



**DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT**

**SOUTH AFRICA**  
**COUNTRY REPORT**

**2024**



## Executive Summary

In 2024, South Africa held its national elections, the outcome of which resulted in a coalition government known as the Government of National Unity (GNU). The GNU comprises 10 political parties, led by President Cyril Ramaphosa of the African National Congress. The GNU presents an opportunity for the government to engage across party lines and be more broadly representative. However, the effectiveness of the GNU given underlying technical and bureaucratic tensions remains to be seen.<sup>634</sup>

From a digital rights perspective, there have been several events which highlight specific challenges preventing their full realisation in South Africa. Although the internet penetration rate is estimated to be 74 percent,<sup>635</sup> the digital divide persists across various socio-economic factors. Further, there are concerns around the increase in online gender-based violence (OGBV), particularly against women journalists and human rights defenders. There is also a notable gap in legislation that regulates government surveillance. While South Africa has strong data protection and access to information legal frameworks, the implementation and enforcement thereof may be problematic given personnel and financial constraints in the Information Regulator.

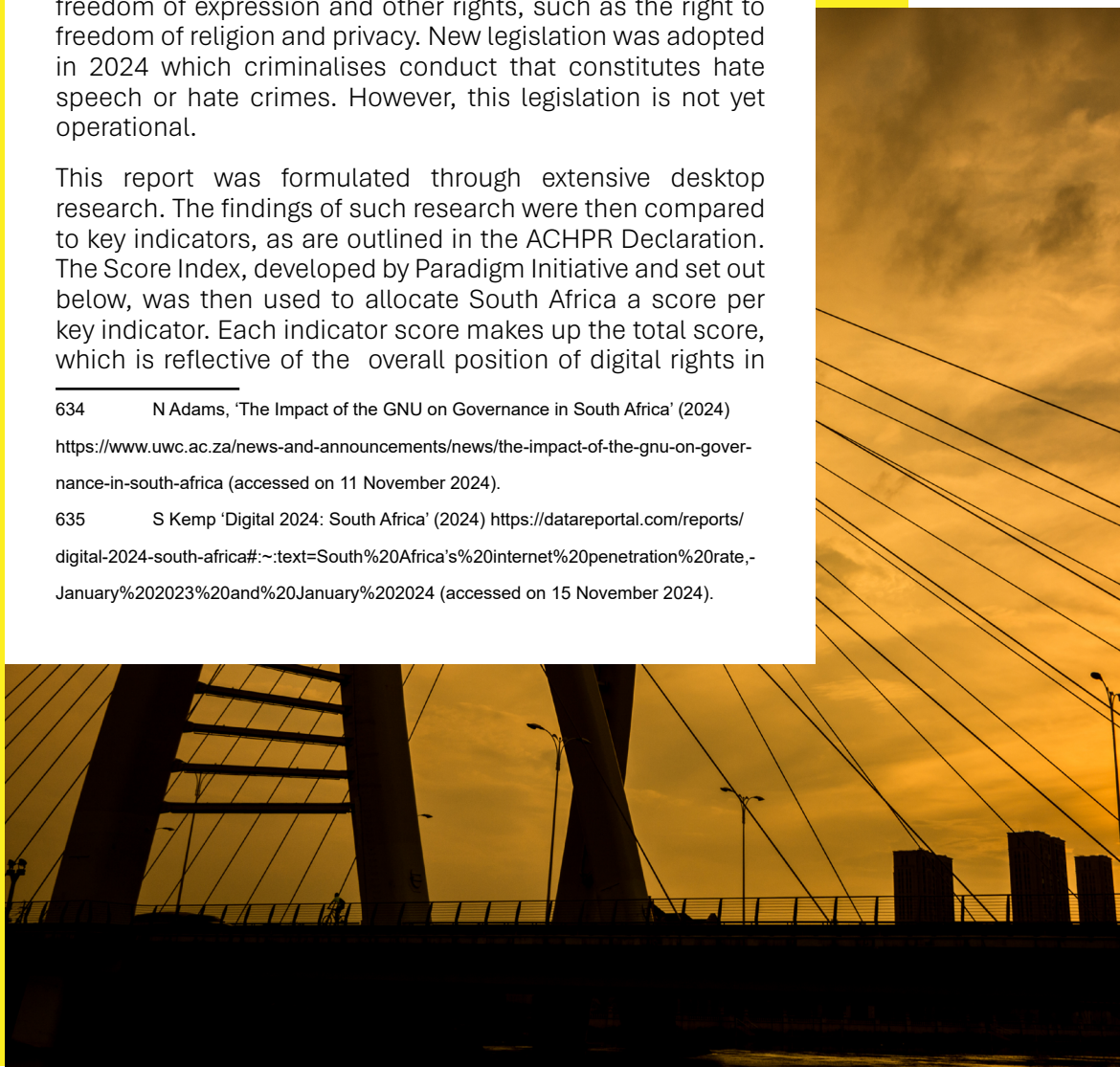
There has also been a number of positive judicial developments, particularly in the intersection between freedom of expression and other rights, such as the right to freedom of religion and privacy. New legislation was adopted in 2024 which criminalises conduct that constitutes hate speech or hate crimes. However, this legislation is not yet operational.

This report was formulated through extensive desktop research. The findings of such research were then compared to key indicators, as are outlined in the ACHPR Declaration. The Score Index, developed by Paradigm Initiative and set out below, was then used to allocate South Africa a score per key indicator. Each indicator score makes up the total score, which is reflective of the overall position of digital rights in

<sup>634</sup> N Adams, 'The Impact of the GNU on Governance in South Africa' (2024)

<https://www.uwc.ac.za/news-and-announcements/news/the-impact-of-the-gnu-on-governance-in-south-africa> (accessed on 11 November 2024).

<sup>635</sup> S Kemp 'Digital 2024: South Africa' (2024) <https://datareportal.com/reports/digital-2024-south-africa#:~:text=South%20Africa's%20internet%20penetration%20rate,-January%202023%20and%20January%202024> (accessed on 15 November 2024).



South Africa.

Based on the aforementioned developments and the findings of the Score Index, the report concludes with recommendations for the government, the private sector, civil society and the media to further protect digital rights. The main takeaway is that all actors need to play a role in developing ICT infrastructure in rural areas, strengthening digital literacy, and urgently addressing OGBV.

## Introduction

In 2024, there were notable events in South Africa which shed light on the state of digital rights in the country. As one of Africa's more powerful economies,<sup>636</sup> with a comparatively high internet penetration rate, key decisions by government and industry may influence other African states. However, various barriers to the full realisation of digital rights for all remain. Concerns around the implementation of surveillance legislation, discussed below, as well as the persisting digital divide in terms of access to the internet and digital literacy remain. As such, South Africa has been rated a score of 43 out of 60 as per TheScore Index.<sup>637</sup>

636 Statista, 'Countries with the highest Gross Domestic Product (GDP) per capita in Africa in 2024' (2024) <https://www.statista.com/statistics/1121014/gdp-per-capita-of-african-countries/> (accessed on 10 December 2024).

637 See below page 10.

## Internet access

South Africa has a population of 63.02 million people,<sup>638</sup> 74.7% of which have access to the internet. This constitutes a 0.9% increase from 2023.<sup>639</sup> The majority of users access the internet through mobile devices.<sup>640</sup> Concerns persist regarding the affordability of data, with 1GB of data consuming over 2% of the average monthly income for many.<sup>641</sup> Internet access is almost 20% higher in urban provinces, such as Gauteng, compared to more rural provinces such as Limpopo.<sup>642</sup> It is evident that while a large segment of the population is online, the rural-urban divide and income equality continue to exacerbate unequal access to the internet.<sup>643</sup> This leads to educational and social inequality, and stifles the development of skills needed to compete equally in workplaces and participate in online spaces more generally.<sup>644</sup>

In response, the South African government has rolled out SA Connect, a broadband connectivity project aimed at bringing internet accessibility to more South Africans.<sup>645</sup> Phase 2 of SA Connect was launched in 2024, which aims to connect more than 42 000 government facilities, including schools and health facilities, with broadband services across 8 rural district municipalities.<sup>646</sup>

## Freedom of expression

South Africa's Constitution grants everyone, including the media, the right to freedom of expression.<sup>647</sup> However, section 16(2) limits this right by stating that freedom of expression 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. The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("PEPUDA") gives effect to these rights through its prohibition of hate speech.<sup>648</sup>

## Emergent concerns

During the 2024 election period, there was an increase in misinformation and disinformation on social media regarding the electoral process, parties and candidates, election results, and information intended to undermine the credibility of the Electoral Commission of South Africa, and its commissioners.<sup>649</sup> Further, the elections highlighted an existing trend of online violence against women journalists and human rights defenders. A 2024 study which examined social media activity

638 StatsSA, '2024 Mid-year population estimates' (2024) <https://www.statssa.gov.za/?p=17440#:~:text=South%20Africa's%20mid%20year%20population,by%20Statistics%20South%20Africa%20today> (accessed on 28 October 2024).

639 Datareportal, 'Digital 2024: South Africa' (2024) <https://datareportal.com/reports/digital-2024-south-africa#:~:text=South%20Africa's%20internet%20penetration%20rate,January%202023%20and%20January%202024> (accessed on 28 October 2024).

640 Id.

641 M Dittlake, 'Digital divide deepens: South Africa struggles with high broadband cost' (2024) <https://www.engineerit.co.za/article/digital-divide-deepens-south-africa-struggles-high-broadband-cost> (accessed on 11 November 2024).

642 South African Government, 'Communications: Department of Communications and Digital Technologies' <https://www.gov.za/about-sa/communications-1> (accessed on 11 November 2024).

643 Regent Business School, 'Bridging the Digital Divide in South Africa: Pathways to Inclusive Educational Technology' (2024) <https://regent.ac.za/blog/bridging-the-digital-divide-in-south-africa-pathways-to-inclusive-educational-technology> (accessed on 1 November 2024).

644 Id.

645 L Masia, 'South Africa Connect' (2024) South African Government <https://www.gov.za/blog/south-africa-connect> (accessed 1 November 2024).

646 South African Government News Agency, 'Mashatile to launch second phase of wifi connectivity project in Limpopo' (2024) <https://www.sanews.gov.za/south-africa/mashatile-launch-second-phase-wi-fi-connectivity-project-limpopo> (accessed on 1 November 2024).

647 Section 16(1) Constitution of the Republic of South Africa, 1996 <https://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf> (accessed on 11 November 2024).

648 Section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 <https://www.justice.gov.za/legislation/acts/2000-004.pdf> (accessed on 11 November 2024).

649 Media Monitoring Africa 'Tracking Trends from Real411: Impact of Mis- and Disinformation in the 2024 National and Provincial Elections in South Africa' (2024) [https://www.mediamonitoringafrica.org/wp-content/uploads/2024/06/240531-MMA-Real411-interim-elections-report-AS\\_edits-clean.pdf](https://www.mediamonitoringafrica.org/wp-content/uploads/2024/06/240531-MMA-Real411-interim-elections-report-AS_edits-clean.pdf) (accessed on 28 October 2024).

directed towards female journalists showed that social media users and bot accounts abuse, harass and threaten them with a clear intent to silence and suppress their crucial reporting.<sup>650</sup>

## Judicial developments

There have been several judicial developments regarding freedom of expression and online privacy in South Africa. In 2024, the Constitutional Court brought finality to the matter of *Botha v Smuts* [2024] ZACC 2. In this matter, Smuts posted Botha's personal information – such as the location of his farm, contact details, and home address – on Facebook in an effort to expose animal trapping practices which were being used on his farm. The Court ordered that the information relevant to Botha's home address must be deleted from the Facebook post, but that Botha did not enjoy a reasonable expectation of privacy in respect of the information regarding his ownership and control of the farm.<sup>651</sup> The court decided that the right to privacy prevailed over freedom of expression, promoting the protection of personal data.

South African courts have also been grappling with the distinction between public and private spaces in the context of social media, and specifically on WhatsApp groups. In *South African Human Rights Commission v Lagardien* (2023/2391), the Equality Court is tasked with deciding whether speech made on a WhatsApp group amounts to hate speech in terms of PEPUDA. In assessing this, the Court will need to consider the realms of public and private communications.<sup>652</sup> The judgment in this case is still pending.

## Legislative developments

In May of 2024, the President assented to the Preventing and Combating of Hate Crimes and Hate Speech Act ("the Hate Speech Act"),<sup>653</sup> which criminalises certain conduct that constitutes hate speech or hate crimes.<sup>654</sup> PEPUDA and the Hate Speech Act substantially prohibit the same conduct. Therefore, one could face a civil sanction in terms of PEPUDA and criminal sanction in terms of the Hate Speech Act for the same conduct. Some civil society actors regard this as unnecessary and disproportionate.<sup>655</sup> At this stage, the Hate Speech Act has not yet commenced and is not yet operational as the necessary regulations, guidelines, and administrative structures have not yet been put in place.

## Content moderation and censorship

The Films and Publication Board ("FPB") is responsible, in terms of the Films and Publications Act 65 of 1996, for classifying and licensing films, games and other publications in order to enable informed viewing choices.<sup>656</sup> However, in 2024, the FPB attempted to overstep its legal mandate and act as a content moderator. Ahead of the elections, a group of civil society actors instituted an urgent application against the FPB for an order declaring a notice published by the FPB unconstitutional and having it set aside. This notice sought to widen the definition of prohibited content in the Films and Publications Act to include misinformation and disinformation, criminalise the distribution of misinformation and disinformation, and extend the obligations of internet service providers to report misinformation and disinformation. The Applicants argued that while there is a

650 International Center for Journalists 'The women journalists of South Africa's Daily Maverick: Sexualised, silenced and labelled Satan' (2024) [https://www.icfj.org/sites/default/files/2024-05/ICFJ\\_BigData\\_SouthAfrica\\_DailyMaverick.pdf](https://www.icfj.org/sites/default/files/2024-05/ICFJ_BigData_SouthAfrica_DailyMaverick.pdf) (accessed on 28 October 2024).

651 Botha v Smuts and Another [2024] ZACC 22 <https://www.saflii.org/za/cases/ZACC/2024/22.html> (accessed on 28 October 2024).

652 Power and Associates Inc. 'South African Human Rights Commission v Lagardien' (2024) <https://powerlaw.africa/2024/04/15/south-african-human-rights-commission-v-lagardien/> (accessed on 28 October 2024).

653 The Presidency Republic of South Africa 'President Ramaphosa Assents to Law on the Prevention and Combatting of Hate Crimes and Hate Speech' (2024) <https://www.thepresidency.gov.za/president-ramaphosa-assents-law-prevention-and-combating-hate-crimes-and-hate-speech#:~:text=President%20Cyril%20Ramaphosa%20has%20assented,persons%20who%20commit%20those%20offences> (accessed on 28 October 2024).

654 Prevention and Combatting of Hate Crime and Hate Speech Act 16 of 2023.

655 Media Monitoring Africa 'Submission by Media Monitoring Africa: Prevention and Combatting of Hate Crimes and Hate Speech Bill [B9B-2018]' (2023) <https://www.mediamonitoringafrica.org/wp-content/uploads/2023/06/230523-Media-Monitoring-Africa-Submission-Hate-Speech-Bill-B9B-2018.pdf> (accessed on 28 October 2024).

656 Films and Publications Act 65 of 1996 <https://www.gov.za/documents/films-and-publications-act#:~:text=The%20Films%20and%20Publications%20Act,to%20repeal%20certain%20laws%3B%20and> (accessed on 11 November 2024).



need to lawfully curb misinformation and disinformation, doing so incorrectly would stifle public and political discourse, and have a chilling effect on the free flow of information and ideas. The FPB withdrew the notice following the initiation of the application.<sup>657</sup> While this matter ultimately did not proceed to a Court hearing, it may be viewed as a positive outcome for the nuance that is necessary to effectively regulate misinformation and disinformation.

## Data protection and privacy

The Protection of Personal Information Act 4 of 2013 (POPIA)<sup>658</sup> is South Africa's primary data protection law. It promotes the protection of personal information that is processed by both public and private bodies.<sup>659</sup> It aims to protect individuals' rights to privacy by establishing minimum requirements for the processing of personal information, and by providing certain rights to persons whose personal information is being processed.

The Information Regulator is the body responsible for monitoring and enforcing POPIA.<sup>660</sup> While the Information Regulator is on a positive development trajectory in terms of encouraging compliance, its financial and human resource capacity is limited.<sup>661</sup> The Information Regulator does not have the capacity to effectively monitor POPIA compliance across the country. Accordingly, POPIA is not comprehensively enforced, resulting in many public and private bodies not being POPIA compliant.

## Judicial developments

In October 2024, the Constitutional Court issued directions in the matter brought by Corruption Watch, a non-profit company that works to advance principles of transparency and accountability. Corruption Watch filed its application in November 2023 for an order declaring that Parliament failed to fulfill its constitutional obligation to facilitate reasonable public involvement in its recommendation process to appoint members of the Commission for Gender Equality. One of the drivers of this application is that the public could not give meaningful feedback on the candidates as Parliament did not publish their curricula vitae. In response, Parliament argued that they could not do so as they had to protect the candidate's personal information and privacy in terms of POPIA. The Court, in this pending case, is tasked with clarifying the balance to be struck between protecting personal information and providing enough information to the public in order to enable them to participate meaningfully.<sup>662</sup>

## Online gender-based violence

One of the forms of online gender-based violence (OGBV) is the non-consensual distribution of intimate images (NCDII). While this form of OGBV is criminalised in South Africa by the Cybercrimes Act 19 of 2020, it was not until 2024 that a survivor of NCDII was able to obtain civil damages for the harm that she suffered. In *KS v AM and Another* [2024] ZAGPJHC 1187, the Johannesburg High Court ordered the Respondents to pay the Plaintiff, KS, R3.5 million in damages for the harm that she suffered as a result of NCDII, which they perpetuated through Facebook.<sup>663</sup> This judgment is the first of its kind in South Africa, and is a notable victory for victims and survivors of NCDII in South Africa. Hopefully, this judgment will pave the way for increased accountability for this form

<sup>657</sup> Power and Associates Inc. 'Media Monitoring Africa and Others v Film and Publication Board and Others' (2024) <https://powerlaw.africa/2024/04/12/media-monitoring-africa-and-others-v-film-and-publication-board-and-others/> (accessed on 28 October 2024).

<sup>658</sup> Protection of Personal Information Act 4 of 2013 [https://www.gov.za/sites/default/files/gcis\\_document/201409/3706726-11act4of-2013popi.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/3706726-11act4of-2013popi.pdf) (accessed on 1 November 2024).

<sup>659</sup> Id at preamble.

<sup>660</sup> See the 'About page' of the Information Regulator of South Africa's site here <https://infoeregulator.org.za/> (accessed on 1 November 2024).

<sup>661</sup> The Information Regulator of South Africa, 'Annual Report 2023/24' (2024) [https://infoeregulator.org.za/wp-content/uploads/2020/07/Information-Regulator-Annual-Report-2023\\_25\\_Approved-by-Members\\_Final90.pdf](https://infoeregulator.org.za/wp-content/uploads/2020/07/Information-Regulator-Annual-Report-2023_25_Approved-by-Members_Final90.pdf) (accessed on 4 November 2024).

<sup>662</sup> Power and Associates Inc., 'Corruption Watch (RF) NPC v Speaker of the National Assembly and Others' (2024) <https://powerlaw.africa/2024/10/09/corruption-watch-rf-npc-v-speaker-of-the-national-assembly-and-others/> (accessed on 1 November 2024).

<sup>663</sup> *KS v AM and Another* [2024] ZAGPJHC 1187 <https://www.saflii.org/za/cases/ZAGPJHC/2024/1187.html> (accessed on 10 December 2024).

## Surveillance

The General Intelligence Laws Amendment Bill (GILAB) was passed by the National Council of Provinces in early 2024 and is awaiting the President's signature.<sup>664</sup> GILAB seeks to amend several of South Africa's existing intelligence laws to modernise and strengthen the country's intelligence framework, ensuring that it is effective in handling contemporary security challenges. Despite substantial amendments following the public consultation process, commentators remain concerned about numerous aspects of the Bill. For example, there are concerns that it may be used to threaten journalistic independence and source confidentiality; it does not provide adequate detail on how mass interception will be conducted; and fails to address mismanagement of secret expenditures.<sup>665</sup>

## Access to information

South Africa has a robust access to information legal framework. The right to access information is enshrined in section 32 of the Constitution, and is given effect by the Promotion of Access to Information Act 2 of 2000 ("PAIA"). PAIA provides mechanisms for people to request access to information from state and private bodies.<sup>666</sup> The Information Regulator of South Africa is empowered to monitor and enforce compliance by public and private bodies with PAIA,<sup>667</sup> and in terms of the PAIA Regulations,<sup>668</sup> is mandated to investigate complaints made.<sup>669</sup>

## Concerns

As mentioned in this report, the Information Regulator currently has limited capacity,<sup>670</sup> resulting in a workload that is time-constraining.<sup>671</sup> Consequently, complaint processes have been protracted and there is uncertainty regarding the measures taken in response to non-compliance with PAIA. PAIA sets out certain grounds of refusal which public bodies may rely on to refuse information requests.<sup>672</sup> There appears to be a concerning trend of public bodies incorrectly relying on grounds of refusal, thus undermining the principle that disclosure of information should be the rule, and refusal should be the exception.<sup>673</sup> This frustrates the objectives of PAIA.<sup>674</sup> Further, it demonstrates that there may be poor recordkeeping by public bodies and a lack of accountability.<sup>675</sup>

## AI and emerging technologies

South Africa's Department of Communications and Digital Technologies ("DCDT") published

664 General Intelligence Laws Amendment Bill, 2023 <https://pmg.org.za/bill/1197/> (accessed on 4 November 2024).

665 H Swart and A Harber, 'Despite important gains the new General Intelligence Laws Amendment Bill fails to safeguard against a second state capture' (2024) <https://intelwatch.org.za/2024/04/08/despite-important-gains-the-new-general-intelligence-laws-amendment-bill-fails-to-safeguard-against-a-second-state-capture/> (accessed on 4 November 2024).

666 See sections 18 and 53 of PAIA respectively.

667 Information Regulator of South Africa 'About the Regulator' <https://infoeregulator.org.za/> (accessed on 28 October 2024).

668 Promotion of Access to Information Act, 2000: Regulations Relating to the Promotion of Access to Information, 2021 (2021) <https://www.justice.gov.za/legislation/notices/2021/20210827-gg45057gon757-PAIAreulations.pdf> (accessed on 28 October 2024).

669 Id at chapter 4.

670 Information Regulator of South Africa '2023/2024 Annual Report' (2024) at page 91 [https://static.pmg.org.za/Information\\_Regulator\\_Annual\\_Report\\_2023\\_24\\_Approved\\_by\\_Members\\_Final\\_.pdf](https://static.pmg.org.za/Information_Regulator_Annual_Report_2023_24_Approved_by_Members_Final_.pdf) (accessed on 28 October 2024).

671 Id at page 103.

672 See sections 33 and 62 of PAIA respectively.

673 Timothy Lloyd, 'The Just Energy Transition (JET) in South Africa: Approaches to accessing information and knowledge for transition-affected communities' (2024) [https://climateresilience.africa/wp-content/uploads/2024/06/JET\\_in-south\\_africa\\_v8.pdf](https://climateresilience.africa/wp-content/uploads/2024/06/JET_in-south_africa_v8.pdf) (accessed on 1 November 2024) at page 72.

674 Id.

675 Id.

a National Artificial Intelligence Policy Framework in August 2024 (“the Framework”).<sup>676</sup> The Framework constitutes the first step in developing a national AI policy, and aims to “promote the integration of AI technologies to drive economic growth, enhance societal well-being, and position South Africa as a leader in AI innovation”.<sup>677</sup> The Framework seeks to ensure that AI systems are developed and implemented with considerations for fairness, accountability, transparency, and inclusivity. It outlines key pillars to enable AI to thrive and contribute meaningfully to sectors such as healthcare, education, and public administration. Such pillars include robust data governance frameworks, infrastructure enhancement, and investments in research and innovation.<sup>678</sup> The DCDT accepted public comments on the Framework until the end of November 2024.

## AI and the media

The Competition Commission is expected to soon complete its Media and Digital Platforms Market Inquiry (“MDPMI”), which was initiated in late 2023.<sup>679</sup> The MDPI looks into how AI impacts the distribution of media content and the operations of news media outlets in South Africa. Organisations representing independent and community media argued that transparency of algorithms and the sharing of data related to news content and related advertising on platforms should be promoted. They also argued for the promotion of informed negotiations with corporate social media and search interlocutors in order to ensure media sustainability.<sup>680</sup>

Once the provisional report is released, stakeholders will be given an opportunity to provide feedback. Following the finalisation of the report, the Competition Commission may refer their findings to the Competition Tribunal for enforcement.

## Digital inclusion

The digital divide between urban and rural areas in South Africa has persisted in 2024. The Independent Communications Authority of South Africa has reported that a mere 1% of people in rural areas have access to the internet in their homes, compared to 17% of people in urban areas.<sup>681</sup> Rural areas have remained underdeveloped in terms of broadband availability, mobile coverage, and internet speed when compared to urban areas in the country.<sup>682</sup> The digital divide manifests in multiple ways. One example of where it is particularly evident is the use of and access to technology in the education system. Schools in affluent areas are able to make use of state-of-the-art technology, while others struggle to have access to any technology at all. The disparity extends to internet connectivity, digital literacy, and the quality of digital content.<sup>683</sup> The government has recently implemented initiatives to try to combat this inequality.

<sup>676</sup> Department of Communications and Digital Technologies, ‘South Africa National Artificial Intelligence Policy Framework’ (2024) <https://www.dcdt.gov.za/sa-national-ai-policy-framework/file/338-sa-national-ai-policy-framework.html> (accessed on 1 November 2024).

<sup>677</sup> Id at page 1.

<sup>678</sup> Id at page 12.

<sup>679</sup> Competition Commission, ‘Media and Digital Platforms Market Inquiry’ (2024) <https://www.compcom.co.za/media-and-digital-platforms-market-inquiry/> (accessed on 1 November 2024). At the time of writing this report, the Competition Commission is set to release its provisional report with initial findings, remedies and recommendations in November 2024 (see <https://presscouncil.org.za/2024/10/11/media-and-digital-platforms-market-inquiry-report-to-be-released-in-november/>).

<sup>680</sup> Joint Presentation for Oral Hearings by the South African National Editors’ Forum (SANEF), The Press Council of South Africa (Press Council), The Association of Independent Publishers (AIP) and the Forum of Community Journalists (FCJ) (2024) <https://www.compcom.co.za/wp-content/uploads/2024/03/240301-SANEF-and-3-Others-Oral-Presentation-to-the-MDPMI-FINAL-1.pdf> (accessed on 1 November 2024) at page 29.

<sup>681</sup> Independent Communications Authority of South Africa, ‘A Step Closer to Achieving a Connected South Africa Where No One is Left Behind’ (2023) <https://www.icasa.org.za/news/2023/a-step-closer-to-achieving-a-connected-south-africa-where-no-one-is-left-behind#:~:text=For%20example%2C%20access%20to%20the,at%20an%20appalling%20low%20%25> (accessed on 8 January 2025).

<sup>682</sup> United States International Trade Administration, ‘Digital Economy Overview’ (2024) <https://www.trade.gov/country-commercial-guides/south-africa-digital-economy> (accessed on 10 December 2024).

<sup>683</sup> B Govender, ‘Bridging the Digital Divide in South Africa: Pathways to Inclusive Educational Technology’ (2024) <https://regent.ac.za/blog/bridging-digital-divide-south-africa> (accessed on 1 November 2024).



694 USAASA, 'Annual report: 2023/2024' (2024) [https://static.pmg.org.za/Minister\\_of\\_DCDT\\_USAF\\_Annual\\_Report\\_Report\\_2023-2024\\_V10\\_FINAL.pdf](https://static.pmg.org.za/Minister_of_DCDT_USAF_Annual_Report_Report_2023-2024_V10_FINAL.pdf) (accessed on 25 February 2025) at page 67.

## Digital ID system

In 2022, the National Identification and Registration Bill was published, which seeks to introduce a single and integrated biometric national identification system.<sup>695</sup> Despite the public participation process by the National Assembly having concluded in 2023, the Bill has still not been passed into law. However, in a presentation to ID4Africa in 2024, the Department of Home Affairs stated that the Bill had been revised and that it would be submitted to Cabinet for approval during the 2024/25 financial year.<sup>696</sup> While some are in favour of the Bill, as it will contain a non-binary gender marker,<sup>697</sup> others have expressed concerns about the Bill's exclusion of non-national births.<sup>698</sup> Further, the introduction of a biometric identification system may lead to the exclusion of certain marginalised groups. Individuals with disabilities or others who are unable to register their biometric information may be excluded from accessing services dependent on biometric identification, such as healthcare or social benefits. The Bill does address these potential exclusions, which may lead to equality and accessibility concerns. Across the Department of Home Affairs, the Minister has committed to driving digital transformation of the department in order to mitigate ID fraud, as well as address systemic corruption.<sup>699</sup>

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695 South African Government, 'National Identification and Registration Bill, 2022' (2023) [https://www.gov.za/sites/default/files/gcis\\_document/202304/48435gon3311.pdf](https://www.gov.za/sites/default/files/gcis_document/202304/48435gon3311.pdf) (accessed on 1 November 2024).

Department of Home Affairs, 'Presentation to ID4Africa' (2024) <https://id4africa.com/2024/ps2/PS2-1-South-Africa-Final.pdf> (accessed on 1 November 2024).

696 Department of Home Affairs, 'Presentation to ID4Africa' (2024) <https://id4africa.com/2024/ps2/PS2-1-South-Africa-Final.pdf> (accessed on 1 November 2024).

697 UDM, 'UDM Supports Zade De Kock's Petition Calling on President Cyril Ramaphosa to Pass the National Identification and Registration Bill' (2023) <https://udm.org.za/udm-supports-zade-de-kocks-petition-calling-on-president-cyril-ramaphosa-to-pass-the-national-identification-and-registration-bill/> (accessed on 1 November 2024).

698 Lawyers for Human Rights, 'Submissions the National Identification and Registration Bill (2022)' (2023) <https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/07/Submission-on-the-National-Identification-and-Registration-Bill-30-June-2023-LHR-CCL.pdf> (accessed on 1 November 2024).

699 A Opiah, 'Home affairs plans digitization, cracks down on identity fraud in South Africa' (2024) <https://www.biometricupdate.com/202408/home-affairs-plans-digitization-cracks-down-on-identity-fraud-in-south-africa> (accessed on 1 November 2024).

# CONCLUSION AND RECOMMENDATIONS

There have been key judicial and legislative developments concerning various aspects of digital rights in 2024. However, concerns around OGBV, access to the internet, digital literacy, the capacity of the Information Regulator, the state of surveillance regulation, and policies regarding the use of AI remain. It is clear that there is a need for continued collaboration between government, the private sector, civil society and the media in order to holistically address the digital divide and promote digital inclusion. The following recommendations are therefore proposed.

## 11

DIGITAL  
RIGHTS  
AND  
INCLUSION  
IN AFRICA  
REPORT

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### Recommendations

#### *Government*

- Improve access to the internet and digital literacy. Government should consider collaborating with existing civil society led programmes in this respect.
- Urgently address all forms of OGBV, including through awareness-raising campaigns about this type of harm and existing legal mechanisms to respond to it.
- Further, the government should develop strategies to prevent the silencing of women journalists and human rights defenders through online harassment.
- Develop clear and accessible training programmes for the judiciary and other legal professionals on digital rights litigation. Such training programmes should be cognisant of the nuances of digital rights and the spaces on which infringements may take place, such as social media platforms.
- Refrain from arbitrarily criminalising speech. The regulation of misinformation and disinformation must be carefully considered in order to prevent stifling public and political discourse.
- Surveillance legislation, such as the Regulation of Interception of Communications and Provision of Communication Related Information Amendment Bill and the General Intelligence Laws Amendment Bill, must be implemented after extensive consultations to ensure provisions are rights-respecting. The Information Regulator's financial and personnel capacity should be expanded in order to enable them to properly fulfil their role.
- Be cautious not to blindly rely on grounds of refusal when considering information requests. The purpose of PAIA, which is to enable the right to access to information, must be upheld.
- The continuation or disestablishment of the Universal Service and Access Agency must be confirmed in order to provide clarity. If the disestablishment process is halted, clearer public reporting on the Agency's priorities becomes important.

#### *The Private Sector*

- Consider investing in infrastructure to enable government initiatives in addressing the digital divide, including offering affordable data plans to address access to the internet disparities.
- Protect peoples' data rights by complying with POPIA, PAIA, and by investing in cybersecurity prevention measures.

## Civil society and the media

- Continue to collaborate with the government to promote digital literacy and access to the internet for all, and continue to participate robustly in legislative and other government processes.
- The media must investigate government conduct and hold them accountable to their obligations regarding digital rights.

## The Score Index

Londa 2024 Key Indicators	ACHPR Declaration	Score	Justification
Internet shutdowns	P38(2)	5	There are no records of internet shutdowns in South Africa in the past year.
Inexistent laws, policies and other measures to promote universal, equitable, affordable and meaningful access to the internet	P37	3	While there are laws or policies in place to ensure access to the internet, inequality in this regard remains. Government is engaged in remedying this.
3. False news criminalisation	P22(2)	4	There are some concerns about the FPB attempting to criminalise mis- and disinformation in an overly broad manner that would unduly chill freedom of expression.
4. Sedition legislation	P22(2)	5	There are no laws that criminalise sedition in South Africa, and the government is not acting against instances of sedition.
5. Arbitrary arrests and harassments of the media, HRDs and citizens	P20(1) & (2)	3	There are concerns over an increased trend in the online harassment of the media and HRDs, particularly for women.
6. Data protection legislation.	P42	4	There is strong data protection legislation in place. However, there are concerns about the enforcement thereof.
7. States interfere and require the removal of online content by internet intermediaries	P38 and P39(4)	5	No records of the state unjustifiably interfering with internet intermediaries in this respect.
8. Invasion of privacy of communications	P41	3	Currently, South Africa has not yet signed the recent Bills concerning surveillance into law. Concerns on their scope and functionality also persist.

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9. Failure by the government to proactively disclose and disseminate information digital technologies	P29(3)	3	While the government is implementing some programmes to address the digital divide, the use of digital technologies remains concentrated in urban areas.
10. AI and emerging technologies national strategies	P39(6)	2	Policy development in this regard is still nascent.
11. Adoption of specific child laws, policies and measures promoting children's digital safety and privacy online	P37(5)	3	While South Africa does not have laws which exclusively deal with children's digital rights, the existing laws contain provisions which arguably extend to children's safety and privacy online.
12. Digital inclusion	P37(3)	3	While the government is in the process of addressing this, issues of digital exclusion due to digital literacy and a lack of a digital ID system persist.
TOTAL (up to 60)		43	

