisia)", UN Women, December 2, 2023 <https://arabstates.unwomen.org/en/stories/feature-story/2023/12/i-now-have-the-tools#drop1>

documented, from November 2022 to October 2023, 32 instances of attacks targeting journalists in the digital space, which notably included 11 gender-based attacks aimed at inciting and distorting the reputation of female journalists.⁹⁵⁶

Privacy and Surveillance

The right to privacy and personal data protection are enshrined in Article 30 of the 2022 Constitution and Organic Law 2004-63 on the Protection of Personal Data. Despite these legal safeguards, the privacy rights of Tunisians continue to face vulnerabilities. Throughout the year, the renewal of the state of emergency has empowered government agencies to access electronic devices without the need for a court order.⁹⁵⁷ Furthermore, the adoption of Decree-law 2022-54 in late 2022 introduced provisions that threaten the right to privacy. Notably, Article 9 grants law enforcement agencies the authority to access extensive personal data on all electronic devices without requiring a judicial warrant. Additionally, Article 6 of the same decree mandates that telecommunications providers retain, for a minimum period of two years, data about the identification of service users, traffic analysis, communication devices, user geolocation data, and data related to the access and utilisation of value-added protected content.

As the government progresses with various digitisation programs, civil society groups caution against jeopardising the privacy, protection of personal data, and digital security of citizens.

On January 3, 2023, Tunisia's Minister of Trade and Exports announced the development of a digital platform for subsidy compensation.⁹⁵⁸ Local associations urged the Tunisian government to postpone the launch of this platform, citing concerns that it does not align with personal data protection laws, potentially impacting the privacy and data protection rights of Tunisians.⁹⁵⁹ The Tunisian authorities did not proceed with the launch of the digital platform without providing any official comments. Rights groups have also expressed concerns over the mobile ID project, the first digital national identity project. They specifically criticised the centralised nature of the system, the security of the collected data, and the lack of consultation with civil society.⁹⁶⁰

Digital ID

It has been over a year since the inauguration of the National Citizen Digital Identity project, marking the initiation of the first digital national identity project designed for citizens through mobile phones. This initiative enables citizens to access documents and administrative services remotely. The project's core objective is to convert SIM cards into identity tools by associating users' national identity card numbers with their phone numbers.⁹⁶¹ As of August 2023, the Ministry of Communication Technologies reports that nearly 60,000 civil status documents have been generated for over 50,000 recipients of the digital ID.⁹⁶²

956 "The seventh annual report on the safety of journalists", SNJT, November 2023, <https://protection.snjt.org/1465-2/>

957 Décret Présidentiel n° 2022-73 du 15 février 2022, portant prorogation de l'état d'urgence, <https://legislation-securite.tn/fr/law/105203>

958 "Bientôt : lancement de la plateforme de subventions ciblées", Tuniscope, January 3, 2023, <https://www.tuniscope.com/ar/article/347328/politique/actualites/bientot-lancement-de-la-plateforme-de-subventions-ciblees-160416>

959 Access Now, "Human rights organizations and associations call for the Tunisian government to postpone the launch of digital platform for subsidies compensation", Access Now, February 27, 2023, <https://www.accessnow.org/press-release/tunisia-postpone-digital-platform-for-subsidies-compensation-launch/>

960 Access Now, "Tunisia's digitization programs threaten the privacy of millions", Access Now, April 27, 2023, <https://www.accessnow.org/tunisia-digitalization-programs-threaten-the-privacy-of-millions/>

961 Tunisie numérique 'Tunisia-Launch of digital identity project for citizens' <https://news-tunisia.tunisienumerique.com/tunisia-launch-of-digital-identity-project-for-citizens/>

962 Ministère des Technologies de la Communication Facebook page, August 2023 <https://www.facebook.com/watch/?ref=sa>

Holders of a digital ID gain access to various government services, including acquiring an online birth certificate or facilitating a paperless transfer of vehicle ownership and signing of documents and authentication of electronic transactions and receipts. Additionally, they can establish an official email in the national domain (@tunisie.tn) to communicate with government agencies and public institutions. Furthermore, in April 2023, the electronic wallet and electronic payment card linked to the digital identity were introduced. The electronic wallet allows citizens to conduct payment and withdrawal transactions including to complete administrative processes.⁹⁶³

Despite these advancements, civil society groups expressed concerns about the lack of transparency regarding the project's technological and legal aspects, including how data is collected and processed. There are apprehensions about the potential misuse of the project as a tool for privacy invasion in the absence of an updated and enforced data protection framework.⁹⁶⁴

Data Protection and Cybersecurity:

In 2023, various regulatory measures and legislative projects were enacted to oversee the cybersecurity national ecosystem and redefine the new responsibilities of the National Cyber Safety Agency. Among these enactments is Decree-law 17 of March 11, 2023, which seeks to regulate the field of cybersecurity and delineate the mission of the National Cybersecurity Agency, along with the mechanisms assigned to it for ensuring the security of the national cyberspace within the scope of its attributions.⁹⁶⁵ The Agency is now tasked with awarding the “secure” label to each software or electronic equipment upon the request of the developer or importer. The Ministry of Communication Technologies has also released decisions about regulating the procedures and conditions for assigning and revoking the “secure” label. Additionally, it has set technical standards for auditing the integrity of information systems and outlined procedures for monitoring the implementation of recommendations outlined in the audit report. The Ministry has further established procedures and conditions for assigning, renewing, and revoking the “Government Cloud Computing Services provider” (G-cloud) label and the “National Cloud Computing Services provider” (N-cloud) label.

The National Cybersecurity Agency is assigned to publish and regularly update a national software and electronic equipment register that has obtained the “secure” label. All institutions managing digital infrastructures of vital importance are mandated to use software and equipment with the “secure” label, maintain their primary hosting centre, and have a backup centre with a cloud computing service provider that has obtained the label. They must also adhere to measures and procedures ensuring continuity and the protection of sensitive databases during a cyber crisis. Decree-law 17 also outlines various monetary sanctions in case of infractions, such as failing to complete mandatory and periodic security audits of information systems.

Universal Service Fund

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The Tunisian regulation governing universal services, introduced in 2001 and amended in 2008 and 2013, defines internet access (minimum 128 kbps) as a universal service.⁹⁶⁶ Telecom

ved&v=641593591044811

963 WebManager; “E-houwiya : La nouvelle carte de paiement électronique prépayée liée à l’identité numérique”, Webmanager, April 16, 2023, <https://www.webmanagercenter.com/2023/04/16/505938/e-houwiya-la-nouvelle-carte-de-paiement-electronique-prepayee-liee-a-lidentite-numerique/>

964 Access Now, “Tunisia’s digitization programs threaten the privacy of millions”, Access Now, April 27, 2023, <https://www.accessnow.org/tunisia-digitalization-programs-threaten-the-privacy-of-millions/>

965 THD, “Un nouveau décret sur la cybersécurité et l’Ansi change de nom”, THD.tn, March 2023, <https://www.thd.tn/un-nouveau-decret-sur-la-cybersecurite-et-lansi-change-de-nom/>

966 Arrêté du ministre des technologies de l’information et de la communication du 30 décembre 2013, fixant la liste des

operators contribute 1% of their revenue to support a Universal Services provision as part of a broader communications development fund. However, the universal service fund isn't managed independently and lacks transparency in its allocation. Despite initiating multistakeholders' consultations in 2015 to develop a specific universal services policy, no progress has been made.⁹⁶⁷ The government pursued alternative strategies to expand service access, particularly in rural areas. These projects, often led by the partly state-owned Tunisie Telecom, include the "white zones" initiative for remote internet coverage and "Edunet 10" which focuses on connecting educational institutions.

services universels des télécommunications. https://www.intt.tn/upload/txts/fr/arr%C3%AAt%C3%A9_du_ministre_des_technologies_du_30_d%C3%A8cembre_2013_fixant_la_liste_des_services_universels.pdf (accessed on March 14, 2023)
967 INT 'workshop «pour l'élaboration d'une politique de service universel des télécommunications en tunisie»' <http://www.intt.tn/fr/index.php?typeactu=89&actu=538> (accessed on March 14, 2023)

▶ Conclusion & Recommendations

Conclusion

The findings presented in this report point to Tunisia's commendable progress in enhancing internet connectivity, strengthening cybersecurity, and implementing innovative digital services. However, concerns raised by civil society regarding transparency and privacy underscore the need for a careful and balanced approach. While advancements in internet access and cybersecurity regulations showcase Tunisia's commitment to progress, challenges related to declining freedom of expression highlight the importance of safeguarding individual rights.

Recommendations

Government:

- » Authorities must prioritise transparent communication and engage in meaningful consultations with civil society groups and stakeholders. This can help address data protection, privacy, and potential misuse of digital initiatives, fostering a collaborative approach and building trust.
- » Given the growing importance of digital identity projects, the government should work on updating and enforcing robust data protection frameworks. The Parliament is called to enact a new data protection law that respects individuals' rights, ensures the protection of Tunisian citizens' data, and is in compliance with Tunisia's international commitments.
- » The government should further invest in digital literacy programs to ensure citizens can fully benefit from digital services while understanding the associated risks.
- » The government should review and reconsider legal measures, such as Decree-Law No. 2022-54, to ensure they align with international standards for freedom of expression. Safeguards should be in place to protect journalists and internet users from unwarranted prosecutions or convictions, promoting a climate of open discourse.
- » The authorities must dismiss all charges and stop extralegal intimidation used to silence and censor critical voices.
- » Establish, communicate, and enforce a comprehensive national strategy aimed at eliminating violence against women and girls in the digital space.

Civil society organisations:

- » Consolidate joint efforts to oppose the reinforcement of laws and decrees threatening digital rights in the country.
 - » Actively engage in advocacy efforts to raise awareness about privacy rights and data protection issues among citizens.
 - » Civil society groups can contribute to promoting digital literacy and cyber safety awareness among citizens.
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Uganda

EXECUTIVE SUMMARY

The 2023 Digital Rights and Inclusion report provides an in-depth analysis of the state of digital rights and inclusion in Uganda. It examines Internet Access and Disruptions, Online Freedom of Expression, Privacy and Surveillance, focusing on Gendered Disinformation and the Universal Service Fund, also known as the Uganda Communications Universal Service and Access Fund (UCUSAF). The report notes that access to the Internet is a basic human right,⁹⁶⁸ but the cost of mobile internet in Uganda remains high. For instance, on average, one gigabyte (GB) of mobile internet costs around \$1.32, with the lowest price at 0.49 cents per 1GB for a 30-day plan.⁹⁶⁹

With a growing number of people relying on Information and Communication Technologies (ICTs) to access information, communicate, and mobilise for causes, limiting factors such as cost, high taxation, network disruption, digital divide, abuse, and gendered disinformation continue to affect freedom of expression and access

to information online. Moreover, the Anti-Homosexuality Act 2023 has led to increased censorship among LGBTQ groups, which is a setback towards progress in freedom of expression.

Despite the challenges, the report recommends establishing a national task force within the country to address gendered disinformation collaboratively with academia, women's rights organisations and technologists. The private sector is also urged to comply with ICT policies on digital rights and inclusion at the national, regional, and international levels. The government should align its national laws on privacy restrictions with regional instruments and international norms, ensuring that any interference in the right to privacy is strictly necessary, proportional, and legally regulated. The 2023 Digital Rights and Inclusion report recommends that the Ugandan government lift the ban on Facebook, as this will improve access to information, communication, and business opportunities for the people.

968 James Vincent, Jul 4, 2016. "UN condemns internet access disruption as a human rights violation", UNHRC (via Article 19) <https://www.theverge.com/2016/7/4/12092740/un-resolution-condemns-disrupting-internet-access> (accessed on 25 January, 2024)

969 Price for mobile data in Uganda as of 2022 (in U.S. dollars per gigabyte) <https://www.statista.com/statistics/1272796/price-for-mobile-data-in-uganda/> (accessed on 31 December 2023)

Introduction

Uganda is a landlocked country located in East Africa. The country is enclosed by Kenya in the east, South Sudan in the north, the Democratic Republic of the Congo in the west, Rwanda in the southwest, and Tanzania in the south.⁹⁷⁰ According to the United Nations Population Fund, the population of the country is around 48.6 million, with 8.5 million living in Kampala, the capital city of Uganda.⁹⁷¹ Uganda's president, who has been in power since 1986, remains President Yoweri Museveni under the National Resistance Movement (NRM). He was voted into the sixth term as President in January 2021 when the Uganda Communications Commission (UCC) ordered a five-day internet blackout during the election, and internet access was partly restored in Uganda by February 2021, with Facebook being blocked to date.⁹⁷²

Globally, more than 5.3 billion people actively use the Internet, accounting for 65.4% of the global population.⁹⁷³ In Africa, 67% of the population remains unconnected.⁹⁷⁴ As of December 2022, over 1 billion people in Africa, about 72% of the region's population, did not have access to mobile internet. This accounts for more than a quarter of the total number of unconnected people globally and demonstrates the scale of the challenge to realise universal connectivity in Africa.⁹⁷⁵ In Uganda, according to the Digital 2023 report, there were 11.77 million internet users at the start of 2023, with internet penetration standing at 24.6%.⁹⁷⁶ However, costs are still high for a large number of Ugandans, with the recent 12% tax on internet data as a part of a tax package under the [Excise Duty \(Amendment\) Act 2022](#) restricting online content publication. This is because not everyone has equal access to reliable and high-speed internet. The lack of proper infrastructure and geographical challenges have made it difficult for many Ugandans to connect to the Internet. There is a notable disparity in access between men and women based on the Inclusive Internet Index report,⁹⁷⁷ which stated a 23.5% gender gap, representing a 10-percentage point increase from the 2021 report. Additionally, Facebook has been blocked for more than two years in Uganda since the January 14, 2021 elections. This continues to affect the business and entertainment community, with digital rights activists asking the government to lift the ban because of its adverse effect on businesses.

However, the general state of Uganda's internet freedom improved in 2023 with no reported cases of new network disruptions. The year 2023 saw an improvement in the implementation of the Universal Service and Access Fund by the Uganda Communications Commission (UCC) in terms of visibility and accountability compared to 2022. The Constitutional Court also nullified Section 25 of the Computer Misuse Act of 2011, which penalised offensive communication—with the dismissal of a case against two representatives of an online media company charged with offensive communication and cyberstalking. Unfortunately, gendered disinformation is massively increasing, and there is increased self-censorship among the LGBT+ community online following the passage of the Anti-Homosexuality Act 2023 in May. There has been increased monitoring and surveillance of social media platforms and other online spaces of journalists and activists, which violates Article 27 of the 1995 Constitution of Uganda. The number of industry players continues to grow, with the availability of competitive prices and technologies offered by 35 telecommunications service providers that offer both voice and data services.⁹⁷⁸

970 Uganda <https://en.wikipedia.org/wiki/Uganda> (accessed on 29 December 2023 at 9:10 pm EAT)
971 World Population Dashboard Uganda <https://www.unfpa.org/data/world-population/UG> (accessed on 25 January, 2024)
972 <https://freedomhouse.org/country/uganda/freedom-world/2023> (accessed on 29 December 2023)
973 Rohit Shewale (December 26, 2023). "Internet User Statistics In 2024 — (Global Demographics)" <https://www.demandsage.com/internet-user-statistics/> (accessed on 29 December 2023)
974 Chris Forrester (November 30, 2023). Data: Global Internet access grows 3% in 2023 <https://advanced-television.com/2023/11/30/data-global-internet-access-grows-3-in-2023/#:~:text=At%20the%20end%20of%20last,per%20cent%20this%20in%202023.> (accessed on 29 December 2023)
975 GSMA Intelligence, "Universal service funds in Africa" <https://www.gsma.com/subsaharanafrica/wp-content/uploads/2023/10/USF-Africa.pdf> (accessed on 23 December 2023)
976 DIGITAL 2023: UGANDA <https://datareportal.com/reports/digital-2023-uganda> (accessed on 22 December 2023).
977 <https://impact.economist.com/projects/inclusive-internet-index/2022/country/Uganda> (accessed on 21 December 2023)
978 The Kampala Post. "UCC Records 33 Telecom Operators in Uganda as of April 1st" (April 23, 2020)

Country Analysis

Internet Freedom

Internet Access and Disruptions

The Internet remains a key avenue for individuals to exercise their fundamental rights as stated in Article 29 of the 1995 Uganda Constitution, Article 19 of The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.⁹⁷⁹ However, Uganda's Internet penetration rate stood at 24.6% with 11.77 million internet users in Uganda at the start of 2023 based on the Digital 2023 Uganda report.⁹⁸⁰ Based on an estimate from the International Telecommunication Union (ITU), the Internet penetration rate remains low in Uganda because only 10% of individuals are using the Internet⁹⁸¹ even though Uganda's population increased by 1.3 million (+2.9%) between 2022 and 2023⁹⁸² with 50.5% of Uganda's population made up of women and 49.5% men.⁹⁸³

The number of mobile internet users in Uganda is estimated at 2.9 million in 2023 and the number of households with internet access at home in Uganda is estimated at 1.53 million in 2023.⁹⁸⁴ The number of mobile connections increased by 286,000 (+0.9%) between 2022 and 2023, according to Digital 2023 Uganda report⁹⁸⁵, with 30.55 million cellular mobile connections in Uganda at the start of 2023, according to data from GSMA Intelligence.⁹⁸⁶ Hence, the number of internet users increased by one million (+9.4 per cent) between 2022 and 2023 based on Kepios analysis. The internet usage figures disclose that 36.15 million people in Uganda did not use the Internet at the start of 2023. This signifies that 75.4% of the population remained offline at the beginning of the year.⁹⁸⁷ This is because not everyone has equal access to reliable and high-speed internet⁹⁸⁸ although fixed internet connection speeds in Uganda increased by 1.47 Mbps (+15.9%) according to the 2023 Digital Report.⁹⁸⁹ Additionally, the lack of proper infrastructure and geographical

<https://kampalapost.com/content/ucc-records-33-telecom-operators-uganda-april-1st> (accessed on 23 December 2023)

979 Internet Barriers constrain the work of Uganda HRDs amidst COVID-19 Pandemic <https://www.unwantedwitness.org/internet-barriers-constrain-the-work-of-uganda-hrds-amidst-covid-19-pandemic/> (accessed on 22 December 2023)

980 SIMON KEMP, 'DIGITAL 2023: UGANDA' 14 FEBRUARY 2023 <https://datareportal.com/reports/digital-2023-uganda> (accessed on 22 December 2023)

981 ITU statistics <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx> (accessed on 22 December 2023)

982 SIMON KEMP, 'DIGITAL 2023: UGANDA' 14 FEBRUARY 2023 <https://datareportal.com/reports/digital-2023-uganda> (accessed on 23 December 2023)

983 SIMON KEMP, 'DIGITAL 2023: UGANDA' 14 FEBRUARY 2023 <https://datareportal.com/reports/digital-2023-uganda> (accessed on 23 December 2023)

984 Digital Connectivity Indicators Internet Uganda <https://www.statista.com/outlook/co/digital-connectivity-indicators/internet/uganda> (accessed on 22 December 2023)

985 SIMON KEMP, 'DIGITAL 2023: UGANDA' 14 FEBRUARY 2023 <https://datareportal.com/reports/digital-2023-uganda> (accessed on 23 December 2023)

986 GSMA Intelligence https://www.gsmaintelligence.com/?utm_source=DataReportal&utm_medium=article&utm_campaign=State_Internet_Connectivity (accessed on 25 January 2024)

987 SIMON KEMP, 'DIGITAL 2023: UGANDA' 14 FEBRUARY 2023 <https://datareportal.com/reports/digital-2023-uganda> (accessed on 23 December 2023)

988 Marcin Frąckiewicz, 'The Future of Internet Connectivity in Uganda: Starlink's Satellite Network' (on 23 November 2023) <https://ts2.space/en/the-future-of-internet-connectivity-in-uganda-starlinks-satellite-network/#gsc.tab=0> (accessed on 23 December 2023)

989 SIMON KEMP, 'DIGITAL 2023: UGANDA' 14 FEBRUARY 2023 <https://datareportal.com/reports/digital-2023-uganda> (accessed on 22 December 2023)

challenges have made it difficult for many Ugandans to connect to the Internet⁹⁹⁰ and there is a notable disparity in access between men and women based on the Inclusive Internet Index report, which stated a 23.5% gender gap, representing a 10 percentage point increase from the 2021 report.⁹⁹¹ Besides, Facebook has remained blocked since the January 14, 2021 elections. This continues to affect the business and entertainment community, with digital rights activists asking the government to lift the ban because of its adverse effect on businesses.⁹⁹² Costs are still high for a large number of Ugandans, with the recent 12% tax on internet data under the [Excise Duty \(Amendment\) Bill 2022](#) restricting online content publication. In March 2023, the government introduced the Income Tax (Amendment) Bill 2023 aimed at taxing nonresidents making income from providing digital services to customers in Uganda at a rate of 5% t.⁹⁹³ Research on the 12 % Internet tax found that it disproportionately affected women’s access to the Internet.⁹⁹⁴

Given the growing number of people who rely on ICT to access information, communicate and mobilise for a cause,⁹⁹⁵ there have been some significant developments in Uganda. In January 2023, MTN Uganda signed a five-year partnership with Chinese technology company, Huawei, to modernise its network towards a Cloud-native 5G Capable Core network.⁹⁹⁶ In February 2023, Airtel Uganda announced that it was ready to deploy 5G technology following the completion of network tests at 11 sites in Kampala.⁹⁹⁷ Currently, 31% of Uganda’s population resides within the range of fourth-generation (4G) service, according to the Inclusive Internet Index.⁹⁹⁸ In 2023, civil society organisations began lobbying the government to reduce the Internet tax in the 2024 fiscal year⁹⁹⁹. As of May 2023, 32 ISPs were connected to the Uganda Internet Exchange Point (UIXP).¹⁰⁰⁰ 35 telecommunications service providers now offer both voice and data services, including MTN Uganda, Airtel Uganda, Uganda Telecom Limited (UTL), Vodafone, Smart Telecom, and Afrimax,¹⁰⁰¹ all of which employ long-term evolution (LTE) technology which shows increased growth in the industry players in terms of available competitive prices and technologies.

Universal Service Fund

In Uganda, mobile telecommunications are increasingly becoming a critical socio-economic enabler¹⁰⁰² and the government, through the Uganda Communications Commission, has tried

- 990 The future of Internet Connectivity in Uganda <https://ts2.space/en/the-future-of-internet-connectivity-in-uganda-star-links-satellite-network/#gsc.tab=0> (accessed on 23 December 2023)
- 991 Economist Impact <https://impact.economist.com/projects/inclusive-internet-index/2022/country/Uganda> (accessed on 23 December 2023)
- 992 Frank Kisakye. ‘Uganda Named Worst Digital Rights Violator’. Observer (5 OCTOBER 2022) <https://allafrica.com/stories/202210060085.html> (accessed on 23 December 2023)
- 993 Uganda issues Tax Amendment Bills for 2023 (May 2, 2023) <https://globaltaxnews.ey.com/news/2023-0795-uganda-issues-tax-amendment-bills-for-2023> (accessed on 23 December 2023)
- 994 Global Dev. ‘Taxation, gender, and internet access: lessons from Uganda’ (February 2, 2023) <https://globaldev.blog/taxation-gender-and-internet-access-lessons-uganda/> (accessed on 22 December 2023)
- 995 Pulling through elections by pulling the plug: Internet disruptions and electoral violence in Uganda (July 5, 2023) <https://journals.sagepub.com/doi/full/10.1177/00223433231168190> (accessed on 23 December 2023)
- 996 MTN Uganda. ‘MTN Uganda embraces the future of Uganda’s digitalization journey with a 5G Core network Transformation’ (10/01/23) <https://www.mtn.co.ug/newsabout/mtn-uganda-embraces-the-future-of-ugandas-digitalization-journey-with-a-5g-core-network-transformation/> (accessed on 24 December 2023)
- 997 Monitor. ‘Kampala ready for 5G’ (Friday, February 24, 2023) <https://www.monitor.co.ug/uganda/business/technology/kampala-ready-for-5g--4135942> (accessed on 22 December 2023)
- 998 Economist Impact <https://impact.economist.com/projects/inclusive-internet-index/2022/country/Uganda> (accessed on 22 December 2023)
- 999 Michael Malakata. ‘Civil society lobbies Uganda gov’t to reduce internet taxes’ (27 Feb 2023) <https://itweb.africa/content/80KdWMDX4nWMbnzQ>, (accessed on 22 December 2023)
- 1000 The Uganda Internet eXchange Point <https://www.uixp.co.ug/networks> (accessed on 22 December 2023)
- 1001 FREEDOM ON THE NET 2023 Uganda <https://freedomhouse.org/country/uganda/freedom-net/2023> (accessed on 22 December 2023)
- 1002 Emmanuel Ogiemwonyi Arakpogun, Jason Whalley, et la. ‘Bridging the digital divide in Africa via universal service funds: an institutional theory perspective’ (9 May 2023)

to address inequalities through several initiatives.¹⁰⁰³ For instance, in June 2021, the World Bank gave money to the government to expand access to high-speed and affordable internet, improve the efficiency of digitally enabled public service delivery, and strengthen digital inclusion in the country.¹⁰⁰⁴ However, two years have passed and Uganda is still facing challenges in providing affordable and high-quality internet connectivity, which is especially prevalent in rural areas. This issue is particularly affecting women and marginalised groups such as persons living with disabilities, widening the digital divide. As of the beginning of 2023, 26.4% of Uganda's population resided in urban areas, while 73.6% lived in rural regions.¹⁰⁰⁵

Currently, the UCC oversees the Rural Communications Development Fund (RCDF), which is now called the Uganda Communications Universal Access and Service Fund (UCUSAF). The fund promotes access to the Internet and phone services in rural communities by connecting rural schools and building centres for ICT access.¹⁰⁰⁶ The UCUSAF was established in 2001 and is currently implementing its fourth strategic cycle, which seeks to achieve digital inclusivity through sustainable interventions and impactful collaborations.¹⁰⁰⁷ The fund is guided by Section 3(g) of the Uganda Communications Act, 2013, which directs the UCC to create and manage the fund dedicated to the development of Rural Communications and Information and Communication Technology in Uganda.¹⁰⁰⁸

Overall, 2023 saw an improvement in the implementation of the fund by the UCC in terms of visibility and accountability compared to 2022. However, taxation is still a huge obstruction to the achievement of universal access to communication in Uganda, especially in rural areas where household incomes are very low alongside limited digital literacy skills.¹⁰⁰⁹ The number of internet users in Uganda is estimated at 6.47 million in 2023.¹⁰¹⁰

The cost of devices is highly influenced by high taxation with a prolonged ban on internet use, such as the Facebook ban which is the main engine utilised by young people and structurally or historically silenced groups for information including the poor network coverage which also remains a barrier.¹⁰¹¹

Connectivity is a necessity in today's world¹⁰¹², and the Internet is an enabler, used for a wide variety of activities¹⁰¹³ The allocation of the funds to be used towards internet connectivity in schools is a progressive step towards universal connectivity in Uganda's social sector.¹⁰¹⁴ The Third National

<https://www.emerald.com/insight/content/doi/10.1108/ITP-01-2023-0042/full/html> (accessed on 23 December 2023)

1003 <https://www.ucc.co.ug/rcdf/> (accessed on 24 December 2023)

1004 World Bank. 'Uganda Secures \$200 million to Accelerate Digital Transformation and Inclusiveness' (JUNE 2, 2021) <https://www.worldbank.org/en/news/press-release/2021/06/02/uganda-secures-200-million-to-accelerate-digital-transformation-and-inclusiveness> (accessed on 23 December 2023)

1005 <https://datareportal.com/reports/digital-2023-uganda> (accessed on 23 December 2023)

1006 RCDF, 'Uganda Communications Commission' (accessed on 22 December 2023), <https://www.ucc.co.ug/rcdf/>

1007 UCC Official Twitter (12:33 PM · Mar 10, 2023) https://twitter.com/UCC_Official/status/1634125418578968576 (accessed on 24 December 2023)

1008 UCC 'Uganda Communications Universal Service and Access Fund (UCUSAF)' <https://www.ucc.co.ug/ucusaf/> (accessed on 24 December 2023)

1009 Andrew Bugembe 'OPINION: The quest of delivering the benefits of a modern connected life to all Ugandans' (Tuesday 03 October, 2023) <https://nilepost.co.ug/opinions/173401/opinion-the-quest-of-delivering-the-benefits-of-a-modern-connected-life-to-all-ugandans> (accessed on 23 December, 2023)

1010 Internet - Uganda <https://www.statista.com/outlook/co/digital-connectivity-indicators/internet/uganda> (accessed on 24 December, 2023)

1011 Parliament of Uganda 'Lift the ban on Facebook and widen phone coverage' (24 Sep 2021) <https://www.parliament.go.ug/news/5281/%E2%80%99lift-ban-facebook-and-widen-phone-coverage%E2%80%99> (accessed on 26 December 2023)

1012 Andrew Bugembe 'OPINION: The quest of delivering the benefits of a modern connected life to all Ugandans' (Tuesday 03 October, 2023) <https://nilepost.co.ug/opinions/173401/opinion-the-quest-of-delivering-the-benefits-of-a-modern-connected-life-to-all-ugandans> (accessed on 26 December 2023).

1013 Emmanuel Ogjemwonyi Arakpogun, Jason Whalley, Roseline Wanjiru, et la., 'Bridging the digital divide in Africa via universal service funds: an institutional theory perspective' (9 May 2023) <https://www.emerald.com/insight/content/doi/10.1108/ITP-01-2023-0042/full/html> (accessed on 26 December 2023).

1014 New Vision 'Provision of internet services to 50 schools' (January 03, 2024) <https://www.newvision.co.ug/opportunities/>

Development Plan (NDP III) will adopt a Human Rights Based Approach (HRBA), focusing on human rights principles such as equality and non-discrimination, empowerment and participation, and special attention to vulnerable groups.¹⁰¹⁵ With the fund allocation, the NDPIII and Digital Uganda Vision framework provides a solid foundation for ICT policy and planning in Uganda, with a focus on integrating ICT with various vertical industries and promoting digital transformation in trade, government, education, health, and other areas to promote employment opportunities and sustainable development in the country.¹⁰¹⁶ The development of internet connectivity and the resilience of such networks can boost related opportunities to contribute to sustainable social and economic development.

The Commission has an ongoing program which gives one tablet per household to people in rural areas to enable accessibility and enjoyment of the benefits that come with connectivity.¹⁰¹⁷ The government has established computer labs in 1,300 secondary schools and distributed 4,000 mobile phone devices to vulnerable households. The UCC Q2 2022 market performance report indicates that the total number of connected mobile phone devices increased from 35 million in April to 36.1 million in June 2022.¹⁰¹⁸ The total number of broadband connections stood at 23.7 million subscriptions, with digital financial services of 40.7 million Uganda shillings.¹⁰¹⁹ The digital divide between individuals, households, businesses, and geographical areas with different socio-economic levels remains a significant challenge, leading to unequal opportunities to access ICTs and use the Internet for various activities. Despite efforts to improve internet penetration, high costs, limited infrastructure, and geographical barriers continue to hinder access to reliable and high-speed internet, especially for underserved communities.

On May 29, 2023, MTN Uganda boosted the UCUSAF with 36 billion Uganda Shillings for the year 2023 to expand coverage of communications services to underserved and unserved areas.¹⁰²⁰ All licensed telecom operators in Uganda must pay a 2% levy on their annual gross revenues to the fund administered aimed at deepening digital services in Uganda.¹⁰²¹ Part of the money will be used to expand ICT services and deepen the uptake of communication services in Uganda.¹⁰²²

On June 26, 2023, UCC also launched a project in partnership with Makerere University Business School (MUBS) to support ICT solutions that address societal challenges in unserved and underserved areas of Uganda in line with UCC's mission of inclusive access to communication

tenders-1208 (accessed on 23 December 2023).

1015 Government of Uganda and ITU joint project on "Technical assistance and training to Uganda on National ICT development strategy (<https://www.itu.int/en/ITU-D/Regional-Presence/Africa/Pages/projects/2023/uganda-digital-transformation.aspx> (accessed on 26 December 2023).

1016 Government of Uganda and ITU joint project on "Technical assistance and training to Uganda on National ICT development strategy <https://www.itu.int/en/ITU-D/Regional-Presence/Africa/Pages/projects/2023/uganda-digital-transformation.aspx> (accessed on 26 December 2023).

1017 Andrew Bugembe 'OPINION: The quest of delivering the benefits of a modern connected life to all Ugandans' (TUE 03 OCT, 2023) <https://nilepost.co.ug/opinions/173401/opinion-the-quest-of-delivering-the-benefits-of-a-modern-connected-life-to-all-ugandans> (accessed on 26 December 2023).

1018 MTN Uganda 'MTN Uganda boosts the Uganda Communications Universal Service and Access Fund with UGX 36 billion for the year 2023' (29 May 2023) <https://www.mtn.co.ug/newsabout/mtn-uganda-boosts-the-uganda-communications-universal-service-and-access-fund-with-ugx-36-billion-for-the-year-2023/> (accessed on 26 December 2023)

1019 Andrew Bugembe 'OPINION: The quest of delivering the benefits of a modern connected life to all Ugandans' (TUE 03 OCT, 2023) <https://nilepost.co.ug/opinions/173401/opinion-the-quest-of-delivering-the-benefits-of-a-modern-connected-life-to-all-ugandans> (accessed on 26 December 2023).

1020 MTN Uganda 'MTN Uganda boosts the Uganda Communications Universal Service and Access Fund with UGX 36 billion for the year 2023' (29 May 2023) <https://www.mtn.co.ug/newsabout/mtn-uganda-boosts-the-uganda-communications-universal-service-and-access-fund-with-ugx-36-billion-for-the-year-2023/> (accessed on 26 December 2023).

1021 MTN Uganda boosts the Uganda Communications Universal Service and Access Fund with UGX 36 billion for the year 2023 <https://www.mtn.co.ug/newsabout/mtn-uganda-boosts-the-uganda-communications-universal-service-and-access-fund-with-ugx-36-billion-for-the-year-2023/> (accessed on 25 January 2024)

1022 ISMAIL LADU 'UCC to invest in expanding digital economy' (Thursday, June 01, 2023) <https://www.monitor.co.ug/uganda/business/markets/ucc-to-invest-in-expanding-digital-economy--4252760> (accessed on 26 December 2023).

services and infrastructure.

The projects implemented under UCUSAF include 76 internet points of presence (POP), 106 internet cafes, 78 ICT training centres, 4,099 public payphones, 78 district web portals, 13 Multipurpose Community Tele-centres (MCT), 45 postal projects, 708 school ICT laboratories, 174 Health ICT facilities, 90 voice network sites, 106 content development projects, two local governance projects, and 31 other unique projects.¹⁰²³ The direct impact realised out of the projects implemented includes 100% voice coverage at the sub-county level, 100% data coverage for every district town of Uganda, as well as the teaching of Computer Studies as a subject in at least 50% of government secondary schools and basic ICT equipment in all district government hospitals.¹⁰²⁴

Despite this progress made and initiatives availed, in 2023, Uganda's progress on the Sustainable Development Goals (SDGs) was ranked 141 out of 166 countries with a global index score of 55%, with a spillover score of 99.3%, showing a 19.7% SDGs worsening in Uganda, and 54.1 per cent limited progress with only 26.2 per cent achieved or on track.¹⁰²⁵ To overcome the obstacles and bridge the digital divide in Uganda, there is a need for a clear redefinition of UCUSAF policies, restructuring the governance, encouraging cross-sectoral collaborations, and bottom-up initiatives to bridge the digital divide in the country.

Online Freedom of Expression

On May 26, 2023, the President signed the Anti-Homosexuality Bill 2023 into law, imposing severe penalties for same-sex conduct.¹⁰²⁶ The law includes life imprisonment for engaging in homosexuality and the death penalty for "aggravated homosexuality." Section 4(4)(c) prohibits the promotion of homosexuality through various means, including electronic devices, with potential imprisonment of up to 20 years. Legal entities promoting homosexuality may face fines of up to 1 billion Ugandan Shillings and license suspension or cancellation for up to 10 years.¹⁰²⁷ The law has led to increased self-censorship within the LGBT+ community online, with individuals and organisations altering their online presence to avoid harassment or prosecution. This legislation intensifies penalties for homosexuality in Uganda, previously illegal, and criminalises speech about LGBTQI+ rights.¹⁰²⁸ The National Prayer Breakfast included religious and radical individuals making hate speeches.¹⁰²⁹

The Constitutional Court nullified Section 25 of the Computer Misuse Act of 2011, which penalised "offensive communication." The court also stopped its execution. The courts dismissed a case against two representatives of an online media company charged with offensive communication and cyberstalking for the State's failure to present enough evidence.

1023 Andrew Bugembe 'OPINION: The quest of delivering the benefits of a modern connected life to all Ugandans' (TUE 03 OCT, 2023) <https://nilepost.co.ug/opinions/173401/opinion-the-quest-of-delivering-the-benefits-of-a-modern-connected-life-to-all-ugandans> (accessed on 26 December 2023).

1024 Andrew Bugembe 'OPINION: The quest of delivering the benefits of a modern connected life to all Ugandans' (TUE 03 OCT, 2023) <https://nilepost.co.ug/opinions/173401/opinion-the-quest-of-delivering-the-benefits-of-a-modern-connected-life-to-all-ugandans> (accessed on 26 December 2023).

1025 <https://dashboards.sdgindex.org/profiles/uganda> (accessed on 25 January 2024)

1026 The Anti-Homosexuality Bill 2023 (3rd March, 2023) <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf> (accessed on 26 December 2023).

1027 Khatondi Soita Wepukhulu 'Queer Ugandans reveal devastating impact of anti-gay law' (4 July 2023) <https://www.opendemocracy.net/en/5050/uganda-anti-homosexuality-act-gay-law-impact-month/> (accessed on 26 December 2023).

1028 Ayesha Khan, Emilie Tant and Caroline Harper 'Facing the backlash: what is fuelling anti-feminist and anti-democratic forces?' (July 2023) <https://www.alignplatform.org/sites/default/files/2023-07/align-framingpaper-backlash-web.pdf> (accessed on 24 December 2023).

1029 Khatondi Soita Wepukhulu 'Christian fundamentalism lies behind harsh new anti-LGBTIQ bill in Uganda' (23 March 2023, 6.19pm) <https://www.opendemocracy.net/en/5050/uganda-anti-homosexuality-bill-church-us-england-odoi-oywelowo/> (accessed on 24 December 2023).

Social media users have increasingly resorted to pseudonymous accounts to avoid harassment and other repercussions for their online speech.¹⁰³⁰ Journalists and commentators who cover the opposition or make critical statements about the president have faced physical violence. In December 2022, President Museveni's son accused journalists at the Daily Monitor of being terrorists and threatened to "crush" journalists who "abuse" him in tweets that were later deleted.¹⁰³¹ In May 2023, blogger Isma Lubega Tusubira, also known as Isma Olaxess, was shot and killed by an unknown attacker while travelling in his private vehicle in Kampala.¹⁰³² The attacker's motivations were unclear, according to the police, but there has been speculation that Tusubira's murder was connected to his divisive remarks and aggressive online presence.¹⁰³³ In November 2023, Musamali, commonly known as Freeman, was arrested by plain cloth security officers from his home in Nabumali, Mbale district. He was charged with computer misuse and cyber harassment and detained at Mbale Central Police Station (CPS). He was released after being kept in police custody for over 48 hours without a court appearance which is a violation of the 48-hour rule of the Constitution of the Republic of Uganda.¹⁰³⁴ The hostile environment for journalists leads many to practice self-censorship due to fears of being harassed or arrested.¹⁰³⁵

The 1995 Ugandan Constitution provides for freedom of expression, freedom of speech, media freedom, and the right to access state information.¹⁰³⁶ However, several laws undermine these protections with constant stringent measures taken by the UCC to regulate online media in the previous years. For example, the Press and Journalist Act requires journalists to register with the statutory Media Council, whose independence is believed to be compromised due to the government's influence over its composition. The Access to Information Act 2005 provides for the right of access to information.¹⁰³⁷ In practice, however, accessing official information is a challenge for citizens.¹⁰³⁸

Gendered Disinformation

In Uganda, there has been a notable increase in gendered disinformation, with targeted attacks directed towards organisations and activists working on sexual and reproductive rights. For instance, in August 2022, there were deferment operations of Sexual Minorities Uganda (SMUG) on allegations that they had failed to register with the National Bureau for Non-Governmental Organisations.¹⁰³⁹ Gendered disinformation is not a new phenomenon; it sits at the intersection of propaganda and gender-based violence aided by online platforms or digital communication.¹⁰⁴⁰

1030 <https://library.fes.de/pdf-files/bueros/africa-media/13547.pdf> (accessed on 27 December 2023).

1031 Sadibou Marong "We will crush you," Ugandan president's son warns journalists' <https://rsf.org/en/we-will-crush-you-ugandan-president-s-son-warns-journalists> (accessed on 27 December 2023)

1032 Controversial blogger Isma Olaxess, Has been shot dead (7 May 2023) <https://pluggedaily.com/2023/05/07/controversial-blogger-isma-olaxess-has-been-shot-dead/> (accessed on 26 December 2023).

1033 DAVID VOSH AJUNA 'Jjaja Iculi': Who was Isma Olaxess in the public eye? (May 13, 2023) <https://www.monitor.co.ug/uganda/news/national/-jjaja-iculi-who-was-isma-olaxess-in-the-public-eye--4226330> (accessed on 27 December 2023).

1034 East African Gazette 'Uganda Journalist body demand for un conditional release of Musamali, the CEO of Free Man News' (November 12, 2023) <https://eastafricangazette.com/index.php/2023/11/12/uganda-journalist-body-demand-for-un-conditional-release-of-musamali-the-ceo-of-free-man-news/> (accessed on 26 December 2023)

1035 Halima Athumani 'Ugandan Activists Say Future of Media Uncertain' (May 23, 2023) <https://www.voanews.com/a/ugandan-activists-say-future-of-media-uncertain-/7105670.html> (accessed on 28 December 2023)

1036 The Constitution of the Republic of Uganda, 1995 <https://washington.mofa.go.ug/uganda/constitution-republic-uganda-1995> (accessed on 31 December 2023).

1037 Access to Information Act 2005 (19th July 2005) <https://chapterfouruganda.org/sites/default/files/downloads/The-Access-to-Information-Act-2005.pdf> (accessed on 28 December 2023)

1038 Hillary Turyansingura 'Government Committed to Citizen's Access to Information' (May 10, 2021) <https://ict.go.ug/2021/05/10/government-committed-to-citizens-access-to-information/> (accessed on 24 December 2023)

1039 Loyce Kyogabirwe 'Pushing Back Against Gendered Disinformation in Uganda' (February 6, 2023) <https://cipesa.org/2023/02/pushing-back-against-gendered-disinformation-in-uganda/> (accessed on 28 December 2023)

1040 Demos 'Submission on opportunities, challenges and threats to media in the digital age: gendered disinformation' (January

Social media is a powerful tool for mobilising social justice, but it's now being used to spread gendered disinformation to shame and discredit women.¹⁰⁴¹ The hashtag #FearWomen, is one example of how gendered disinformation is used to reinforce patriarchal norms further and affect the dignity of women.¹⁰⁴²

Disinformation campaigns that target feminist struggles and gendered discourse in an attempt to silence women, push them to self-censorship, and restrict their civic space. These campaigns are a direct attack not only against specific women but against gender justice.¹⁰⁴³ Apart from the immediate harm inflicted on victims—ranging from psychological distress and trauma to enduring mental health effects, physical and sexual violence—these narratives extend to threats of violence and rape.¹⁰⁴⁴

In Uganda, there are also several examples of persons who are perceived queer being evicted by their landlords from their homes, denials of HIV medicines and other sexual and reproductive health services at hospitals, among many other undocumented horrors started by the disinformation. The LGBTQIA+ community in Uganda continue to have their rights suppressed through anti-LGBTQ legislation.

Uganda repainted a kids' playground because it had a rainbow on it. The banning of watches and repainting of playgrounds, for example, also indicates how public opinion and perspectives are becoming increasingly extremist. This example highlights the urgent need for strategies that specifically address gendered disinformation which can also translate to online platforms, considering the unique vulnerabilities and roles of women in the community. Continuous experience sharing can contribute to a more nuanced and effective approach to combating disinformation at the grassroots level.

Privacy and Surveillance

As Uganda's elections draw closer, many activists have suspected that the government has increased monitoring and surveillance of social media platforms and other online spaces. Article 27 of the Constitution prohibits interference with the privacy of a person's "home, correspondence, communication or other property."¹⁰⁴⁵

In November 2023, Uganda launched a new vehicle tracking system that allows the government to track the real-time location of all vehicles. The launch of the Intelligent Transport Monitoring System (ITMS) mandate is to reduce vehicle theft, improve road safety, computerise policing and simplify the identification of criminals or traffic violators. However, installing license plates incorporating cutting-edge technology on all vehicles in the country will expand to unchecked mass

2022)

<https://www.ohchr.org/sites/default/files/documents/issues/expression/cfis/threats-digital-age/csos/2023-01-26/Submission-SR%20freedex-hrc50-Demos.pdf> (accessed on 28 December 2023).

1041 Act Alliance 'ACT Alliance's Input for the report on gendered disinformation: Submitted to the UN Special Rapporteur on Freedom of Expression and Opinion' (7th July 2023)

<https://www.ohchr.org/sites/default/files/documents/issues/expression/cfis/gender-justice/subm-a78288-gendered-disinformation-cso-act-alliance.pdf> (accessed on 26 December 2023).

1042 Act Alliance 'ACT Alliance's Input for the report on gendered disinformation: Submitted to the UN Special Rapporteur on Freedom of Expression and Opinion' (7th July 2023) <https://www.ohchr.org/sites/default/files/documents/issues/expression/cfis/gender-justice/subm-a78288-gendered-disinformation-cso-act-alliance.pdf> (accessed on 26 December 2023).

1043 Association for Progressive Communications 'Placing the gendered in disinformation' (20 September 2023) <https://www.apc.org/en/project/placing-gendered-disinformation> (accessed on 26 December 2023).

1044 U.S State Department of State 'Gendered Disinformation: Tactics, Themes, and Trends by Foreign Malign Actors' (MARCH 27, 2023) <https://www.state.gov/gendered-disinformation-tactics-themes-and-trends-by-foreign-malign-actors/> (accessed on 27 December 2023)

1045 Constitution <https://www.parliament.go.ug/documents/1240/constitution> (accessed on 31 December 2023)

surveillance of citizens coupled with mandated cell phone registration, which is a huge destabiliser to privacy rights, hence creating severe risks to the rights to freedom of association and expression. ITMS is part of Uganda's '9 Point Strategy' to end insecurity.¹⁰⁴⁶ After February 1, 2024, all vehicle owners will be required to pay between 50,000 Ugandan Shillings (\$18.57) and 714,300 Ugandan Shillings (\$189.47) to register for new plates of their vehicles with an attached sim-card-equipped device provided by the state-owned telecommunications company, Uganda Telecommunications Corporation Ltd (UTL).¹⁰⁴⁷ Foreign vehicles temporarily in Uganda will also be required to install the tracking devices for the time they are in the country. The system will collect data from UTL's telecommunications network, as well as the network of a privately owned telecommunications company, increasing the number of private corporate actors with potential access to the real-time location of all vehicles in Uganda.¹⁰⁴⁸

Unfortunately, Uganda's government has limited public scrutiny of the technical system, including its capabilities and the contract with the Russian company delivering the project. Also, there is no accountability in terms of publicly available published plans for oversight and human rights mitigation around the project.¹⁰⁴⁹

Uganda already collects and stores vast personal information, including names, signatures, photos, and fingerprints of nationals to register SIM cards and national identity cards.¹⁰⁵⁰ In the past, the government has used surveillance technology to track and arrest government opponents and critics.¹⁰⁵¹ Other government-sponsored initiatives include fingerprinting all privately owned firearms, banning cyclists from wearing hoodies and creating a national DNA database. The existing traffic surveillance system is being expanded by introducing surveillance cameras and mandatory mobile network-connected tracking devices in all vehicles. This unrestricted mass surveillance undermines millions of Ugandans' right to privacy. The government should prioritise protecting the rights of its citizens rather than abusing them.¹⁰⁵²

Privacy protections are enshrined in the Data Protection and Privacy Act 2019 including its regulations, which came into force in April 2021. However, ensuring compliance with the Act remains a challenge, although an independent office oversees the implementation of and the enforcement of the Data Protection and Privacy Act, 2019.¹⁰⁵³ The Regulation of Interception of Communications Act (RICA) 2010 allows the government to conduct real-time electronic surveillance of suspected terrorists by installing equipment in telecommunication companies. The Act also grants the Security Minister the power to access personal communications in case of national security concerns upon obtaining a court order from a High Court judge. The Act was passed after a terrorist attack in Kampala in 2010.¹⁰⁵⁴ The clauses in the Anti-Terrorism Act 2002 give security officers appointed by the Interior Minister the power to intercept the communications of individuals suspected of

1046 Sean Beeghly. 'HRW: Uganda surveillance system threatens rights to privacy, expression and association'. U. Pittsburgh School of Law, US (NOVEMBER 14, 2023) <https://www.jurist.org/news/2023/11/hrw-uganda-surveillance-system-threatens-rights-to-privacy-expression-and-association/> (accessed on December 31, 2023)

1047 The East African 'Scrap new surveillance system, HRW tells Uganda' (Tuesday, November 14 2023) <https://www.theeastafrican.co.ke/tea/news/east-africa/scrap-new-surveillance-system-hrw-tells-uganda-4433356> (accessed on 30 December 2023)

1048 The East African 'Scrap new surveillance system, HRW tells Uganda' (Tuesday, November 14 2023) <https://www.theeastafrican.co.ke/tea/news/east-africa/scrap-new-surveillance-system-hrw-tells-uganda-4433356> (accessed on 30 December 2023)

1049 The East African 'Scrap new surveillance system, HRW tells Uganda' (Tuesday, November 14 2023) <https://www.theeastafrican.co.ke/tea/news/east-africa/scrap-new-surveillance-system-hrw-tells-uganda-4433356> (accessed on 30 December 2023)

1050 The East African 'Scrap new surveillance system, HRW tells Uganda' (Tuesday, November 14 2023) <https://www.theeastafrican.co.ke/tea/news/east-africa/scrap-new-surveillance-system-hrw-tells-uganda-4433356> (accessed on 30 December 2023)

1051 The East African 'Scrap new surveillance system, HRW tells Uganda' (Tuesday, November 14 2023) <https://www.theeastafrican.co.ke/tea/news/east-africa/scrap-new-surveillance-system-hrw-tells-uganda-4433356> (accessed on 30 December 2023)

1052 <https://www.iot-mesh.io/human-rights-watch-uganda-real-time-location-system/> (accessed on 30 December 2023)

1053 Unwanted Witness 'Privacy-Scorecard-Report-2021' (November 2021) <https://www.unwantedwitness.org/wp-content/uploads/2021/11/Privacy-Scorecard-Report-2021.pdf> (accessed on 24 December 2023).

1054 Chapter Four Uganda 'The Regulation of Interception of Communications Act, 2010' (August 5, 2010) <https://chapterfouruganda.org/resources/acts-bills/regulation-interception-communications-act-2010> (accessed on 26 December 2023).

terrorism and to keep the individuals under surveillance without judicial oversight.¹⁰⁵⁵

These provisions are broad and contrary to international law, which requires that any intrusion on the right to privacy, including gathering metadata or surveillance of communications content, must be strictly necessary and proportionate to the protection of a specified state interest and regulated in law on a non-discriminatory basis.¹⁰⁵⁶ Although Uganda is a signatory to several international conventions with privacy provisions, including the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the African Charter on Human and Peoples' Rights; the Convention on the Rights of the Child, and the African Charter on the Rights and Welfare of the Child. The 1995 Ugandan Constitution explicitly recognises the right to privacy and calls for its protection in Article 27.

1055 THE ANTI-TERRORISM ACT, 2002. http://www.vertic.org/media/National%20Legislation/Uganda/UG_Anti-Terrorism_Act_2002.pdf (accessed on 27 December 2023).

1056 The East African 'Scrap new surveillance system, HRW tells Uganda' (Tuesday, November 14 2023) <https://www.theeastaf-rican.co.ke/tea/news/east-africa/scrap-new-surveillance-system-hrw-tells-uganda-4433356> (accessed on 30 December 2023)

▶ Conclusion & Recommendations

Conclusion

Access to the Internet is a powerful tool that can be used by both state and non-state actors to influence the social and economic development of Uganda. To ensure that Uganda can make a positive impact on freedom of expression, press freedom, access to information, and government ICT policies without resorting to continuous targeted surveillance, notable disparities in internet access between men and women, directed and targeted hate speech, privacy violations, and data mismanagement, a genuine multi-stakeholder approach focused on prevention is required. However, online freedom of expression continues to be undermined in Uganda due to the absence of any action to unban Facebook.

Recommendations

Government

- » Implement the National Broadband Policy 2018 to reduce internet data prices in Uganda
- » Put in place an appropriate implementation framework to address the infrastructure development gaps, legal and regulatory environment and capacity gaps of the citizens to exploit ICT in the country productively.
- » Use a data-led approach to select Universal Service and Access Fund projects and apply relevant insights to project selection to form part of the operational reform of Universal Service and Access Fund.
- » Ensure regular performance monitoring and reporting to provide visibility and accountability of digital rights and inclusion in Uganda.
- » Build capacity and develop skills within the Universal Service Fund with a specific focus on reskilling and upskilling existing personnel, recruiting new people and retaining qualified staff at the Universal Service and Access Fund authority.
- » The government should align its national laws on privacy restrictions with international laws, ensuring that any interference in the right to privacy is strictly necessary, proportional, and legally regulated.
- » Uganda Communications Commission should be intentional in celebrating International Day for Universal Access to Information annually and provide critical analysis of Uganda Communications Universal Access and Service fund to the consumers.
- » The government is also urged to desist from future clampdowns on digital access and ensure that digital rights and inclusion policies are implemented to promote a free, open, and safe online environment for all Ugandans.

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- » Uphold and reinforce the Data Protection and Privacy Act of 2019, ensuring strict compliance with regulations. The government should prioritise protecting citizens' privacy rights, aligning all initiatives with international privacy standards.
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Civil Society

- » There is a need to set up an in-country national task force on gendered disinformation, working with academia, women's rights organisations and technologists to map disinformation campaigns and their connection to online abuse of women in politics and journalists and must ensure the representation of women's perspectives and lived experiences.
 - » Invest in strengthening research, including local actors at country and regional levels on gender disinformation, to better understand the contexts, root causes and prevalence.
 - » There is a need to push back against gendered disinformation to combat online harms against women and attain gender equity.
 - » Furthering understanding of communications responses and interventions that can be used to counter gendered disinformation.
 - » There should be the involvement of civil society and local media who can raise early warnings about gendered disinformation campaigns which may be triggered or are beginning to evolve.
 - » Conduct public consultations to gauge citizen sentiment and concerns regarding the ITMS project. Encourage citizen participation in decision-making processes related to surveillance technologies that impact their rights.
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Private Sector

- » Tools developed to combat the dissemination of disinformation through technology must be guided by unambiguous processes and comply with ethical standards.
 - » Comply with rights-respecting ICT policies at the national, regional and international levels on digital rights and inclusion.
 - » Collaborate with industry associations to advocate for tax reforms that reduce the burden on internet users. Engage with policymakers to ensure that tax structures are conducive to fostering digital inclusion and economic growth.
 - » Actively participate in policy discussions and advocacy efforts to reduce barriers to internet access. Specifically, work towards the reduction of taxes on internet services and engage with the government to lift restrictions on platforms like Facebook, considering their impact on businesses and the wider community.
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Zambia

EXECUTIVE SUMMARY

The Londa Zambia report sheds light on internet freedoms in Zambia in 2023, including key developments and trends in the ICT sector. The report covers thematic areas of online freedom of expression, Digital IDs, data protection, and cybersecurity and reviews the implementation of the Universal Access and Service Fund. The report was compiled using data obtained through targeted interviews and desk research. It further provides recommendations on measures to positively enhance Zambia's digital rights. In the 2022 Londa report, Zambia appeared to emerge from a climate of fear, repression and intolerance witnessed in previous governments. However, this has not been the case as arrests of people charged under the Cybersecurity and Cybercrimes Act 2021 heightened. In 2023, Zambia recorded several policy and legal developments, including enacting the long-awaited Access to Information Act 2023 and launching some key strategies like the National ICT Policy and Digital

Transformation Strategy. In addition, the Data Protection Office was established, and the first-ever Data Protection Commissioner was appointed. The revision of the Cybersecurity and Cybercrimes Act commenced, although the process, much like in previous cases, has been criticised by stakeholders. As such, the CSO group that petitioned the piece of legislation in the High Court only withdrew the case once the government agreed to consider the recommendations and improve the stakeholder engagement process. Lastly, the Internet Service Providers' Association of Zambia announced a 17.5% increase in fixed Internet costs. The ICT regulator ZICTA fined Airtel Zambia to compensate all its users after incessant network outages.

Introduction

Predominantly a mining country, Zambia’s population stood at 19.6 million as of 2023, with the female and male population split at 51% and 49% respectively.¹⁰⁵⁷ With over 60% of the population living in rural areas and over 80% of the population under the age of 30 years, the country maintained a steady GDP increase of 29 billion¹⁰⁵⁸ despite declining economic conditions and high inflation rates.

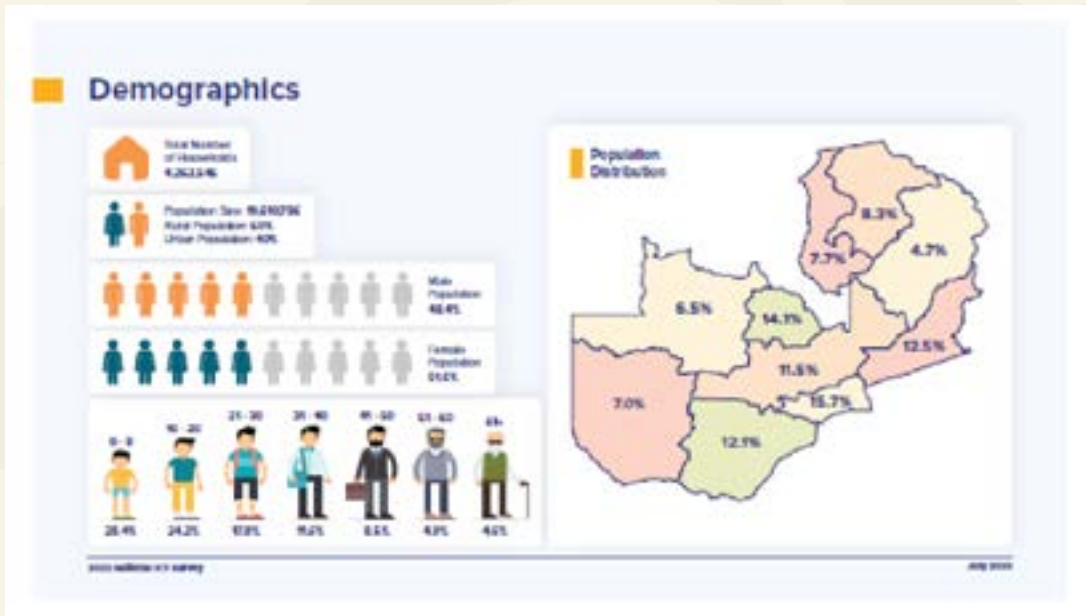


Fig 1: Zambia’s population breakdown, Source: ZICTA¹⁰⁵⁹

Zambia’s political landscape remained relatively stable in the current reporting period; with elections looming in 2026, the battle for the top seat has begun amid declining economic conditions and growing citizen dissatisfaction. The former President Edgar Lungu indicated his intentions to emerge from retirement to contest for the Presidency, causing uproar among some political groups.¹⁰⁶⁰

In the period under review, the ICT sector witnessed some key developments. Policy-wise, the Ministry of Technology and Science launched the long-awaited revised National ICT Policy 2023 alongside the National Digital Transformation Strategy 2023 - 2027, the National ICT Policy Implementation Strategy 2022 - 2026 and Strategic Plan 2022- 2026.¹⁰⁶¹ ¹⁰⁶² These documents set out a roadmap and comprehensive regulatory framework for an

1057 Zambia Statistics Agency “Census of Population and Housing” (2022) <https://www.zamstats.gov.zm/download/6815/?v=9623> (accessed 11 December 2023).

1058 World Bank “Zambia Data GDP” (2022) <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=ZM> (accessed 11 December 2023).

1059 Tech Bulletin https://drive.google.com/file/d/14iqISYvt3F618NUM_VuL0UHPeLPLVm-n/view?usp=sharing (accessed 11 December 2023).

1060 BBC “Edgar Lungu - ex-Zambian president makes political comeback” (2023) <https://www.bbc.com/news/world-africa-67254347/> (accessed 11 December 2023).

1061 Kalemba, “Mutati launches ICT policy, digital transformation strategic plan” (2023) <https://kalemba.news/business/2023/10/14/mutati-launches-ict-policy-digital-transformation-strategic-plan/> (accessed 11 December 2023).

1062 Ministry of Technology and Science “The Ministry Of Technology And Science Launches The Strategic Plan

► Country Analysis

integrated ICT ecosystem, digital economy and measures for safeguarding the digital rights and cybersecurity of citizens. The policies also aim to contribute to stimulating technological growth for the roll-out of digital services. Additionally, the e-Government division under Smart Zambia launched the National Electronic Government Plan 2023 - 2026 which sets out a foundation for enhanced service delivery, accessibility, transparency, and efficiency between the government and citizens and the private sector.

At the close of 2023, internet penetration stood at 58%, accounting for 11 million users showing a steady increase from the 53% penetration recorded in the previous year.

Table 6: Trends in Internet Usage: June 2022 to June 2023

Internet Usage Period	2022				2023		YoY Change
	Q1	Q2	Q3	Q4	Q1	Q2	
Internet Subscriptions – Fixed	81,775	84,258	85,259	86,446	86,242	82,254	-2.4%
Fixed Internet penetration per 100 Inhabitants	0.43	0.45	0.43	0.44	0.44	0.42	0.026
Internet users – Mobile	10,063,776	9,989,947	10,798,027	11,062,212	11,025,912	11,352,595	13.6%
Mobile Internet penetration per 100 Inhabitants	53.2	52.8	54.3	56.4	56.2	57.9	5.1
Internet Users – Fixed + Mobile	10,145,551	10,074,205	10,883,286	11,148,058	11,112,154	11,434,849	13.5%
Internet Users penetration per 100 Inhabitants	53.0	53.2	54.8	56.8	56.7	58.3	5.1

Source: Operator submissions

Fig 2: Trends in Internet Usage: June 2022-June2023 Source: ZICTA¹⁰⁶³

Following the introduction of 5G technology in 2022,¹⁰⁶⁴ Zambia has continued to expand its 5G network coverage across the country and recently adopted 4G as the new standard, subsequently, phasing out 2G and 3G technologies¹⁰⁶⁵ in a bid to provide internet services to all parts of the country and in recognition of ICTs role as a catalyst to development.

(2022-2026)” (2023) <https://www.mots.gov.zm/?p=2797> (accessed 11 December 2023).

1063 Mid Year Market https://drive.google.com/file/d/14iqISYvt3F618NUM_VuL0UHPELPLVm-n/view?usp=sharing (accessed 11 December 2023).

1064 MTN “MTN Zambia launches the country’s first 5G network” (2022) <https://www.mtn.com/mtn-zambia-launches-the-countrys-first-5g-network/> (accessed 11 December 2023).

1065 IT Web Africa: Zambia “Zambia adopts 4G as the new standard, phases out 2G and 3G networks” (2023) <https://itweb.africa/content/JN1gPvOAWGaMjL6m/ap6GxRkqYaqb3Wjr> (accessed 11 December 2023).

Selected Individual Level Findings

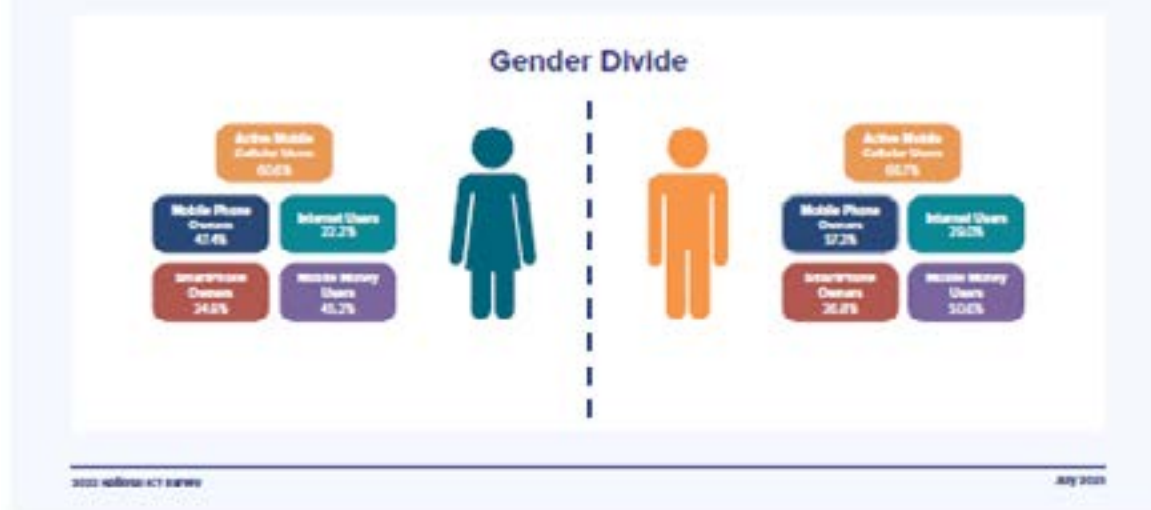


Fig 3: Zambia's Gender Digital Divide Source: ZICTA

Zambia has four mobile network operators (MNOs) and 19 internet service providers (ISPs) although Zedmobile, a newly formed MNO is yet to commence operations after it launched in December 2022.¹⁰⁶⁶ On the other hand, Zambia became the sixth country in Africa to launch Starlink satellite Internet services in a bid to provide fast, reliable and uncapped internet access.¹⁰⁶⁷ In October 2022, the Technology and Science Minister called for the ICT regulator to investigate poor network quality following customer complaints.¹⁰⁶⁸ In December 2023, the ICT regulator Zambia Information and Communications Technology Authority (ZICTA) ordered Airtel Zambia which enjoys a market share of over 50% to compensate all users over constant network outages.¹⁰⁶⁹ This was not the first time that ZICTA clamped down on poor service provision Previously in 2020, Airtel, MTN, and Zamtel were fined over K5.4 million for providing poor service to subscribers.¹⁰⁷⁰ In another turn of events, internet costs are set to increase by 17.5% in 2024 following adjustments to excise duty on fixed internet services.¹⁰⁷¹

1066 Zambian Observer "Zambia's Fourth Mobile Network Operator Launched" (2022) <https://zambianobserver.com/zambia-fourth-mobile-network-operator-launched/> (accessed 11 December 2023).

1067 Voice of America: Africa "Zambia Launches SpaceX's Starlink Internet Service" (2023) <https://www.voanews.com/a/zambia-launches-spacex-s-starlink-Internet-service-/7372081.html> (accessed 11 December 2023).

1068 IT Web Africa: Zambia "Zambia's Tech Minister calls for ICT 'reboot'" (2022) <https://itweb.africa/content/j5alrvQAAQGvpYQk> (accessed 11 December 2023).

1069 IT Web Africa: Zambia "Zambia cracks whip on Airtel over network outages" (2023) <https://itweb.africa/content/ILn-147mQWp37J6Aa/ap6GxRKqYaqb3Wjr> (accessed 11 December 2023).

1070 News Diggers "ZICTA fines all 3 mobile networks K5.4m for poor service" (2020) <https://diggers.news/business/2020/09/04/zicta-fines-all-3-mobile-networks-k5-4m-for-poor-service/> (accessed 11 December 2023).

1071 Tech Trends "Fixed Internet Costs in Zambia Set to Rise by 17.5% in 2024" (2023) <https://www.tech Trends.co.zm/fixed-Internet-costs-in-zambia-set-to-rise-by-17-5-in-2024/> (accessed 15 December 2023).

Online Freedom of Expression

The National Constitution 2016,¹⁰⁷² affirms the right to freedom of expression,¹⁰⁷³ assembly and association,¹⁰⁷⁴ access to information,¹⁰⁷⁵ and privacy.¹⁰⁷⁶ Zambia is also a signatory of regional and global human rights instruments that affirm freedom of expression online and offline, including cybersecurity and data protection. These include; the African Charter on Human and Peoples Rights (ACHPR),¹⁰⁷⁷ the International Convention on Civil and Political Rights (ICCPR),¹⁰⁷⁸ the Windhoek Declaration,¹⁰⁷⁹ the African Platform on Access to Information¹⁰⁸⁰ and the African Union Convention on Cybersecurity and Personal Data Protection (Malabo Convention)¹⁰⁸¹ amongst others.

In terms of online freedoms, Zambia is ranked partly free with a score of 59 on the Freedom on the Net 2023 scorecard, indicating a onepoint improvement from the 2022 scores.¹⁰⁸² Although the country appeared to emerge from a climate of fear, repression and intolerance that was witnessed in previous regimes, this has not been the case on the ground.¹⁰⁸³ Following the abolishment of the defamation of the president clause in December 2022,¹⁰⁸⁴ which had previously been used to persecute political opponents, activists and citizens for their offline and online activity, Zambians are yet to witness tangible outcomes of this development because criminal defamation still exists within the Penal Code Act.¹⁰⁸⁵¹⁰⁸⁶ The current coverage period witnessed an increase in defamation and hate speech arrests for posts and comments made online which are charged under the Cybersecurity and Cybercrimes Act 2021.

In August 2023, Brighton Mwanza aged 25 was arrested for using Twitter (now X) to incite the military to rise against a legitimate government in a tweet where he called on the Zambia army to emulate West African countries that had recently seen coup d'états.¹⁰⁸⁷ In the same month, opposition Socialist Party Leader Fred M'membe was arrested and questioned over an alleged cybercrime where he critiqued the increasing state surveillance, which he stated was partly enabled by digital technologies which could potentially undermine the digital rights of citizens, weaken civil society

1072 Constitution of Zambia Act 18 of 2016.

1073 Constitution of Zambia Act 18 of 2016 art 20 n13 above.

1074 N 13 above above, art 29.

1075 n 13 art 21.

1076 n 13, art 17.

1077 African Commission on Human and People's Rights (ACHPR) Declaration on Freedom of Expression and Access to Information, <https://www.achpr.org/legalinstruments/detail?id=69> (accessed 12 December 2023).

1078 Universal Declaration of Human Rights (UDHR), <https://www.un.org/en/aboutus/universal-declaration-of-human-rights> (accessed 12 December 2023).

1079 Windhoek Declaration.

1080 African Platform on Access to Information <https://www.africanplatform.org/> (accessed 12 December 2023).

1081 African Union Convention on Cyber Security and Personal Data Protection <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection> (accessed 12 December 2023).

1082 Freedom House "Freedom on the Net 2023" (2023) <https://freedomhouse.org/country/zambia/freedom-net/2023> (accessed 12 December 2023).

1083 Paradigm Initiative "Londa Report" (2022) <https://paradigmhq.org/londa-22/> (accessed 12 December 2023).

1084 Lusaka Times "HH Announces the abolition of the death penalty and defamation of the president crime" (2022) <https://www.lusakatimes.com/2022/12/24/hh-announces-the-abolition-of-the-death-penalty-and-defamation-of-the-president-crime/> (accessed 12 December 2023).

1085 News Diggers "Defamation of the President is gone but criminal defamation still exists" (2023) <https://diggers.news/guest-diggers/2023/02/16/defamation-of-the-president-is-gone-but-criminal-defamation-still-exists/> (accessed 12 December 2023).

1086 Zambia Monitor "Kasonde faults arrest of M'membe, says criminal defamation laws abnormal in democratic society" (2023) <https://www.zambiamonitor.com/kasonde-faults-arrest-of-mmembe-says-criminal-defamation-laws-abnormal-in-democratic-society/> (accessed 12 December 2023).

1087 Zambian Observer "Brighton Mwanza Arrested For Inciting Military To Rise Against Legitimate Government" (2023) <https://zambianobserver.com/brighton-mwanza-arrested-for-inciting-military-to-rise-against-legitimate-government/> (accessed 12 December 2023).

and independent voices, and hinder people's meaningful participation in civic matters.¹⁰⁸⁸

In September, opposition Patriots for Economic Progress (PeP) party leader Sean Tembo was arrested on two counts of hate speech contrary to section 65 of the Cybersecurity and Cybercrimes Act No. 2 of 2021 for posts he allegedly made on his social media.¹⁰⁸⁹ In another incident, an opposition party official Stardy Mwale was arrested for Seditious Practices for allegedly circulating an audio recording on various social media platforms instructing millers in the country to stop the production of mealie meal in a bid to entice the millers to revolt against the government.¹⁰⁹⁰

Efforts to revise the Cybersecurity and Cybersecurity Act 2021 commenced with stakeholder consultations¹⁰⁹¹ and the process much like in previous processes was described by CSOs as closed and rushed. Stakeholders did not feel that their recommendations were adequately covered in the new bill. And as such the CSO group that previously petitioned the piece of legislation in the High Court has refused to withdraw the case until the government agrees to consider their recommendations and improve the stakeholder engagement process.¹⁰⁹²

Similarly, efforts to enact a media self-regulation framework remain stalled after media organisations and the Media Owners Association disagreed on the presented Zambia Media Council (ZAMEC) Bill, due to inimical clauses that included mandatory registration of individual journalists and sanctions for journalists without licenses.¹⁰⁹³

In December 2023, President Hakainde Hichilema enacted the historical Access to Information law which was pending for over 20 years, and a source of great controversy.¹⁰⁹⁴ This was a key milestone for media practitioners and other stakeholders since it would eliminate bottlenecks associated with accessing vital state and public interest information, build trust between government and citizens and in turn promote accountability, transparency and human rights in the country. However, some civil society and human rights organisations have indicated that while the current law meets acceptable international standards, it still needs more work. Particularly on issues of proactive disclosure of information by the government and the placing of responsibility of monitoring compliance with the Act on the government through the Information Ministry instead of an oversight body like the Human Rights Commission as prescribed by the African Union Model Law on Access to Information for Africa.¹⁰⁹⁵¹⁰⁹⁶

1088 Zambia Monitor "Socialist Party leader, M'membe, arrested for alleged cyber crime" (2023) <https://www.zambiamonitor.com/socialist-party-leader-mmembe-arrested-for-alleged-cyber-crime/> (accessed 12 December 2023).

1089 Zambia National Broadcasting Corporation (ZNBC) "Sean Tembo, Stardy Mwale Arrested" (2023) <https://www.znbc.co.zm/news/sean-tembo-stardy-mwale-arrested/> (accessed 13 December 2023).

1090 Ibid

1091 Zambia Law Development Commission (ZLDC) "Zambia Law Development Commission (Zlde) Concludes National Stakeholder Consultative Meetings on the Review Of The Cyber Security And Cyber Crimes Act, No 2 Of 2021" (2023) <http://www.zambialawdevelopment.org/press-release/> (accessed 13 December 2023).

1092 News Diggers "Press Statement dated 1st February 2023 on the proposed amendments to the Cybersecurity and Cybercrimes Act" (2023) <https://diggers.news/guest-diggers/2023/02/02/press-statement-dated-1st-february-2023-on-the-proposed-amendments-to-the-cyber-security-and-cybercrimes-act/> (accessed 13 December 2023).

1093 Money FM "MOAZ rejects final draft ZAMEC Bill" (2021) <https://www.moneyfmzambia.com/2022/06/16/moaz-rejects-final-draft-zamec-bill/> (accessed 13 December 2023).

1094 Lusaka Times "President Hichilema signs Access to Information bill into Law" (2023) <https://www.lusakatimes.com/2023/12/22/president-hichilema-signs-ati-bill-into-law/> (accessed 22 December 2023).

1095 News Diggers "Access to Information A Pandora's Box" (2023) <https://diggers.news/guest-diggers/2023/12/19/access-to-information-bill-a-pandoras-box/> (accessed 13 December 2023).

1096 News Diggers "ATI Bill is fair but needs more work" (2023) <https://diggers.news/guest-diggers/2023/11/22/ati-bill-is-fair-but-needs-more-work/> (accessed 13 December 2023).

Digital IDs, Data Protection and Cybersecurity

By the end of 2023, over 1 million Zambians had registered for digital identity cards.¹⁰⁹⁷ This follows the introduction of the Integrated National Registration Information System (INRIS) project in 2022, a digital biometric national identity management system that will replace the traditional paper and manual national registration system.

Following the enactment of the Data Protection Act in 2021, there have been calls for the government to establish a Data Protection Office and appoint a suitable Commissioner, especially in light of the country's current cybersecurity needs and introduction of digital identity systems. In June 2023, the government indicated that the data protection office would soon be introduced and subsequently Mr Likando Lyuwa was appointed as the Commissioner.¹⁰⁹⁸

Furthermore, in July 2023, the Data Protection Commission expressed concern over the increase in hacking incidents in financial institutions in the country and the significant risks that this situation posed to national security.¹⁰⁹⁹ This came after the Bank of Zambia social media and National Pensions Scheme Authority (NAPSA) systems were hacked.¹¹⁰⁰ Similarly in 2022, the Central Bank's computer systems were hacked, disrupting some of its operations and banking services.¹¹⁰¹ A 2022 National Cyber Risk Assessment revealed that the biggest cybersecurity threats at the national and sector level were malware and phishing respectively. Furthermore, the assessment revealed that the highest level of sector vulnerabilities appears to be in government, healthcare and water and sanitation institutions. On the other hand, financial and banking institutions have a potential worst-case impact of up to 3% of the country's GDP.¹¹⁰²

In October 2023, The Cyber Security Task Force comprising officers from the Zambia Police Service, the Drug Enforcement Commission and ZICTA nabbed over 25 suspected cybercriminals who were involved in a spate of criminal activities including mobile money fraud.¹¹⁰³ In another incident in June 2023, Emmanuel Mwamba aged 52 and Andy Luchinde aged 29 were arrested on three counts of publication of information contrary to section 54 of the Cybersecurity and Cybercrimes Act No. 2 of 2021 on the Facebook pages known as Patriotic Front-PF and Grindstone Television Zambia. The two published a letter purporting to have been signed by the Republican President and issued an email with the intent to compromise the safety and security of state house staff.¹¹⁰⁴

Review of Universal Access and Service Fund¹¹⁰⁵

1097 IT Web Africa: Zambia "Zambia transitions to a digital IDs" (2023) <https://itweb.africa/content/P3gQ2qGAWYN7nRD1/ap-6GxRKqYaqb3Wjr> (accessed 15 December 2023).

1098 Zambia National Broadcasting Corporation (ZNBC) "Office of the data protection Commissioner coming" (2023) <https://www.znbc.co.zm/news/office-of-the-data-protection-commissioner-coming/> (accessed 15 December 2023).

1099 News Diggers "Data Protection Commission expresses interest in increased hacking of financial entities" (2023) <https://diggers.news/local/2023/07/25/data-protection-commission-expresses-interest-in-increased-hacking-of-financial-entities/> (accessed 15 December 2023).

1100 News Diggers "The hacking of NAPSA and BO pose a national security risk" (2023) <https://diggers.news/opinion/2023/07/27/the-hacking-at-napsa-boz-pose-a-national-security-risk/> (accessed 15 December 2023).

1101 IT Web Africa: Zambia "Hackers nail Zambia's Central Bank" (2023) <https://itweb.africa/content/kYbe97XblOwqAWpG> (accessed 15 December 2023).

1102 Zambia Information and Communication Technology Authority (ZICTA) "National Cyber Risk Assessment Report" (2022).

1103 Zambian Observer "ZP, DEC, ZICTA Arrest 25 Suspects For Cyber Crimes" (2023) <https://zambianobserver.com/zp-dec-zic-ta-arrest-25-suspects-for-cyber-crimes/> (accessed 20 December 2023).

1104 Zambia Police Service "Mwamba, Luchinde Arrested" (2023) <http://www.zambiapolice.gov.zm/index.php/112-news/392-charged-and-arrested> (accessed 17 December 2023).

1105 Section based on interview with Zambia Information and Communication Technology Authority (ZICTA) Universal Access and Service Fund Department on 8 December 2023.

The Zambia Information and Communications Technology Authority (ZICTA) is responsible for administering the country’s Universal Access and Service Fund (UASF) which is established under the ICT (Universal Access) Regulations Act 2012.¹¹⁰⁶ At the time of drafting the report, the ZICTA annual reports for 2022 and 2023 which contain the total UASF revenue collected within the period were unavailable on the organisation’s website and efforts to obtain these figures directly from the institution proved futile. Some of the UASF-funded projects¹¹⁰⁷ include;

1. The tower construction program- has facilitated the construction of 253 towers in underserved communities of Zambia since its inception in 2013 with each tower costing an estimated \$ 250,000. Between 2023 and 2024 ZICTA earmarked 31 towers for construction to help meet the national deficit of 990 towers in order to complete the countrywide network coverage. The government targets 100% network coverage by the end of 2024 and recently auctioned spectrum costing over US\$41 million to help supplement the cost of towers.¹¹⁰⁸ In addition, following a directive by the Minister of Technology and Science, ZICTA began upgrading some towers with 4G technology, which were previously equipped with 2G technology to enable Internet access in parts of the country.¹¹⁰⁹
2. Connecting learning institutions program- fosters the use of ICTs in learning institutions by providing fully-fledged computer labs. Zambia has over 12 000 primary and secondary schools, and in 2013 ICT was introduced as a mandatory subject yet some schools continued to teach this subject without any computer equipment. So far, the program has connected 525 schools- the package includes 20 computers, one printer, and two MiFi’s while the schools are responsible for providing a secure computer room and furniture. In addition, the USAF supports training and capacity building of teachers in ICT skills through subsidised courses. Other institutions connected with ICT facilities include 47 colleges, 17 government security institutions and two community labs.
3. Support for ICTs for Persons with Disabilities (PWDs) program- provides specialised ICT equipment and software for the visually impaired. So far 14 disability institutions have accessed this project and the package includes specialised computer equipment, software and braille printers. ZICTA facilitates this project in partnership with the Zambia Agency for Persons with Disabilities who provide recommendations on the institutions to be supported and equipment specifications. The National ICT Policy 2023- 2028 recognises the need for equitable access and genuine distribution of ICT products and services through the provision of assistive ICT equipment for persons with disabilities.¹¹¹⁰
4. The last mile optic fibre connectivity project – run in partnership with the Zambia Research and Education Network (ZAMREN) provides affordable internet to higher learning institutions. So far 80 institutions have been supported with last-mile fibre connectivity. The UASF supports the supply of fibre optic cabling and internet subscription for up to one year while ZAMREN provides internet services.

1106 1.5 percent of gross annual turnover collected from all licensed mobile network operators.

1107 Zambia Information and Communication Technology Authority (ZICTA) “Projects” (2023) <https://www.zicta.zm/media/projects> (accessed 20 December 2023).

1108 IT Web Africa: Zambia “Zambia targets 100% network coverage by 2024” (2023) <https://itweb.africa/content/KPNG878NGowq4mwD> (accessed 20 December 2023).

1109 IT Web Africa: Zambia “Zambia adopts 4G as the new standard, phases out 2G and 3G networks” (2023) <https://itweb.africa/content/JN1gPvOAWGaMjL6m/ap6GxRKqYaqb3Wjr> (accessed 20 December 2023).

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5. Agriculture and e-health projects- are some of the other pilot projects that the UASF is expected to deliver. The agriculture project seeks to provide ICT device support for agriculture sector workers. The project has since given out 500 tablets to government's Agricultural Extension Officers in selected farming blocks across the country. On the other hand, the e-Health project plans to provide ICT equipment and Internet connectivity to hospitals and medical institutions. So far, two health institutions have been connected and the roll-out to other health posts is expected in the coming years.

Overall, Zambia has been consistent in the collection of the UASF and the governance and administration of the Fund have improved over the years through institutional reforms and clear implementation plans. While the Fund alone may not be sufficient to meet the country's ICT deficits, the overall impact can be seen.

Over 100,000 learners are now connected to ICT facilities and the skills gained in post-secondary school are used for entrepreneurial activities such as running internet cafes and helping other community members to access ICT services. The communication towers have facilitated cell phone and internet connectivity in underserved and unserved communities to access ICT services to communicate and manage medical emergencies, e-voucher and farmer input support programs (FISP), and social cash transfers to the most vulnerable individuals. Lastly, the last mile connectivity project has connected over 60,000 individuals and community members with internet access.

▶ Conclusion & Recommendations

Conclusion

The year 2023 presented a stable digital rights environment and saw key reforms within the policy and legal landscapes coupled with progressive ICT developments. If the country continues on this trajectory it will be well-placed for an integrated and accelerated ICT ecosystem that promotes meaningful accessibility, innovation, entrepreneurship, and an inclusive and resilient digital economy.

Considering the gaps and concerns raised in this report, various recommendations are proposed to stakeholders as follows:

Recommendations

Government

- » It is commendable that the government began the process of reviewing the Cybersecurity and Cybercrimes Act 2021. However, they are urged to complete this process in a timely and participatory manner that accommodates the views of the stakeholders involved in the process.
 - » It is commendable that the government ended the 22-year wait for the access to information law, however, the government is urged to fine-tune the current Act to reflect the standards prescribed in the African Union Model Law on Access to Information in Africa.
 - » Amend the Zambia Media Council Bill and enact it through a participatory process spearheaded by media practitioners and journalists.
 - » Raise awareness of data protection among the private sector and citizens in light of the rollout of digital IDs and public security information systems.
 - » Develop a comprehensive policy framework for ethical governance of Artificial Intelligence technologies, robotics and other emerging technologies in compliance with international human rights standards.
 - » Take measures to protect journalists, media practitioners, activities and citizens from arbitrary arrests and detention, and unlawful surveillance.
 - » Increase the annual budget allocation towards the growth of ICTs to meet the aspirations of the National ICT Policy 2023 by connecting the underserved communities and improving digital services countrywide.
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Civil Society

- » Continue to play an oversight role and provide the necessary checks and balances in the development and enforcement of human rights-based ICT policy and legal frameworks.
- » Collaborate with the government in the revision of the Cybersecurity and Cybercrimes Act 2021.
- » Coordinate and agree on the CSO and media organisations' position on the provisions of the Zambia Media Council Bill.
- » Collaborate with the government in the development of a national AI strategy.
- » Continue to raise awareness of digital rights and digital inclusion in Zambia.

Private Sector

- » Implement appropriate measures and awareness of data protection to ensure and enhance compliance with the Data Protection Act 2021.
- » Continue to complement government efforts in improving the ICT sector through increased investments that ensure universal, equitable and meaningful access to ICTs.
- » Produce regular transparency reports disclosing their commitment to upholding human rights in line with the UN Guiding Principles on Business and Human Rights.

Academia

- » Conduct more research on digital rights and digital inclusion including studies on the impact and development of Artificial Intelligence and emerging technologies to inform the development of various ICT-related strategies and policies.
 - » Contribute to monitoring and documenting digital rights and inclusion developments in Zambia.
-



Zimbabwe

EXECUTIVE SUMMARY

The growing internet penetration in Zimbabwe has led to rising discourse online and efforts to govern and restrict the cyber environment. This report evaluates the state of digital rights and inclusion in Zimbabwe and the attendant barriers to enjoying digital rights. To ensure evidence-based information on Zimbabwe's digital rights landscape in 2023, the research assessment involved a comprehensive desk review examining relevant documents such as country reports, demographic datasets, digital rights situation analyses, legislation and national report assessments. The research findings developed a comprehensive report with valuable and reliable information on Zimbabwe's digital rights gaps and progress in 2023. This report is significant as it seeks to demonstrate the state of digital rights in Zimbabwe and make recommendations for policies and actions by civil society and government. The report will inform evidence-based interventions centred on improving access and use of the internet in Zimbabwe.

The year under review was characterised by the enactment of contested¹¹¹¹ laws such as the Criminal Law (Codification and Reform) Amendment Act (no. 10 of 2023) with repressive patriotism provisions. During the reporting period, Zimbabwe conducted its general elections in August 2023, and the digital space was marred by disruptions that violated the general public's access to the

Internet. This is notwithstanding civil society organisations and individuals pushing back against digital rights violations. During the electoral year, Zimbabwe's internet landscape became a hive of information disorders peddled by both the ruling party and opposition supporters. Information disorders limit the rights of the electorate to access credible information. The report discusses Zimbabwe's strides in data protection and cybersecurity, providing evidence of the work being conducted by the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) which was bestowed the powers of the data protection authority. The report makes reference to the enactment of the Data Protection Act in December 2021 and how POTRAZ has been conducting stakeholder meetings to raise awareness of the Act and subsequent measures. The report further discusses the Universal Service Fund (USF) and outlines the challenges that the fund experiences, the progress achieved and makes recommendations for the governing of the USF. Overall, the report takes a deep dive into three thematic areas, which include internet access and disruptions, the USF and data protection and cybersecurity.

Introduction

Zimbabwe's 2022 Population and Housing Report¹¹¹² reveals that Zimbabwe has 15,178,957 people, with geographical data showing land area as 390,757 square meters. Human rights are guaranteed by the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (Act No. 1 of 2013)¹¹¹³. According to Freedom House's Freedom in the World 2023 rankings, which provide numerical rankings and descriptive text on political rights and civil liberties, Zimbabwe's Global Freedom Score is pegged at 28/100, a rating that shows that the country is not free. Its Internet Freedom Score is 51/100 showing that it is partly free¹¹¹⁴. Moreover, despite the enactment of the Cyber and Data Protection Act in 2021, Zimbabwe has not yet ratified the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention).

In 2021, Zimbabwe adopted a National Development Strategy (NDS1)¹¹¹⁵, which prioritises the use of ICT for the improvement of the digital economy. Through the strategy, the government aims to entrench ICTs across all national development strategies to achieve universal access by 2030. The government set targets to increase the internet penetration rate from 59.1% in 2020 to 75.4% by 2025 and increase the mobile penetration rate from 94.2% to 100% by 2025. This is despite independent data that shows minimal percentages of people with access to the Internet, as will be outlined in the report.

1112 Zimbabwe National Statistics Agency (ZIMSTAT) 'Zimbabwe 2022 Housing and Census Report' https://www.zimstat.co.zw/wp-content/uploads/Demography/Census/2022_PHC_Report_27012023_Final.pdf (Accessed 7 December 2023).

1113 Parliament of Zimbabwe 'Constitution of Zimbabwe Amendment no 20' <https://parlzim.gov.zw/constitution-of-zimbabwe/> (Accessed on 12 December 2023).

1114 Freedom House 'Freedom in the World 2023 Zimbabwe Report' <https://freedomhouse.org/country/zimbabwe/freedom-world/2023> (Accessed on 9 December 2023).

1115 Veritas Zimbabwe 'National Development Strategy' https://www.veritaszim.net/sites/veritas_d/files/NDS.pdf (Accessed on 10 December 2023).

Internet Access

Zimbabwe's internet penetration rate is 34.8% and POTRAZ's second-quarter report of 2022¹¹¹⁶ forecasts that the mobile penetration rate is expected to increase to 75.4 % by 2025. According to the POTRAZ third quarter report of 2023¹¹¹⁷, the internet penetration rate increased by 4.9% to reach 70.1% from 65.2%. While official figures from POTRAZ reflect a high percentage, independent researchers note that internet penetration stands at 34.8%¹¹¹⁸ of the 16.49 million population. In the third quarter of 2023, mobile subscriptions stood at over 14 million, translating to a mobile penetration rate of 97.5% from 91.9% recorded in the second quarter of 2023. Considering these statistics show a growth in mobile penetration in Zimbabwe, access to quality internet in remote areas is limited, with approximately 31% of Zimbabwe's primary and secondary schools having access to the internet¹¹¹⁹. Median Country Internet speeds for mobile released by Ookla's Speedtest Global Index¹¹²⁰ in November show that the average download speed is 32.41Mbps, an increase from 10.88 Mbps in the same time in 2022, upload speed is 14.95 Mbps, an increase from 6.06 Mbps. To handle any online activity, fast download speeds should reach at least 100Mbps, and upload speeds should be at least 10Mbps.

In March 2023, following a call issued by the International Telecommunications Union for submissions of policy makers' views, ideas and experiences, under the overall theme of "Regulatory and economic incentives for an inclusive sustainable digital future", POTRAZ submitted¹¹²¹ that it sees the adoption of novel proposals which include the use of free spectrum in underserved areas to attract investors of infrastructure as a gateway for encouraging the private sector to continue investing in rural, isolated, and non-profitable areas. In this regard, the submission by POTRAZ indicated developments that have been undertaken by the regulator which include allowing the refarming of the 900MHz spectrum to be deployed as U900 for the provision of broadband networks in rural and remote areas. In low to middle-income countries globally, mobile operators are shifting from 900MHz to U900¹¹²² in order to boost mobile broadband coverage, ramp up user experience and accelerate return on investment. POTRAZ indicated that this shift will enable rural areas to be at least covered by a 3G network. 800MHz is also reposed for 4G/LTE deployment, thereby allowing LTE to be accessed in rural areas and work towards repossession of 700MHz is underway.

Internet disruptions

Digital rights were restricted in Zimbabwe at the height of elections when the Internet was throttled, slowing down internet speeds for mobile network companies such as Econet, NetOne, TelOne, Telecel, and the Liquid technology company. The throttling of the Internet limited access

1116 Postal and Telecommunication Regulatory Authority of Zimbabwe (2023) 'Second Quarter Abridged Sector Performance Report' <http://www.potraz.gov.zw/wp-content/uploads/2022/10/2022-Second-Quarter-Abridged-Sector-Performance-Report.pdf> (Accessed on 14 December 2023).

1117 Postal and Telecommunications Regulatory Authority of Zimbabwe 'POTRAZ Third Quarter Sector Performance Report' <http://www.potraz.gov.zw/wp-content/uploads/2024/01/POTRAZ-Sector-Performance-Report-3rd-Quarter-2023.pdf> (Accessed on 18 January 2024)

1118 Data Reportal 'Digital 2023: Zimbabwe' <https://datareportal.com/reports/digital-2023-zimbabwe> (Accessed on 7 December 2023).

1119 Giga.Global 'Sub Saharan Africa Zimbabwe Two Pager' <https://s41713.pcdn.co/wp-content/uploads/2020/09/Zimbabwe-Giga-2pager.pdf> (Accessed on 14 December 2023).

1120 Speedtest Global Index 'Speedtest Global Index' <https://www.speedtest.net/global-index/zimbabwe#fixed> (Accessed on 14 January 2024)

1121 International Telecommunications Union 'Contribution from POTRAZ- Zimbabwe GSR-23 Best Practice Guidelines Consultation' https://www.itu.int/itu-d/meetings/gsr-23/wp-content/uploads/sites/20/2023/03/GSR-23_Contribution_POTRAZ-Zimbabwe.pdf (Accessed on 5 December 2023).

1122 Huawei 'Industry Perspective' <https://carrier.huawei.com/en/trends-and-insights/emsite/racing-ahead-with-u900> (Accessed on 12 December 2023).

to information to at least 5.74 million who have internet access in Zimbabwe¹¹²³. A Netblocks report¹¹²⁴ revealed that internet service was degraded in Zimbabwe on the eve of the elections. Access to platforms such as Twitter, Instagram, YouTube, and Facebook was limited, thus depriving the general public of much-needed information on the eve of the election.

Electricity disruptions impeded internet accessibility in urban areas. Several internet freedoms remained of concern, and hyperinflation in Zimbabwe limited the public's ability to pay for internet services. Zimbabwe's inflation stood at 229% in the first quarter of 2023¹¹²⁵. As a result, mobile telecommunications providers announced increases in the cost of data, sms and voice bundles. Econet, one of the major telecommunications companies, had their rates pegged at ZWL\$18,557¹¹²⁶ which was equivalent to US\$ 20,¹¹²⁷ to get 8GB valid for 30 days in February 2023. In this period, telecommunications companies designed bundled data packages for the general public, offering internet data alongside other essential services like voice calls thus allowing the public to save costs.

Freedom of Expression and Media Freedoms

On 14 July 2023, the Parliament and the President of Zimbabwe enacted into law the Criminal Law (Codification and Reform) Amendment Act (no. 10 of 2023)¹¹²⁸ commonly referred to as the "Patriotic Bill," which several United Nations mandate holders condemned, on the basis of the adverse impacts of the provisions on human rights¹¹²⁹. The Act is overly broad and may have negative impacts on particular groups, on due process, on the right to liberty and security of persons, as well as on the exercise of freedom of opinion and expression, and freedom of peaceful assembly and of association. The Act was flagged¹¹³⁰ by international human rights organisations for its potential to limit civic participation and result in a crackdown on Zimbabwean nationals' freedom of expression, assembly and association.

In 2023, journalists and ordinary users faced arrests and threats for their online activities. On January 18, 2023, police in Masvingo arrested¹¹³¹ journalist Garikai Mafirakureva for allegedly publishing false information. According to the Criminal Law (Codification and Reform Act)¹¹³², publishing false

1123 Data Reportal 'Digital 2023: Zimbabwe' <https://datareportal.com/reports/digital-2023-zimbabwe> (Accessed on 7 December 2023).

1124 Netblocks 'X-@netblocks' https://twitter.com/netblocks/status/1693997476691558644?s=46&t=M4_z9pT4YSEqFxZSt3wF-MA. (Accessed on 20 December 2023).

1125 The Chronicle 'Zimbabwe annual monthly inflation rates tumble' <https://www.chronicle.co.zw/zimbabwe-annual-monthly-inflation-rates-tumble/> (Accessed on 17 December 2023)

1126 The Chronicle 'Econet increases Data, sms bundle tariffs' <https://www.chronicle.co.zw/econet-increases-data-sms-bundle-tariffs/> (Accessed on 14 December 2023)

1127 Reserve Bank of Zimbabwe 'Rates_28_February_2023-Interbank Rate' https://www.rbz.co.zw/documents/Exchange_Rates/2023/February/RATES_28_FEBRUARY_2023-INTERBANK_RATE.pdf (Accessed on 17 December 2023).

1128 Law 'Criminal Law (Codification and Reform) Amendment Act 2023' <https://www.law.co.zw/download/criminal-law-codification-and-reform-amendment-act-2023/> (Accessed on 16 December 2023).

1129 Office of the High Commissioner on Human Rights 'Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders' <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28304> (Accessed on December 16 2023).

1130 Amnesty International 'Zimbabwe: President's signing of the 'Patriotic Bill' is a grave assault on Civic Space' <https://www.amnesty.org/en/latest/news/2023/06/zimbabwe-parliaments-passing-of-patriotic-bill-is-a-grave-assault-on-the-human-rights/> (Accessed on 19 December 2023).

1131 Media Institute for Southern Africa 'Editor to appear in court on charges of publishing false information' https://zimbabwe.misa.org/media_violations/editor-to-appear-in-court-on-charges-of-publishing-false-information/ (Accessed on 23 December 2023).

1132 The UN Refugee Agency 'Zimbabwe: Criminal Law (Codification and Reform) Act' <https://www.refworld.org/legal/legislation/>

information can carry a maximum sentence of twenty years in prison and a fine¹¹³³ of up to up to level 14. As per the SI 209, the fine is ZWL\$500 000. When the Statutory Instrument 209 of 2021 of the Criminal Law (Codification and Reform) (Standard Scale of Fines) Notice was gazetted, the fine was equal to US\$4,587¹¹³⁴. On February 22, 2023, the Minister of Justice, Legal and Parliamentary Affairs published a new Standard Scale of Fines¹¹³⁵ Notice in Statutory Instrument 14A of 2023, wherein publishing false information can carry a maximum fine of up to level 14 which amounts to US\$5, 000.

In May 2023, the Zimbabwe High Court acquitted¹¹³⁶ journalist Hopewell Chin'ono on all charges of obstructing justice that were laid against him for posting critical content on Twitter in 2022. The positive development marginally safeguarded free expression. However, this was not the case for the then Citizens Coalition for Change (CCC) opposition party spokesperson Fadzayi Mahere, who was convicted of publishing falsehoods following a video post she made on Twitter (now X). Mahere was ordered to pay a \$US500 fine or serve three months' imprisonment. Mahere later appealed the judgement.

On election day, which was held on August 23, 2023, at least 41 civil society actors were raided¹¹³⁷ by Zimbabwean authorities of their digital technologies, which comprised 93 smartphones, 38 laptops, two smartwatches, two modems, one Wi-Fi router, one external drive and other digital gadgets. Digital rights activists in the Net Rights Coalition condemned the arrests¹¹³⁸, emphasising that the arrests will stifle free expression and access to information on elections, and present opportunities for privacy breaches and state surveillance.

During the period under review, the United States of America issued a statement¹¹³⁹ citing that in accordance with section 212(a)(3)(C) of the Immigration and Nationality Act, individuals believed to be responsible for, or complicit in, undermining democracy in Zimbabwe will now be subjected to visa restrictions. These restrictions will also affect family members of such persons. The statement reinforces free expression and indirectly encourages the general public to speak out against human rights abuses in Zimbabwe.

Information disorders and hate speech

In the run-up to the 2023 general elections, which were held in August 2023, the online space in Zimbabwe became fertile ground for state and non-state-sponsored disinformation, particularly on social media platforms like WhatsApp. In a rising shift from previous years where disinformation

natlegbod/2005/en/98050 (Accessed on 20 December 2023).

1133 Zimbabwe Revenue Authority (2021) <https://www.zimra.co.zw/legislation/category/47-statutory-instruments-2021?download=1309:statutory-instrument-209-of-2021-criminal-law-codification-and-reform-standard-scale-of-fines-notice-2021> (Accessed on 22 December 2023).

1134 Reserve Bank of Zimbabwe 'Rates_31_December_2023-Interbank Rate' https://www.rbz.co.zw/documents/Exchange_Rates/2021/December/Rates-31-December--2021.pdf

1135 Veritas "SI 2023-014A Criminal Law (Codification and Reform) (Standard Scale of Fines) Notice, 2023" <https://www.veritaszim.net/node/6162> (Accessed on 20 February 2024)

1136 Judicial Service Commission "Judgements HH 294-23 HC 8485/22 Ref CRB No. ACC 235/20" <https://www.jsc.org.zw/upload/Judgements/High%20Court/Harare/2023/HH%20294-23.pdf> (Accessed on 20 December 2023).

1137 BBC 'Zimbabwe election: Poll monitors arrested amid election' <https://www.bbc.com/news/world-africa-66604659> (Accessed on 18 December 2023)

1138 Paradigm Initiative 'Press Release: The Net Rights Coalition condemns raids of digital technologies of civil society actors in Zimbabwe during the 2023 elections' <https://paradigmhq.org/press-release-the-netrights-coalition-condemns-raids-of-digital-technologies-of-civil-society-actors-in-zimbabwe-during-the-2023-elections/> (Accessed on 21 December 2023)

1139 U.S Department of State 'Visa Restriction Policy for Undermining Democracy in Zimbabwe' https://www.state.gov/vi-sa-restriction-policy-for-undermining-democracy-in-zimbabwe/?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news (Accessed on 20 December 2023)

was more prominent on platforms such as Twitter (X) and Facebook, the 2023 election period was characterised by fake videos and images which moved at lighting speed on the WhatsApp platform. The electorate had no agency to effectively fact-check, a practice that should be fostered before the next Zimbabwe elections in 2028. On election day, 23 August, the country woke up to messages encouraging the electorate to boycott voting purporting to have come from the CCC opposition party leader Nelson Chamisa. The posters, which were scattered across different major cities and distributed via WhatsApp, read “Do not vote, the election is rigged” and were branded with CCC opposition party symbols and colours, with a picture of the party’s President displayed on the poster, in true election poster fashion, making the narrative believable.

The Zimbabwe Electoral Commission (ZEC) initiated a disinformation campaign following a series of information disorders that implicated the Electoral Management Body. Among the many disinformation narratives, social media, in particular, WhatsApp, was awash with a press statement¹¹⁴⁰ in which ZEC was purported to have concluded that the elections were null and void.

The Universal Service Fund

Zimbabwe introduced the Universal Service Fund (USF) by establishing section 73 of the Postal and Telecommunications Act (Chapter 12:05)] of 2000. Section 74(c) of the Postal Telecommunications Act (PTA) stipulates its purpose is to finance or assist in financing the extension of postal and telecommunication services to under-served areas and community centres within or outside such areas. Funds are collected from holders of licences in terms of the Act, including telecommunications operators.

Submitting its contribution for the GSR-23 best practice guidelines consultation to the International Telecommunications Union (ITU), POTRAZ indicated that it saw the adoption of novel proposals, which include extending Universal Service Fund programmes to platform-based businesses as a gateway to encouraging the private sector to continue investing in rural, isolated, and non-profitable areas. In the report, POTRAZ highlighted that the Regulator also employed Capital Expenditure (CAPEX) intervention initiatives through the usage of USF towards the purchase of Customer Premises Equipment (CPEs) and meeting network installation costs in rural areas.

In 2023, POTRAZ reported¹¹⁴¹ that it had funded the relocation of 11 towers in order to improve connectivity for underserved communities. Network operators such as Econet and NetOne relocated 10 towers and one tower, respectively. In June 2023, the Government of Zimbabwe released Statutory Instrument (SI) 110 of 2023, Postal and Telecommunications (Postal Services) (Amendment) Regulations, 2023 (No. 3)¹¹⁴² which now compels regional, domestic, intra-city, and intercity couriers to pay annual contributions of two per centum of monthly gross turnover as a direct contribution to the USF payable monthly on or before the 10th day of the following month.

On 16 June 2023, the Acting Auditor General presented the report of the Auditor-General for the financial year ended December 31, 2022, on State-Owned Enterprises and Parastatals¹¹⁴³ to the

1140 X - Zimbabwe Electoral Commission '@ZECZim post' <https://x.com/zeczim/status/1712837826524348474?s=46> (Accessed on 19 December 2023).

1141 Sunday Mail 'POTRAZ facilitates relocation of 11 network towers' <https://www.sundaymail.co.zw/new-potraz-facilitates-relocation-of-11-network-towers> (Accessed on 19 December 2023).

1142 Judicial Service Commission 'Statutory Instrument 110 of 2023: Postal and Telecommunications (Postal Services) (Amendment) Regulations, 2023 (No. 3)' [https://www.jsc.org.zw/upload/Gazette/S.I.%20110%20of%202023%20Postal%20and%20Telecommunications%20\(Postal%20Services\)%20\(Amendment\)%20Norm.pdf](https://www.jsc.org.zw/upload/Gazette/S.I.%20110%20of%202023%20Postal%20and%20Telecommunications%20(Postal%20Services)%20(Amendment)%20Norm.pdf) (Accessed on 22 December 2023).

1143 Office of the Auditor General 'Report of the Auditor-General for the financial year ended December 31, 2022 on state-owned enterprises and Parastatals' <https://www.auditorgeneral.gov.zw/phocadownload/AG%20REPORT%202022%20ON%20STATE%20-ENTERPRISES%20AND%20PARASTATALS.pdf> (Accessed on 20 December 2023).

Parliament of Zimbabwe. The report provided an audited account of the Universal Services Fund as at December 2021. The report's findings on Asset Management showed that the Fund's property and equipment at some Communication Information Centres (CICs) were not being used for the purpose of providing information to the members of the public and that the USF did not have adequate security over its assets at the CICs. This presents a gross deprivation of the right for under-served communities to access the Internet. This is also likely to result in misappropriation of the Fund's assets and financial loss due to loss of assets as there is inadequate security over the assets. The Auditor General highlighted that the USF coordinators have submitted 2022 financial statements, and audits are in progress and being finalised. Up-to-date information on the USF in Zimbabwe is not readily available and the regulatory authority should make concerted efforts to timeously and publicly avail this information to help the public track and monitor the use of the resources in their respective communities.

Data Protection and Cybersecurity

In 2021, Zimbabwe enacted the Cyber and Data Protection Act¹¹⁴⁴, which establishes baseline protections for personal information. The law requires data controllers to collect, use, and disclose personal information in a fair and lawful manner. In a push to operationalise the Data Protection Act in 2023, POTRAZ, in its sensitisation meetings, invited the general public to provide comments on the Draft Cyber and Data Protection Regulations, which were released in November 2022. Once approved, the regulations will facilitate the enforcement of the Cyber and Data Protection Act.

POTRAZ conducted a series of sensitisation meetings on the Cyber and Data Protection Act. The meetings targeted the general public and data controllers and were held online. Physical sensitisation meetings were conducted in Harare in June 2023. Between June 26 and August 12, 2023, POTRAZ conducted a study¹¹⁴⁵ across all 10 provinces of Zimbabwe on data privacy opinions and experiences. The study revealed that only 25% of the respondents were aware of the risks posed by 'free' online services to personal data privacy and security, and 82% reported that they did not understand laws around the use of personal information. The data also revealed that 47% are experiencing a rise in unsolicited marketing communications. 22% experienced misuse of their personal data at least once, and 72% reported that they did not know who to seek help from in case of data violations. Although the law provides for data breach notification, the data shows that there is a need for the government to raise awareness of avenues for reporting data violations.

Despite the existence of the Cyber and Data Protection Act, in April 2023, the general public received unsolicited geo-targeted messages from the ruling party - Zimbabwe African National Union-Patriotic Front (ZANU-PF), calling for the incumbent President's re-election and allaying fears of data breaches in voter data.

1144 Veritas Zim 'Cyber and Data Protection Act [Chapter 12:07] (No. 5 of 2021)' <https://www.veritaszim.net/node/5522> (Accessed on 19 December 2023).

1145 Postal and Telecommunications Regulatory Authority of Zimbabwe 'Data Privacy Opinions and Experiences' <https://www.potraz.gov.zw/wp-content/uploads/2023/11/Data-Privacy-Opinions-Experiences-Infographic.pdf> (Accessed on 21 December 2023).

▶ Conclusion & Recommendations

Conclusion

Zimbabwe's internet freedom rankings are not impressive, and the government of Zimbabwe should take the necessary steps and strategies to promote, safeguard, and protect human rights online adequately. The government of Zimbabwe should urgently adopt data protection regulations to set the tone for implementing the Data Protection Act. The Regulatory Authority should prioritise providing information on the Universal Service Fund to ensure transparency on its use. The Regulatory Authority should also publish regular reports and avail them for public scrutiny.

Recommendations

Government

- » The Universal Service Fund should have a monitoring mechanism to ensure that the assets distributed to Community Information Centres (CICs) are used for the intended purposes and the approved beneficiaries.
 - » The security of assets at CICs should be enhanced to avoid loss or misappropriation of assets.
 - » Enable open and secure access to the Internet and free flow of information before, during and after elections without throttling internet speeds.
 - » On CICs that are handed over to the Zimbabwe Post (ZimPost), the onus to ensure that all assets are properly utilised and accounted for should equally rest with the POTRAZ and bi-annual spot checks should be conducted by the regulator.
 - » Auditor General's reports should be current so that positive changes can be implemented and not overtaken by events.
 - » Conducting sensitisation meetings on enacted laws should be decentralised to smaller towns and rural areas where most of the population resides.
 - » Raise awareness on avenues for reporting data violations.
 - » Allocation of resources / developing private-public partnerships to improve internet infrastructure in rural areas.
 - » Address power outages that impact internet services.
 - » Safeguard democracy and promote free expression by desisting from arresting journalists or individuals who critique the government online.
 - » Begin implementing the Cyber Data Protection Act and ensure compliance by all data controllers.
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- » Create regulatory sandboxes to allow the private sector to develop human rights-respecting technologies.
 - » Allow for new entrants in the broadband provision sector to enable high competition and reduced prices.

Private Sector

- » Develop private-public partnerships to support internet access in remote areas and improve internet speed to ensure meaningful connectivity.
- » Ensure that the development of new technology undergoes human rights impact assessments.
- » Provide affordable internet to all.

Civil Society Organisations

- » Engage in advocacy initiatives to compel the government to provide quality internet access.
 - » Monitor digital rights violations (surveillance, information disorders, attacks on online journalists and bloggers, internet shutdowns) and advocate for the respect of human rights.
 - » Conduct campaigns to counter disinformation and hate speech online.
 - » Conduct awareness campaigns on digital rights.
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