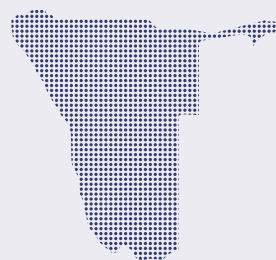


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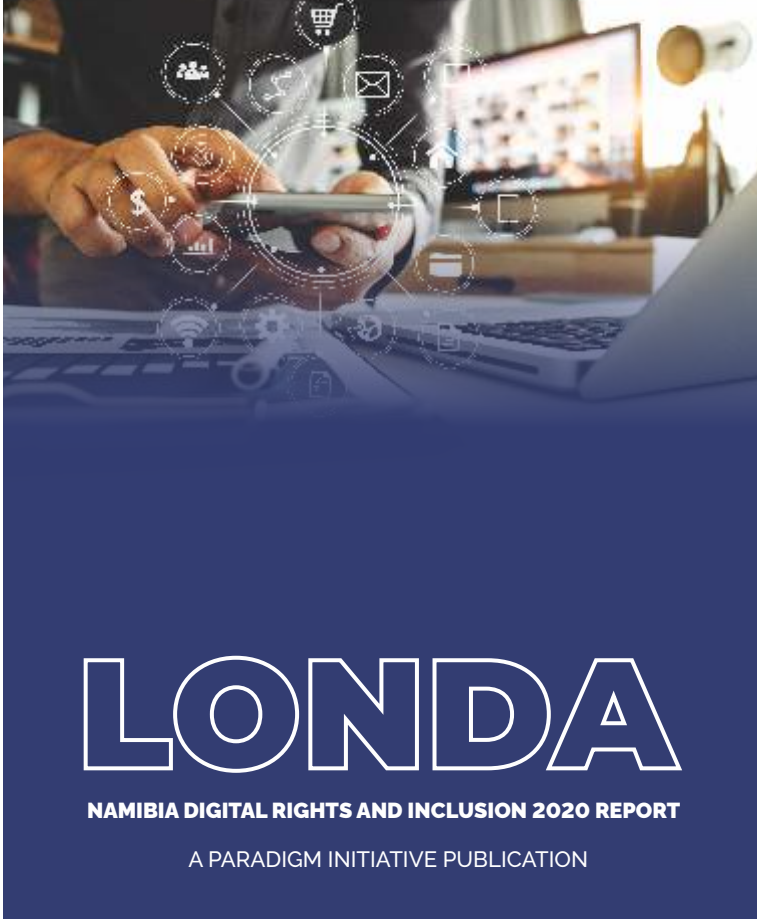
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Civil society organizations continue to work to advance digital rights and inclusion in Africa, ensuring best practices are adopted into policy and legislation. This report analyses the state of digital rights and inclusion in Namibia, examining violations and gaps, investigating the use and application of policy and legislation, highlighting milestones and proffering recommendations for the digital landscape in Namibia. This edition captures among other issues, the digital divide worsened by the COVID-19 pandemic and unearths infractions on different thematic areas such as privacy, access to information, and freedom of expression with the legislative and policy background well enunciated.

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Namibia is a southern African country with a population of 2.5 million inhabitants. Having gained independence in 1990, democracy is generally regarded as thriving and the rule of law is intact. Although it is an upper-middle-income country, Namibia has one of the highest rates of income inequality in the world.¹

INTRODUCTION

DIGITAL RIGHTS AND INCLUSION IN NAMIBIA

Article 21 of the Constitution of the Republic of Namibia guarantees “freedom of speech and expression, which shall include freedom of the press and other media,” providing for legitimate restrictions under 21(2) including on grounds of “national security, public order, decency or morality, contempt of court, defamation or incitement to an offence.”² For years Namibia has enjoyed the highest rank in Africa on the global press freedom index, with an improvement in ranking from 26th in 2018 to 23rd in 2019 and 2020 out of 180 countries assessed.³



International Telecommunication Union (ITU) data reveals that, in 2014, 35.5 in every 100 inhabitants had a mobile broadband subscription⁴ and by 2018 the figure had risen to 59.3 in every 100.⁵ The 2018 Measuring the Information Society Report called Namibia “one of the frontrunners in Africa on ICT development”.⁶ With growing digitization, it is even more important for fundamental freedoms to be protected online as well as offline.

1. 'Namibia Overview', <https://www.worldbank.org/en/country/namibia/overview>

2. Constitution of the Republic of Namibia, https://www.constituteproject.org/constitution/Namibia_2010.pdf

3. RSF, <https://rsf.org/en/namibia>

4. Measuring the Information Society Report 2015, <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>

5. Measuring the Information Society Report 2018, <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2018/MISR-2018-Vol-2-E.pdf>

6. Measuring the Information Society Report 2018, p.126, <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2018/MISR-2018-Vol-2-E.pdf>

ENJOYMENT OF FREEDOM OF EXPRESSION ONLINE

Human rights online, especially the right to privacy, freedom of expression, freedom of opinion and the right to access information, are some of the key issues in the Namibian digital rights and inclusion realm.

Social media is increasingly being used to express dissent, and in retaliation politicians have been calling for its regulation as a means of fighting misinformation and cybercrime.⁷ For the past few years, politicians and government officials have issued stern warnings and threats citing the “irresponsible use”⁸ of social media, claiming it endangers lives.⁹

A proposal to regulate social media is said to have divided members of Parliament in mid-2019.¹⁰ However, in February 2020, the Ministry of ICT confirmed plans to regulate it.¹¹ Although the government says that the regulations are only aimed at preventing the grooming of school girls such measures could be seen to amount to unnecessary restriction on online expression.

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

In April 2020, as part of regulations to curb the spread of COVID-19, Namibia outlawed the publication of false or misleading statements related to the virus, including on social media.¹² Consequently a man was arrested under the regulations in June 2020.¹³

In April 2020, the Namibian government enforced e-learning countrywide as a response to the pandemic.¹⁴ This decision has been criticised as the country has a low technology roll out, with only 30% of schools having access to the internet.¹⁵



7. 'Vice president wants to censor social media', <https://www.namibiansun.com/news/vice-presidentwants-to-censor-social-media>

8. 'Government warns against irresponsible use of social media', <https://neweralive.na/posts/govt-warns-against-irresponsible-use-of-social-media>

9. 'Social media endangers lives', <https://www.namibiansun.com/news/social-media-endangerslives/>

10. 'MPs divided on social media gagging', <https://www.namibian.com.na/190767/archive-read/MPs-divided-on-social-media-gagging>,

11. 'Govt mulls social media protection', <https://www.namibian.com.na/197767/archive-read/Govt-mulls-social-media-protection>

12. 'Covid-19 'fake news' now a crime', <https://www.namibian.com.na/200224/archive-read/Covid19-fake-news-now-a-crime>

13. 'Man arrested for spreading fake Covid-19 news', <https://www.namibian.com.na/91561/read/Man-arrested-for-spreading-fake-Covid-19-news>

14. 'Govt ponders e-learning for schools', <https://www.namibian.com.na/199902/archive-read/Govt-ponders-e-learning-for-schools>

15. '70% of Govt schools without internet', <https://allafrica.com/stories/201910080121.html>

A July 2020 paper by the Association for Progressive Communications (APC) has highlighted that the move posed “serious discriminatory elements to those not connected to and unable to afford the internet, and interfered with the right to development and access to knowledge, a principle set out in the African Declaration on Internet Rights and Freedoms.”¹⁶

There were serious failures in data protection during COVID-19, with anecdotal reports of women reporting unsolicited contacts from unknown men who claimed to have obtained their numbers from the shop registers instituted as contact tracing measures. The media reported a case of a stolen attendance register,¹⁷ and also suggested that many people were using false names in these registers, possibly due to security concerns.¹⁸ Nine months after their introduction, the government has rescinded the requirement for customer registers in public places citing lack of authenticity of information provided.¹⁹

INTERNET ACCESS

Namibia’s technology sector is hindered by a lack of affordable access, and poor-quality service.²⁰ The 2020 Inclusive Internet Index, which assesses internet availability, affordability, relevance of content and readiness, ranked Namibia 84th out of 100 countries, with a score of 41.2% for availability

and 54.8% for affordability indicators respectively. ITU data indicates that, as of June 2018, the percentage of individuals using the internet in Namibia is 36.8%²¹ in comparison to 14.8% in 2014.²²

A National Broadband Policy was launched in early 2020 with the aim of achieving reliable and affordable broadband access services for all.²³ The policy’s five-year implementation action plan seeks to ensure 95% broadband coverage by 2024, as well as to operationalise the Universal Access and Service Fund.²⁴

PRIVACY, DIGITAL ID AND SURVEILLANCE

While the right to privacy is provided for under Article 13 of the Namibian Constitution,²⁵ the country does not yet have a data protection and privacy law. Nonetheless, there are indications of progress in this area, as the government is currently drafting a data protection policy.²⁶ In February 2020, a multi-stakeholder consultation took place²⁷ and further stakeholder consultations on a proposed Bill were conducted between September and October.²⁸ In the absence of a data protection law, data breaches have been reported even from government databases.²⁹ The country has been called “a safe haven for cybercrime”,³⁰ and without a cybercrime law,³¹ many citizens have fallen victim to grooming, revenge pornography and online fraud.³²

16. Compulsory e-learning in Namibia's public schools, https://africaninternetrights.org/sites/default/files/Nashilongo_Gervasius.pdf

17. 'Covid-19 customer register stolen', <https://www.namibian.com.na/206001/archive-read/Covid-19-customer-register-stolen>

18. First name 'Apple', last name 'Tomato', <https://www.namibian.com.na/96668/read/First-name-Apple-last-name-Tomato>

19. Govt to tighten COVID -19 rules <https://www.namibian.com.na/97414/read/Govt-to-tighten-Covid-19-rules>

20. 'Namibia's internet costs are too high', <https://www.namibiansun.com/news/namibias-internetcosts-are-too-high2019-03-05>,

21. Measuring the Information Society Report 2018, <https://www.itu.int/en/ITU/Statistics/Documents/publications/misr2018/MISR-2018-Vol-2-E.pdf>

22. Measuring the Information Society Report 2015, <https://www.itu.int/en/ITU/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>

23. 'Namibia launches national broadband policy', <https://southern-timesafrica.com/site/news/mict-namibia-launches-national-broadband-policy>

24. 'Govt targets 95% broadband coverage by 2024', <https://neweralive.na/posts/govt-targets-95-broadband-coverage-by-2024>

25. Namibian Constitution, <https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf>

26. 'Data Protection Laws of the World',

<https://www.dlapiperdataprotection.com/index.html?t=law&c=NA#:~:text=The%20Namibian%20Government%20is%20currently,of%20their%20personal%20data%2C%20and>

27. 'GLACY+: Stakeholders' Consultation Workshop on the Data Protection Bill in Namibia', <https://www.coe.int/en/web/cybercrime/-/glacy-stakeholders-consultation-workshop-on-the-data-protection-bill-in-namibia>

28. Highlights for September - pg14x- Council of Europe <https://rm.coe.int/cybercrime-coe-update-2020-q3/16809fd8fa>

29. 'SSC leak exposes personal info online', <https://www.namibian.com.na/178310/archive-read/SSC-leak-exposes-personal-info-online>

30. 'Namibia a safe haven for cybercriminals', <https://neweralive.na/posts/namibia-a-safe-haven-for-cybercriminals>

31. 'Cybercrime in Namibia', <https://www.namibian.com.na/165301/archive-read/Cybercrime-in-Namibia>

32. 'Many Namibians fall victim to online fraud', <https://www.nbc.na/news/many-namibians-fall-victim-online-fraud.20124>



A National Broadband Policy was launched in early 2020 with the aim of achieving reliable and affordable broadband access services for all.

In 2017, the Communications Regulatory Authority of Namibia (CRAN) enforced a provision within the 2009 Communications Act requiring mandatory SIM card registration through telecommunications operators.³³ The registration exercise was later abandoned as civil society and media raised concerns.³⁴ However, SIM card regulations may be reviewed as part of the ongoing review of the Communications Act.³⁵

Part 6 of the Communications Act provides wide-ranging powers for the interception of communications, and Article 70 (1) legislates for the establishment of an interception centre for the purposes of national security and combating crime.³⁶

Overall, there is a high perception of state-sponsored surveillance among civil society and the media, particularly by the Central Intelligence Service, as reported by a Namibian newspaper in a detailed three-part report.³⁷

33. 'Spy agency wants SIM cards registered', <https://www.namibian.com.na/163120/archive-read/Spy-agency-wants-SIM-cards-registered>

34. 'Ripe for surveillance abuse – Unpacking Namibia's SIM card registration limbo', <https://action-namibia.org/ripe-for-surveillance-abuse-unpacking-namibias-sim-card-registration-limbo/>

35. 'Namibia undertakes review of communications law', <https://www.commsupdate.com/articles/2019/10/11/namibia-undertakes-review-of-communications-law/>

36. Communications Act, 2009, https://www.nbc.na/sites/default/files/pdf/Namibia%20Communications%20Act%20of%202009_0.pdf

37. Action Access to Internet, 'The rise of the Namibian surveillance state (Part I)', <https://action-namibia.org/rise-namibian-surveillance-state/>; 'The Rise of the Namibian Surveillance State: Part 2', <https://www.namibian.com.na/174788/archive-read/The-Rise-of-the-Namibian-Surveillance-State-Part-2;>; 'The rise of the Namibian surveillance state: Part 3', <https://www.namibian.com.na/175475/archive-read/The-rise-of-the-Namibian-surveillance-state>

HATE SPEECH, MISINFORMATION AND CRIMINAL DEFAMATION LAWS

While freedom of speech is constitutionally guaranteed, constitutional protections for national security, public order, and public morality provide legal grounds for restricting media freedom.³⁸ Defamation is a criminal offense under common law, and there have been a number of successful court cases for defamation.³⁹

Racial discrimination is currently regulated under the Racial Discrimination Prohibition Act of 1991.⁴⁰ However, hate speech in Namibia is not outlawed, and in 2008 the UN criticised the country for not outlawing hate speech, especially towards minority groups.⁴¹

Misinformation related to COVID-19 has recently been outlawed and is punishable with a fine of up to 2,000 Namibian Dollars (USD 134) or imprisonment of up to six months.⁴²

THE EXTENT OF DIGITAL EXCLUSION AND ITS IMPACT ON HUMAN RIGHTS

The Internet is largely expensive and inaccessible in Namibia leaving many digitally excluded.⁴³ Research conducted by the Alliance for Affordable Internet (A4AI) in 2019 has revealed that 1GB of data in

Namibia cost 8.57 USD.⁴⁴ Telecom Namibia charges N\$139.00 for prepaid 1GB, equivalent to USD9.32.⁴⁵

There has been some positive strides towards greater digital inclusion. In its 2017/22 strategic plan, the Ministry of ICT (MICT) aimed to ensure network coverage of mobile phones and internet “to all corners of the country” (p. 23).⁴⁶ MICT also established 25 multi-purpose community centres in remote parts of Namibia, complete with internet infrastructure (p. 2).⁴⁷

In 2016, MICT made a commitment to provide the entire nation with cellular phone coverage by mid-2020, in order to make information more accessible, affordable and relevant, through a program implemented by parastatal Mobile Telecommunications Limited (MTC).⁴⁸ As part of this initiative, MTC intends to erect 500 new towers throughout the country.⁴⁹

Digital exclusion is particularly felt by the education sector, where 70% of government schools are not connected to the internet.⁵⁰ The Deputy Minister of Education, Arts and Culture confirmed that, out of 1,897 government schools across the country, only 590 schools are connected to the internet.⁵¹

***Defamation is a criminal
offense under common law***

38. Constitution of the Republic of Namibia, https://www.constituteproject.org/constitution/Namibia_2010.pdf

39. For example, 'Hamata to pay for defamation', <https://www.namibian.com.na/119662/archive-read/Hamata-to-pay-for-defamation>; <https://namiblii.org/na/judgment/high-court-main-division/2017/103>

40. <https://laws.parliament.na/annotated-laws-regulations/law-regulation.php?id=375>

41. 'UN report lambasts Nam for hate speech', <https://www.namibian.com.na/41758/archive-read/UN-report-lambastes-Nam-for-hate-speech>

42. 'Covid-19 fake news now a crime', <https://www.namibian.com.na/200224/archive-read/Covid19-fake-news-now-a-crime>

43. 'Namibia's Internet Costs are too High', <https://www.namibiansun.com/news/namibias-internet-costs-are-too-high2019-03-05>

44. The Alliance for Affordable Internet, https://a4ai.org/extra/mobile_broadband_pricing_usd-2019Q2

45. <https://internetpkg.com/namibia-internet-packages/>

46. Ministry of Information and Communication Technology (MICT) 2017/22 Strategic Plan, p.23, <http://www.mict.gov.na/documents/32978/266786/MICT+STRATEGIC+PLAN+2017-2022/3596bd32-0aa5-498a-b4c9-b396af9e8c1a>

47. Ministry of Information and Communication Technology (MICT) 2017/22 Strategic Plan, p.2,

<http://www.mict.gov.na/documents/32978/266786/MICT+STRATEGIC+PLAN+2017-2022/3596bd32-0aa5-498a-b4c9-b396af9e8c1a>

48. 'MTC aims to connect 20 000 in rural areas', <https://neweralive.na/posts/mtc-aims-connect-20-000-rural-areas>

49. 'MTC to erect 500 new towers', <https://www.namibian.com.na/174168/archive-read/MTC-to-erect-500-new-towers>

50. 'Namibia: 70 Percent of Govt Schools Without Internet', <https://allafrica.com/stories/201910080121.html>

51. '32% of public schools not equipped for online learning', <https://www.telecom.na/media-centre/212-internet-exchange-point-launched-in-windhoek>



DIGITAL INFRASTRUCTURE

With support from the African Union and the African Bureau for the Internet Society, Namibia launched an Internet Exchange Point (IXP) in 2014.⁵² The functionality and performance of the point is undetermined as not much has been written about it. However, according to Pauina Magongo, a member of the committee in charge of the IXP, the local IXP has been facing challenges dating from 2017 and for sometime now, the equipment has neared obsolete.⁵³

Other ICT infrastructures in Namibia also include the Western African Cable System (WACS) which arrived in the country in early 2011.⁵⁴ The submarine presence in the country ought to have brought cheap bandwidth and translated into many possibilities in the ICT sector of the Namibian economy, but the cables have reportedly been damaged a number of times since arrival.⁵⁵

The 2020 Inclusive Internet Index ranks Namibia overall at 84 out of 100 researched

countries and places the country at 21.2% on the infrastructure category, highlighting that while the country is 100% covered by the 2G network, 3G network only covers 53% of the country while the 4G network coverage is even further lower at 39% with no 5G deployment reported. The report has rated Namibia 0 (zero) on indicators regarding both government and private sectors initiatives to make Wi-Fi available.⁵⁶

Section 57 of the Communications Act 2009 (Act No. 8 of 2009) provides for the establishment of a Universal Service Fund, implemented under CRAN and funded by a levy of licensed operators' turnover.⁵⁷ However, the fund has never become operational as the Supreme Court ruled in 2018 that collection of the levy was unconstitutional.⁵⁸

GENDER AND ICT

The 2020 Inclusive Internet Index reported that Namibia's gender gap in internet access stands at 14.1%, with 64% of males and 55% of females being internet users.⁵⁹ In 2012, only 25.8% of women had an internet-enabled mobile phone compared to 36.9% of men.⁶⁰

A community of women in technology exists in Namibia, although the area continues to be male dominated. However, female developers are reported to be part of the Google and Facebook developers' circle.⁶¹ Recently a group of women hackers won an innovation challenge held by UNDP.⁶²

52. 'Internet Exchange Point Launched in Windhoek', <https://www.telecom.na/media-centre/212-internet-exchange-point-launched-in-windhoek>

53. Telephonic Interview, November 18, 2020, Paulina Magongo

54. 'WACS Submarine Cable Lands in Swakopmund Today', <https://www.telecom.na/media-centre/260-wacs-submarine-cable-lands-in-swakopmund-today>

55. 'WACS undersea cable damaged again', <https://www.we.com.na/news/wacs-undersea-cable-damaged-again2020-03-30>

56. The Inclusive Internet Index 2020, <https://theinclusiveinternet.eiu.com/explore/countries/NA/>

57. Government Gazette 8 June 2015, <https://www.lac.org.na/laws/2019/6886.pdf>

58. 'Supreme Court rules against Cran levy', <https://www.namibian.com.na/68353/read/Supreme-Court-rules-against-Cran-levy>

59. The Inclusive Internet Index 2020, <https://theinclusiveinternet.eiu.com/explore/countries/NA/performance/indicators/>

60. 'Lifting the Veil on Gender ICT Indicators in Africa', p.29, https://www.researchinAfrica.net/publications/Evidence_for_ICT_Policy_Action/Policy_Paper_13_-_Lifting_the_veil_on_gender_ICT_indicators_in_Africa.pdf

61. Namibia Women in Tech; <https://namtechwomen.com/about-us>

62. 'Female 'hackers' take the lead', <https://www.we.com.na/news/female-hackers-take-the-lead2020-08-18/>

The 2020 Women's Rights Online Report Card on Namibia⁶³ gave the country a score of 29% based on its assessment in the categories of internet access and women's empowerment; relevance of content and services; online safety; affordability; and digital skills and education. The report indicates that only 47% of Namibian women have access to the internet and that there is no national policy recognising technology as a tool for fighting gender inequalities.

Online violence against women also remains a challenge.⁶⁴ The 2020 Women's Rights Online Report Card also reveals that the lack of

cybercrime and data protection legislation in Namibia puts women at risk of violence and in vulnerable positions, in the cases of non-consensual image sharing (also known as revenge pornography), as well as with regard to online blackmail and sexualised hate speech.⁶⁵

Women in political and prominent positions are frequently targets of online harassment and bullying. The Internet Society Namibia Chapter in 2019 organised a Digital Forum for Women in Political and Prominent space aiming at engaging and empowering women with skills to mitigate online violence.⁶⁶

CONCLUSION AND RECOMMENDATIONS



Namibia is actively pursuing greater digital inclusion, and is also making progress towards protections in relation to data protection and cybercrime. However, to date the balance has been skewed too much towards state control and intervention, and too little towards the genuine protection of its citizens and connectivity. Issues around gender and technology need urgent interventions, as women face online harms and at the same time are more likely to be digitally excluded.

In concluding further, the following recommendations ought to be considered;

Infrastructures: Greater effort needs to be realised in creating awareness of the benefits and usage of the IXP locally and how that translates into economic and internet security issues. There is a need to translate the country's benefits of the WACS and how that translates into the greater connectivity of the country.

Namibia must operationalise the Universal Service Fund as set out in the Communications Act in order to effect equitable access to the internet.

Digital Inclusion: Namibia should adopt the UN Broadband Commission pricing for data of 1GB of mobile data priced at no more than 2% of monthly GNI per capita. Both government and private sectors should make Wi-Fi-available in public places and in addition Government should ensure the connection of all schools to the Internet.

63. 'Women's rights online report', <http://webfoundation.org/docs/2020/08/GenderReport-Namibia.pdf>

64. 'Addressing 'Revenge Porn' in Namibia', <https://ohrh.law.ox.ac.uk/addressing-revenge-porn-in-namibia/>

65. Women's rights online report' <http://internetsociety.na/wpcontent/uploads/2020/07/GenderReport-Namibia-FINAL-ONLINE-VERSION.pdf>

66. 'Call for anti-online bullying law', <https://www.namibian.com.na/84148/read/Call-for-anti-online-bullying-law>

The implementation plan of the Broadband Commission needs to be closely evaluated to ensure success of broadband access throughout the country.



Privacy and Protection Online: With the Data Protection Bill said to be drafted and the Cybercrime Bill headed for finalisation, the country should ensure protection and privacy that protects the citizens especially women and other vulnerable communities.

Social Media: There is evidence that social media has facilitated greater involvement in public discourse and also allowed for increased access and sharing of information. Overall social media has also increased internet usage and uptake in the country. Given these developments and others, talks to regulate social media should considerably be halted.

Namibia is actively pursuing greater digital inclusion, and is also making progress towards protections in relation to data protection and cybercrime.

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