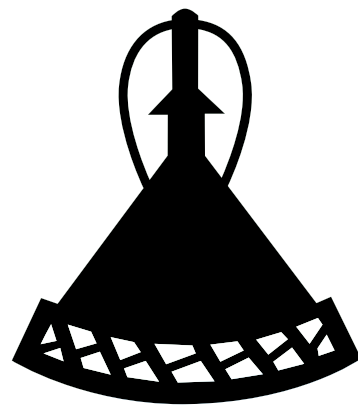


# LONDA 2023

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT



## LESOTHO

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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.<sup>444</sup> With 30 360km<sup>2</sup> in land area, the country's Gross Domestic Product (GDP) is estimated at 2.3 million USD.<sup>445</sup> 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.<sup>446</sup> 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.<sup>447</sup> 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.<sup>448</sup>

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.<sup>449</sup> 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.<sup>450</sup> 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.<sup>451</sup> 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](https://adsdatabase.ohchr.org/IssueLibrary/LESOTHO_Constitution.pdf) (accessed 5th December 2023).

447 Section 135 (1) (a) of the Constitution of Lesotho (n3).

448 Hooilo '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](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.<sup>452</sup> 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.<sup>453</sup> 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.<sup>454</sup> In 2018 Vodacom launched 5G network coverage to pilot offering connection services with high bandwidth similar to fixed broadband or fibre.<sup>455</sup> Fixed broadband is available in the urban area with low subscriptions of about 0.236% of the population.<sup>456</sup> 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.<sup>457</sup> Companies such as Leo and Comnet offer wireless and fibre internet connection services only without prepaid services.<sup>458</sup>

Using the Internet Outage Detection and Analysis (IODA) tool, no irregular internet connection was detected for the greater part of the year 2023.<sup>459</sup> However, on June 16, 2023, Vodacom Lesotho experienced a service outage for four hours.<sup>460</sup> According to the Lesotho Communications Authority,<sup>461</sup> 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.<sup>462</sup> 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> 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](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).<sup>463</sup> The general monthly minimum wage in Lesotho as of 2023 is 2005 LSL (approximately USD 111.38)<sup>464</sup> with smartphones being the most frequently used devices to connect to the Internet.<sup>465</sup> The most affordable smartphone in Lesotho costs 699 LSL (approximately USD 45.90 USD).<sup>466</sup> This implies that the most affordable smartphone would cost a minimum wage worker between 41.2% to 43.1% of their monthly outcome.<sup>467</sup>

## 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.<sup>468</sup> In 2018, the case of Peta v Minister of Law, Constitutional Affairs and Human Rights<sup>469</sup> 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.<sup>470</sup> 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.<sup>471</sup> 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.<sup>472</sup>

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'.<sup>473</sup> 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/lc/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/lc/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.<sup>474</sup> 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.<sup>475</sup> In 2021, the National Reforms Authority (NRA) adopted a National Media Policy and a National Code of Conduct, Behaviour and Practice.<sup>476</sup> The National Assembly later adopted the policy in November 2021.<sup>477</sup> 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.<sup>478</sup>

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.<sup>479</sup> 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.<sup>480</sup> 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 Lebese Molati was detained and tortured by police.<sup>481</sup>

## 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.<sup>482</sup> 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.<sup>483</sup> 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.<sup>484</sup> 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.<sup>485</sup> Not availing other gender markers in identification documents perpetuates this violation and often results in exclusion.<sup>486</sup>

## 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 Commission<sup>487</sup> 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’.<sup>488</sup> This Act stipulates that other sector-specific legislations which offer safeguards on personal information shall prevail.<sup>489</sup> 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.<sup>490</sup> 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.<sup>491</sup> The Act additionally prohibits the publishing or communication of such information except under specific conditions.<sup>492</sup> 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.<sup>493</sup>

The Communication Act, 2012 stipulates that the Lesotho Communications Authority (LCA) may require communication entities to protect their user information.<sup>494</sup> 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%.<sup>495</sup> In terms of basic digital skills for youth, Lesotho only reached half of the set target by 30%.<sup>496</sup> Additionally, only 26% of Micro- Small-Medium Sized Enterprise (MSMEs) are connected to the Internet.<sup>497</sup> In terms of infrastructure, there are 600 network towers across Lesotho.<sup>498</sup> In an attempt to close the digital divide, the government intends to build an additional 48 towers,<sup>499</sup> 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.<sup>500</sup>

## 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.<sup>501</sup> 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.<sup>502</sup> 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.<sup>503</sup>

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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

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### 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.

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### 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.
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**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.

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**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.
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