2021 State of Digital Rights and Inclusion in Africa

22 Country Reports

Governments must set policies that keep the Internet open and safe for all and work with relevant stakeholders to eliminate online violence, bullying, hate speech and misinformation.





A PARADIGM INITIATIVE PUBLICATION

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ABOUT LONDA

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

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Londa features country reports authored by digital rights and inclusion experts from 22 African countries. A special thanks to the 22 contributors.

These contributions present key findings and highlight pertinent recommendations aimed at advancing digital rights and inclusion in Africa. We acknowledge and appreciate the Editorial Team for the undertaken editorial process. The support received from our funding partners is most appreciated and ensures that we continue to deliver on our mandate to monitor, document and report on the state of digital rights and inclusion in Africa.



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EXECUTIVE SUMMARY

The COVID-19 pandemic exacerbated existing digital inequalities and already dire exclusion. It is also reinforcing the urgency of infrastructure development, reliable and affordable internet access and rights-affirming digital policy and legislation. Several countries made encouraging progress in 2021 to drive digital transformation across the continent but at the same time, the landscape was marred by digital rights violations. There were shutdowns during election periods, as usual, in addition to other digital rights violations, with governments once again missing opportunities for multi-stakeholder resolution of emerging challenges.

Notable developments, positive and negative, were recorded in the legislative landscape during the period under review. Existing policies and legislation are still far from adequate as most country reports highlight implementation challenges from opaque processes to noncompliance from state actors, among others. Countries like Rwanda and Zambia enacted legislation on data protection and privacy. Zambia passed its first data protection law, albeit without institutional frameworks for its enforcement, and ratified the Malabo Convention within record time. In Ethiopia, criminal defamation was scrapped to entail civil liability only, and not criminal liability, through Proclamation No. 1238/2021. As the Data Protection Act came into effect in Botswana, the government introduced new regulations to expand its powers over the digital space, including a proposed Criminal Procedure and Evidence Bill. South Africa also developed its data protection framework further, issuing guidance notes on processing children's personal data and "special personal information."

Ghana reported a steady development in infrastructure and increased internet usage with a contrasting decline in the respect for digital rights. Numerous cases of attacks on social media activists and police harassment of journalists and human rights defenders were reported over the past year. Adding to the developments in the digital rights landscape, the High Court in Accra has ordered a stop to the collection of data on mobile telephony subscribers and the erasure of data already collected through the Establishment of Emergency Communications System Instrument, 2020 (EI 63). Civil society has continued to hold duty bearers accountable, notably initiating litigation to ensure the implementation of established legislation.

Despite groundbreaking achievements in Ghana's digital landscape, data highlights an unresolved gender imbalance in the sector. Countries like Tanzania also face major challenges as women continue to be under-represented in the Science, Technology, Engineering and Mathematics (STEM) and Information and Communications Technology (ICT) sectors with equally low numbers of female internet users. National digital transformation strategies such as Rwanda's ongoing Digital Acceleration Project are expected to boost inclusion as they will target more women and improve digital literacy and entrepreneurship.

The Nigerian government, the most significant data processor in the country, does not yet have comprehensive legislation on data protection save for sector-specific laws. This, however, has encouraged individual states to pass their own laws on the subject, such as Lagos state, where a data protection bill passed the second reading in October 2021.

To date, progress has been slow across the continent in implementing ICT development strategies as governments demonstrate a lack of urgency in implementing laws or policies related to digitalisation. One such example is Namibia's broadband policy of 2020, which included a specific target of improving digital literacy. Faced with prolonged school closure, the Ugandan government made no interventions to facilitate access to the Internet, leaving the under-served at a disadvantage as they had no access to online classes. Less than 30% of children can access online education in Zimbabwe. Furthermore, the absence and obsolescence of open data policies set back the growing ICT sector. For example, Angola lacks a national framework, policies, and legislation for protecting women, children, and Persons with Disabilities (PWDs) online. The digital divide is a lived reality for PWDs in Angola, Zimbabwe and countries all over the continent whose lack of access to digital technologies often translates to a lack of access to education, information and economic empowerment.

Mobile technology has emerged as a key driver of digital transformation in several countries including Tanzania. These countries still experience challenges with digital infrastructure, such as power supply and low internet penetration. The Malawian government also rolled out an ambitious five-year Digital Economy Strategy (2021-2026), setting new targets for different aspects of the digital economy. Conversely, the country's new political administration abolished the Community Telecentre Program aimed at expanding access to ICT services. Zambia notably established a Ministry of Technology and Science, giving hope for the development of ICT. However, this report shows that technology which should be the bridge remains a great divider on the continent.

The rise of misinformation and hate speech remains a complex issue in developing and implementing policies and legislation to promote and protect freedom of expression. In a February 2021 ruling, South Africa's Constitutional Court found that the Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA) did not provide adequate safeguards against abuse and, thus, key provisions of RICA were unconstitutional. Regardless, this ruling has not put an end to state harassment and surveillance. In July 2021, South Africa was embroiled in global media exposés surrounding the controversial Pegasus spyware, underscoring the need for protection against trafficking and the use of surveillance tools.

Also in the southern part of the continent, Zambia witnessed a renewed commitment by civil society organisations to push back on digital rights violations, while in East Africa, Kenya continues to guarantee freedom of expression online fairly efficiently. On the West Coast, the Nigerian government, in a pivotal decision, banned Twitter on June 5 2021, through the Minister of Information and Culture. This limited public access to critical and reliable information about the pandemic and profoundly impacted citizens as the socioeconomic effect cascaded offline in an already declining economy.

Some countries reported no significant violations. While this is an encouraging trend, the practices unearthed by the country reports demonstrate that infractions are becoming increasingly sophisticated.

The African Commission on Human and Peoples' Rights' (ACHPR) Resolution 473 calls on State Parties to develop a comprehensive legal and ethical governance framework for Artificial Intelligence (AI) technologies. Still, most countries either do not have or are yet to publish national legislation and strategies guiding Artificial Intelligence (AI). Although growing, the Artificial Intelligence industry on the African continent is still at an embryonic stage with countries such as Ghana and Nigeria taking the lead in the progression of AI in West Africa. Nigeria has its own government-run National Center for Artificial Intelligence and Robotics, and Ghana hosted the first Google AI lab in Africa. On the other hand, the private sector is making strides in implementing AI technology, as shown in Botswana.

Londa 2021 expands on last year's report with findings from 22 countries, examining themes of privacy, freedom of expression, access to information, segmentation and exclusion, digital transformation, affordability, gender and others within existing legislative frameworks, and against the backdrop of a widening digital divide. This edition captures the gaps and proffers recommendations to achieve a digitally inclusive and rights-respecting Africa.

COUNTRY REPORTS



ANGOLA

Angola has a relatively fair digital rights record, given that internet and social network users can express themselves with some degree of freedom. However, there are cases of violation of fundamental rights in the digital space. The Constitution and general legislation provide for freedom of speech and the press. However, State dominance of most media outlets and self-censorship by journalists limit these rights in practice. With the general elections anticipated in August 2022, there is a need for greater protection of human rights, both online and offline, in order to allow Angolans to express themselves freely and for the coverage of the political processes in a transparent manner.

There is also a need for the government to stop interfering with the operations of the private media through the nationalisation law. Authorities should punish those who violate the fundamental rights of the press in particular, and of citizens in general. This will guarantee that Angola is a country based on law and order and also respects fundamental freedoms that are enshrined in its Constitution. Finally, there is a need for the government to broadly reflect on the access and use of digital media platforms, particularly how women and other minorities are affected. This can be done through the expansion of technological communication infrastructures, as well as the enactment and implementation of legislation that protects citizens, whether in digital or physical space.



^{1.} Freedom of Net in Angola 2021 https://freedomhouse.org/country/angola/freedom-net/2020 (accessed 13 January 2022).

^{2.} Constitution of Angola, 2010 (the Constitution) https://governo.gov.ao/ao/angola/a-constituicao/ (accessed 9 January 2022).

^{3.} Paradigm Initiative 'Policy Brief – Advancing Internet Rights in Angola' (2021) https://paradigmhq.org/wp-content/uploads/2021/11/Digital-Rights-In-Angola-English.pdf (accessed 13 January 2022).





Angola is located in Southern Africa and has an estimated population of 31 million people.⁴ The country has been governed by the Popular Movement for the Liberation of Angola (MPLA) since its independence in 1975. The current President, João Lourenço, succeeded the previous head of state, José Eduardo dos Santos, in 2017, after being in power for more than 30 years.⁶ Angola is expected to hold its general elections in August 2022.7



Angola is ranked 106th out of 180 countries in the 2021 World Press Freedom Index. Despite this low ranking, no reporters/journalists were killed in Angola in 2021. However, the Freedom in the World report⁹ ranks Angola as a country that is 'not free' (31 points/100). This is attributed to the state ownership of most of the media in the country. As a result, state-owned media report favourably on the government and rarely include critical coverage.10 In fact, there is systematic government interference in the operations of the public and private media. More significantly, the Angolan government privatised a number of media outlets in 2021.¹¹

^{4.} Angola's population 2022 https://countrymeters.info/pt/Angola (accessed on 29 March 2022).

^{5.} The world factbook Angola https://www.cia.gov/the-world-factbook/countries/angola/ (accessed on 11 January 2022).

^{6.} Angola's ruling MPLA wins parliamentary election, commission says https://www.bbc.com/news/world-africa-41052544 (accessed on 13 January 2022).

^{7.} Constitutional changes and mistrust mark Angola's election announcement

https://globalvoices.org/2021/09/15/constitutional-changes-and-mistrust-mark-angolas-election-announcement/ (accessed on 13 January 2022).

^{8.} Reporters Without Borders 'Press freedom still fragile despite the old dictator's departure' https://rsf.org/en/angola (accessed on 13 January 2022).

^{9.} Freedom in the World 2021-Angola, Op cit.

^{10. 2020} Country Reports on Human Rights Practices: Angola https://www.state.gov/reports/2020-country-reports-onhuman-rights-practices/angola/ (accessed on 18 February 2022)

^{11.} Government Opens Tender for TV Zimbo Privatization https://allafrica.com/stories/202107230385.html accessed on 24 February 2022).

62/100 FREEDOM ON THE **NET REPORT (2021)** The country has four mobile phone companies: Movicel, Unitel, Angola Telecom and Africell. Africell started operations in December 2021. Angola is ranked 62/100 in the Freedom on the Net report (2021).¹² Amid widespread protests in 2020 and 2021, activists used social media and messaging platforms to record incidents of police brutality.¹³ For example, a prominent activist Luaty Beirão was detained while livestreaming a popular demonstration against the economic and social crisis.¹⁴

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

The Angolan Constitution¹⁵ provides for freedom of expression and the press. The 2011 Law on Electronic Communications and Information Company Services provides for citizens' rights to privacy and security online, among other provisions regulating internet use and services.16 However, Angolan legislation also includes unclear language that may infringe on internet freedom. For example, there is no clarity on what constitutes state secrecy in the law (article 19). The government may use the state secrecy reason to violate fundamental rights such as access to information.¹⁷

Stringent state security laws and defamation contradict constitutional guarantees. For example, article 26 of the 2010 State Security Law penalises individuals who insult the country or president in "public meetings or by disseminating words, images, writings, or sound" with prison sentences of up to three years.18

The 2006 Press Law holds authors, editors, or directors of a publication criminally liable for defamatory content.¹⁹ If the author does not reside in the country or the text is not signed, the law establishes the circumstances in which the editor, director, or both may be held criminally responsible for such content.



Under article 82, it criminalises publication of texts or images that are "offensive to individuals," which would be punished under the Penal Code as defamation and slander.20

^{12.} Freedom House ' Freedom on the Net 2021: Angola' https://freedomhouse.org/country/angola/freedom-net/2021 (accessed on 24 February 2022).

^{13.} Human Rights Watch - World report 2021 Angola https://www.hrw.org/world-report/2021/country-chapters/angola (accessed on 13 January 2022).

^{14.} Freedom in the World 2021-Angola https://freedomhouse.org/country/angola/freedom-net/2021 (accessed on 13

^{15.} Constitution of Angola, 2010 (the Constitution) https://governo.gov.ao/ao/angola/a-constituicao/ (accessed on 9 January 2022).

^{16.} https://www.inacom.gov.ao/fotos/frontend_1/editor2/lei_23_de_2011-20_de_junho_de_2011.pdf (accessed on 14 January 2022).

^{17.} Committee to Protect Journalists (CPJ) denounces arrest of journalist https://cpj.org/pt/2021/04/jornalista-angolanojorge-manuel-preso-detido-por-5-dias-enquanto-informava-sobre-despejos/ (accessed on 29 March 2022).

^{18.} State Security Law http://freedominfo.org/documents/angolalaw.pdf (accessed on 29 March 2022).

^{19.} Press Law https://www.wipo.int/edocs/lexdocs/laws/pt/ao/ao006pt.pdf (accessed on 29 March 2022).

^{20.} Penal Code

https://governo.gov.ao/fotos/frontend_1/gov_documentos/novo_codigo_penal_905151145fad02b10cd11.pdf (accessed on 29 March 2022).

The Penal Code, approved in January 2019, contains articles on media activity. These include fines and up to six months' imprisonment for "abuse of press freedom," which can encompass incitement, the dissemination of hate speech, and the defence of fascist or racist ideologies. On 21 February 2020, Angola ratified the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention).²¹

However, the implementation of the legal framework on data protection is still problematic. Since the creation of the Data Protection Agency (ADP) in 2016 it has not been acting proactively, mainly because the agency operates in a dependent manner in relation to the government, as its President is appointed by the President of the Republic and its budget depends on the state.²²

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

In response to the beginning of the COVID-19 pandemic, Angola adopted the Presidential Decree)²³ to limit the movement of people and remain in a State of Public Calamity, but in other contexts is known as *'national state of disaster'*. Under the lockdown, people were only allowed out of their homes to buy basic necessities such as medicine, food, water, and cooking gas. Schedules were put in place to regulate the operating times for markets. During that period, Angola committed to

fully respect, promote and protect the rights of all citizens, and reduce the negative impacts during and after the pandemic, mainly in the focus on elearning and the promotion of digital initiatives that are made possible by the Internet.²⁴ However, it has been reported that Angolan authorities struggled to contain abuses by state security forces implicated in killings and excessive use of force against unarmed people who allegedly violated COVID-19 regulations.²⁵

According to Human Rights Watch,²⁶ state security forces were implicated by human rights groups and media in serious human rights abuses, including killings, harassment and arbitrary arrests, as they tried to enforce lockdown rules and restrictions.²⁷ There are also reports that the COVID-19 pandemic resulted in the closure of independent print media, prompting some journalists to turn to online publishing, although there are still notable challenges.²⁸For example, under COVID-19 emergency measures, state and private media outlets are obligated to collaborate with "competent authorities," which the decree defines as the government bodies responsible for security and civil protection. Although it is not clear how this provision has been implemented, there are concerns that it may be used to manipulate Angola's media environment.²⁹

^{21.} How African states can improve their cybersecurity https://www.brookings.edu/techstream/how-african-states-can-improve-their-cybersecurity/ (accessed on 24 February 2022).

^{22.} DPA Paradigm Initiative https://paradigmhq.org/report/data-protection-authorities-in-africa-dpas-report/ (accessed on 29 March 2022).

^{23.} Presidential Decree No. 106/21 (2021) https://governo.gov.ao/ao/documentos/index.php?tipo=2 (accessed on 24 February 2022).

^{24.} Angolan Government committed to Protect and Promote Child Rights https://reliefweb.int/report/angola/covid-19-angolan-government-committed-protect-and-promote-child-rights (accessed on 24 February 2022).

^{25.} Human Rights in Angola (2021) https://www.cmi.no/publications/7714-human-rights-in-angola (accessed on 24 February 2022).

^{26.} World Report-Angola (2021) https://www.hrw.org/world-report/2021/country-chapters/angola (accessed on 24 February 2022).

^{27.} Angolan police kills 23-year-old for breaking confinement rules, local media reports

https://globalvoices.org/2020/08/06/angolan-police-kills-23-year-old-for-breaking-confinement-rules-local-media-reports/ (accessed on 24 February 2022).

^{28.} Manuel Luamba, "Angola: Jornalistas procuram novas soluções face à crise no setor," DW (2021)

https://www.dw.com/pt-002/angola-jornalistas-procuram-novas-solu%C3%A7%C3%B5es-face-%C3%A0-crise-nosetor/a-58109633 (accessed on 11 January 2022).

^{29.} Freedom House 'Freedom on the Net 2020: Angola' https://freedomhouse.org/country/angola/freedom-net/2020 (accessed 24 February 2022).



Human rights defenders were arrested for disseminating health information and distributing masks and hand sanitizer to Indigenous communities.30 In fact, when the pandemic started the dissemination of disinformation and rumours was one of the main challenges that confronted Angola in the fight against the coronavirus. In response, in July 2020, the World Health Organisation (WHO) office in Angola and the Ministry of Health created the COVID-19 Alliance. This is an initiative that is designed to combat the spread of potentially harmful online misinformation.31

The COVID-19 Alliance tracks and analyses the conversations surrounding the pandemic on social and traditional media and develops content to counter such rumours. Its website contains official data, regular updates, and key messages about the pandemic. This truthful and certified information is also disseminated through social media platforms. This is done by the Ministry of Health, which may also indicate a control of the circulation of information by the authorities.

Lizandro Chissupa, Director of the COVID-19 Alliance platform argued that the initiative could help prevent the spread of rumours, even if there is no concrete example of the impact of the platform.³² According to Chissupa, the COVID-19 Alliance system received about 100 messages daily, in 2021, from people seeking clarification on rumours, access to testing, facts about the disease, its transmission, and preventive measures. However, we were unable to find more information on how this platform protects personal data. Beyond this dimension of digital rights, it is known that COVID-19 has encouraged the discovery of new teaching practices and expanded the possibilities of access to knowledge through technology. However, cases of digital exclusion still persist as not all Angolans can access the Internet and often rural areas lack internet access.



A report³³ published in 2021 on access to education in times of **COVID-19** in Lusophone countries showed that countries like Angola did not have adequate financial resources to deal with the critical moment and encourage new forms of education, as well as to invest in infrastructure and ICT.

^{30.} Report Angola-2020 https://www.amnesty.org/en/location/africa/southern-africa/angola/report-angola/ (accessed on 18 February 2022).

^{31.} Angola's struggle against rumours and myths about COVID-19 https://www.afro.who.int/fr/node/13795 (accessed on 8 January 2022).

^{32.} Combating rumours and scams related to COVID-19 in Angola https://www.afro.who.int/fr/news/lutter-contre-lesrumeurs-et-les-arnaques-liees-la-covid-19-en-angola (accessed 24 February 2022).

^{33.} Raport (2021): The Pandemic of COVID-19 and the Right to Education in Portuguese Speaking Countries https://inee.org/pt/resources/pandemia-de-covid-19-e-o-direito-educacao-em-paises-de-lingua-portuguesa-desafios-e (accessed 31 March 2022).

DIGITAL INFRASTRUCTURE AND PRIORITISATION OF ICT

ICT access remains prohibitively expensive for the majority of Angolans, partially due to a lack of competition in the ICT industry, even if the government and some private companies have made efforts to establish free wireless hotspots. In general, internet access remains prohibitively expensive, especially for those in rural areas. In fact, access to the Internet in Angola is very low but it is growing steadily. More than half of the population

31%

INTERNET PENETRATION RATE **ACCORDING TO THE DIGITAL** 2021 REPORT

does not have internet access. According to the Digital 2021 report, the internet penetration rate was at 31%.34 The coverage and penetration of third-generation (3G) and fourth-generation (4G) technology for mobile networks reached 85% and 13.8% of the population, respectively.35

Angola has four mobile phone companies: Movicel, Unitel, Angola Telecom and Africell. Angola Telecom is stateowned while Africell, as a new player in the market, started

its operations in December 2021. The Communication Regulator (INACOM) also announced that three of the four operators with global licences in Angola received their titles for the use of 3.3-3.7 GigaHertz (GHz) frequencies.³⁶ This will enable them to use 5G technology in order to improve telecommunications in the country.³⁷

In May 2021, as part of the Privatisation Programme (PROPRIV) 2019-2022, the government launched a tender to sell its 51% stake in the internet service provider Net One, but there is no publicly available information on the deal and what its impact was for national connectivity.³⁸ In addition, it is known that some mobile companies have already been preparing for digital transformation. For example, On 8 April, Unitel S.A. and Ericsson signed a three-year frame agreement for the supply of Ericsson Radio System solutions as well as core solutions and related services.³⁹ Ericsson will deliver a transformation to Unitel's existing 2G/3G/4G Radio Access Network (RAN) and core infrastructure to implement 5G services. 40

^{34.} Digital in Angola (2021) https://datareportal.com/reports/digital-2021-angola (accessed 13 January 2022).

^{35.} Freedom in the World 2021: Angola https://freedomhouse.org/country/angola/freedom-net/2021 (accessed on 13 January 2022).

^{36.} Angola licences first three companies to deploy 5G technology https://www.inacom.gov.ao/ao/noticias/angolalicencia-primeiras-tres-empresas-para-implantacao-da-tecnologia-5g/ (accessed 13 January 2022).

^{37.} Mobile operators authorised to use 5G technology https://www.angop.ao/en/noticias/tecnologia/operadoras-detelefonia-movel-autorizadas-a-usar-tecnologia-5g/ (accessed on 11 January 2022).

^{38.} Beginning of the sale of Net One's capital https://www.jornaldeangola.ao/ao/noticias/iniciada-alienacao-do-capitalda-net-one/ (accessed on 13 January 2022).

^{39.} Unitel confie à Ericsson l'expansion et la modernisation de son réseau

https://www.agenceecofin.com/operateur/0904-87023-angola-unitel-confie-a-ericsson-l-expansion-et-lamodernisation-de-son-reseau (accessed on 11 January 2022).

^{40.} Ericsson and Unitel sign frame agreement for network expansion & evolution to benefit Angola

https://www.ericsson.com/en/press-releases/1/2021/ericsson-and-unitel-sign-frame-agreement-for-network-expansion-evolution-to-benefit-angola (accessed on 11 January 2022).



In September 2021, Angola Cables, a multinational provider of global connectivity solutions, launched a Sales Partnership Programme giving service providers and vendors the opportunity to market a range of products and services such as IP Transit, Remote Peering, Cloud Solutions, IP Gamer and others in the rapidly expanding global ICT market.⁴¹

FREEDOM OF EXPRESSION

Although the Constitution guarantees freedom of assembly, what is on paper is not often replicated in practice.^{42 43}Despite a history of censorship in print and broadcast media, there are no known incidents of the government blocking or filtering online content in Angola, and there are no restrictions on the type of information that can be exchanged through digital media technologies.⁴⁴ A set of new media laws that took effect in 2017 has been criticised as restrictive. In fact, a number of the Press Law articles violate Angola's international obligations to respect media freedom. These include:

- Article 29 which gives the Ministry of Social Communication the authority to oversee how media organisations carry out editorial guidelines and to punish violators with suspension of activities or fines;
- Article 35 imposes excessive fees to establish a media group of 35 million kwanzas (US\$211,000) for a news agency and 75 million kwanzas (US\$452,000) for a radio station; and
- Article 82 criminalises publication of a text or image that is "offensive to individuals."

But no websites have been censored under their provisions to date.⁴⁵ There have been no major incidents of the government blocking or filtering online content, and there are no restrictions on the type of information that can be exchanged through digital media technologies. However, in February 2021, Mariano Brás, the editor of an independent paper, was questioned 46 by police and threatened with charges for writing an online article critical of the president's performance.



⁽accessed on 13 January 2022). 43. Security Forces Kill Protesters in Lunda Norte Province https://www.hrw.org/news/2021/02/04/angola-securityforces-kill-protesters-lunda-norte-province (accessed on 13 January 2022).

^{44.} Freedom House 'Freedom on the Net 2021: Angola https://freedomhouse.org/country/angola/freedom-net/2021 (accessed on 24 February 2022).

^{45.} Constitutional Challenge to Angola's New Media Laws https://www.makaangola.org/2017/03/constitutionalchallenge-to-angolas-new-media-laws/ (accessed on 24 February 2022).

^{46.} Freedom House 'Freedom in the World 2021: Angola' https://freedomhouse.org/country/angola/freedom-net/2021 (accessed on 13 January 2022).

PRIVACY, DIGITAL IDS **AND SURVEILLANCE**

Angola has a Personal Data Protection Law which makes extensive procedural provisions for data protection principles and enforcement of rights, such as privacy of personal data and access to information.⁴⁷ The Presidential Decree 214/2016 creates the office of the Data Protection Agency (DPA)⁴⁸ to ensure compliance with the data protection law. The DPA's mandate is to monitor compliance with the data protection law, issue recommendations, instructions, opinions and guidelines on data protection best practices, register and publish personal data files, implement necessary technical and security measures, prepare annual reports, ensure compliance and sanction violations of the data protection law.

The DPA is run by a management board of seven members headed by a chairperson. In an appointment that appears like a distribution of powers, the President recommends three members of the board, the National Assembly recommends three while the judiciary recommends the last one of the seven members. The board is appointed for a term of five years renewable for one or two periods, however, the board may be dissolved at the will of the President if the board fails to fulfil the APD's mission.⁴⁹ In June 2021, the Data Protection Agency (DPA) was nominated into the African Network of Personal Data Protection Authorities (RAPDP).⁵⁰

The DPA draws its own budget and is required to submit an annual report to the Ministry of Economy by the end of each year. It is also

accountable to the Council of Audit which has the competence to supervise financial activities of state bodies and issue opinions on the public finances to the National Assembly. Despite this well-organised legislative landscape for data protection, there are no verifiable reports on the conclusion of investigations leading to sanctions or exoneration regarding privacy and access to personal data.⁵¹ Currently, there is no publicly available information about the DPA's progress since its establishment. Equally, there are no reports of restrictions on encryption.

ACCESS TO INFORMATION

On 21 April 2021, the government suspended the television channels Record TV África, ZAP Viva and Vida TV. The suspensions were attributed to "legal inconsistencies". 52

The Minister for Telecommunications, Information Technology and Media - Minister for the Media pointed out that the executive managers were operating illegally, without authorisation because they were foreigners without legal work permits.



Also, provisional registers of newspapers, magazines, news websites and radio stations were provisionally suspended with no effective activity in the last two years, but the list of the outlets was never made public.53

^{47.} Personal Data Protection Law https://www.apd.ao/fotos/frontend_1/editor2/110617_lei_22-11_de_17_junhoproteccao_dados_pessoais.pdf (accessed on 29 March 2022).

^{48.} Data protection Law: Law 22/11 (2017) https://apd.ao/ao/legislacao/ (accessed on 24 February 2022).

^{49.} Data Protection Agency https://apd.ao/ao/legislacao/ (accessed on 13 January 2022).

^{50.} DPA Angola was nominated as a member of the African Network of Personal Data Protection Authorities proteccao-de-dados-pessoais-rapdp/ (accessed on 13 January 2022).

^{51.} Paradigm Initiative (2021), Data Protection Authorities in Africa (DPAS) Report https://paradigmhq.org/report/dataprotection-authorities-in-africa-dpas-report/ (accessed on 11 January 2022).

^{52.} Angolan authorities suspend TVs https://www.voaportugues.com/a/autoridades-angolanas-suspendememiss%C3%B5es-da-rede-record-zap-viva-e-viva-tv-por-irregularidades/5859684.html (accessed on 24 February 2022). 53. Angola suspends 3 TV channels for alleged improper registration https://cpj.org/2021/05/angola-suspends-3-tv-

On 30 April 2021, Record TV Africa appointed Angolan journalist Simeão Mundula to replace Fernando Teixeira, a Brazilian national, as director.⁵⁴ Before he was replaced, Teixeira told CPJ via messaging app that no foreign journalists were employed by the broadcaster, adding that the suspension order was a political decision. At that time, the only explanation that the Ministry provided for the suspensions was that they were aimed at adjusting the process of granting the definitive registration for exercising the activity of broadcasting to media companies.⁵⁵ After that, the government seized the private companies, but journalists and opposition parties said the seizure of the media outlets was worrying and would limit independent journalism leading up to national elections in 2022. The government argued that the seized companies were in poor economic shape and needed to be restructured before offering the companies for sale to investors under the government's privatisation program.⁵⁶

Organisations such as the Union of Angolan Journalists and the Media Institute of Southern Africa (MISA-Angola) criticised the suspensions and argued that it jeopardised the plurality of information, which is now only broadcast through public channels, controlled by the State. They also questioned the laws invoked for the suspensions, as it is not prohibited for a foreigner to own or manage a media outlet in Angola.⁵⁷ In November 2021, the Minister of Telecommunications, Information Technologies and Media, Manuel Homem, reiterated the country's commitment to promote

access to information in digital media and to adapt to technological changes, but given these examples, it does not seem to be the case.⁵⁸

This represents a serious violation of the importance of the rights to freedom of expression and access to information as stipulated under the ACHPR 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa. Principle 10 states that the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art or through any other form of communication or medium, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.59

INTERNET DISRUPTIONS

No restrictions on connectivity to internet or mobile phone networks were reported during the period under review. However, the government's indirect control of telecommunications infrastructure via the state-owned Angola Telecom may enable the government to partially control internet connectivity if desired.⁶⁰



^{54.} Record TV Africa announces replacement of Brazilian director https://www.rtp.pt/noticias/mundo/record-tv-africaanuncia-substituicao-de-diretor-brasileiro-e-diz-que-so-tem-quadros-angolanos_n1316460 (accessed on 24 February

^{55.} ZAP Viva Channel closes its doors and lays off hundreds of employees https://www.dw.com/pt-002/angola-canal-zapviva-fecha-portas-e-despede-centenas-de-funcion%C3%A1rios/a-60399081 (accessed on 13 January 2022).

^{56.} Government says "tasks" are still ongoing for legal regularisation of Zap Viva

https://www.verangola.net/va/en/022022/Telecommunications/29541/Government-says-are-still-ongoing-for-legal-states and the same of the sregularization-of-Zap-Viva.htm (accessed on 18 February 2022).

^{57.} Extreme measure in closure of broadcasters in Angola https://www.dw.com/pt-002/entidades-veem-medida-extremaem-encerramento-de-emissoras-em-angola/a-57269578 (accessed on 13 January 2022).

 $^{58. \} https://www.angop.ao/noticias/tecnologia/angola-promove-acesso-a-informacao-nos-meios-digitais/ (accessed 13 angola-promove-acesso-a-informacao-nos-meios-digitais/ (accessed 13 angola-promove-acesso-a-informacao-nos-meios-acesso-a-informacao-nos-meios-digitais/ (accessed 13 angola-promove-acesso-a-informacao-nos-meios-acesso-a-informacao-nos-meios-acesso-a-informacao-nos-meios-acesso-a-informacao-nos-meios-acesso-a-informacao-nos-meios-acesso-a-informacao-nos-meios-acesso-a-informacao-nos-meios-acesso-a-informacao-nos-meios-acesso-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-a-informacao-nos-meios-nos-meios-a-informacao-nos-meios-nos-meios-a-informacao-nos-meios-nos-meios-nos-meios-nos-meios-nos-meios-nos-meios-nos-meios-n$ January 2022). This was stated at the Southern Africa ICT Ministers Forum.

^{59.} Declaration of Principles on Freedom of Expression and Access to Information in Africa, 2019 (ACHPR 2019 Declaration) https://www.achpr.org/legalinstruments/detail?id=69 (accessed on 2 March 2022).

^{60.} Angola Wants To Privatize State-Owned Telecoms Firm https://moguldom.com/236927/angola-wants-to-privatizestate-owned-telecoms-firm/ (accessed on 21 February 2022).

ARTIFICIAL INTELLIGENCE NATIONAL STRATEGY

Angola does not yet have a legal and policy framework on AI, but during the Forum on Digital Transformation in Angola post COVID-19 held in October 2021, in partnership with the Ministry of Telecommunications, Information Technologies and Media (MINTICS) and Huawei, the Angolan Minister stated that AI is one of the central pillars for Angola's digital transformation.61

In February 2022, IT portal informed 62 that Angola intends to create an artificial intelligence platform to accelerate digital transformation. The information was revealed by the Minister of Telecommunications, Information Technology and Media, Manuel Homem, during his visit to the United Arab Emirates (UAE) to implement the Digital Transformation Plan (Digital Angola 2024).⁶³ Among other objectives, the initiative intends to transform the National Institute for the Promotion of the Information Society (INFOSI)⁶⁴ into a stateof-the-art National Cloud Centre, the establishment of bases to develop and scale Digital Transformation Plan for Digital Transport and for Justice Systems and Public Security.



GENDER AND ICT

In Angola, different laws are in place to protect women. In addition, policy measures under the National Development Plan aim to promote⁶⁵ the full realisation of human rights and fundamental freedoms for men and women, promote all equalopportunity aspects in employment policies. This includes reduction of occupational segregation and helping reconcile work and family life, as well as to

counter the persistent under-representation of women in all decision-making spheres. It also aims to promote equal access and full enjoyment of social rights such as access to the same job opportunities for men and women, in order to eliminate gender disparities in primary and secondary education and at other educational levels by 2025. However, the policy lacks a specific

^{61.} Forum: Digital Transformation in Angola Post COVID-19 https://minttics.gov.ao/ao/noticias/forum-transformacaodigital-em-angola-pos-covid-19/ (accessed on 21 February 2022).

^{62.} Portal IT: Angola plans to create artificial intelligence platform https://www.portaldeti.com/pt/noticias/item/1477angola-quer-criar-uma-plataforma-de-inteligencia-artificial-para-acelerar-a-transformacao-digital (accessed on 1 April

^{63.} Correio Kianda: Manuel Homem visits Expo 2020 Dubai https://correiokianda.info/manuel-homem-visita-expo-2020dubai/ (accessed on 1 April 2022).

^{64.} INFOSI - National Institute for the Promotion of the Information Society https://www.infosi.gov.ao/ (accessed on 1

^{65.} UN Women 'Angola commits to the empowerment of women and gender equality, the dignity of families and the advancement of women https://www.unwomen.org/en/get-involved/step-it-up/commitments/angola (accessed on 21 February 2022).

approach on women-ICT and online gender based violence (OGBV).

The Angolan government has adopted policies to support gender issues, including the advancement of women, to support victims of violence, to give due recognition to families, to develop communities and to promote rural women. The President also mandated a review of the percentage of representation of women at all levels to increase it to at least 40%. National campaigns to prevent violence and traditional practices that violate the rights of women and girls have also been launched. 66 However, there is no specific focus on online violence against women and girls. Laws are not adequately harmonised to address the use of technologies.

The gender gap index score in Angola remained at 0.66 in 2021. Females were 34% less likely to have the same opportunities as males.⁶⁷ Gender disparities were more pronounced in the categories of economic participation and opportunity, and political empowerment. In April 2021 the Secretary of State for Telecommunications and IT, Mário Augusto de Oliveira, expressed support for technological initiatives that are developed by women. Oliveira emphasised that ICTs play an important role in the economic development and

participation of women.⁶⁸ Therefore, it is important to reduce the gender gap in the sector and to encourage young women to choose careers in the ICTs sector.

On OGBV, there is inadequate disaggregated data focusing on gender-based violence committed through ICTs against women and other marginalised groups in Angola. Cases of online violence against women usually manifest in the form of defamation and publication of personal information on digital platforms.⁶⁹ These forms of violence were denounced by Association Ondjango, a feminist nongovernmental organisation, which using Facebook as their main mobilizing tool, tried to raise awareness about crimes against women online, but also generally in Angola.70

The issue of women and ICTs is not the only issue related to the inclusion of social and vulnerable groups in Angola. For example, Angola lacks a national framework or policy concerning the protection of children from harm in the digital environment. The country also lacks legislation to promote digital inclusion for children and persons with disabilities (PWDs).

^{61.} Forum: Digital Transformation in Angola Post COVID-19 https://minttics.gov.ao/ao/noticias/forum-transformacaodigital-em-angola-pos-covid-19/ (accessed on 21 February 2022).

^{62.} Portal IT: Angola plans to create artificial intelligence platform https://www.portaldeti.com/pt/noticias/item/1477angola-quer-criar-uma-plataforma-de-inteligencia-artificial-para-acelerar-a-transformacao-digital (accessed on 1 April

^{63.} Correio Kianda: Manuel Homem visits Expo 2020 Dubai https://correiokianda.info/manuel-homem-visita-expo-2020dubai/ (accessed on 1 April 2022).

^{64.} INFOSI - National Institute for the Promotion of the Information Society https://www.infosi.gov.ao/ (accessed on 1 April 2022).

^{65.} UN Women 'Angola commits to the empowerment of women and gender equality, the dignity of families and the advancement of women' https://www.unwomen.org/en/get-involved/step-it-up/commitments/angola (accessed on 21

^{66.} Ana Dias Lourenço joins the fight against gender violence https://www.portaldeangola.com/2020/12/18/ana-diaslourenco-junta-se-a-luta-contra-a-violencia-de-genero-2/ (accessed on 21 February 2022).

^{67.} Statista 'Angola: gender gap index in Angola from 2016 to 2021'

https://www.statista.com/statistics/1220535/gender-gap-index-in-angola/ (accessed 24 February 2022).

^{68.} M Oliveira 'MINTTICS supports technology initiative developed by women

https://www.angop.ao/noticias/tecnologia/minttics-apoia-iniciativa-tecnologica-desenvolvida-por-mulheres/ (accessed 10 January 2022).

^{69.} DW ' Angolan Women Launch " Stop killing us" campaign on social media' https://www.dw.com/pt-002/mulheresangolanas-lan%C3%A7am-campanha-parem-de-nos-matar-nas-redes-sociais/a-50755066 (accessed 24 February 2022). 70. https://www.ondjangofeminista.com/ondjango/2018/12/11/parem-de-matar-as-mulheres (accessed on 18 February 202).



CONCLUSION

This report reflects the current status of digital rights in Angola. Specifically, it analyses the exercise of fundamental rights such as access to information and freedom, including how the government has dealt with their protection in 2021. Although the current government has a slightly better human rights record than the previous dispensation under President José Eduardo dos Santos' rule, recent events revealed increased incidents of human rights violations. The independence of the media is still compromised by state interference.

The report also shows that the COVID-19 pandemic resulted in the closure of independent print media, prompting some journalists to turn to online publishing, although there are still challenges.71On one hand, false information, often unsourced or wrongfully credited to reliable media, is increasingly common, especially on social media and other messaging platforms. There is also a tendency for the government to control the media, especially by monitoring the activities of private television and radio stations. This trend compromises the enjoyment of fundamental rights and freedoms including the right of access to information and freedom of expression. In addition to that, as noted in this report, Angola lacks a national framework or policy concerning the protection of children from harm in the digital environment.

The country also lacks legislation to protect women on the online landscape and digital inclusion in the context of persons with disabilities (PWDs). In order to change this reality, there is a need for the government to promote a wide discussion on the adoption of specific legislation. Given that Angola will hold elections in August 2022, it will be important to monitor how the country manages its communications system, particularly to protect personal data and internet access during elections. This is necessary to allow great access to information and freedom of expression, which are fundamental freedoms encapsulated in the ACHPR 2019 Declaration and other relevant international standards.



Angola lacks a national framework or policy concerning the protection of children from harm in the digital environment.

^{71.} Manuel Luamba, "Angola: Jornalistas procuram novas soluções face à crise no setor," DW (2021) https://www.dw.com/pt-002/angola-jornalistas-procuram-novas-solu%C3%A7%C3%B5es-face-%C3%A0-crise-no-data-procuram-novas-solu%C3%A7%C3%B5es-face-%C3%A0-crise-no-data-procuram-novas-solu%C3%A7%C3%B5es-face-%C3%A0-crise-no-data-procuram-novas-solu%C3%A7%C3%B5es-face-%C3%A0-crise-no-data-procuram-novas-solu%C3%A7%C3%B5es-face-%C3%A0-crise-no-data-procuram-novas-solu%C3%A7%C3%B5es-face-%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-novas-solu%C3%A0-crise-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-procuram-no-data-prsetor/a-58109633 (accessed on 11 January 2022).

RECOMMENDATIONS

In light of the identified gaps, the following are the recommendations:

THE GOVERNMENT

- As required under principle 20 of the ACHPR 2019 Declaration, the government should take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners, and ensure that victims have access to effective remedies.
- · The government should create a conducive environment for the free flow of information during elections, in line with the ACHPR Guidelines on access to information and elections in Africa, guaranteeing the unrestricted use of the Internet during that period (ACHPR 2019 Declaration, principle 37).
- To improve ICT resiliency, Angola should urgently define response plans to be deployed in the event of a major ICT attack on their critical infrastructure. These plans should describe what immediate nation-wide actions would be taken, as well as digital fall-back alternatives, to ensure that government and organisations would still be able to operate even with a sudden loss of digital tools and networks.
- In order to promote greater access to the Internet, the government should boost budgetary allocations for the ICT sector and expand the Angola Net One project, particularly in rural areas. It can be done in conformity with principle 37 of the ACHPR 2019 Declaration on access to the internet.
- The government should implement measures to raise the awareness and build the capacities of journalists and other media practitioners, policy-makers and other stakeholders on laws and standards for ensuring safety in the communication sector.
- The Angolan government should accelerate implementation of its strategy on intelligence, with respect to the 473 Resolution on the need to undertake a study on human and peoples' rights and artificial intelligence (AI), robotics and other new and emerging technologies in Africa, adopted by the African Commission on Human and Peoples' Rights in February 2021.
- Finally, regarding ownership, there is need to clarify the details about the nationalisation and privatisation of the media companies since it can represent a limitation of freedom of expression in Angola. Currently, the State is controlling the public media as the 'Televisão Pública de Angola (TPA)', it is recommended that the government should consider taking positive measures to promote digital plurality media. The nationalisation and privatisation process should be transparent and open to all stakeholders in the communications market.

CIVIL SOCIETY

- Civil society organisations should work in a coordinated manner to denounce cases of human rights violations, both offline and online, by creating mechanisms to channel information in real time.
- Local civic organisations should be trained to better understand national legislation and international instruments that will enable them to carry out advocacy actions for human rights in virtual and physical space.

PRIVATE SECTOR AND ICT PLATFORMS

- Private institutions should demonstrate their commitment to cybersecurity and work in close collaboration and partnership toward the shared objective of protecting citizens, businesses, and organisations in the digital era.
- It is necessary to create initiatives between the main digital platforms and the private sector in the creation of internet facilities, through free digital plazas in the main urban centres and rural areas of Angola, in order to expand connectivity in the country.

ACADEMIA

- There is a need for more research that focuses on digital rights in Lusophone countries such as Angola, as there are few working properly documented locally by the academia.
- There is a need to adopt academic language that is more accessible to the ordinary public, as well as the use of technical terms on digital rights that are appropriate to the context.



There is a need for more research that focuses on digital rights in Angola.

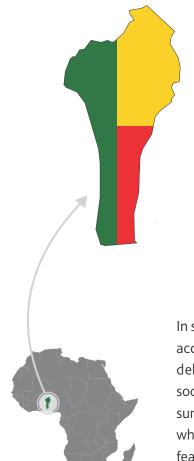
BENIN

Between the reforms of the digital code and the risk of internet connection cuts during the elections, 2021 has been an eventful year on the Beninese web.

This report presents the state of digital rights in Benin in 2021. It reveals the risks of the current digital code on opinion leaders and journalists. It also highlights the difficulties of accessing the network due to the cost of the internet as well as a significant mobilization to counter the shutdowns of the web during the election period.

These challenges must push the authorities to organize a real collective reflection with all the parties around the legal text, which the digital code represents. The government must also ensure greater transparency around the tariff schedule of telephone operators.







In several African countries, the massive use of social networks by citizens is accompanied by increasingly restrictive legal standards. In Benin, the debates concerning the digital code are tense, around which many civil society associations are asking for a revision. In this context, it has been summarily laid out, but questions continue to arise. The key concern is whether this digital code is positive for freedom of expression and there is fear that it can be used to restrict the rights of journalists.

The digital code in the Republic of Benin established by Law No. 2017-20 is not the only issue of the past year. During this election year, users of digital services tried to warn against an abusive shutdown of the network. In addition, everyone should be able to have equitable access to the internet when looking at the cost concerned.

THE DIGITAL CODE IN QUESTION

The year 2020 was marked by the arrest of two journalists following their online activity and the launch of more than 250 e-services which raised

> numerous issues (security, protection of personal data, etc.) that we mentioned in the previous 2020 report.¹



E-SERVICES RAISING NUMEROUS ISSUES

To assess the year 2021, there is a need to look briefly at incidents in 2020. On December 10, 2020, the Beninese parliament deliberated and adopted Law No. 2020-35 amending the Digital Code in the Republic of Benin. It modifies and completes the provisions of Law No. 2017-20 of April 20, 2018 on the Digital Code in the Republic of Benin in its articles 121, 125 and 464.²

^{1.} https://paradigmhq.org/report/londa-benin-haki-za-digitali-na-ujumuishaji-2020-ripoti/?lang=fr

^{2.} https://www.afapdp.org/wp-content/uploads/2018/06/Benin-Loi-2017-20-Portant-code-du-numerique-en-Republiquedu-Benin.pdf

The amendments relate to the reduction from nine to five of the number of advisers to the Electronic Communications and Postal Regulatory Authority (Arcep), the reduction from eleven to eight of the number of members of the Data Protection Authority to personal character (Apdp) and the replacement of the name "Minister of Electronic Communications and Post" by "Minister in charge of Electronic Communications."

Officially, this is a favourable legal framework for digital development.

However, Amnesty International Benin in its report of December 10, 2021 on the situation of human rights in Benin in 2021 deplored the fact that journalists continue to be prosecuted on the basis of the digital code. Amnesty specifies that a revision is essential in particular of the provisions which restrict the freedom of expression. Indeed, accused of electronic harassment, journalists Patrice Gbaguidi and Hervé Alladé (respectively editor-in-chief and owner of the private daily Le Soleil Benin Infos) have been in prison since November 2021. CP | said:



They are accused of having violated the Beninese digital code, which came into effect on April 20, 2018, because their report on alleged wrongdoing by a public official was shared on social media,"

Published on August 25, 2021, this report was subsequently the subject of a complaint filed by the person concerned, Marcellin Laourou, a Beninese customs official.

On December 21, the Beninese Human Rights Commission released its 2020-2021 activity report to deputies. In the latter, she points to a decline in freedom of expression. In question, the digital code which she asks parliamentarians to read again. "Several repressive provisions of this law jeopardize freedom of expression and freedom of the media in Benin," says the commission.

Benin occupies the 114th position out of 180 countries in the World Press Freedom Index published by Reporters Without Borders (RSF) in 2021. The country has lost 36 places since 2016. In this same ranking, Nigeria has also fallen from 5 places compared to 2020.



On May 3, 2021, World Press Freedom Day, RSF called on the Beninese authorities to reform the Digital Code. "This text should not be used to arbitrarily detain journalists, a practice that has largely contributed to Benin's free fall in the World Press Freedom Index in recent years," RSF notes on its website.

The Digital Code was adopted to offer companies and investors strong legal certainty while guaranteeing citizens high protection in order to build their trust in digital services. It is a major text that is a novelty on the African continent.

While the Code has entered into force, the prospects it allows to consider do not exclude that its application is surrounded by difficulties, observes the jurist Julien Comlan Hounkpè in Ciomag.3

Also, for the latter, "the intervention of the legislator did not consider the calls of human rights organizations and media professionals, for a rereading of the Digital Code." For Harold Adjaho, president of the Beninese chapter of the Internet Society, "the latest modification of the digital code is of little importance. It had no significant impact on the state of affairs."

ELECTIONS WITHOUT INTERNET SHUTDOWNS

In 2020, Access Now's #KeepItOn coalition documented 155 shutdowns in 29 countries, including 10 in Africa. In Benin, two months before the presidential elections in April 2021, the Beninese chapter of the Internet Society mounted a campaign with the hashtag #CoupezPasInternet (#DontCutInternet) to avoid another shutdown of networks on election day. During the elections, the Beninese chapter used various tools to monitor Internet traffic and connectivity. No disturbances were observed on election day. "I, for one, think we stopped them from suspending the service [and made them think]. We focused on the economic consequences that a cut could have. The government is pushing for economic reforms... and, I think they understood that if they had shut down the internet this time it would have been disastrous," says Harold Adjaho, president of the Beninese chapter of the Internet Society.





CHEAPER INTERNET ACCESS

On November 8, 2021, young Beninese activists supported by artists musicians like Crisba and Siano Babassa, called on social networks for lower internet connection costs in Benin with the #1gigafavi campaign. The call was addressed to telephone operators and regulatory authorities.

The request is clear: the billing of 1 Giga of data at 500fcfa (a little less than 1 euro). According to the estimate of several users, today when you pay 500 fcfa, you have an average of 400 MB to browse the internet. The latter therefore want the double in order to have more time to train, publish forums or simply to do e-commerce.

Many Internet users were quick to denounce the price of the packages. One of them writes: "Because internet packages are expensive, we can no longer work properly. Internet packages being expensive, we are no longer able to carry out our online activities. Because internet packages are expensive, we are sometimes unable to support our artists by viewing and sharing their work. Review your rates and speeds".

^{3.} https://cio-mag.com/code-du-numerique-au-benin-decryptage-du-specialiste-julien-coomlan-hounkpe-sur-la-loimodificative/



A petition published by Joachim Sehonou, one of the participants in the campaign, collected more than 3000 signatures. "We want prices to come down. May the authorities at different levels support us in this fight," he wrote on the petition page.

Internet users have also called for a pure and simple boycott of operators in order to force them to review their price list.

In response to a publication by an Internet user who criticized the high cost of the Internet connection, the country's leading telephone operator suggested that the change in tariffs was the responsibility of the telecommunications regulatory authority. He acknowledged, a few days later, that he was free to apply the rates of his choice.

According to Ramanou Biaou, specialist in cyberintelligence and former president of the Beninese chapter of the Internet Society, "We must ensure that the fall in the cost of the Internet connection does not degrade the quality of the networks." As stated by the former manager of Beninese members of the Internet Society, users and organizations for the defence of digital rights must come together in coalition to address a plea to economic and political actors to reduce the high cost of accessing the Internet.

Indeed, it is essential to lower the costs of the internet, how do we justify charging a Gigabyte at 500 FCFA. What is going to happen with the price tomorrow?

"We need to know the real costs of an Internet connection worthy of the name, the share collected by the State, the operators and the fixed costs linked to the maintenance and proper functioning of the network."

In 2018, with the #TaxePasMesMo campaign, the Benin Bloggers Association and civil society have already called for lower internet connection costs.

Compared to the year 2020, we have witnessed in Benin in 2021 a political will to improve the legal framework related to the use of digital technology and the digital code precisely.



RECOMMENDATIONS TO CONSIDER

Despite these efforts, as in 2020, Beninese journalists have been prosecuted in the exercise of their activity. It is therefore urgent that:

- A real reform of the digital code takes place in consultation with civil society organisations.
- In order to make the digital code better known, it would be necessary to train and raise the awareness of the various players in the ecosystem and the population.
- There is a need to adopt less restrictive laws on freedom of expression to avoid internet disruptions during election periods.
- Civil society organisations must also create links with the media in order to support them and make their actions better known.
- The very high cost of digital connectivity has been for several years a real problem in Benin. Telephone operators must therefore review their tariff schedule in order to allow easy and equitable access to the network and work towards increased broadband access.
- The National Assembly is also urged to pass a law to promote, guarantee and strengthen Internet access for all.



There is a need to adopt less restrictive laws on freedom of expression to avoid internet disruptions during election periods.

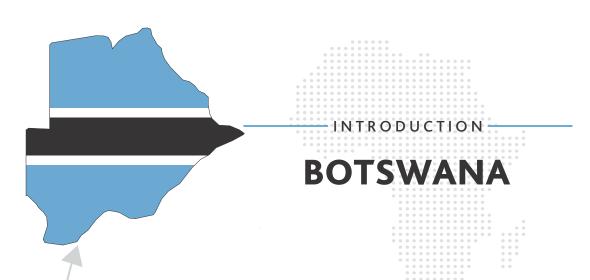
BOTSWANA

The Londa Digital Rights and Inclusion report for 2021 expands on the analysis provided in the 2020 report to assess progress on a range of topics impacting digital rights in Botswana. Particular emphasis was placed on the commonalities and contrasts in their hegemonic existence in this study, the subjects covered include: the effect of COVID-19 regulations on digital rights and inclusion, online freedom of expression, privacy, digital identity as well as surveillance, digital access – and recognising thematic issues in both the approaches and subject matter for contextualisation.

Additionally, the study examines key challenges and opportunities associated with creating a unified approach to ICT regulation in Botswana, offering findings both through qualitative and quantitative analysis. This report makes three major observations on country approaches to digital rights and ICT policy:

- The government has expanded its power over the digital space by introducing new forms of regulations including, most recently, a proposed Criminal Procedure and Evidence Bill, despite having the Data Protection Act enacted and having come into effect.
- Without proper checks and balances, the government continues to use surveillance technologies illegally to monitor citizens; this capability is altering the governance environment while potentially providing another tool of repression.
- government censorship and intimidation of journalists and civilians persist. Though concerns about Botswana's surveillance capabilities remain, there were no reports of blocking or filtering, nor were there restrictions on online activism via social media in 2021.

Evolving policy frameworks and governance procedures have resulted in little effort to establish a multistakeholder digital rights agenda, and in many ways, consultative democratic processes are usually overlooked. To maximise the efficiency and effectiveness of this partnership, an ICT working group of diverse stakeholders should be formed to provide oversight, analyse existing legislation, and serve as a conduit for communication with policymakers.





Botswana is one of Africa's democratic states, having long been lauded for its outstanding democracy and transparency. The Southern African nation received a score of 72/100 in Freedom in the World 2021, Freedom House's annual assessment of political rights and civil liberties.² Additionally, the country is classified as one of the least corrupt governments in Sub-Saharan Africa by Transparency International, receiving a score of 60 on the 2020

> Corruption Perception Index (CPI).³ A small, landlocked country with a population expected to grow up to 2.4 million people, according to United Nations forecasts,⁴ and with a per capita GDP of roughly US\$ 18.5 Billion in 2022. Botswana has transformed itself, rising to upper middle-income status and becoming one of the world's fastest growing economies, with an average annual growth rate of approximately 4.6%.6



Given Professor Klaus Schwab's reasoning about rethinking the digital economy, 7 It stands to reason that the World Economic Forum's (WEF) policy narrative on the Fourth Industrial Revolution (4IR)—as defined by the increasing use of new technologies such as artificial intelligence (AI) will advance the cause of socio economic disruption in Africa. In order to reap the benefits of this

^{1.} Jorich Johann Loubser 'Botswana's success story is built on disciplining transnational capital '(2021). https://blogs.lse.ac.uk/internationaldevelopment/2021/10/19/botswanas-success-story-is-built-on-discipliningtransnational-capital/ (accessed on 24 January 20222).

^{2.} Freedom House 'Freedom in the World 2021' (2021) https://freedomhouse.org/country/botswana/freedom-world/2021 (accessed on 16 January 2022)

^{3.} Transparency International 'CPI 2020 - Corruption Perception Index-Sub Saharan Africa' (2020) https://www.transparency.org/en/news/cpi-2020-sub-saharan-africa (accessed on 19 January 2022)

^{4.} World Population Review 'Botswana Population 2021' (2021) https://worldpopulationreview.com/countries/botswanapopulation (accessed on 23 January 2022)

^{5.} Trading Economics (2022) 'Botswana GDP' https://tradingeconomics.com/botswana/gdp (accessed on 24 January 2022)

^{6.} Statista 'Botswana: Growth rate of the real gross domestic product (GDP) from 2016 to 2026*' (2022) https://www.statista.com/statistics/407779/gross-domestic-product-gdp-growth-rate-in-botswana/ (accessed on 24 January 2022).

^{7.} Klaus Schwab 'A Better Economy Is Possible. But We Need to Reimagine Capitalism to Do It' (2020). https://time.com/collection/great-reset/5900748/klaus-schwab-capitalism/ (accessed on 07 March 2022)

digital transformation, during his November 2019 inauguration, Botswana's President, Mokgweetsi Masisi, expressed his goal to leverage technology and build a more diversified knowledge-based economy,8 driven by the Information and Communication Technology (ICT) sector.

Botswana's new concept for economic, governmental, and social development can be linked to the recently launched "SmartBots" proposition. This initiative necessitates public sector transformation, developing digital skills, increased internet access, new e-government policies, and increased use of ICT as a means of job creation and development. Botswana has established the ICT groundwork for implementing its ongoing visionary aspiration over the last few decades, beginning with the establishment of the Government Computer Bureau in the 1990s followed by the country's first convincing ICT roadmap, then the 2007 National Information and Communications Technology Policy (also known as Maitlaimo).¹⁰

To illustrate Botswana's developmental agenda, the ICT infrastructure was developed by modernising the telecommunications sector, implementing key legislations to foster favourable ICT legal and regulatory frameworks. Moreover, adopting IT transformation in the public sector, initiating major e-government projects, rolling out digital literacy initiatives, and leveraging ICT technologies to stimulate sustainable economic growth, and enhancing the capacity to utilise ICT technologies to spur sustainable economic development.

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

One of the impediments to the development of effective internet policy in Botswana is the inability of existing human rights instruments to adequately protect citizens from online human rights violations even though Botswana ratified the International Covenant on Civil and Political Rights (ICCPR) in 1966, and the Convention on the Rights of Persons with Disabilities in July 2021, both of which are legally enforceable.¹³ Emphasising these

treaties points us to the importance of the Internet as a medium for communication, socialising, and online business transactions. These treaties help establish a consistent standard for governing the relationship between the state and the citizens, ensuring that internet policies and digital rights principles are binding on states and other players in the Internet environment.

^{8. &#}x27;(2019) https://www.reuters.com/article/ozatp-uk-botswana-politics-idAFKBN1XB49E-OZATP (accessed on 07 February 2022)

^{9.} Government of Botswana 'SmartBots 2021' (2021) https://smartbots.gov.bw (accessed on 24 January 2022)

^{10.} Ministry of Science and Technology 'Maitlamo' (2007)

¹⁹⁴a1a522c49/Maitlamo%20Policy_26112019_083359_d807e512-ea2e-4d56-8fba-60679904b985.pdf?ver=2019-11-26-083359-520 (24 January 2022)

^{11.} International Covenant on Civil and Political Rights (ICCPR)

https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (accessed on 19 January 2022)

^{12.} Convention on the Rights of Persons with Disabilities (CRPD)

https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf (accessed on 17 January 2022)

^{13.} United Nations Huaman Rights Treaty Boadies 'UN Treaty Database-Botswana'

January 2022)

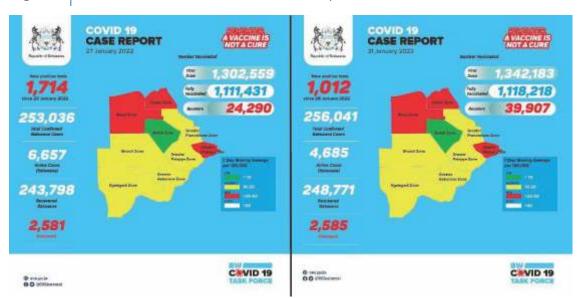
At the regional level, the African Union (AU) has adopted a Convention on Cyber Security and Personal Data Protection of which Botswana is not a signatory.¹⁴ However, the government enacted the Cybercrime and Computer Related Crimes Act (Act 18, 2018) as part of its policies, standards, and practices that integrate and shape national cyberspace, as well as other capacity development initiatives. Looking at other extensions of wellestablished African human rights frameworks, including the 1981 African Charter on Human and Peoples' Rights, 15 Botswana as a state party is compelled to adhere to the principles of this

Charter, having adopted it in 2001. The Model Law on Access to Information in Africa,16 adopted in April 2013, embodies almost similar themes outlined in the 2002 Declaration of Principles on Freedom of Expression in Africa,¹⁷ which is currently being revised to incorporate issues of freedom of expression, access to information, and digital rights. Both laws' principles exemplify the importance of addressing emerging challenges in Botswana, including media control, press freedom, limits related to cybercrime laws, and regulating the internet space and information access.

THEMATIC ASSESSMENT

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

New COVID-19 Statistics and Vaccine Report Figure 1



Source: Botswana Government

f https://www.facebook.com/BotswanaGovernment

^{14.} African Union Convention on Cyber Security and Personal Data Protection https://au.int/sites/default/files/treaties/29560-sl-

AFRICAN%20UNION%20CONVENTION%20ON%20CYBER%20SECURITY%20AND%20PERSONAL%20DATA%20PRO TECTION.pdf (accessed on 15 January 2022)

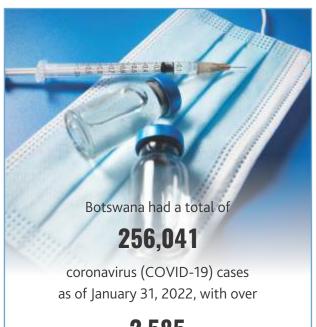
^{15.} African Charter on Human and Peoples' Rights (also known as the Banjul Charter)

https://www.achpr.org/legalinstruments/detail?id=49 (accessed on 22 January 2022)

^{16.} African Commission on Human and Peoples' Rights 'Model Law on Access to Information for Africa' (2018) $https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_africa/model_law_on_ati_in_ati_in_africa/model_law_on_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_ati_in_at$ ccess_to_infomation_en.pdf (accessed on 06 March 2022)

^{17.} African Commission on Human and Peoples' Rights 'Declaration of Principles on Freedom of Expression and Access to Information in Africa' (2019)

 $https://www.achpr.org/public/Document/file/English/draft_declaration_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_principles_on_freedom_of_expression_in_africation_of_expression_of_expression_in_africation_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expression_of_expres$ _eng.pdf (accessed on 06 March 2022)



2,585

fatalities recorded and

246,771

recoveries as of the same date.

On January 31, 2022,

1,342,183

had received their first dose, with

1,118,218

of them fully vaccinated.

The outbreak of the COVID-19 pandemic in Botswana also hastened the adoption of digital contact tracing technologies which have played a critical role in managing the pandemic and enabling social distance.

The BSafe application was developed as a replacement to traditional Covid-19 contact tracing approaches.¹⁸ Though this application was deemed privacy compliant and in-line with Botswana's data privacy law by the government.19 With a lack of established data protection authority to implement the legislation and oversee the application's deployment, security breaches were highlighted and citizens filed a lawsuit against the country's Covid-19 task force, questioning the platform's privacy policies.²⁰ This emphasises the significance of establishing an autonomous data protection authority, like the Information Regulator established by South Africa's Protection of Personal Information Act.

In March, President Masisi proclaimed a COVID-19related state of emergency, and in April, broad emergency regulations were gazetted. Among other measures, the Emergency Powers Act (EPA) restricted the right to strike, and declared that sharing false pandemic-related news was illegal.²¹ These sweeping emergency powers were considered equivalent to restricting freedom of speech and expression, and had the potential to violate human rights.

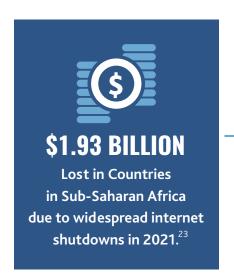
FREEDOM OF EXPRESSION ONLINE AND INTERNET DISRUPTIONS

Restriction of freedom of expression online and internet disruptions are human rights issues that have received serious attention across Africa. Persistent internet shutdowns imposed primarily by authoritarian states in many African countries, and non-compliance with international laws require urgent action at both the national and continental levels. Despite these regional issues, it is important

^{18.} The Correspondent 'African Growing App-etite for Coronavirus Apps gets Mixed results' (2020) https://the correspondent.com/598/a frican-countries-growing-app-etite-for-coronavirus-apps-gets-mixed-results(accessed on 5 February 2022).

^{20.} Mmegi 'Presidential COVID-19 Task Team in court over BSafe app' (2020) https://www.mmegi.bw/news/presidentialcovid-19-task-team-in-court-over-bsafe-app/news (accessed on 05 February 2022)

^{21.} Ibis pg 2



to mention that Botswana has never imposed an internet blackout against citizens. This demonstrates why Botswana is recognised as one of the continent's most effective democracies.²²

It is evident that regional bodies such as the AU have not responded to internet shutdowns effectively in the past and no action has been taken to stop this tendency, despite the fact that the African Commission on Human and Peoples' Rights has expressed its concerns regarding these issues.²⁴

DIGITAL EXCLUSION IN AFRICA AND ITS IMPACT ON HUMAN RIGHTS

While many African governments contemplate various national policies to bridge digital gaps, a human rights-based framework that supports digital inclusion should be given more priority to promote the digital economy. Given the need to develop human rights norms and standards, effective policies and programs that focus on development of ICT infrastructure and bridging the digital gap are imperative to fostering open governance and inclusion.

The practices witnessed in some African countries continue to impede these efforts to promote access and affordability of digital technologies, as well as unjustly restricting citizens' rights to free speech, privacy, and access to information – and these continue to harm efforts to overcome the increasing digital gaps and exclusion. Further, they obstruct significant technological adoptions, undermining ICT's ability to strengthen governments and contribute to sustainable development.



^{22.} According to the Democracy Index, flawed democracies conduct free and fair elections and uphold fundamental human rights notwithstanding issues such as media freedom violations). They do, however, have severe shortcomings in other facets of democracy, including governance issues, a lack of political culture, and low levels of political engagement. 23. New24 'Sub-Saharan Africa lost R30bn due to govt Internet shutdowns, report says' (2022) https://www.news24.com/news24/africa/news/sub-saharan-africa-lost-r30bn-due-to-govt-Internet-shutdowns-report-

says-20220112 (accessed on 06 February 2022).

^{24.} African Commission on Human and Peoples' Rights 'Press Release by the Special Rapporteur on Freedom of Expression and Access to Information in Africa on the Continuing Trend of Internet and Social Media Shutdowns in Africa' (2019) https://www.achpr.org/pressrelease/detail?id=8 (accessed on 06 February 2022)

PRIVACY, DIGITAL IDS **AND SURVEILLANCE**

In Botswana, there are no general laws that regulate surveillance by law enforcement agencies. In the respective laws that establish the agencies, only the surveillance and interception of private communication is provided for under the 2007 Intelligence and Security Service Act (ISSA).²⁵ Recently, Botswana's government proposed the Criminal Procedure and Evidence Bill, which grants the government the authority to intercept communications and compel information disclosure to state intelligence and law enforcement authorities.26

The Counter-Terrorism Act (Act 24, 2014) establishes measures to prevent and combat terrorism, including financing terrorism; it also establishes the Counter-Terrorism Analysis and Fusion Agency and provides for related matters. The Botswana Telecommunications Act of 1996 (Act 15, 1996) on the contrary provides for the telecommunications industry to disclose customers' private communications to law enforcement agencies and the courts. This directly threatens vulnerable groups and facilitates surveillance by making it easier for law enforcement authorities to monitor people.

The Data Protection Act 32 of 2018 (DPA) was enacted by the Botswana Parliament in order to realise the right to privacy guaranteed in the Constitution. This DPA came into effect on 15 October 2021. The DPA came into effect.²⁷

The right to privacy is guaranteed in section 9 (1) of the Botswana Constitution, while the Data Protection Act of 2018 establishes the statutory



framework for the processing of sensitive personal data.²⁸ Section 25 of the Act forbids the processing of genetic and biometric data and allows it only where the processing is consistent with the principles in Sections 20 and 26 of the law, such as consent and necessity, are met.²⁹

^{25.} Intelligence and Security Services Act, 2007 (ISSA)

^{26.} The Committee to Protect Journalists (CPJ) 'CPJ Calls on Authorities in Botswana to reject bill on warrantless surveillance 'https://cpj.org/2022/01/cpj-calls-on-authorities-in-botswana-to-reject-bill-on-warrantless-surveillance/ (accessed on 03 January 2022)

^{27.} Data Protection Act (Act No. 32 of 2018) ('the Act')

https://www.dataguidance.com/sites/default/files/government_gazette_15th_october_2021.pdf

^{28.} Constitution of Botswana, 1966 (the Constitution)

^{29.} Data Protection Act, 2018 (the DPA)

In 2020, Botswana's Ministry of Nationality, Immigration, and Gender Affairs appointed Veridos' ICAO-compliant passport software system with integrated biometrics, extending the company's long-standing relationship with the government to include data enrollment and personalised management system, as well as identification document readers for immigration control. Extended Access Control (EAC) safeguards biometric data contained on the passport's chip using the Veridos software solution.30

Although little is known about the interception capabilities of Botswana's security forces, the security agents are thought to have used Cellebrite's Universal Forensic Extraction Device (UFED) and Physical Analyzer technology to retrieve and assess information from journalists in Botswana.31 Cellebrite, owned by Japan's Sun Corporation, claims its UFED toolset can recover data from phones, SIM cards, and other devices even after they've been wiped.

While some of these regulatory frameworks can be considered necessary to strengthen the government's ability to combat terrorism, maintain public order, and fight cybercrime, state actors have misused their capability to conduct illegal surveillance and interception of private communication, compromising citizens' digital rights such as privacy, freedom of expression, and access to information.

As a result, it is critical to contextualise active conversations about privacy rights in Botswana by analysing patterns with how state policies and practises have moulded and limited these freedoms over the years.

HATE SPEECH, MISINFORMATION AND CRIMINAL DEFAMATION LAWS

Botswana has no laws that specifically address hate speech but Section 12(1) of the Botswana Constitution guarantees freedom of expression³² and there are limitations granted in Section 12(2), which allows for the regulation of freedom of expression. Throughout the COVID-19 epidemic, the Botswana government has regularly cautioned members of the public and media to adhere to accepted standards of news reporting, such as verifying information before posting and avoiding deception through the dissemination of fake news.

Despite the paucity of successful prosecutions, the state often pursues civilians under various acts, including the widely utilised Cybercrime and Related Crimes Act. The application of this legislation, while not aimed at regulating the Internet, is still used to charge victims, justifying pre-trial imprisonment and adversely affecting online freedoms. This action exemplifies the dangers faced by civil society actors, journalists, and activists, with many of these cases remaining open indefinitely.

For example, the Botswana Police Service (BPS) detained local journalists between April and May 2020 for exposing information about COVID-19 and local politics. The journalists were charged with posting "with the intention to deceive" under the emergency COVID-19 laws, as well as "publication of alarming statements" under the Penal Code and "offensive electronic communication" under the Cybercrime Act.³³ If such charges are proven in court, a prison sentence of up to five years or a fine of 100,000 Botswana pula (US\$9,250) may be

^{30.} Biometrics Research Group, Inc. 'Veridos receives further order for biometric passports from Botswana' (2020) https://www.biometricupdate.com/202012/veridos-receives-further-order-for-biometric-passports-from-botswana (accessed 04 January 2022)

^{31.} The Committee to Protect Journalist 'Botswana police use Israeli Cellebrite tech to search another journalist's phone' (2021) https://cpj.org/2021/07/botswana-cellebrite-search-journalists-phone/ (accessed on 01 February 2022)

^{33.} Investigative Journalism Network 'How Botswana Police use US and Israeli Technology to Identify Press Sources' (2021) $https://gijn.org/2021/05/19/how-botswana-police-use-us-and-israeli-technology-to-identify-press-sources/\ (accessed on the control of the c$ 05 February 2022)



imposed. Defamation is also a punishable crime; a recent example of a defamation lawsuit involves Khato Civils (Pty) Ltd and the Umbrella for Democratic Change (UDC).34As an argument in this case law, the aggrieved challenge the Umbrella For Democratic Change to produce proof in support of the defamatory and deceptive statements meant to destroy the company's and its chairman's good name.

ACCESS TO INFORMATION, DIGITAL INFRASTRUCTURE AND PRIORITISATION OF ICT

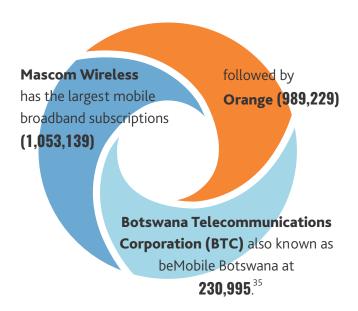
Given the fact that access to information laws provide safeguards for individuals' rights to information, the pandemic has demonstrated how ineffective these measures remain in practice. Numerous African countries, even well-known democracies such as Botswana, lack access to information laws. Along with limiting access to information, the government has threatened and arrested individuals and journalists for disclosing information regarding Covid-19 malfeasance. Botswana's Constitution protects freedom of expression and a free press, but efforts to constitutionally protect citizens' rights to privacy in communication (such as mobile phones) and access to government information have stalled.

Botswana's National ICT Policy approach aims to promote national ICT penetration; yet, the process of digitization remains low in the country as a result of the government's failure to implement ambitious policies for universal ICT and technological literacy.

Besides this, the Internet's limited bandwidth and high data charges have impeded efforts to expand digital access and affordability. The Botswana Communication Regulatory Authority (BOCRA) was established in April 2013 with the

responsibility of governing the information and communications technology (ICT) sector.

Three mobile network operators (MNOs) dominated the 2021 telecommunications statistics by number of subscriptions:



According to Statistics Botswana, fixed telephone line subscriptions fell by 3.9 percent in the second quarter of 2021, from 139,930 in the first quarter to 134,498 in the fourth quarter, from 139,930 in the first quarter to 134,498 in the fourth quarter.

^{34.} Sunday Standard 'Phiri sues UDC for Defamation' (2021) https://www.sundaystandard.info/phiri-sues-udc-fordefamation/ (accessed 02 February 2022)

^{35.} Botswana Communication Regulatory Authority '2021 BOCRA Telecom

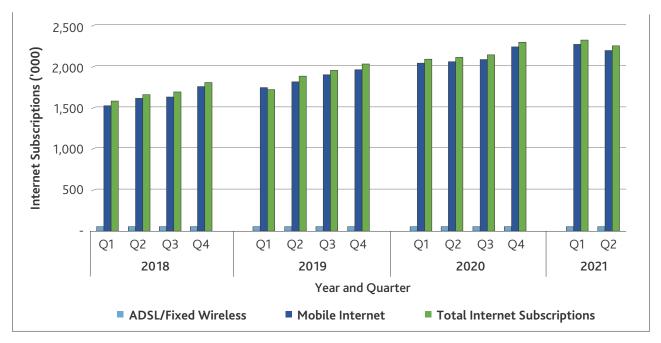
Statistics"'https://www.bocra.org.bw/sites/default/files/documents/MARCH_2021_BOCRA_TELECOMS_STATISTICS.pdf (accessed on 22 January 2022)

Subscriptions to mobile cellular phones, on the other hand, increased by 0.9 percent from 3,876,773 in Q12021 to 3,911,833 in Q22021.

Internet subscriptions, like fixed telephone subscriptions, dropped by 3.2 percent in Q2 2021, from 2,323,120 in Q12021 to 2,249,137.

Nonetheless, this decline could be attributed to the pandemic's major impact, which cut household incomes, hence reducing mobile phone affordability. Some of the issues associated with these statistics include a lack of reliable broadband connectivity during lockdown, limited access to electricity in remote areas, and a lack of expertise for maintenance.

Internet subscriptions by quarter and year Q1 2018 - Q2 2021



Source: Statistics Botswana

ARTIFICIAL INTELLIGENCE NATIONAL STRATEGY

Botswana has yet to publish its national artificial intelligence policy, while publicly declaring readiness for the Fourth Industrial Revolution. Botswana was ranked 109th on the 2021 Oxford Insights Government AI Readiness Index with a score of 36.33 overall, 36 compared to its 121 ranking in the 2020 study with a score of 33.27.31 This increase is almost certainly the effect of the country's new AI initiatives, which include the Vice President's push to encourage firms to create research centres across the country and recruit Al experts.³⁸



^{36.} Oxford Insights 'Government AI Readiness Index 2021'

https://static1.squarespace.com/static/58b2e92c1e5b6c828058484e/t/61ead0752e7529590e98d35f/1642778757117/Gould and the static of the staticvernment_Al_Readiness_21.pdf (accessed on 01 February 2022)

^{37.} Oxford Insights 'Government AI Readiness Index 2020'

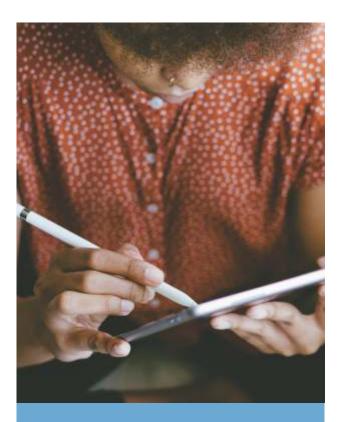
Readiness+Report.pdf (accessed on 01 February 2022)

^{38.} Artificial Intelligence for the Future of Botswana https://tsena.co.bw/news/artificial-intelligence-future-botswana (accessed 29 January 2022)

With the increasing convergence of digitalisation and datafication throughout industry sectors, the global digital economy setting is increasingly integrating with 4IR technologies such as the Internet of Things, big data, machine learning, robotic systems, cloud technology, blockchain, and virtual reality.

While the government is in the process of diversifying its economy, the newly introduced National E-commerce³⁹ and SmartBots⁴⁰ strategies demonstrate the government's commitment to embracing emerging technologies to develop the envisioned knowledge-based economy. Botswana has also identified 4IR as a critical driver of national transformation in its long-term National Vision 2036, with the goal of establishing a sustainable, technology-driven, and commercially vibrant economy.

The advances in a number of Botswana's established businesses suggest that they have already fully or partially integrated AI-driven technology into their routine business operating processes. To foster these cross-sectoral advancements, a joint effort between the public and commercial sectors is necessary to grow the economy and close the existing skills gap. Without this approach, a national AI policy will be ineffective to develop and implement. Botswana, like many other developing countries in Africa, is experiencing a skills deficit of AI specialists. To address this obstacle, the government would need to convene an AI task force composed of experts from key government agencies, the commercial sector, academia, civil society and other stakeholders to design a roadmap for implementing AI technology in the national context.

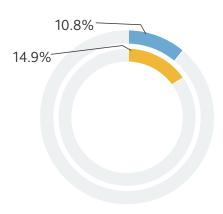


GENDER AND ICT

COVID-19 highlighted the need for individuals to be connected digitally to access education, employment opportunities, and other purposes, particularly for women and girls who are disproportionately excluded. It is evident that more research is needed on gender and ICT in Botswana, as there appear to be no published assessments or responses to the gender digital divide and its disproportionate gendered impact on digital rights. The United Nations Women (UN Women) report provides insight to the problem of gender balance in positions of leadership which is a similar trend even in the ICT sector, women hold only 10.8 percent of seats in parliament as of February 2021 in Botswana.

^{39.} United Nations Conference on Trade and Development 'National ICT policy review and e-commerce strategy for Botswana' https://unctad.org/system/files/official-document/dtlstict2021d4_en.pdf (accessed on 22 January 2022) 40. ibis

Political participation, accountability and gender-responsive institutions





- Proportion of seats held by women in national parliament (% of total number of seats).
- Proportion of elected seats held by women in deliberative bodies of local government.

Source: https://data.unwomen.org/country/botswana

If exposure to leadership opportunities and access to digital technologies are directly related to social and economic development, it is critical that women in Botswana understand and utilise these technologies. As Botswana prepares to rebuild following COVID-19, digital access and affordability offers new opportunities for women in business. Entrepreneurship should be considered a critical driver of Botswana's socio-economic prospects. According to the United Nations, the female economy is:

"[...] the world's largest rising market, with the potential to add \$12 trillion to global GDP by 2025 [...]"

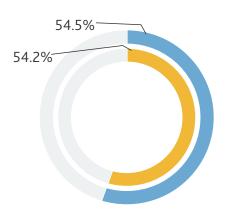


Figure 3.2

- Proportion of women in managerial positions.
- Proportion of women in senior and middle management positions.

In a post-pandemic period, innovative startups that offer digital solutions are critical to the country's sustainable socio-economic prosperity. Also, gender-sensitive national ICT policies that account for gender inequities need to be developed to ensure that women are included fairly in Botswana's developmental strategy. The AU's Agenda for Gender Equality and Women's Empowerment places considerable emphasis on women's inclusion in the continent's developmental strategy.41

^{41.} AU Strategy for Gender Equality and Women's Empowerment https://au.int/sites/default/files/documents/36195-docau_strategy_for_gender_equality_womens_empowerment_2018-2028_report.pdf (accessed 04 February 2022)

CONCLUSION AND RECOMMENDATIONS

Given the foregoing, it is evident that Botswana's status of digital rights and inclusion is worrying, and may deteriorate further given the country's current legislative trends. This research provides the following recommendations for resolving some of the country's most perplexing digital rights issues:

- In response to countering dis/misinformation, journalists and the media could bolster government efforts by providing fact-checking tools and training on how to combat dis/misinformation.
- The gender digital divide exists mostly as a result of policy failure. Improved broadband policy through private sector provisions provides a clear path ahead in terms of increasing women's internet access and use, as well as progressing toward universal access goals.
- Additional research from academia and government is needed to conduct a national study assessing existing ICT policies in terms of their impact on women and digital divide - and ensuring women's participation in these policymaking processes.
- Government should collaborate with academia to execute evidence based research that maps existing policies in order to simplify the scoping of ICT laws and policies in Botswana. This will provide insights of the existing opportunities and challenges these regulations present in the field of digital rights.
- Government should be transparent about their surveillance capabilities and the tools being used in monitoring citizens, to advance public confidence. This entails expanding on existing reform efforts and best practices at a country level.
- Lawmakers and civil society groups advocating for human rights should hold open consultative sessions to address illegal state surveillance and provide proposals on surveillance technology standards and policies that aligns to universal human rights norms and standards.
- Media companies should prioritise digital safety training for media practitioners by implementing programs and policies that contribute towards increasing online safety and security in publishing information.
- Governments should prioritise regaining public trust through the adoption and effective enforcement of access-to-information laws.
- Academic institutions have a role to play in leading evidence-based research on digital rights, particularly internet freedom, and in establishing curricula aimed at increasing public knowledge of various digital rights and related challenges.

CAMEROON

This report presents the state of digital rights, internet freedoms and digital inclusion in Cameroon in 2021. Digital rights and inclusion are an important part of human rights. These rights deserve to be monitored in view of the level of recurring violations between Internet shutdown, arrest of journalists and activists, censorship of websites and social networks, disruptions of the Internet network, control, mass surveillance or the theft of personal data.

Various crises have accentuated the rise of hate speech and disinformation, in particular on the COVID-19 crisis during the year 2021. These various evils have contributed to a policy of digital exclusion, often for political reasons affecting human rights and ICT development. In Cameroon, despite efforts, the need remains visible with regard to ICT infrastructure. In 2021, Cameroon recorded no major digital rights violations. However, some actions contributed directly or indirectly to the recorded violations.

To improve the face of digital rights and digital inclusion, the government must urgently develop a law on the management of personal data; have an evaluation plan for projects in the ICT sector including all players in the ecosystem and develop a mechanism for transparency in the management of financing from the special ICT fund. Transparent digital governance is also necessary with a plan to promote artificial intelligence.







Cameroon is a bilingual country (French and English) located in Central Africa with an estimated population of over 27 million in 2020. The gross domestic product (GDP) is estimated at 479 billion FCFA over three years, including 180 billion in 2020.2

Over the past 20 years, Cameroon has adopted various laws in the ICT sector. But it is since 2016 that the development of digital is defined in the Strategy Document for the Growth of Digital called Strategic Plan Cameroon Digital 2020.3 Several areas of this strategic plan were not achieved for economic and structural reasons. The new digital plan for the next few years has been included in the National Development Strategy (SND) plan for 2030.4



3G mobile coverage in Cameroon is estimated at a satisfactory rate of 69% with individual Internet use of 23% since 2018.⁵ The Internet market in Cameroon has four operators, namely MTN, Orange, Nexttel and Camtel, which provide different types of network coverage, 2G, 3G, 4G and even 5G. Alongside these telephone and Internet operators are around fifty Internet access supply companies. In Cameroon, the 5G network covers less than one million users on the national territory.6

https://www.tresor.economie.gouv.fr/Pays/CM/indicators-et-

conjoncture#:~:text=Le%20Gouvernement%20a%20pr%C3%A9sent

^{1.} Population of Cameroon, Countryeconomy.com (2022) $https://fr.countryeconomy.com/pays/cameroun#: \sim : text = The \%20 Cameroun \%2C\%20 with \%20 une \%20 population, current with the first of the first$ y%20est%20the%20franc%20CFA . (accessed 2 January 2022).

^{2.} Indicators and economic conditions, Treasury and Economy (2019)

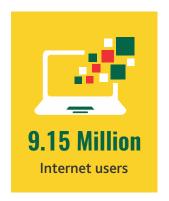
[%]C3%A9%20un,interm%C3%A9diaire%20de%20la%20tranche%20inf%C3%A9rieure (accessed 23 January 2022).

^{3.} Localhost Kmer (2020) https://localhostkmer.xyz/2020/08/18/plan-4 strategique-numerique-du-cameroun-2020/ (accessed 2 January 2022).

^{4.} National Development Strategy, Scrib(2021) https://fr.scribd.com/document/492181621/SND30-Strategie-Nationalede-Deveppement-2020-2030(accessed 22 January 2022).

^{5.} Nperf() https://www.nperf.com/fr/map/CM/-/-./signal/ (accessed 3 January 2022).

 $^{6. \} https://www.nperf.com/fr/map/CM/-/449.MTN/signal/?ll=4.718777551249867\&lg=9.953613281250002\&zoom=6.$



According to the report published by Hootsuite and We Are Social, Cameroon had approximately 9.15 million Internet users as of January 31, 2021. A figure has increased by 1.3 million (+ 16%) between 2020 and 2021. Based on this growth, the Internet penetration rate in Cameroon stands at 34.0% in January 2021, indicating the same report. Among these Internet users, 4.3 million are users of social networks. This out of a global population estimated at 26.88 million inhabitants in January 2021, therefore an increase of 672 thousand (+ 2.6%) between January 2020 and January 2021.8

ICT POLICIES AND REGULATORY FRAMEWORKS IN CAMEROON

For nearly two decades, Cameroon has implemented laws that govern certain digital sectors in the country. Regulatory bodies are at the center of digital policy in Cameroon. This is the Ministry of Posts and Telecommunications which coordinates all activities in the sector, and is the main government institution responsible for ICT in the country. The Telecommunications Regulatory Agency (ART) is the regulator of the mobile telephony sector and Internet connections. The National Agency for Information and Communication Technologies (ANTIC) is an institution responsible for promoting ICT and the fight against cybercrime on the national territory.

The specific digital legislation of the ICT sector is described in Law No. 2010/013 of December 21, 2010, governing electronic communications in Cameroon and supplemented by the law of 2015.

This law establishes the procedures for establishing and operating communications networks.9

Other laws were adopted in the same period, including Law No. 2010/021 of December 21, 2010 governing electronic commerce in Cameroon.¹⁰ Law No. 2010/012 of December 21, 2010 on cybersecurity and cybercrime in Cameroon sets the security framework for electronic communications networks.11



Framework Law No. 2011/012 of 6 May 2011 on consumer protection in Cameroon applies to all transactions relating to communication services in relation to consumers.¹²

^{7.} Hootsuite and We are social, datareportal(2021) https://datareportal.com/reports/digital-2021cameroon?rq=Cameroon (accessed 23 January 2022).

^{8.} Population du Cameroon, countryeconomy(2021)

https://fr.countryeconomy.com/pays/cameroun#:~:text=Le%20Cameroun%2C%20avec%20une%20population,monnaie %20est%20le%20franc%20CFA (accessed 23 January 2022).

^{9.} Minpostel, law on electronic communications (2010) https://www.minpostel.gov.cm/images/Les_textes/Lois/Loi_2013-013_communications_electroniques.pdf (accessed 6 January 2022).

^{10.} ART, telecommunications law (2010) http://www.art.cm/sites/default/files/documents/Loi-commerce-electronique-N-2010-021-du-21-12-2010.pdf (accessed 6 January 2022).

^{11.} Minpostel, cybercrime law (2010) https://www.minpostel.gov.cm/images/Les_textes/Lois/Loi_2010-

⁰¹²_cybersecurite_cybercriminalite.pdf (accessed 6 January 2022).

^{12.} Minpostel, consumer protection framework law (2011) http://165.73.158.31:81/case_study/loi-cadre-n-2011-012/ (accessed 23 January 2022).

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Cameroon's digital legislation draws its sources from regional and international legal instruments in this area. For example, the declaration of principles on the freedoms of expression establishes the principles of anchoring the rights to freedom of expression and access to information.13

The principles govern freedom of expression, which extends to social media and the internet. Principle 1 outlines the importance of the rights to freedom of expression and access to information. Principle 5 of the declaration establishes the protection of the rights to freedom of expression and access to information online.

The digital regulatory framework has also been structured through the principles of the African Commission on Human and Peoples' Rights as well as non-binding and relevant standards, 14 such as the model law on access to information for Africa of 2013 and the Guidelines on Access to Information and Elections in Africa of 2017 as well as the adoption of the African Union Convention on Cybersecurity and Personal Data Protection.



The declaration of principles on the freedoms of expression establishes the principles of anchoring the rights to freedom of expression and access to information.



COVID-19 AND IMPACT ON DIGITAL RIGHTS REGULATION AND INCLUSION

In 2021, Cameroon did not record any cases of major digital rights violations related to COVID-19. The shock of the health crisis encouraged the State in the implementation of projects for the development of innovation, digital and technological tools in the health field. Cameroon does not have a law on the protection of personal data. Some applications designed by the state or the private sector during the Coronavirus do not have terms of services or privacy policies. For example, the platform of the Ministry of Public Health of Cameroon, 3MS which is responsible for collecting and publishing the test results of COVID-19 for travelers does not have information on the conditions of use and confidentiality.¹⁵

This app like others contains personal and sensitive data including phone and passport numbers, birth dates, location and many more. However, users have no information about the fate of the data available on these platforms.

^{13.} Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019(2019) https://www.achpr.org/legalinstruments/detail?id=69 (accessed 5 January 2022)

^{14.} ACHPR, Model Law on Access to Information for Africa

https://www.achpr.org/en_legalinstruments/detail?id=32#:~:text=2(accessed 23 January 2022).

^{15.} Minsanté, 3ms (2021) https://3msminsante.com/ (accessed 9 January 2022).

Under these conditions or no indication has been given, user data may be used for inappropriate purposes, particularly in the context of health campaigns, electoral operations, or in hacking operations.

To limit contact between people, the General Delegation for National Security (DGSN) launched in 2021 the first digital platform for enrolling passports online, the passcam portal, with the aim of facilitating the rapid obtaining of passports.¹⁶ Although the platform has the terms of use, unfortunately, it does not indicate the details on the confidentiality of the data collected, nor on the sharing of information with third-party entities.

FREEDOM OF EXPRESSION **ONLINE IN 2021**

Freedom of expression in Cameroon is often very threatened due to the regularly tense political context. Journalists, activists and bloggers were intimidated directly or indirectly by their opinion online during the year. The Coronavirus crisis has impacted the level of freedom of expression in Cameroon. The management and access to information on the disease are not fluid

Cameroon does not have a national information center on the Coronavirus. Access to information on other areas remains limited, in violation of the model law on access to information for Africa which specifies in article 12 on the right of access to information that "subject to the conditions provided for in this law, any person has the right of access to information held by: (a) the public entities and the private entities referred to; and (b) other private entities..."

Journalists and Internet users are often obliged to content themselves in most cases with the information available on the sites of international organizations, often with delays in updating.

INTERNET NETWORK DISRUPTIONS

During the year 2021, Cameroon did not record any major Internet cuts from the various operators and Internet service providers. However, the Internet networks of the operators MTN and Orange recorded several network disruptions, causing enormous harm to users. Cameroon recorded on average more than 2 network disruptions per month with a total of approximately 60 disruptions per year. These disturbances last between 30 minutes and 2 hours and are rarely reported or notified by network operators.

During these disruptions, mobile money services are also affected, and transactions are impossible. Telephone operators generally blame the break in the optical fibre linking Cameroon to Brazil, or ongoing maintenance work. Notification of these cases of network disruptions to customers is rarely done, while the contract between customers and Internet network operators provides for the opposite. Optical fibre in Cameroon is offered under contract by Camtel, a public mobile phone company, also an Internet service provider.

Since 2021, certain taxes on electronic transactions have been considered as a brake on innovation and technological development. In the 2021 finance law, the government announced the charging of 19.25% tax for all electronic operations. Thus, all purchases of products and services are subject to this imputation.



^{16.} DGSN, Cameroon passport (2020) https://portal.passcam.cm/ (accessed 10 January 2022).



HATE SPEECH AND MISINFORMATION

Law No. 2010/013 of December 21, 2010 on electronic communications provides a regulatory framework for the use of platforms and electronic communications. Law No. 2014/028 of 23 December 2014 on the Suppression of Acts of Terrorism is legal provisions generally used to convict certain political actors on the basis of their online and offline communication and offenses related to hate speech or hate speech contempt of ethnicity.

But specifically, Law No. 2019/020 of December 24, 2019, supplementing certain provisions of Law No. 2016/007 of July 12, 2016 on the Penal Code, punishes the proliferation of hate speech as indicated in article 241 -1 relating to contempt and ethnicity: 17

"(1) Is punished by imprisonment for one (01) to two (02) years and a fine from three hundred thousand (300,000) to three million (3,000,000) francs, anyone who, by any means whatsoever, holds hate speech or incites violence against people because of their tribal affiliation or ethnic."

Since 2019, no specific convictions for hate speech have been recorded in Cameroon, although hate speech is very often spread on social networks by identifiable people.

DIGITAL INFRASTRUCTURE AND ICT PRIORITIZATION

Cameroon has taken a big step in the development of its digital infrastructure over the past 5 years, through the construction of database centres, data centres, the improvement of the Internet connection by optical fibre between Cameroon and Brazil by cables submarines, the deployment of two Internet exchange points (IXPs) in Douala and Yaoundé. The latest generation of technological equipment has been acquired for health centres or national police services for the production of biometric passports and in certain research laboratories.

Unlike countries that have used COVID-19 to develop Artificial Intelligence, Cameroon has not taken any policy or strategy for the development of AI. Also, Cameroon has no legal and regulatory provision on Artificial Intelligence while the interactions between Internet users in Cameroon face the processes of artificial intelligence. Although these infrastructures exist, the gap is still visible with regard to mobile networks and Internet coverage throughout the territory.

^{17.} Law n°2019/020 of December 24, 2019 (2019) https://www.prc.cm/files/e4/df/69/d0803e347719aa9263eff2afe4c8c158.pdf (accessed January 9, 2022)



CONCLUSION

Cameroon recorded little news on violations related to digital rights and internet freedoms in 2021. However, slight cases of digital rights violations were recorded through disruptions of the internet network and networks of financial operations by mobile.

Some Data Breach Cases of a personal nature in the management of the covid crisis are also to be deplored. Online freedoms of expression and freedoms of protest have also been curtailed due to Covid, which has also heightened self-censorship of freedom of expression.

The COVID-19 crisis has enabled Cameroon to take a step forward in the development of ICT. Some infrastructure was built during the crisis and the quality of the Internet network has improved.

In the face of violations, the role of local and international organizations has remained dynamic and constant in the face of non-compliance with digital rights and freedoms through various actions and advocacy campaigns.



Cameroon recorded little news on violations related to digital rights and internet freedoms in 2021.

RECOMMENDATIONS

- For access to information on the COVID-19 pandemic, Cameroon must have a national information centre on the impact of COVID-19 and strengthen the mechanisms for accessing information offline and online for quality and up-todate content.
- · For freedom of expression online, Cameroon must strengthen the freedom of expression and association online and respect the national and international legal provisions in this area.
- To strengthen data security and the protection of privacy, Cameroon must adopt a law on personal data. The creation of an independent agency for the collection and management of personal data could better protect users.
- To limit the disturbances of the Internet network, Cameroon must create an independent agency for the management of the Internet network and the transparent management of optical fibre.
- To limit the spread of hate speech and its consequences, the government must enforce the law in this area. Also, the government must create an agency responsible for triggering sanctions against the authors of hateful and dangerous remarks and on the excesses linked to new technologies.
- As part of the development of technology infrastructure, the government must prioritize the development of infrastructure and the expansion of ICT Internet coverage in all regions of Cameroon.
- To promote artificial intelligence, the government should develop a national artificial intelligence strategy.



To strengthen data security and the protection of privacy, Cameroon must adopt a law on personal data.

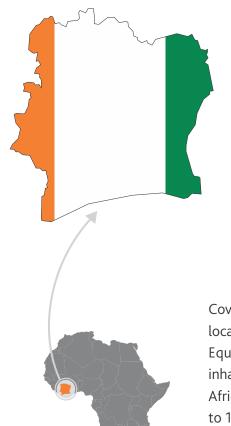
CÔTE D'IVOIRE

Among the classic requirements of democracy are not only freedom of expression, but also transparency in accessing, processing and disclosing information. However, these requirements seem to undergo critical reversals due to a set of paradoxes which, without being really foreign to the daily life of modern societies, have been amplified by the popularization of the Internet and social networks.

For Côte d'Ivoire, the issue of misinformation and hate speech is at the heart of the new challenges facing the government, the population and all development actors. This report will address several issues and propose recommendations to strengthen the resilience of the population to the threats that misinformation and hate speech pose to social cohesion in Côte d'Ivoire.

Reflections will include an overview of the state of misinformation, a better understanding of the legal framework of misinformation and related challenges, and best practices to support awareness raising among Internet users.







Covering an area of 322,462 km2, Côte d'Ivoire is a West African country located in the northern hemisphere between the Tropic of Cancer and the Equator. Its population, mainly young, is estimated at 28 088 455 inhabitants in 2021. The main economic power in French-speaking West Africa, the country has one of the most dynamic economic growths (from 6 to 11% between 2012 and 2019) in the world and maintains its position as the world's leading producer and exporter of cocoa beans and cashew nuts.²

In terms of internet and telecommunication consumption, Côte d'Ivoire has one of the highest internet penetration rates in the West African region with



an average of 46.8% in January 2021.3 The penetration rate of fixed Internet is 1.2% while that of mobile Internet is 77%.4 The proportion of the population connected to the Internet is estimated at 12.50 million, representing an increase of 2.5% between 2020 and 2021.5 It should also be noted that 22.1% of the Ivorian population uses social media networks, which is equivalent to nearly 5.90 million users. Côte d'Ivoire is in 3rd place in West Africa in the field of ICT 6

^{1.} The World Factbook / Côte d'Ivoire, in https://www.cia.gov/the-world-factbook/countries/cote-divoire/ consulted on the 13th of January 2021 at 11:23 hrs

^{2.} In https://www.banquemondiale.org/fr/country/cotedivoire/overview consulted on the 10th of January 2022 at 12:10 hrs 3. In https://www.artci.ci/index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-

abonnes-service-internet.html?tmpl=component&print=1&layout=default consulted on the 12th of January 2021 at 00:45hrs.

 $^{4. \} In \ https://www.artci.ci/index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-index.php/marches-regules/11-observatoire-du-service-internet/75-index.php/marches-regules/11-observatoire-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-secteurs-du-sect$ abonnes-service-internet.html?tmpl=component&print=1&layout=default consulted on the 12th of January 2021 at

^{5.} In https://datareportal.com/reports/digital-2021-cote-divoire consulted on the 15th of January 2021 at 12:10hrs

^{6.} Mamadou Sanogo, « ICT Sector, Coe divoire 3rd in West Africa » in https://www.7info.ci/secteur-tic-la-cote-divoire-3een-afrique-de-louest/ consulted on the 10 of January 2021 at 9:10hrs

DISINFORMATION AND HATE SPEECH IN CÔTE D'IVOIRE

The rise of the Internet and social networks has considerably transformed interactions in the public space, which has become increasingly virtual. In Côte d'Ivoire, cases of misinformation are becoming more widespread, especially over the last five years. Indeed, the spread of a whole range of forms of disinformation is increasingly apparent, especially on Facebook. The rise of virtual discussion forums has amplified fake news given the confrontation between supporters of different political parties.7

This reality was also evident during the 2020 and 2021 electoral cycles. Indeed, Côte d'Ivoire is not immune to the phenomenon of misleading political advertisements and false information that are unleashed on web platforms.8

Among the examples, we can cite the numerous conspiracy theories related to the Corona virus disease. Indeed, a report published by the National Democratic Institute (NDI) in Ivory Coast states that the misinformation surrounding Covid-19 initially led the entire Ivory Coast population to question Ivory Coast's ability to effectively respond to the challenges posed by the fight against the pandemic.9

This questioning had considerable impacts on the further management of the pandemic and the respect for digital rights, especially in the city of Abidjan.10

According to Anderson Diédri,



The fake news spread misled citizens and led them to behave unreasonably.

"We have seen people destroying the screening center that was under construction in Yopougon¹¹{a suburb of the city of Abidjan}, believing that this center was going to receive patients who were going to contaminate them, when in reality it was a screening center that was supposed to help improve care and support in the fight against the disease".12

In addition, accusations of assassination plots against prominent politicians, unsubstantiated allegations of election fraud, manipulated photos to spread false political narratives and false statements attributed to politicians played a prominent role in amplifying false information and hate speech during both the October 2020 presidential elections and the 2021 legislative elections. In fact, "Election periods are characterized by political excitement that results in many irregularities."

^{7.} The Democratic Observatory of Côte d'Ivoire (ODCI) is one of the most influential Facebook discussion groups in Côte d'Ivoire. With a community of more than 400,000 members, this group is a space for exchanges in which Ivorians discuss $social\ issues,\ especially\ political\ ones.\ In\ https://newsgeek.ci/2020/06/03/odci-le-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum-facebook-de-cote-plus-grand-forum$ divoire-ferme-pour-pedopornographie/ consulted on the 20th of January 2022 at 11:23hrs.

^{8.} Pascal Hérard, "Presidential election in Côte d'Ivoire: can Facebook fight against Fake News? » in https://information.tv5monde.com/afrique/presidentielle-en-cote-d-ivoire-facebook-peut-elle-lutter-contre-les-fakenews-380296 consulted on the 14th of January 2022 at 11:21hrs.

^{9.} National Democratic Institute, Report on Disinformation in Côte d'Ivoire, 1st case study, September 2020, in https://www.ndi.org/sites/default/files/Final%20French%20Case%20Study.pdf

^{10.} Report on digital rights and inclusion in Côte d'Ivoire, in https://paradigmhq.org/wp-content/uploads/2021/06/Droits-Num%C2%AEriques-et-Inclusion-au-Cote-D_ivoire.pdf

^{11.} Municipality of the City of Abidjan

^{12.} Ruth Assoko, "Coronavirus epidemic, feedback on an information crisis" in https://www.lemediacitoyen.com/epidemiede-coronavirus-retour-sur-une-crise-de-linformation/ consulted on January 10 2022 at 06:30 min.



DECREASE IN HATE SPEECH ON

FACEBOOK GROUPS. PAGES AND PROFILES. The phenomena of misinformation, which has always existed, nowadays, with the Internet, social networks and some media that have an editorial line of false information, takes an unprecedented scale. There are more and more obvious links between the constellation of disinformation actors and the traditional political parties which, for many reasons, exhibit an extreme use of "Fake news". 13

Online hate speech, on the other hand, has been fluctuating mainly during the year 2021. In fact, in the period from 15 to 21 July 2021, there was a 9% decrease in hate speech on 172 Facebook groups, pages and profiles according to the monitoring carried out by Internews Côte d 'Ivoire.14 The monitoring also reveals that from September 30 to October 6, 2021, hate speech dropped from 121 to 95. Conversely, the report shows a 41% increase in online hate speech, particularly on Facebook, from November 4 to 10, 2021.15 The second week of 2022, for example, goes from 110 to 105, a 5% decrease.16

Finally, the above-mentioned statistics reveal that online hate speech varies according to the country's political news and generally manifests itself in virtual exchange forums, particularly on Facebook. It should also be noted that in order to reduce the impact of misinformation and hate speech, several initiatives such as awareness raising, training and monitoring activities have been implemented by the government and civil society organizations.¹⁷



Election periods are characterized by political excitement that results in many irregularities.

^{13.} Christian Gambotti, "THE MONDAY CHRONICLE- Ivory Coast: How "fake news" tries to intervene in the presidential election or decryption of the Vice Media article", in https://www.lintelligentdabidjan.info /news/la-chronique-du-mondicote-divoire-how-the-fake-news-are-trying-to-intervene-in-the-presidential-election-or-decryption-of-the-vice-media-election-or-decryption-of-the-vice-media-election-or-decryption-of-the-vice-media-election-or-decryption-of-the-vice-media-election-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-decryption-or-darticle/ consulted on 14 January 2022 at 9:21 p.m.

^{14.} Online hate speech monitoring is an activity of the USAID-funded Political Transition and Inclusion (PTI) Program implemented by the National Democratic Institute (NDI), Internews, and a coalition of Ivorian civil society organizations. In https://www.fratmat.info/article/214185/societe/discours-de-haine-en-ligne-en-cote-divoire-2e-baisse-consecutivedepuis-le-debut-du-mois consulted on January 21, 2022 at 03:32 min.

^{15.} Danielle Tiémélé, "Côte d'Ivoire-AIP/ A 41% increase in hate speech on the web in one week (Observatory)", in https://www.aip.ci/cote-divoire-aip-une-ascension -of-41-hate-speeches-on-the-canvas-in-one-week-observatory/ consulted on January 24, 2022 at 01:34 min.

^{16.} Eugène Sahi, "Haine en ligne Côte d'Ivoire: More good news" in https://www.afrique-sur7.ci/484253-haine-en-lignecote-divoire consulted on January 23, 2022 at 05:32 min.

^{17.} Délorès Pie, "Disinformation online around the ballot, the OIDH recommends the maintenance of political dialogue", in https://www.lemediacitoyen.com/desinformation-en-ligne-autour-du-scrutin-loidh-preconise-le -maintenance-dudialogue-politique/ consulted on January 05, 2022 at 01:30 min.



CURRENT DIGITAL POLICIES AND REGULATIONS

Côte d'Ivoire has an extensive system of digital regulations. The strengthening of this sector is indeed a consequence of the rise of cyber-crime and the rampant digitalisation of Ivorian society over the last ten years. Regarding legislation, it should be noted that the country has adopted several legal instruments including Ordinance No. 2012-293 of March 21, 2012 on telecommunications and Information and Communication Technologies (ICT), designed to govern the telecommunications sector. Information and Communication (ICT), intended to govern the telecommunications sector.

There is also:

- Law No. 2013-867 of December 23, 2013 on access to information of public interest,
- Law No. 2013-451 of June 19, 2013 on the fight against cyber-crime,
- Law No. 2017-803 of December 7, 2017 pertaining to the orientation of the information
- the new Law No. 2017-867 of December 27, 2017 pertaining to the legal regime of the press, which takes into account the online press, and
- Law No. 2019-574 pertaining to the Côte d 'Ivoire's Criminal Code. It is necessary to review this law addressing the presence of crimes of

defamation. This is the case of article 183 of the said Penal Code.

The main point to remember is that there is no specific legislation to deal with disinformation and hate speech online. The whole legislation is indeed governed by a collection of scattered articles across various laws but nothing specific. In fact, already in 2018, President Alassane Ouattara announced a law to curb the phenomenon of disinformation, but it never came into force.18

Also, while the legal and punitive component related to disinformation is promoted as an appropriate solution in view of the political, economic and social damage being inflicted, various criticisms are made by civil society stakeholders. For example, there is a growing concern that the fight against disinformation is a pretext for silencing dissenting voices and encroaching on freedom of expression, which is a fundamental element of democracy. Such situations make the legal framework of this phenomenon increasingly complex, with unprecedented consequences, especially for young people who are mostly present on social networks.

^{18.} TV5 Monde, "Presidential election in Côte d'Ivoire: disinformation abounds on social networks", in https://information.tv5monde.com/afrique/presidentielle-en-cote-d-ivoire-la-desinformation-pullule-sur-les-reseaux-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-desinformation-pullule-sur-les-dessociaux-381545 consulted on January 24, 2022 at 06:30 min.



CONCLUSION

The fragility of the Ivorian socio-political climate over the past five years is largely due to the penetration of the digital space by political actors and their sympathizers.

The manipulation of information and public opinion for political purposes by these actors is a powerful way to consolidate the position of certain political movements and to eliminate potential opponents. In such a context, misinformation and hate speech were bound to increase significantly. This situation has had a major impact on human rights and social cohesion in the country.

Initiatives by civil society and nongovernmental organizations (NGOs) have also helped to mitigate and better monitor the impact of misinformation and hate speech in the run-up to, during, and after the presidential and legislative elections.

However, considerable efforts are still needed to better support the country's digital revolution. Between the unequal distribution of universal services, the misuse and abuse of digital platforms and the crisis of values related to bad practices on social networks, Côte d'Ivoire, through its government, will have to invest more in technological development and the management of change that is inherent to it. This change management must also be based on a solid basic education oriented towards new media.



The manipulation of information and public opinion for political purposes by political actors is a powerful way to consolidate the position of certain political movements and to eliminate potential opponents.

RECOMMENDATIONS

The various stakeholders in the digital ecosystem in Côte d'Ivoire, public and private sector actors, civil society, technical and financial partners of the government have in this context issued several recommendations below with a view to promoting a healthy digital environment, legally framed with citizen and responsible actors:

- Citizens must refrain from speeches and acts likely to weaken social cohesion or deteriorate the socio-political climate and speech and publications (texts or videos, etc.) calling for violence, hatred or xenophobia;
- The government must take the necessary measures to avoid the propagation or dissemination of false and sensitive information by pages or accounts under their responsibility;
- The government must educate and train citizens on democratic practices and a gender-sensitive democratic culture;
- Citizens must prioritize content that has a credible source;
- The government must elaborate a common charter including sanctions against the authors of hate speech, xenophobic, racist, sexist or false information likely to disturb public order;
- The government and academia to conduct and promote local scientific research on digital issues in general and misinformation in particular;
- · Civil society organisations must engage in an advocacy process for the production of a law that specifically addresses misinformation and online hate speech;
- The government must promote media and information literacy;
- Civil society organisations must create a synergy of action between civil society actors working on the issue of disinformation;
- Sensitize members of virtual groups or forums on the legal provisions repressing the dissemination of false news;
- The government to come up with a rights-respecting content moderation policy addressing hate speech, xenophobia or speech of a nature that disturbs public order.

DEMOCRATIC REPUBLIC OF THE CONGO

This report focuses on the Democratic Republic of the Congo, taking stock of human rights issues in general with a particular focus on freedom of expression online.

Using an approach comprising documentary, policy and legal analysis as well as key informant interviews, this report aims to analyse aspects of online freedom of expression in the DRC. It also presents the legal environment as well as the specific provisions of the law which guarantee this right to citizens.

Based on the research findings, this report concludes with specific recommendations for different stakeholders, namely the government, parliament, civil society groups and telecommunications companies to ensure citizens' freedom of expression, information and association as provided for in the Congolese constitution.





INTRODUCTION -

DEMOCRATIC REPUBLIC OF THE CONGO



The Democratic Republic of the Congo is a country in Central Africa with nearly 90.9 million inhabitants, having an internet penetration rate estimated at nearly 23.2% during the first quarter of 2021.¹

The country is covered by 4 mobile phone networks, which are Airtel, Orange, Africel and Vodacom; as well as several internet access service providers.



INTERNET PENETRATION RATE

For more than 18 years, the telecommunications sector in the Democratic Republic of Congo was governed by framework law n°013/2002 of October 16, 2002, a legal provision that was too controversial because of the shortcomings revealed in certain questions which have been deemed "Mandatory" by the legislator in the new law in particular: State security, protection of the rights of users of the sector and the structure of the market.²

Over the past ten years, several reports published in the context of human rights and freedom on the Internet, present the Democratic Republic of Congo as one of the countries where violations of human rights, as well as freedom on the Internet, are recurrent and have serious implications for democracy.3

^{1. &}quot;Digital 2021 – The Democratic Republic of Congo", DataReportal.com, February 11, 2021, https://datareportal.com/reports/digital-2021-democratic-republic-of-the-congo?rq=congo

^{2. &}quot;DRC: the innovations of the Telecoms Act adopted by the National Assembly", Zoom-eco.net, May 9,

^{2018,}https://zoom-eco.net/a-la-une/rdc-les-innovations-of-the-law-on-telecoms-adopted-at-the-national-assembly/

^{3. &}quot;Restoring DRC's Democratic Ideals Through Internet Freedom", Paradigmhq.org, August 2021,



Under Article 46 of the framework law governing the postal and telecommunications sector, the authorities had the power to interrupt "partially or totally and for a period that they determine the use of telecommunications installations" for reasons of public security and national defence. Under this same law, the government also had the power to control telecommunications facilities.4

During the existence of this legal provision, the country recorded several cases of internet shutdowns as well as the arrest of journalists and civil society actors whom President Kabila's regime considered "hostile" to his power.5

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

The Constitution of the Democratic Republic of the Congo, the supreme law of the country, guarantees in its articles 23, 24 and 25 the freedom of expression, information and association.6

Article 23

Everyone has the right to freedom of expression. This right implies the freedom to express one's opinions or convictions, particularly speech, writing and image, subject to compliance with the law, public order and morality.

Article 24

Everyone has the right to information. Freedom of the press, freedom of information and broadcasting by radio and television, the written press or any other means of communication are guaranteed subject to respect for public order, good morals and human rights.

Article 25

Freedom of peaceful and unarmed assembly is guaranteed subject to respect for the law, public order and good morals.

^{4. &}quot;framework law n°013-2002 of October 16, 2002 on telecommunications in the DRC", Droit-Afrique.com, January 25, 2003, http://www.droit-afrique.com/upload/doc/rdc/ DRC-Law-2002-13-telecom-framework.pdf

^{5.} In Kinshasa, anti-Kabila masses dispersed in churches", Voaafrique.com,

December 31, 2017, https://www.voaafrique.com/a/kinshasa-messes-anti-kabila-eglises/4186288.html

^{6. &}quot; Constitution of the Democratic Republic of Congo / Official Journal Special Issue February 5, 2011, courconstitutionnelle.cd, February 5, 2011, https://www.cour-constitutionnelle.cd/wp-content/uploads/2021/02/ Constitution-of-the-DRC.pdf



Since November 25, 2020 a new law in the information and communication technology sector has replaced the framework law of 2002 which has been at the centre of several controversies in terms of state security, the protection of users' rights but also the structure of the market.

In this digital age, the protection of human rights and freedom of expression remain fundamental on the African continent.⁷

As formulated in article 19 of the Universal Declaration of Human Rights, freedom of expression is a fundamental human right, the very basis of all other human rights, the pillar of all civil liberties, and the foundation of any democracy.

This freedom remains the first of the rights that any aspirant or totalitarian system suppresses in order to establish or maintain its power, through the systematically organized persecution of the population, intimidation, arrests, arbitrary acts, targeted killings, massacres, and the establishment of a climate of general insecurity.8

In response to this challenge, the African Declaration of Rights and Freedoms on the Internet has been an essential tool on the African continent, laying the groundwork necessary for the promotion of human rights standards as well as the principles of openings in the establishment and application of Internet policies.9

Freedom of expression on the internet is provided for in international human rights instruments, in particular, the Universal Declaration of Human Rights (UDHR) in its article 19 as well as the International Covenant on Civil and Policies (ICCPR) in article 19(2).10



The protection of human rights and freedom of expression remain fundamental on the African continent.

^{7. &}quot;362 Resolution on the Right to Freedom of Information and Expression on the Internet in Africa -ACHPR/Res.362(LIX)2016", Achpr.org, 04 November 2016, $https://www.achpr.org/fr_sessions/resolutions?id=374$

^{8. &}quot;The need for the revaluation of freedom of expression in the DRC", Civicus.org, 2018, https://www.civicus.org/index.php/re-imagining-democracy/stories-from-the- frontlines/3391-the-necessity-of-the-

revaluation-of-the-freedom-of-expression-in-the-democratic-republic-of-congo 9. "The African Declaration of Internet Rights and Freedoms in several languages", Apc.org, October 2017, https://www.apc.org/en/news/the-african-declaration-of-rights -and-internet-freedoms-available-in-more-numbers 10. "Freedom of expression and the internet", Rm.coe.int, December 2013, https://rm.coe.int/prems-167417-gbr-1201freedom-of-expression-on-internet- web-16x24/1680984eae

FREEDOM OF EXPRESSION ON THE INTERNET IN THE EMOCRATIC REPUBLIC OF THE CONGO

The internet penetration rate has evolved considerably, for example from 19.9% in 2019 to almost 23.2% during the first quarter of 2021. The democratic transition between former President Joseph Kabila and new President Félix Antoine Tshisekedi created a break in the political coalition. Current political actors are looking for an electorate for the elections scheduled for 2023. These are the indicators that can guide the analysis of any observer interested in the issue of freedom of expression on the Internet in DRC.

In 2021, Reporters without Borders, an international organization that campaigns for freedom of information, drew up an "alarming" report with regard to concerns press freedom violations in the Democratic Republic of the Congo by ranking the country 149th out of 180 countries and territories worldwide.11

The organization Journaliste en Danger (JED) on the side-lines of the celebration of World Press Freedom Day on May 3, 2021, insisted on the need to carry out in-depth reforms in the press sector, without which journalism will remain a risky profession in the Democratic Republic of the Congo.¹²

Since the start of President Antoine Felix Tshisekedi's mandate, the Journaliste en Danger (JED) organization has reported a worrying increase in attacks against journalists and the media, with a total of nearly 228 cases of non-respect for the freedom of the press throughout the national territory.13

On May 6, 2021, the provinces of North Kivu and Ituri were placed in a state of siege in accordance with Article 85 of the Constitution in order to deal with the worsening violence committed against the civilian population.14

The state of siege being a special regime of legality, the civil authorities are replaced by the military authorities. In this situation, the army is responsible for the security of citizens instead of the police.¹⁵

In this regime, civil liberties can also be reduced. The military authorities can in this case search homes day and night, and prohibit meetings considered a threat to public order. Under the regime of the state of siege, the military authorities can also prohibit the movement of people.¹⁶

Several actors working in the field of human rights in the DRC have expressed their fear that the state of siege regime will open a breach to human rights violations by restricting freedom of expression, information and association.

The authorities of the Democratic Republic of the Congo have been called upon to ensure that the "state of siege" established from May 6, 2021 in the provinces of North Kivu and Ituri does not further

^{11. &}quot;Without strong measures, being a journalist will remain a risky profession in the DRC", Rsf.org, Ranking 201, https://rsf.org/fr/republique-democratique-du-congo

^{12. &}quot;Celebration of World Press Day", Jed-afrique.org, May 3, 2021, http://jed-afrique.org/2021/05/03/rdc-sans-desreformes-en-profondeur -journalism-will-remain-a-risky-job-in-dr-congo/

^{13. &}quot;The NGO Journalist in Danger (JED) is sounding the alarm", Rfi.fr, 04 May 2021,

https://www.fi.fr/fr/afrique/20210504-m%C3%A9dias- in-drc-l-ong-journalist-in-danger-jed-sounds-the-alarm-bell

^{14. &}quot;President declares "state of siege" in two provinces affected by violence", France24.com, May 1, 2021, https://www.france24.com/fr/afrique/20210501-rd-congo- the-president-proclaims-the-%C3%A9state-of-age-in-twoprovinces-touched%C3%A9es-by-violence

^{15. &}quot;Constitution of the Democratic Republic of Congo", cour-constitutionnelle.cd, February 5, 2011, https://www.courconstitutionnelle.cd/wp-content/uploads/2021/02/Constitution-de-la- DRC.pdf

^{16. &}quot;State of siege in the DRC: what results in Ituri and North Kivu with a 12th extension?", Bbc.com, November 20, 2021, https://www.bbc.com/afrique/59352140

violate guaranteed human rights. by international human rights law.¹⁷

On August 28, 2021, through a campaign called "A candle for press freedom in North Kivu", the corporation of journalists called on the military authorities to guarantee journalists a free and independent press and finally pay tribute to their colleagues cowardly killed during this period of the state of siege in the province of North Kivu and in Ituri and whose investigations have so far remained silent.18



CONCLUSION AND RECOMMENDATIONS

The following conclusions and recommendations are key:

To the Government

With regard to Law No. 20/017 of November 25, 2020 relating to telecommunications and information and communication technologies, as provided for, on the proposal of the Regulatory Authority, an order of the Minister having the telecommunications and ICT sector in its attributions can set the conditions and procedures for the collection, recording, processing, storage and transmission of personal data.

To Parliament

There is a need for the Parliament to pursue and complete legislative and structural reforms in the press and communication sector by the adoption and promulgation of the law on access to information in the DRC and also by starting the revision of Law No. 96-002 of June 22, 1996 establishing the procedures for exercising press freedom.

To Civil Society Organisations (CSOs)

There is a need for CSOs to increase awareness-raising activities and also consolidate joint actions in multi-stakeholder meetings such as internet governance forums in order to improve or develop frameworks for the benefit of the digital ecosystem in the Democratic Republic of Congo.

To Telecommunications Companies

Telecommunications companies need to comply with the law and international standards to protect the private communications and personal data of their users. Also, they must not comply with illegal requests by government institutions for the personal data of users.

^{17. &}quot;DRC. The "state of siege" must not further undermine human rights", Amnesty.org, 6 May 2021, https://www.amnesty.org/fr/latest/news/2021/05/drc- state-of-siege-must-not-further-undermine-human-rights/ 18. "DRC: journalists pay tribute to their murdered colleagues", Africanews.com, 28 August 2021, https://fr.africanews.com/2021/08/28/rdc-les-journalistes-rendent-hommage-a -their-colleagues-assassins//

ETHIOPIA

Digital rights, mainly the right to free speech and the right to privacy as well as other human rights on the Internet have been recognised in Ethiopia under the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution, and international and subsidiary laws Ethiopia accepted. Ethiopia is currently amongst countries with the lowest level of internet penetration and use. Although there is a repeated pushback from Civil Society organizations, and litanies from digital rights activists and academia, the issue of internet shutdowns has not got the attention it deserves in Ethiopia.

This report found that while the legal reform project in Ethiopia has brought a normative dawn for human rights in the digital ecosystem, digital rights continue to be restricted by the government through various techniques including internet shutdowns, the hate speech regulation, digital exclusion and intrusion of privacy.

This report showcases Ethiopia's commitment to regional and international human rights instruments pertaining to digital rights. Thematic assessments including the impact of Covid-19 regulation on digital rights inclusion, freedom of expression online, privacy, digital ID and surveillance, access to information, internet disruptions, hate speech, disinformation and criminal defamation, digital exclusion, digital infrastructure and ICT, artificial intelligence national strategy, gender and ICT are presented at length. It ends by analysing the country's performance in relation to digital rights in 2021 with the previous year and making a few concrete recommendations.







Ethiopia is a sovereign state found in East Africa. Ethiopia is the largest and second most populated country - after Nigeria. Ethiopia is historically the oldest polity that preserved its civilisation from foreign domination and successfully defended its sovereignty from colonial rule.² Ethiopia is also dubbed as the 'museum of people' because of being the home of more than 80 ethnic and tribal groups. Since 1991, the country has been organising the federation on the basis of ethnicity, and is organised into nine regional states.



INTERNATION HUMAN **RIGHTS TREATIES RATIFIED**

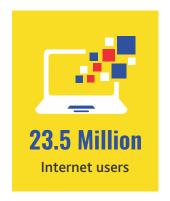
Ethiopia has ratified a number of international human rights treaties. For instance, Ethiopia has ratified the International Covenant on Civil and Political Rights (ICCPR) on 11th June 1993. This means Ethiopia is fully bound by Article 19 of the Covenant on the right to freedom of expression, and Article 17 of the Covenant on the right to privacy. Similarly, Ethiopia has also ratified the African Charter on Human and Peoples' Rights (The Banjul Charter) on 15 June 1998 which in turn, fully accepted a provision on the right to freedom of expression.

Before looking at how digital rights are protected in Ethiopia, it is important to briefly discuss the provenance of internet and internet freedom in Ethiopia. The advent of the Internet in Ethiopia seems a very nascent phenomenon that was introduced two decades ago. Although Ethiopia had telephone services since 1894 - not long after its invention, the history of the Internet in Ethiopia with limited accessibility was introduced only in 1997, and broadband Internet was not widely deployed until recently.3

^{1.} Encyclopedia Britannica, Ethiopia https://www.britannica.com/place/Ethiopia accessed 11 February 2022.

^{2.} Teshale Tibebu, 'Ethiopia The "Anomaly" and "Paradox" of Africa', (1996) 26: 4 Journal of Black Studies 414.

^{3.} Kinfie M Yilma and Halefom Abraha 'The Internet and Regulatory Responses in Ethiopia: Telecoms, Cybercrimes, Privacy, E-commerce, and the New Media', (2015) 9 Mizan Law Review 109.



Statistical figures have shown that the number of internet users in Ethiopia is still low compared to the total number of its population.⁴ There is disagreement about the exact number of Ethiopians with access to the internet, but estimates typically range between 18 and 23 million. For example, the Internet World Stats, in the year 2021 provides that, out of 117,876,227 people living in Ethiopia; 21.15 million people use the internet which constituted 17.9 % of the total population. (See Table 1).

However, the Ethio-Telecom report, as of 21 January 2021 shows there are 23.5 million internet subscribers in Ethiopia⁵ which constitute 20% of the total population. In the past few years, Ethiopia has experienced steady growth in internet penetration from 0.02% in 2000⁶ to 23.5% in 2021 which is an estimated 23.5 million people using the internet. While Ethiopia still lags behind the rest of Africa and the world in internet penetration, it is striving to bridge the gap steadily.

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Ethiopia is a party to seven out of nine core international human rights treaties.⁷ These include:

- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),
- International Covenant on Civil and Political Rights (ICCPR),
- International Covenant on Economic, Social and Cultural Rights (ICESCR),
- · Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),
- · Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) (CAT),
- Convention on the Rights of the Child (CRC), and
- Convention on the Rights of Persons with Disabilities (CRPD).

However, Ethiopia is yet to ratify two major human rights treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED). Yet, the plan shortfalls a stipulation on whether Ethiopia will accede to the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). This protocol mandates the UN Human Rights Committee to receive complaints on civil and political rights, including digital rights.

It should be noted article 9(4) of the Ethiopian Constitution requires that international agreements ratified by Ethiopia are an integral part

^{4.} See Halefom Abraha 'Examining approaches to internet regulation in Ethiopia' (2017) 26 Information & Communications Technology Law 293-311.

^{5.} Ethio Telecom 2013 EFY (2020/21) First Half Business Performance Summary Report

https://www.ethiotelecom.et/ethio-telecom-2013-efy-2020-21-first-half-business-performance-summary-report/ (accessed on 11 April 2022).

^{6.} The International Telecommunications Union (ITU), Percentage of Individuals Using the Internet, Ethiopia https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx (accessed on 11 April 2022).

^{7.} See generally UN Treaty Body Database, Ratification Status for Ethiopia

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN accessed April 11, 2022.

of the law of the land. This means the Ethiopian legal system is seemingly considered as monist in giving effect to international treaties. Importantly, Ethiopia adopted its third national human rights action plan. The National Human Rights Action Plan (NHRAP) is a five-year roadmap that guides the government toward the realization of human rights. It also acts as a touchstone for assessing the country's performance in the area of human rights, in alignment with international standards. One of the major flaws of the current National Human Rights Action Plan is the absence of detailed guidance on human rights in the digital ecosystem.

With regard to compliance with regional human rights instruments, the Ethiopian government needs to show commitment by ratifying the Protocol that grants jurisdiction to the African Court on Human and Peoples' Rights.8 At a sub-regional level, the government should also consider acceding to the Treaty for the Establishment of the East African Community, which enables individuals to file human rights cases before the East African Court of Justice (EACI). This would show additional commitment and would mean Ethiopia accepting the acquis communautaire (community norms) of the East African Economic Community. The government would be bound by regionally and internationally recognised human rights laws and procedures, and this would further solidify accessions to human rights treaties. The lack of commitment to enforcing civil and political rights on the Internet at the international and regional levels echoes that the incumbent administration - much like its predecessors - fears international scrutiny. Without conceding involvement from the UN and AU treaty bodies or monitoring organs, there are restricted gateways for individuals to challenge certain governmental actions such as harassment of journalists, internet censorship or internet shutdowns.



^{8.} Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, opened for signature 10 June 1998, (entered into force 25 January 2004).

^{9.} Treaty for the Establishment of the East African Community, adopted 1999 in Arusha, amended 20 August 2007.

THEMATIC ASSESSMENT OF NATIONAL LAWS AND POLICIES

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

On April 8, Ethiopia's Cabinet declared a national state of emergency in response to the COVID-19 pandemic.¹⁰ Following the first case of Covid-19 was confirmed, the Council of Ministers banned all public gatherings and sports events and ordered the closure of bars, nightclubs, schools, universities, and colleges, as well as restrictions on religious gatherings.¹¹ To give effect to this Proclamation, the Council of Ministers enacted an enabling regulation, the subsequent Regulation 466/2020 was promulgated.¹² However, civil societies like Freedom House 13 and Human Rights Watch 4 were concerned about the impact of Covid-19 regulations on human rights both, off and online. Breaking Covid-19 regulations may entail imprisonment of up to three years or a fine of no less than 1000 Birr and not exceeding 200,000 Birr. 15

Yayesew Shimles was the first journalist indicted for misinforming the public after he posted on Facebook, without mentioning a source in anticipation of COVID-19's impact, the government had ordered the preparation of 200,000 burial places.¹⁶ The case is still being adjudicated and pending before court while the accused was released on bail.

FREEDOM OF EXPRESSION ONLINE

The Ethiopian Constitution recognises freedom of expression in similar terms as under the Universal Declaration¹⁷ and the ICCPR.¹⁸ It recognises the freedom to seek, receive and impart information through any medium, including the Internet.¹⁹ Ethiopia has also enacted sector-specific laws governing mass media, broadcasting services, hate speech and disinformation, network disruptions and social media regulation. For example, the Ethiopian Freedom of the Mass Media and Access to Information Proclamation²⁰ stresses the need for upholding freedom of expression for the mass media houses. However, as of 5 April 2021, the 2008 Mass Media and Access to Information Proclamation has been amended with new Media Proclamation No.1238/2021.



The Media Proclamation applies to mainstream media (print and broadcasters) and online media, excluding social media as provided under Article 2(1).

^{10.} State of Emergency Proclamation Enacted to Counter and Control the Spread of Covid-19 and Mitigate Its Impact Proclamation No. 3/2020.

^{11.}See generally Zemelak A Ayele et al, 'Ethiopia: Legal Response to Covid-19', in Jeff King and Octavio LM Ferraz et al (eds), The Oxford Compendium of National Legal Responses to Covid-19 (OUP 2021) para 13.

^{12.} State of Emergency Proclamation No. 3/2020 Implementation Regulation No. 466/2020.

^{13.} Yoseph Badwaza, 'Coronavirus Response Threatens Ethiopia's Fragile Political Transition' (Freedom House, April 13, 2020) < https://freedomhouse.org/article/coronavirus-response-threatens-ethiopias-fragile-political-transition > (accessed on 12 April 2022)

^{14.} Human Rights Watch, Ethiopia: Free Speech at Risk Amid Covid-19. New Emergency Law Raises Concerns of Further Arrests, Prosecutions' (May 6, 2020) < https://www.hrw.org/news/2020/05/06/ethiopia-free-speech-risk-amid-covid-19 > (accessed on 12 April 2022).

^{15.} Proclamation No 3/2020, Ibid, Art 6.

^{16.} See Addis Standard, 'Prosecutor's charge journalist Yayesew with newly enacted hate speech law,' 21 April 2020. < https://addisstandard.com/news-update-prosecutors-charge-journalist-yayesew-with-newly-enacted-hate-speech-law/> (accessed on 21 April 2021).

^{17.} Universal Declaration of Human Rights (UDHR) adopted 10 December 1948, UNGA Res 217 A(III) Art. 19

^{18.} UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations Treaty Series (UNTS), vol. 999, p. 171, article 19.

^{19.} ibid. 20. Ethiopia: Proclamation No. 590/2008 of 2008, Freedom of the Mass Media and Access to Information Proclamation, 4 December 2008, Art 4.



Nevertheless, the practical realisation of the right to freedom of expression remains under constant siege and threat from State and nonstate actors in Ethiopia. Regarding freedom of expression on the Internet, emerging concerns in Ethiopia include a lack of internet access, hate speech and disinformation regulation, draconian national laws such as the 2016 Computer Crimes Proclamation, and internet censorship.²¹

PRIVACY, DIGITAL IDS **AND SURVEILLANCE**

The right to privacy is a constitutionally guaranteed right in Ethiopia. However, while Ethiopia has ratified major international and regional human rights documents and has incorporated the right to privacy in its constitution, it has not yet enacted comprehensive data protection law despite the recent reform efforts.

The Ethiopian government has launched a pilot programme on digital ID in 2021. Digital ID is regulated by Registration of Vital and National Identity Card Proclamation No.760/2012. This law is slightly amended by Proclamation No.1049/2017. As laid down under Article 56 (1) of the Proclamation, individuals who have attained majority age shall be obligated to obtain a national identity card. Article 58(2) further provides the particulars of national IDs. Accordingly, a national identity card to be issued shall have the quality of lasting for the period of its validity (ten years) referred to in article 59 of this Proclamation, have security features and contain the following particulars:

- the full name including grandfather, sex, date and place of birth, principal residence, photograph, fingerprint and signature of the holder;
- · national identification number and identity card number; and
- issuance and expiry date.

Although the legal reform helped revise warrantless surveillance under the anti-terrorism law, it is undercut by problematic national security laws and practices by the authorities in practice (for example, warrantless interceptions and surveillance to counter-terrorism) that wholly disregard applicable human rights protections.²²

ACCESS TO INFORMATION

Access to information is one of the basic human rights subsumed under the right to freedom of expression in the Constitution of Ethiopia. Ethiopia has drafted a free standing legal framework on access to information so that citizens access and enjoy any publicly held information. However, the Draft Proclamation on Access to Information is yet to be ratified by the Parliament.

One of the persistent problems is the government's unwillingness to inform the public in a timely fashion about what is going on in the country. Part of this problem is the absence of an independent institution to provide timely and up-to-date information to the public. Following widespread criticism, the government set up an institution called 'Government Communication Service' in October 2021 which is meant to provide and facilitate access to information in the country. It is too early to assess the overall performance of the Government Communication Service, but there are reasonable grounds to believe that this institution is not living up to the public's expectations.

^{21.} See Yohannes Eneyew Ayalew 'Assessing the limitations to freedom of expression on the Internet in Ethiopia against the African Charter on Human and Peoples' Rights' (2020) 20 African Human Rights Law Journal 315, 322 22. See Human Rights Watch, 'They Know Everything We Do' Telecom and Internet Surveillance in Ethiopia, (2014) https://www.hrw.org/node/256532/printable/print (accessed on 11 February 2022).

During the height of the armed conflict in Northern Ethiopia, it only gave irregular, intermittent press briefings and statements to journalists and the general public.

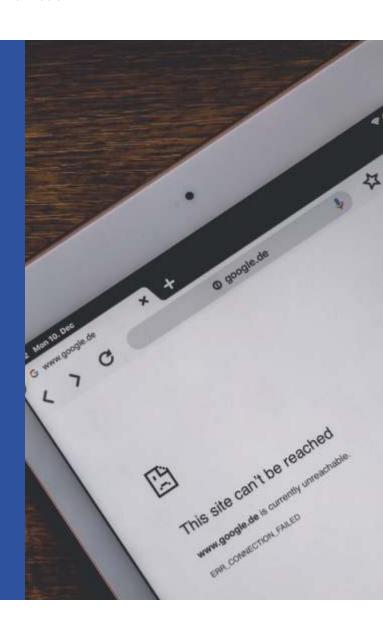
Indeed, the government seems to be reluctant to freely let the information flow. Instead, there is a seeming tendency to control the free flow of information. Yet, ironically, the government often leaks or communicates important information through informal channels such as using paid and pro-government activist (s).

Another problem is the monopoly of fact-checking by the government. When the war started, the government established a body named "State of Emergency Fact Check" and later renamed it "Ethiopia Current Issues Fact Check". While the country's sovereignty and territorial integrity by then were at stake, it's also important to note that government-led fact-checking casts doubt on the impartiality and neutrality of the service. In effect, the government was seemingly restricting independent fact-checking and access to verified information.

INTERNET DISRUPTIONS

The 2020 Draft Computer Crimes Proclamation discourages internet shutdown measures as stipulated under Article 24(1). It provides: "Measures aimed at internet shutdown, blocking, or filtering should only be made when necessary to protect national security, public order, public health and public safety." If this law is approved as is, it will legalise the practice of internet shutdowns or censorship in Ethiopia, which already poses huge threats to the protection of human rights both online and offline.

However, internet shutdowns have become the hallmark of the Ethiopian government. The Ethiopian government has been using different narratives, including a proposed law to justify network disruptions, which in turn muzzles the right to freedom of expression.²³ In the year 2021, the Internet was shut down at least four times (and four partial shutdowns) in connection with the insecurity and counter-insurgency movements in the Wollega area and an armed conflict in Northern Ethiopia, mainly Afar, Amhara and Tigray regions.²⁴



^{23.} Yohannes Eneyew Ayalew, 'The Internet shutdown muzzle(s) freedom of expression in Ethiopia: competing narratives,' (2019) 28 Information & Communications Technology Law, 208.

^{24.} AccessNow 'What's happening in Tigray? Internet Shutdown avert accountability' (29 July 2021)

https://www.accessnow.org/tigray-internet-shutdowns/ accessed 11 February 2022.

HATE SPEECH, DISINFORMATION AND CRIMINAL DEFAMATION LAWS

In February 2020, the Ethiopian Parliament passed a Proclamation aimed at countering hate speech. Article 2(2) of the Proclamation defines 'hate speech' as any speech that deliberately promotes hatred, discrimination or attack against a person or group based on protected status.

However, this definition is still vague and susceptible to subjectivity under international human rights law because it fails to define the term 'hatred', one of the major ingredients of effectively regulating hate speech.²⁵

Article 2(3) of the Hate Speech and Disinformation Proclamation defines disinformation as 'a speech that is false, is disseminated by a person who knew or should reasonably have known the falsity of the information and is highly likely to cause a public disturbance, riot, violence or conflict.' However, this definition is sweeping in scope, violating the legality requirement under Article 19(3) of the ICCPR.

Importantly, Ethiopia enacted Media Proclamation No.1238/2021 which scraps criminal defamation.

When defamation (or sedition) is committed; it shall only entail civil liability, not criminal liability.

DIGITAL EXCLUSION IN ETHIOPIA AND ITS IMPACT ON HUMAN RIGHTS

Digital exclusion continues to impede the enjoyment of human rights in Ethiopia. Although there is no universally accepted definition for this concept, digital exclusion could refer to a situation where a section of the population has continuing unequal access and capacity to use Information and Communications Technologies (ICT), including the Internet that are essential to fully participate in society.²⁶ Beyond physical access, digital skills should include a number of things such as the capacity to search for valuable information, manage social contexts online, reporting illegal contents to internet intermediaries and so on.²⁷

The advent of the Internet in Ethiopia seems a very nascent phenomenon as it was introduced some two decades ago. While Ethiopia had a longstanding telephone service in Africa which was operating since 1894, the history of the Internet in Ethiopia with limited accessibility was introduced only in 1997.28

 Table 1
 internet usage in Ethiopia and the world in 2021. Source. Internet World Statistics:

Region	Population (est 2021)	Internet Users (as of 31 Dec 2020)	Internet Penetraion (% population)	% Users in the world
Ethiopia	117,876,227	21,147,255	17.9%	0.42
Africa	1,373,486,514	590,296,163	43.0%	11.68
Rest of the World	6,502,279,070	4,463,594,959	68.6%	88.31
World Total	7,875,765,584	5,053,891,122	64.2%	100

Source: http://www.internetworldstats.com/stats1.htm

^{25.} Yohannes Eneyew Ayalew, 'Defining 'Hate Speech' under the Hate Speech Suppression Proclamation in Ethiopia: A Sisyphean exercise?' 12 Ethiopian Human Rights Law Series (2020), 57-79.

^{26.} Martyn Warren, 'The digital vicious cycle: Links between social disadvantage and digital exclusion in rural areas' (2007)

³¹ Telecommunications Policy 374-388.

^{27.} Massimo Ragnedda 'Conceptualising the digital divide' in Bruce Mutsvairo and Massimo Ragnedda (eds) Mapping

Digital Divide in Africa Book Subtitle: A Mediated Analysis (Amsterdam University Press, 2019) 27.

^{28.} Yilma & Abraha (n 3)

It shall be noted that the digital divide is still too high in Ethiopia due to its low level of internet penetration and use. Statistical figures have shown that the number of internet users in Ethiopia is still low compared to the total number of population. In effect, the digital exclusion would affect the enjoyment of a number of human rights on the Internet.

DIGITAL INFRASTRUCTURE AND PRIORITISATION OF ICT

The government of Ethiopia has launched a national 'Digital Strategy' (2020-2025), which aspires to digital transformation by the year 2025. This is conducted under the supervision of the Ministry of Innovation and Technology (MINT).

One of the reforms introduced during the early reign of Abiy's leadership was amending the laws that were used to narrow the civic space for the last 10 years. The new administration formed a Legal and Justice Affairs Advisory Council (LJAAC) to work on laws to help widen the political space.²⁹ A legal reform working team, a combination of independent experts and lawyers drafted a new anti-terror law, civil society law and media law which was later ratified by the Ethiopian parliament.³⁰ Abiy has been praised for law reforms that aim to widen the political sphere.³¹

As part of the reform undertaken by Prime Minister Abiy, a plan to liberalise the telecom sector was unveiled. In 2019, a regulatory body that oversees the communication sector, Ethiopia Telecommunication Authority (ECA) formed. Based on the Communications Service Proclamation 1148/2019, The Ethiopia Telecommunication Authority has the mandate to issue licenses to new telecom operators, protect consumers' data and regulate communication devices.32

In May 2021, the Ethiopia Telecommunications Authority awarded the first-ever telecom license to a private company, a consortium led by Safaricom. In June 2021, the government announced a tender process to sell a 40% stake in the sole telecom operator in the country, Ethio telecom.33



The new administration formed a Legal and Justice Affairs Advisory Council (LJAAC) to work on laws to help widen the political space.

^{29.} Abadir M. Ibrahim and Abduletif Kedir Idris, 'The Silent Fighters: The Volunteers behind Ethiopia's Democratic Reforms, Addis Standard (Addis Ababa, 27 February 2020) accessed 11 February 2022.

^{30.} AFP, 'Ethiopia Adopts New Version of Much-Criticized Terrorism Law' (03 January 2020) < https://www.voanews.com/africa/ethiopia-adopts-new-version-much-criticized-terrorism-law> accessed 11 February 2022.

^{31.} Human Rights Watch, 'Abiy's First Year as Prime Minister, Review of Freedom of Association,' (April 4, 2019) https://www.hrw.org/news/2019/04/04/ethiopia-abiys-first-year-prime-minister-review-freedom-association, accessed 11 February 2022

^{32.} Communication Service Proclamation 1148/2019, Federal Negarit Gazetta, Addis Ababa, 25th Year No.82, articles 19-

^{33.} Reuters, 'Ethiopia launches tender process to sell 40% stake in Ethio Telecom', (June 14, 2021) accessed 11 February 2022.

ARTIFICIAL INTELLIGENCE NATIONAL STRATEGY

In the past few years, Artificial Intelligence (AI) is growing in Ethiopia despite the sector not being supported by enabling legal and policy instruments.³⁴ In 2013, a robotics lab iCog was launched with USD 50,000 capital and four programmers. It is reported as the first AI lab that was involved in developing the world-famous, Sophia robot.35 In late 2019, Ethiopia established a center dedicated to Artificial Intelligence development called Ethiopian Artificial Intelligence Center (EAIC) through a regulation.³⁶ The Center has five areas of focus which include:

- Al-robotics,
- Big Data,
- Machine Learning,
- Natural Language Processing (NLP)
- and Computer Vision.

While Ethiopia is yet to enact a comprehensive AI policy and strategy, the regulation is meant to confer the Center some powers and duties to foster research and development in the fields of AI in Ethiopia. The Center is empowered to provide research-based artificial intelligence services and products, setting national infrastructure that enables artificial intelligence research and development programs, formulating national artificial intelligence-related policies, legislation, and regulatory frameworks, ensuring Artificial Intelligence services support the defence and national security-related decisionmaking process, as well as socio-economic programs such as health, education, agriculture, and utilities.

Recently, it was renamed as Ethiopian Artificial Intelligence Institute on 6 October 2021. The Institute is answerable to the Prime Minister.³⁷ Thus, the Institute continues to undertake the powers and functions of the Center.



^{34.} Abebe Chekol, The Thriving Al Landscape in Ethiopia: Its Implications for Human Rights, Social Justice and Development (Global Information Society Watch, 2019) 128.

^{35.} Thomas Lewton, Futurists in Ethiopia are betting on artificial intelligence to drive development (Quartz, 2018) https://qz.com/africa/1301231/ethiopias-futurists-want-artificial-intelligence-to-drive-the-countrys-development/ accessed 12 April 2022.

^{36.} Artificial Intelligence Centre Establishment Council of Ministers Regulation No 463/2020.

^{37.} Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/2021, article 79(10).



There is a clear intent for ICTs to be a core part of many countries' plans to empower women and recover economically from the Covid-19 pandemic. However, in contrast to this, governments are failing to convert words into action by adopting broadband policies and universal access strategies that will build an inclusive foundation for a robust digital economy.

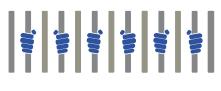
In regard to data affordability in Ethiopia, the Alliance for Affordable Internet (A4AI) in its 2021 Affordability Report noted that policies related to internet infrastructure and access played a key role in making broadband more affordable. The report found Ethiopia – has seen its ADI score rise from 2.31% in 2014 to 24.8% in 2021, stimulated by the opening up of its telecommunication market over the past three years. Although the country has made progress toward the affordability of the Internet, women continue to face uneven access to ICT services in Ethiopia due to socially and culturally constructed barriers that resulted in gendered roles.

AN ANALYSIS OF ETHIOPIA'S PERFORMANCE FROM THE PREVIOUS YEAR.

While the legal reform project is a step in the right direction and has the potential to foster digital rights, State and non-State actors continue to impede the full enjoyment of digital rights in Ethiopia. It recorded four partial shutdowns in Afar, Amhara, Tigray and Oromia regions while in 2020, there was one complete shutdown across the country and two partial shutdowns in Amhara and Tigray regions.

Importantly, it was in 2021 that the Ethiopian government awarded the first-ever telecom license to a private company, a consortium led by Safaricom – which ultimately boost healthy competition and enhance telecommunication and digital services access.

Worryingly, press freedom is regressing in the country. In 2021, nine journalists were arrested and one journalist was killed while in the previous year seven journalists were arrested, per Committee to Protect Journalists (CPJ). Some of these journalists work in digital media and online mediums.



JOURNALISTS ARRESTED

CONCLUSION AND RECOMMENDATIONS

The following recommendations are made:

- The Media Proclamation has a hefty fine for civil defamation and vague terms as under Article 85(1) which could have a chilling effect on freedom of expression, off and online. As such, such problematic provisions need to be reconsidered and redrafted:
- The Hate Speech and Disinformation Proclamation No.1185/2020 should be redrafted with precision taking the legality requirement under international human rights law into account. These sections include Article 2(2), which has a vague definition of hate speech and Article 2(3) for its sweeping scope which may violate the legality requirement of Article 19(3) of the ICCPR;
- The government should review the national ICT policy periodically so that it addresses new emerging technologies including AI, big data, Internet of Things (IoT) and cloud computing;
- The government must adopt the draft data protection bill and ensure the establishment and operationalisation of a Data Protection Commission or any other independent body;
- To bridge the digital divide steadily, the government must invest reasonable resources for digital and ICTs development so that individuals enjoy their human rights.
- The government must respect the digital rights of human rights defenders and opposition political parties, for example, by refraining from confiscating phones, spying on social media accounts and communication materials, thereby, should show a strong commitment to international standards on digital rights; and
- To enforce digital rights, the laws should grant courts an active role in interpreting digital rights. Also, the government must initiate a constitutional amendment process to expressly reclaim the court's inherent power of judicial review from a non-judicial body, i.e., the House of Federation.

THE GAMBIA

After the ousting of a long-time dictatorship in 2016, The Gambia began its transition into a democracy. The year 2021 marked the end of a five-year transition period and the first post-dictatorship elections.

It was thus a significant year in highlighting the major gains in digital rights and inclusion The Gambia has made in the past five years. Like many of the years in this period, there were a few infringements of digital rights by the State and non-state actors. There were also a number of legal and policy reforms, as well as strategy developments geared towards the better protection of digital rights and better digital inclusion.

However, as a result of poor implementation of these reforms and strategies, as well as the existence of poor infrastructure, major challenges remain in regards to the protection of digital rights and digital inclusion in The Gambia.







THE GAMBIA



The Gambia, a former British Colony, is situated on the western coast of Africa.¹ It is the smallest non-island nation in Africa with a population of approximately 2.1 million people inhabiting its narrow strip of land measuring 10, 689 sq. km, making it one of Africa's most densely populated countries.² The Gambian economy primarily relies on tourism, rain-dependent agriculture and remittances from Gambians living overseas.³ The country's current gross domestic product (GDP) was

estimated at USD\$1.90 billion, at the height of the COVID-19 pandemic in 2020. This figure, as per World Bank estimates, represents less than 0.01% of the global economy. The Gambia experienced a 22 year dictatorship (1994-2016) and is now five years into a democratic transition with President Adama Barrow winning a second term in office in the country's first post-dictatorship elections in December 2021.



23.7%

INTERNET PENETRATION RATE

INTERNET ACCESS, DISRUPTIONS, AND DIGITAL EXCLUSION

According to DataReportal, there were 580,200 internet users in The Gambia as of January 2021, which represents an internet penetration rate of 23.7%. While this number marks a significant increase from the previous year,⁶ it is still

^{1.} The Gambia: Colonial History, https://ttag.gm/colonial-history (accessed on 11 January 2022)

^{2.} H A Gailey, "Brittanica: Gambia Country Facts" https://www.britannica.com/place/The-Gambia (accessed on 11 January 2022)

^{3.} GIEPA: Economy,

https://www.giepa.gm/node/3 4#:~:text=The%20Gambia%20has%20a%20small,and%20growth%20in%20the%20econ omy. (accessed on 11 February 2022)

^{4.} Trading Economics, "Gambia: GDP" https://tradingeconomics.com/gambia/gdp (accessed on 11 January 2022)

^{5.} World Bank, "The Gambia Profile" https://www.worldbank.org/en/country/gambia/overview#1 (accessed 11 January 2022)

^{6.} S Kemp, "Digital 2021: The Gambia" https://datareportal.com/reports/digital-2021-gambia (accessed 11 January 2022)



INTERNET **DISRUPTIONS AFFECTED BUSINESS, EDUCATION AND** OTHER ACTIVITIES

well below the 42% internet penetration average in West Africa, making it one of the worst in the region. The majority of Gambians who can access the Internet, do so through their mobile devices, with fixed-line broadband services opted for by less than 20% of The Gambia's internet users.⁸ Thus an increase in internet users over the past years can arguably be attributed to the existence of many mobile Internet Service Providers (ISPs) in the country. The main ISPs are Gamtel, Africell, Qcell, Comium and Netpage. Internet connectivity into The Gambia is managed by the state-owned Gamtel, with bandwidth sold to other ISPs. With the launch of the Africa Coast to Europe (ACE) submarine cable in 2011, the quality of connectivity improved significantly, albeit with lingering issues of reliability, accessibility and affordability. Between January and February 2021, the country saw at least four nationwide disruptions each lasting between two and eight hours.¹⁰ Gambians expressed that the disruptions in early 2021 interrupted business, education, and other critical activities which were for the most part being conducted online due to the restrictions caused by the COVID-19 pandemic.¹¹

These internet disruptions were reminiscent of those that occurred during the dictatorship that were solely aimed at stifling free speech and access to information, most notably, on the eve of the December 2016 presidential elections, when the ruling government ordered ISPs to shut down internet services, international calls, and SMS messaging across the country.¹²This was supposedly to disrupt the spread of false information, but in reality, this disrupted the process of vote counting and election monitoring. This however failed to guarantee the re-election of longtime ruler Yahya Jammeh who had overseen this shutdown.¹³ The Minister of Information and Communication of The Gambia, Ebrima Sillah, did clarify that, unlike the internet blackouts in 2016, the recent outages were not a deliberate act of government but as a result of a "power outage in the Senegal base Sonatel station that hosts the connectivity between The Gambia and Senegal, via the ACE cable."14



^{7.} Statista, "Internet penetration rate in Africa as of January 2021, by region"

https://www.statista.com/statistics/1176668/Internet-penetration-rate-in-africa-by-region/ (accessed 15 March 2022)

^{8.} International Telecommunication Union, "Mobile cellular subscriptions, 2000-2018," June 2019,

https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx. (accessed 12 January 2022) 9. Gambia, The - Country Commercial Guide, "Information and Communications Technology"

https://www.trade.gov/country-commercial-guides/gambia-information-and-communications-technology (accessed 11 January 2022)

^{10.} Y Taylor, "The Gambia's Internet Shuts Down for over 14 hours on First Day of 2021," Gainako,

https://gainako.com/the-gambias-Internet-shuts-down-for-over-14-hours-on-the-first-day-of-2021/ (accessed 11 January

^{11.} Jainaba Sonko, "'A day without Internet is a day in the dark': The Gambia's growing digital divide," Global Voices, https://globalvoices.org/2021/03/31/a-day-without-Internet-is-a-day-in-the-dark-the-gambias-growing-digital-divide/ (accessed 11 January 2022)

^{12.} Ruth Maclean, The Gambia bans international calls and Internet as voters go to polls, The Guardian: https://www.theguardian.com/world/2016/dec/01/the-gambia-bans-international-calls-and-Internet-as-voters-go-topolls (accessed 12 January 2022)

^{13.} Ibid

^{14.} Supra no. 5

The 2021 presidential elections in The Gambia – the first post dictatorship presidential elections – validated the Minister's statement to a certain degree, as in spite of widespread fears that the internet shutdowns of the 2016 elections would repeat themselves, the 2021 electoral period was free from any internet blackouts or shutdowns. This demonstrated the ruling government's commitment to open and fair internet access, even though reliability, accessibility and affordability remain a concern.

In the 2021 Freedom of the Net Report, The Gambia scores a measly 12 out of 25 in the category "Obstacles to Access", he which primarily evaluates the infrastructural, economic, and political barriers to access the Internet.¹⁷ The report highlights that the biggest obstacles to internet access in The Gambia are the infrastructural limitations (quality and speed), and the exorbitant costs.¹⁸ On the cost of the Internet, the report notes that the "high cost of internet remains a primary hindrance to internet access in The Gambia, where 48.6% of its over 2 million inhabitants live in poverty". 19 In 2020 ISPs including Africell and QCell increased their internet fees by 100% for unlimited monthly packages. QCell's cheapest unlimited monthly package now starts at D3,800 (\$73.42) for one megabyte per second internet speed and up to D8,550 (\$165.21) for five megabytes per second internet speed.²⁰

In their defence, ISPs have claimed that the high costs of internet services are as a result of a combination of high taxes levied on ISPs, high costs involved in acquiring and maintaining telecommunications equipment, and the small market of internet service consumers in The Gambia.²¹



^{15. #}KeepItOn coalition to The Gambia: uphold democracy this election, keep people connected https://www.accessnow.org/keepiton-the-gambia-election/ (accessed 12 January 2022)

^{16.} Freedom on the net 2021, "The Gambia" https://freedomhouse.org/country/gambia/freedom-net/2021 (accessed 12 January 2022)

^{17.} Freedom-House, "What do we measure" https://freedomhouse.org/report/freedom-net (accessed 12 January 2022)

^{18.} Supra no.10

^{19.} Ibid

^{20.} Supra no. 4

^{21.} Madi Ceesay, "High Cost of Internet Services Triggers Misery in The Gambia", The Daily News, May 11, 2021 https://dailynewsgm.com/high-cost-of-internet-services-triggers-misery-in-the-gambia/ (accessed 29 March 2022)

According to Africell's Media Consultant, Musa Sisay, Africell spends over 800 million dalasi (USD 15 million) on tax per annum, in addition to other expenditures. A government official from the Public Utilities Regulatory Authority (PURA) also confirmed that high taxes on telecom companies have contributed significantly to the high costs of internet services in the country.²²

In terms of infrastructural limitations, the slow pace at which internet access has grown in The Gambia in the past decade can be linked in part to reduced government funding for regional internet cafés and telecentre hubs operated by national telecommunications company Gamtel.²³ Further, there exists a rural-urban divide in terms of access. In general, rural areas suffer from poor or virtually nonexistent infrastructure, a lack of electricity and/or frequent power cuts, and most ISPs in The Gambia (including the state-owned Gamtel) have not prioritised investments in network coverage in these rural areas.24

A 2021 Global Voices report confirms that children living in rural areas could not get to school or access learning materials online during the pandemic due to poor digital infrastructure in those parts of the country. As a result, these children stayed home for months, missing out on learning, whilst most of their counterparts going to school in the urban areas were able to access the Internet (albeit at exorbitant costs) to continue having lessons online. 25

The Ministry of Basic and Secondary Education

which provided school lessons on online platforms during COVID-19, tried to bridge this rural-urban digital gap by also providing those lessons on several TV and radio stations. However, many critics pointed out that similar to the lack of adequate digital infrastructure, most homes in rural areas do not have access to a TV or radio device.26 This digital exclusion resulted in the infringement of the right to education of children living in the rural areas of The Gambia, as protected in The Constitution of The Gambia, 1997 which guarantees "the right to equal educational opportunities and facilities" with a view to achieving the full realisation of the right to education.²⁷

In a bid to address the problems of access and affordability, the government of The Gambia approved the National Broadband Policy (2020 -2024) which recognises the challenges that relate to the digital divide in accessing broadband services in The Gambia, 28 and highlights that the national fibre backbone (ECOWAN), which is connected to the ACE cable, is not accessible in some major settlements where the ECOWAN is not laid down.²⁹ The policy promises to address this gap in access "in order to ensure that all parts of the country begin and take part in the measured digital revolution at the same time" 30 and aims to provide an alternative backup to ACE Cable by the end of 2021 and to ensure that at least 75% of homes have affordable access to high-speed internet connectivity (defined as an upload and download rate of at least 5 Mbps) by the end of 2022.³¹

^{22.} Ibid; also see The Gambia Public Utilities Regulatory Authority (PURA), Legislative Mandate, https://pura.gm/aboutpura/overview-of-pura/ (accessed 30 March 2022)

^{23.} Supra no. 11

^{24.} Ibid

^{26.} APA Banjul, "Gambia adopts media schooling for basic education amid COVID-19" (April 2020)

http://apanews.net/en/news/gambia-adopts-media-schooling-for-basic-education-amid-COVID-19 (accessed 19 March 2022)

^{27.} Constitution of The Gambia, 1997, S. 30 https://www.constituteproject.org/constitution/Gambia_2018?lang=en (accessed 13 January 2022)

^{28.} The Gambia National Broadband Policy (2020 – 2024), p. 25 https://moici.gov.gm/sites/default/files/2021-

^{05/}BROADBAND%20POLICY%202024.pdf (accessed 13 January 2022)

^{29.} Ibid. p. 10

^{30.} Ibid, p. 10

^{31.} Ibid,



In the end, the government of The Gambia had failed to meet its policy goal of providing an alternative backup to the ACE Cable. It thus remains to be seen whether it can achieve its ambitious goals of providing affordable high-speed internet to at least 75% of Gambian households by the end of 2022.

HATE SPEECH, MISINFORMATION, AND FREEDOM OF EXPRESSION ONLINE

As 2021 marked the year of The Gambia's first postdictatorship presidential elections,³² the right to freedom of expression, especially in political discourse, was put to the test, and the majority opinion was that this right thrived in The Gambia in 2021. This right is guaranteed in the Constitution of The Gambia, 1997 as the "freedom of speech and expression", and includes the "freedom of the press and other media".33 A number of repressive mediarelated laws had in the past made the exercise of this right difficult. However, a number of media law-related reforms have taken place in the last five years, including the Supreme Court declaring as unconstitutional the law on false publication on the Internet, as well as other repressive pieces of legislation on defamation and sedition.³⁴ This has resulted in a better climate for the exercise of this right.

outlets.³⁶ Digital inclusion, therefore, had an important role to play, as, without it, many citizens lacking internet connectivity would be left out of political discourses occurring in digital spaces.



A 2021 AfroBarometer report confirms that a majority of Gambians believe that the media is in fact free to do its work without government interference.

A 2021 AfroBarometer report confirms that a majority of Gambians believe that the media is in fact free to do its work without government interference.³⁵ This public perception was important, as it helped promote the semblance of a free and fair electoral process, where differing political views were expressed and publicised through the media, including social media and

This inspired a project by Jokkolabs Banjul who sought to amplify the voices of rural women in The Gambia ahead of the December 2021 presidential elections. As Jokkolabs Banjul describes it, "the political battle for votes is now happening in online forums created on WhatsApp."37 Its digital inclusion project, under the slogan "Digital inclusion: Not without our rural women", has enabled women

^{32.} S Waan, The Point Newspaper, "PDOIS accepts IEC election result"

https://thepoint.gm/africa/gambia/headlines/pdois-accepts-iec-election-result (accessed on 13 January 2022). 33. Supra no. 19, S. 25.

^{34.} MFWA, "Major Boost for Digital Rights in The Gambia" https://www.mfwa.org/major-boost-for-digital-rights-in-thegambia/ (accessed on 14 January 2022.)

^{35.} AfroBarometer, "Gambians support media freedom but want government to prevent false news and hate speech, Afrobarometer survey shows" https://afrobarometer.org/press/gambians-support-media-freedom-want-governmentprevent-false-news-and-hate-speech (accessed 14 January 2022).

^{37.} Jokkolabs Banjul enabled digital inclusion for rural women in Gambia https://www.apc.org/en/news/enabling-digitalinclusion-most-vulnerable-2020 (accessed on 14 January 2022).



to appreciate the power of technology using WhatsApp, including creating voice recordings to share their political perspectives in communities.³⁸

With the advantages of the digital space in enabling the exercise of the freedom of expression in political discourse in The Gambia, comes some disadvantages in the form of hate speech and misinformation. The 2021 AfroBarometer Survey report discloses that more than eight in 10 citizens (84%) say that social media users spread information that they know is false.³⁹ The report also discloses that the citizens want the government to be able to limit or prohibit the sharing of news or information that is false (85%), hate speech (84%), and information or opinions that criticise or insult the president (76%).40 The prevalence of misinformation in The Gambia led, in 2021, to the creation of Fact Check Gambia, which was developed to close the market gap for independent, non-partisan fact-checked and verified information, particularly about COVID-19 and the presidential elections.⁴¹

The platform was inspired by similar platforms in Ghana and Nigeria. Minister of Information, Ebrima Sillah at the launching of the online platform, highlighted that the initiative to set up a factchecking platform in The Gambia could not have come at a better time when the country is preparing for a series of elections coupled with the rising trend of misinformation about COVID-19.42 Since its establishment, factcheckgambia.org has published several articles debunking fake news and stories surrounding COVID-19 and the December presidential elections, among other pertinent issues. An example is an August 2021 fact-checking article debunking certain untruths about the COVID-19 vaccine.43

As the 2021 presidential elections beckoned, hate speech online became prevalent as well. A Gambia Press Union (GPU) research report discloses that in the last seven years, web-based publications published more hate speech than any other type of media, followed by print media.44

^{39.} Gambians support media freedom but want government to prevent false news and hate speech, Afrobarometer survey shows https://afrobarometer.org/sites/default/files/press-release/The%20Gambia/news_releasegambians_support_media_freedom_within_limits-afrobarometer-2may21.pdf (accessed on 14 January 2021).

^{41.} UNESCO-supported fact checking platform launched in The Gambia https://en.unesco.org/news/unesco-supportedfact-checking-platform-launched-gambia (accessed on 14 January 2022).

^{43.} Factcheck Gambia "What you need to know about the Johnson & Johnson vaccine https://factcheckgambia.org/the-jj-COVID-19-vaccine-what-you-need-to-know-about-any-possible-side-effects/ (15 January 2022)

^{44.} S Jammeh & Gambia Press Union, "Research on hate speech in The Gambia Media", p. 15 $https://gpu.gm//DataImages/PDFFiles/Resume_0_Research\%20on\%20hate\%20speech\%20in\%20the\%20Gambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20Megambia\%20$ dia.pdf (accessed 15 January 2022)

The report also confirms that much of hate speech in The Gambia, which is usually ethnic or political in nature, occurs on social media platforms (Facebook and WhatsApp in particular) and that unfortunately, some of these hateful WhatsApp messages or Facebook posts find their way into the mainstream media (print and broadcast).⁴⁵ While there is currently no specific law to counter misinformation and hate speech, the Criminal Offences Bill, 2020 which is before Parliament at the time of writing, will become the first legislation that specifically prohibits hate speech, if and when it successfully passes into law.⁴⁶

ACCESS TO INFORMATION

The Gambia in August 2021 enacted its first-ever access to information legislation.⁴⁷ It was enacted following a consultative process by the Civil Society Coalition on Access to Information, spearheaded by the Gambia Press Union (GPU), who were determined to shed The Gambia's image as the only country in Anglophone West Africa without an Access to Information legislation.⁴⁸ Prior to this, The Gambia had undergone a repressive period in which the right to access to information enjoyed neither constitutional nor statutory protection. Even recent attempts to constitutionally protect this right through the 2020 Draft Constitution of The Gambia,⁴⁹ became unsuccessful, after the Draft failed to obtain parliamentary approval needed for its enactment. 50

Under the former regime, over 20 web pages were blocked by the government, many of which were independent news and opposition news websites known for their criticism of the ruling government,⁵¹ thus limiting access to public information that could be detrimental to the regime.



^{45.} Ibid. p. 18.

^{46.} See section 58 (2) of Criminal Offences Bill, 2020 2020-07-04 11:40 (squarespace.com) (15 January 2022)

^{47.} AFEX, "Gambia's Journey to an Access to Information Legislation" P. 9 GPU-Report-on-ATI-Gambias-Journey-to-ATI_MFWA.pdf (accessed on 15 January 2022).

^{48.} Ibid.

^{49.} Article 48, 2020 Draft Constitution of The Gambia available at

 $https://www.constitute project.org/constitution/Gambia_2020D? lang=en \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \ on \ 15 \ January \ 2022) \ (accessed \$

^{50.} Gambia: Lawmakers put brakes on reform process https://www.aa.com.tr/en/africa/gambia-lawmakers-put-brakes-onreform-process/1991633 (accessed on 15 January 2022).

^{51.} Freedom on the Net 2017 - the Gambia, available at https://www.refworld.org/docid/5a547d01a.html#_ftn29 (accessed on 15 January 2022).

Back then, government officials argued that every citizen could access information from the State or any other organ or agency of the State except information that was likely to be "prejudicial to the security or sovereignty" of the State, or interfere with the right to privacy of another person.⁵² This position was reflected in the provisions of the Official Secrets Act, 1922 (amended as of 2008), which prescribed penalties for any unauthorised possession, retention, and/or disclosure of official information.53

The Access to Information Act, is aimed at proactive and organised dissemination of public records and information to the people.⁵⁴ It repeals the repressive sections of the Official Secrets Act,55 and has some implications on how Gambians digitally access information either from privately owned webpages or directly from government sources. Firstly, it grants previously repressed citizens the right to access and disseminate public information.⁵⁶ It also puts the onus on the government to make such public information easily accessible e.g. digitally.⁵⁷

However, it has been admitted by government officials that many government Ministries and departments do not have official websites through which information about their work could be sourced, nor do they have official contact details such as an official email to facilitate the request of information.⁵⁸ As the right to access to information will be put to the test in the coming years, it is incumbent upon the government to put both the physical and digital structures in place to allow the easy storage, request, access, and dissemination of public information.

ANALYSIS OF THE GAMBIA'S PERFORMANCE FROM THE **YEAR 2020**

The Gambia made slight improvements in terms of digital rights and inclusion from the year 2020. A major highlight is the passing into law of the Access to Information legislation, which provides proactive and organised dissemination of public records and information. This was after four years of civil society advocacy for the passing of the legislation. There were also increases in the number of internet users, as freedom of expression thrived on online spaces and platforms. Digital inclusion however remains a problem with infrastructural deficiencies leading to a rural-urban divide in terms of Internet connectivity. Costs of Internet connectivity also remain high thus limiting access for many Gambians who live in poverty.

Poor policy implementation has also ensured that the government of The Gambia failed to meet its target of providing an alternative backup to the ACE Cable by the end of 2021, which may lead to similar occurrences of Internet blackouts in 2022 as seen in 2021. It also offers little hope that the government would meet its target to connect at least 75% of Gambian households by the end of 2022.

^{52.} Official Secrets Act, Article 6,

https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5f02515438f0572cbaa93fab/1593987424166/Offi clal+Secrets+Act_1922+%28Cap+17.01%29.pdf (accessed on 16 March 2022);also see Cipesa "Digital Rights in The Gambia" P.3 https://cipesa.org/?wpfb_dl=290 (accessed 15 January 2022).

^{53.} A Sowe "The Gambia's missed opportunity for digital rights reform" https://advox.globalvoices.org/2021/03/31/thegambias-missed-opportunity-for-digital-rights-reform/ (accessed on 15 January 2022).

^{54.} Access to Information Act, 2021, Long Title, https://drive.google.com/file/d/1ed6CfVyZfcUYJhsM2uMVbOiH198tf8p/view (accessed on 15 January 2022)

^{55.} Ibid, Article 4.

^{56.} Ibid, Article 11.

^{58. 7}th National Internet Governance Forum (Hybrid Format), The Gambia, Communiqué January 2022).



CONCLUSION AND RECOMMENDATIONS

The Gambia has progressed notably in terms of digital rights and inclusion in the past five years post-dictatorship, and there are active efforts in place to further improve the status quo. However, major issues continue to negatively impact developments in digital rights and inclusion in The Gambia. Thus, the following recommendations ought to be considered;

Government

Government needs to ensure that the rural-urban divide is addressed by putting better digital structures in place in rural areas to ensure a more inclusive digital space in The Gambia. Both Government and Private ISPs should provide Wi-Fi connectivity in public spaces throughout the country, at reasonable rates. Government must ensure that all schools, both public and private, are connected to the internet.

Government must also ensure that the high costs of internet services are addressed, by ensuring that the taxes and tariffs imposed by the state, which directly impacts cost and affordability, are reviewed and where possible reduced or removed.

Government must embrace e-governance, including ensuring that all government ministries and departments have websites, data centres, and digital communication channels. These digital structures within the government machinery would also enable easy access to public information, as per the ATI legislation.

Civil Society

Media institutions must be trained and provided with the tools to curtail the spread of hate speech and misinformation on their platforms. Civil society organisations should also take the lead in creating public awareness on hate speech and misinformation, and in the tools needed to counter them.



Government needs to ensure that the rural-urban divide is addressed by putting better digital structures in place in rural areas to ensure a more inclusive digital space in The Gambia.

GHANA

Ghana's digital rights space has grown over the past two decades with increasing mobile subscriptions and about half of the population having access to the Internet. This has been on the back of increasing infrastructure and a booming artificial intelligence ecosystem, which culminated in Google setting up its first AI lab in Africa in Ghana in 2019. While these advancements should be celebrated, the data shows that there continues to be unequal involvement of women in these sectors and especially with regard to senior staff in the AI sector, especially in data science.

The growth of the digital space in Ghana comes on the back of a fairly liberal legislative framework that substantially implements the country's international and regional human rights obligations. Recent legislative changes include the coming into force of the Cybersecurity Act which among others criminalises online child pornography and child exploitation online generally and the protection of partners, mostly women, from 'revenge porn'. The Act, however, contains provisions that could be utilised for mass or targeted surveillance with little critical oversight.

Another recent legislative framework, the Right to Information Act, appears to have hit an uncomfortable snag in its implementation, as government officials have been reluctant to accede to access to information requests leading to a confrontation with various civil society organisations, including litigation in court. The inauguration of the Right to Information Commission, which has begun to sanction recalcitrant government agencies is proving to be an important force in ensuring open governance and accountability.



The year in review also saw a worrying decline in freedom of speech online, with a number of reports of social media users being targeted by state security agencies through the use of public order laws. Additionally, the government of Ghana needs to adopt more targeted measures to ensure gender parity in the digital rights space. Ensuring gender equality in all sectors of public and private life is one of the primary obligations that the state has in accordance with its international, regional and constitutional obligations.

Steps also need to be taken to ensure that the potential gains of the Right to Information Act are not lost through the conduct of government agencies that continue to hold on to official secrecy, rather than open governance, proactive disclosure and speedy disclosure of information upon request. Information officers within various government departments and agencies need to be trained to understand their obligation under the law, to ensure effective implementation of the Act.

The government also needs to take steps to repeal illiberal public order laws that are being used by state security agencies to stifle free speech, including online free speech.



Finally, stakeholders need to keep a keen eye on the implementation of provisions of the Cybersecurity law that allows for interception of private communication, to ensure that strict practical safeguards are adopted to prevent the potential use of the law for targeted or mass surveillance.





Since its return to democratic rule in 1993, after several successive military dictatorships between 1966 and 1992, Ghana has often been highlighted as a model democracy on account of fairly liberal laws and policies and successive peaceful change of governments through periodic free and fair elections. As the second most populated and second largest economy in West Africa, Ghana plays an important role in the socio-political as well as the economic affairs of the region. Ghana has consistently ranked amongst the top three in Africa when it comes to freedom of speech and press freedom.²



Prior to the onslaught of the COVID-19 pandemic, the economy of Ghana was growing at 7% on average per annum but the pandemic resulted in economic slowdown which has put a strain on households, and slightly increased poverty from 25% in 2019 to 25.5% in 2020.3 In recent years, Ghana's public debt has significantly increased as a result of excessive borrowing, with the debt estimated at 81.1% of GDP which places Ghana in a significant risk of debt distress.4

^{1.} See MG Nyarko 'Digital rights and inclusion in Ghana – 2020; see also Anyway Sithole 'Ghana: A beacon of hope in Africa' (2012) 18 Policy and Practice Brief https://www.files.ethz.ch/isn/154807/ACCORD-policy-practice-brief-18.pdf (accessed 26 February 2022).

^{2.} https://www.worldbank.org/en/country/ghana/overview#1(accessed 26 February 2022).

^{3.} As above.

^{4.} As above.

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Ghana is a member of the United Nations (UN) and a founding member of the Organisation of African Unity (OAU) and African Union (AU). Since its independence, Ghana has ratified most of the core United Nations human rights instruments, including the:

- International Convention on the Elimination of All Forms of Racial Discrimination, which was ratified in 1966:
- Convention on the Elimination of All Forms of Discrimination Against Women, ratified in 1986;
- Convention on the Rights of the Child, ratified in 1990 and
- · its Optional Protocol on the involvement of children in armed conflict, which was ratified in 2014.5

In the year 2000, Ghana ratified the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention Against Torture and Other Cruel Inhuman and Degrading Treatment and the International Convention on the Protection of the Rights of All Migrant Workers and members of their families.⁶ Other UN human rights treaties ratified by Ghana include the Convention on the Rights of Persons with Disabilities, which was ratified in 2012, and the Optional Protocol to the Convention Against Torture, ratified in 2016.7

At the African Union level, Ghana ratified the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa in 1983,8 African Charter on Human and Peoples' Rights in 1989,9 African Charter on the Rights and Welfare of the Child in 2005¹⁰ and the African Charter on Democracy, Elections and Governance in 2010. Ghana also ratified the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) in 2007, the Protocol to the African Charter on the establishment of the African Court on Human and Peoples' Rights in 2005, and the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) in 2019.

Being a dualist state, ratification of these human rights instruments does not make them directly applicable at the national level. Consequently, the government of Ghana has an obligation to enact domestic laws and policies to give effect to their obligations under these treaties.

While various laws and policies have been enacted to give effect to most of Ghana's international

^{5.} https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=67&Lang=EN (accessed 27 February 2022).

^{6.} As above.

^{8.} https://au.int/sites/default/files/treaties/36400-sl-

OAU%20Convention%20Governing%20the%20Specific%20Aspects%20of%20Refugee%20Problems%20in%20Africa.p df (accessed 26 February 2022).

^{9.} https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf (accessed 26 February 2022).

^{10.} https://au.int/sites/default/files/treaties/36804-sl-

AFRICAN%20 CHARTER%20ON%20 THE%20 RIGHTS%20 AND%20 WELFARE%20 OF%20 THE%20 CHILD.pdf (accessed the property of the property26 February 2022).

^{11.} https://au.int/sites/default/files/treaties/36384-sl-

AFRICAN%20CHARTER%20ON%20DEMOCRACY%2C%20ELECTIONS%20AND%20GOVERNANCE.PDF(accessed 26

^{12.} https://au.int/sites/default/files/treaties/37077-sl-

PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS% 200N%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf (accessed 27 February 2022).

^{13.} https://au.int/sites/default/files/treaties/36393-sl-

protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_estab.pdf(accessed 27 February 2022).

human rights obligations,14 the Government has recently enacted the Cybersecurity Act 2020, Act 1038, to give effect to its obligations under the Malabo Convention.¹⁵ The government also launched a number of activities in 2021 to popularise the Act and raise awareness among key stakeholders and the general populace.16



ACT 1038

The Cybersecurity Act provides, among others, a comprehensive legal framework for cybersecurity in Ghana including the protection of children online especially against child pornography and child sexual exploitation.¹⁷ The Act also makes provision for criminalisation of the 'non-consensual sharing of intimate image[s]' (revenge porn), which carries criminal penalties of up to three years imprisonment.¹⁸ The Cybersecurity Act, however, contains some potentially problematic provisions relating to the interception of data by law enforcement agencies through exparte applications to the High Court, without making provisions for safeguards such as the presence of an independent intermediary.¹⁹

These provisions may be abused by law enforcement officials to conduct surveillance, without the necessary checks and balances. Similar provisions in South Africa's Regulation of Interception of Communications and Provision of Communication- Related Information Act 70 of 2002 (RICA) were recently declared unconstitutional by the Constitutional Court for its failure to provide necessary safeguards during ex parte proceedings and post-surveillance notification to affected persons.20



The Cybersecurity Act provides, among others, a comprehensive legal framework for cybersecurity in Ghana including the protection of children online especially against child pornography and child sexual exploitation.

^{14.} See for instance, MG Nyarko 'The impact of the African Charter and Maputo Protocol in Ghana' in VO Ayeni (ed) The impact of the African Charter and Maputo Protocol in selected African states (2016) 95.

^{15.} Ministry of Communication and Digitalisation, Cybersecurity Act Passed to Promote & Regulate Cybersecurity Activities (2021) https://www.moc.gov.gh/cybersecurity-act-passed-promote-regulate-cybersecurity-activities.

^{16.} https://ncsam.cybersecurity.gov.gh (accessed 27 February 2022).

^{17.} See sections 62-66 of the Cybersecurity Act.

^{18.} Sections 67 & 68.

^{20.} AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC and Others (CCT 278/19; CCT 279/19) [2021] ZACC 3; 2021 (4) BCLR 349 (CC); 2021 (3) SA 246 (CC) (4 February 2021).



and policy framework concerning freedom of expression online, actions of some organs of State put a strain on the enjoyment of freedom of expression online during 2021, of which a few examples are highlighted in this report. While many incidents relating to attempts to stifle online freedom of expression were recorded in Ghana during the year, perhaps the most shocking came from the Judiciary. In February 2021, the lawyers of the Judicial Service of Ghana issued a statement warning media houses to stop making 'incendiary, hateful and offensive statements and speeches on their various platforms' about judges, and in particular judges of the Supreme Court who were presiding over a presidential election petition filed by the former President John Mahama challenging the legality of the re-election of the current President Nana Akufo Ado.²¹ The statement further requested media houses to immediately pull down the alleged statements from their websites and threatened legal action should media houses fail to do so.²² This was seen by many as an attempt by the Judiciary to intimidate and interfere with the editorial independence of media houses.²³

expression online include the arrest on 1 April 2021 of David Tamakloe, the editor of an online newspaper (Whatsup News), on allegations of extortion and publishing false news, in relation to publications he made about a scandal involving a business woman who is the wife of a senior police officer.24

On the back of the growing numbers of these kinds of cases, civil society organisations have urged the government to amend laws on the prohibition of 'false information', especially in the middle of a global pandemic, where access to vital information is critical. Government has been urged to utilise other alternatives including 'proactively providing timely, accurate and comprehensive information', 25 instead of resorting to criminal sanctions which could have a negative impact on freedom of expression and access to information online. Similar provisions in the Penal Code of Kenya were struck down by the High Court in Kenya as being an illegitimate restriction on freedom of speech.²⁶

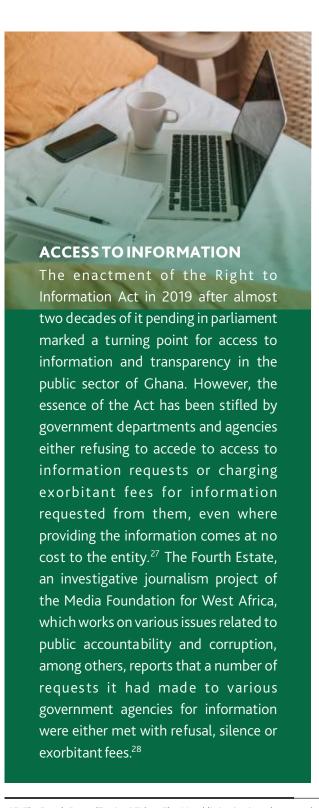
^{21.} GhanaWeb 'Election petition: Delete all 'hateful, spiteful' comments against SC justices – Judicial Service to media' 26 $February\ 2021, https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Election-petition-Delete-all-hateful-spite full-spite full-spit$ comments-against-SC-justices-Judicial-Service-to-media-1190476 (accessed 27 February 2022).

^{23.} Media Foundation for West Africa 'The state of internet freedom in Ghana – 2021, (2022) 6 https://www.mfwa.org/wp-content/uploads/2022/01/Freedom-of-Expression-Online-in-GHANA-2021-muh.pdf (accessed 27 February 2022).

^{24.} Media Foundation for West Africa (as above) 6; Committee to Protect Journalists 'Police detain Ghanaian journalist David Tamakloe overnight in relation to 'false news' complaint' https://cpj.org/2021/04/police-detain-ghanaianjournalist-david-tamakloe-overnight-in-relation-to-false-news-complaint/(accessed 27 February 2022).

^{25.} Article 19 'Ghana: 'False information' prohibitions must be amended', 8 November 2021 https://www.article19.org/resources/ghana-false-information-prohibitions-should-be-amended/(accessed 27 February 2022).

^{26.} Cyprian Andama v Director of Public Prosecutions & 2 others; Article 19 East Africa (Interested Party) [2021] eKLR, http://kenyalaw.org/caselaw/cases/view/212397/(accessed 27 February 2022).



In one instance, the Minerals Commission demanded US\$1000 as the processing fee for an access to information request that was made concerning mining firms that had been licensed in Ghana.²⁹ In another case, which eventually ended up in the High Court, the National Communications Authority, which is one of the key regulators in the digital sector, charged GHS 2000 (US\$ 350) in response to a request for information concerning radio stations that have been licensed to operate. The High Court eventually reduced the fee to GHS 1500 after months of litigation.³⁰ These are rather high figures which, for the average Ghanaian, are unaffordable and have the impact of deterring citizens from making access to information requests.

Despite this unfortunate turn of events, the operationalisation of the Right to Information Commission, which is mandated under the Right to Information Act, to ensure compliance with the provisions of the Act seems to have given new impetus to access to information. For instance, in the Minerals Commission case cited earlier, an appeal by the Media Foundation for West Africa against the US\$1000 processing fee requested, resulted in the Right to Information Commission ordering the Minerals Commission to reduce the processing fee from US\$1000 to US\$ 0.33.31 In another instance, the Right to Information Commission ordered the Scholarship Secretariat, a State institution, to release information relating to beneficiaries of government scholarships, which it had previously refused, citing the privacy of beneficiaries.32

^{27.} The Fourth Estate 'Testing RTI law: The 33 public institutions that passed or failed', 11 October 2021, https://thefourthestategh.com/2021/10/11/testing-rti-law-the-33-public-institutions-that-passed-or-failed/(accessed 27 February 2022).

^{28.} Evans Aziamor-Mensah 'Minerals Commission demands \$1000 from The Fourth Estate in a Right to Information request', 18 June 2021 https://thefourthestategh.com/2021/06/18/minerals-commission-demands-1000-from-the-fourth-estate-ina-right-to-information-request-2/ (accessed 27 February 2022).

^{29.} As above

^{30.} Media Foundation for West Africa 'RTI court case: MFWA disappointed at ruling' 18 June 2021 https://www.mfwa.org/rtirequest-case-mfwa-disappointed-at-judgment/(accessed 27 February 2022).

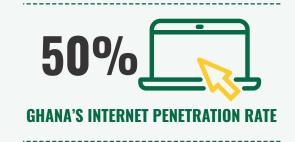
^{31.} Media Foundation for West Africa 'Ghana's Information Commission orders release of information to journalist at \$0.33 instead of \$1,000 demanded by state agency' 21 July 2021, https://www.mfwa.org/ghana-information-commission-ordersrelease-of-information-to-journalist-at-0-33-instead-of-1000-demanded-by-state-agency/(accessed 27 February 2022). 32. The Fourth Estate 'RTI Commission orders Scholarship Secretariat to release beneficiaries list', 4 October 2021, https://the four the state gh.com/2021/10/04/rti-commission-orders-scholar ship-secretariat-to-release-bene ficiaries-bene flist/(accessed 27 February 2022).

DIGITAL INFRASTRUCTURE, INTERNET PENETRATION AND GENDER INEQUALITY

Ghana's internet penetration rate increased from an estimated 48% to 50% during the course of 2021 marking a 2% increase in the space of one year, and one of the most rapid paces of growth in the sub-region.³³ This has been on the back of a booming mobile telephony industry and massive investment in fibre optic infrastructure.34 Similarly, the number of Facebook users during 2021 was estimated at 8,838,800,35 a marked increased from the estimated 6 million social media users in 2020.³⁶ Even as internet usage continues to increase, there is still a significant gender disparity. For instance, only 37.2% of Facebook users in Ghana are women,³⁷ even though women make up almost 51% of the population.³⁸ Research also shows that there is negligible participation of women in artificial intelligence and in particular the FinTech sector.³⁹ For instance, there are no 'women in senior data

science-related roles' 40 in Ghana even though there are reports that the AI sector is booming,41 culminating in Google opening its first AI lab in Ghana in 2019.42

The share of the mobile service market among the mobile network operators remained significantly similar to the previous year.⁴³ However, there was a significant change in the ownership of mobile network operators within the sector, with the government acquiring a 100% stake in AirtelTigo, 44 which had a market share of 19.1% of mobile subscribers in Ghana as of June 2021.45 This is in addition to the fact that the government already owns a 30% stake in Vodafone Ghana, raising concerns that the State may become a significant player in the industry and may put it in a position to control flow and access of information.46



- 33. Media Foundation for West Africa 'Internet freedom in Ghana-2021' (2022) 1 https://www.mfwa.org/wpcontent/uploads/2022/01/Freedom-of-Expression-Online-in-GHANA-2021-muh.pdf(accessed 27 February 2022).
- 34. As above
- 35. As above
- 36. MG Nyarko 'Digital rights and inclusion in Ghana-2020 (2021) 3.
- 37. Media Foundation for West Africa (n 23 above) 4.
- 38. https://www.bbc.com/pidgin/58658816 (accessed 27 February 2022).
- 39. Shamira Ahmed 'A Gender perspective on the use of Artificial Intelligence in the African FinTech Ecosystem: Case studies from South Africa, Kenya, Nigeria, and Ghana' (2021) https://media.africaportal.org/documents/Final-Revised-AI4D-Gender-ITS-conference-paper.pdf(accessed 27 February 2022).
- 41. DW 'Ghana's artificial intelligence sector booming' https://www.dw.com/en/ghanas-artificial-intelligence-sectorbooming/av-57820145 (accessed 27 February 2022).
- 42. Aanu Adeoye 'Google has opened its first Africa Artificial Intelligence lab in Ghana', 16 April 2019 https://edition.cnn.com/2019/04/14/africa/google-ai-center-accra-intl/index.html(accessed 27 February 2022).
- 43. Media Foundation for West Africa (n 23 above); see also National Communications Authority 'Quarterly statistical bulletin on communications in Ghana, April-June 2021 https://nca.org/gh/wp-content/uploads/2021/12/Draft-Q2-2021-Statistical-Bulletin-Final-1-2.pdf(accessed 27 February 2022).
- 44. Jame Barton 'Ghana's government assumes full control of AirtelTigo', 18 November 2021,
- https://developingtelecoms.com/telecom-business/operator-news/12262-ghana-s-government-assumes-full-control-ofairteltigo.html (accessed 27 February 2022); https://www.graphic.com.gh/business/business-news/ghana-govt-signsagreement-with-airteltigo-for-transfer-of-ownership.html(accessed 27 February 2022).
- 45. National Communications Authority (n 43 above) 2.
- 46. Media Foundation for West Africa (n 23 above) 5.

ANALYSIS OF THE COUNTRY'S PERFORMANCE

While the state of digital rights in Ghana remains quite stable, with a steady increase in infrastructure and internet usage, there seems to be a decline in the respect for digital rights, given the reported number of attacks on social media activists and police harassment of journalists and human rights defenders for posts made on social media platforms. The enactment of the Cybersecurity Act, which harmonises regulations on online security, including the protection of women and children from online abuse and exploitation, demonstrates progress in the digital rights space over the past year. Other initiatives such as the nationwide sensitisation of key stakeholders and the public about the Cybersecurity Act are encouraging first steps towards the implementation of the Act. However, as noted earlier, the provisions of the Act relating to interception of private communication could potentially be used for targeted or mass surveillance in the absence of strict safeguards and continuous monitoring by stakeholders, especially civil society.

In another development, the High Court in Accra ordered the State through its National Communications Authority to stop collecting data on subscribers of mobile telephony services and to delete data already collected.⁴⁷ This follows the promulgation of the Establishment of Emergency Communications System Instrument, 2020 (EI 63) which, among others, tasked the network operators to provide the following information to the National Communications Authority Common Platform: all caller and called numbers, merchant codes (for mobile money), mobile station international subscriber directory number codes and international mobile equipment identity codes and site location etc, 48 as part of Covid-19 measures to facilitate contact tracing. Commentators had already warned of the potential dangers of EI 63 on privacy rights as it presented the State with the capacity to engage in mass surveillance without adequate oversight.49



The enactment of the Cybersecurity Act, which harmonises regulations on online security, including the protection of women and children from online abuse and exploitation, demonstrates progress in the digital rights space over the past year.

^{47.} Francis Kwarteng Arthur v Ghana Telecommunications Company Limited and others, Suit No. HR 0064/2020, Suit No. GJ 0855/2020 (Judgement of 22 July 2021) https://news.dennislawgh.com/full-ruling-stop-providing-details-of-yournetwork-subscribers-to-government-court-orders-mtn-vodafone/(accessed 27 February 2022).

^{48.} Media Foundation for West Africa 'Ghana: MFWA welcomes high court ruling ordering government to stop collecting personal data' https://www.mfwa.org/ghana-mfwas-welcome-high-court-ruling-ordering-government-to-stop-collectingpersonal-data/(accessed 27 February 2022).

^{49.} See K Agyeman-Budu 'Constitutionalism and COVID-19 in Ghana' https://ancl-radc.org.za/node/627(accessed 27 February 2022); MG Nyarko 'Digital rights and inclusion in Ghana' (2021) 5.



CONCLUSION AND RECOMMENDATIONS

While Ghana remains an open and democratic state founded on the ideals of freedom and justice and has made important strides in this regard, there are some worrying trends that need to be urgently addressed. The State's continuous use of public order laws to frustrate the sharing of information online is of concern to all stakeholders. Freedom of expression online is equally as important as freedom of expression offline and the seemingly large appetite for State security agencies to target online expressions should be warded off. The State needs to develop a rights-based approach to guarding against dangerous speech online, and allow civil remedies or counter speech rather than using criminal sanctions to police what may, in some circumstances, be uncomfortable speech.

The government also needs to comply with the decision of the High Court in Francis Kwarteng Arthur v Ghana Telecommunications Company Limited and others and amend EI 63 to bring it in compliance with Ghana's constitutional and international human rights obligations - to promote, protect and fulfill the right to privacy. Similarly, safeguards need to be put in place to ensure that the newly promulgated Cybersecurity Act does not become a tool for government security agencies to conduct mass surveillance or even targeted surveillance against government critics, human rights defenders and other persons, similar to the fears expressed about EI 63.

Additionally, while the passage of the Right to Information Act was welcomed with much optimism, the practice over the last year shows that government departments and agencies have been reluctant to comply with requests for information, leading activists to resort to the use of the Right to Information Commission and sometimes the Courts to obtain information. This situation shows the absence of political will and/or sufficient familiarity of relevant State agencies with the Right to Information Act. The State, through its agencies, needs to show that it is committed to enforcing the Right to Information Act by complying speedily with requests for information.

State departments, agencies and organs need to be trained on their obligations under the Act to ensure that the real benefits of the Act, such as increasing transparency and accountability in the public service, become a reality and that those who make requests for information are not saddled with unnecessary hurdles.

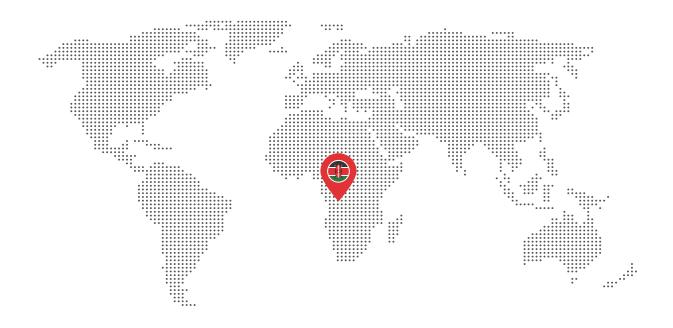
Finally, the government and other stakeholders should not lose sight of the glaring gender inequalities that persist in the digital rights sector and should continue to take targeted steps to ensure that more women are involved in the sector to ensure inclusive growth.

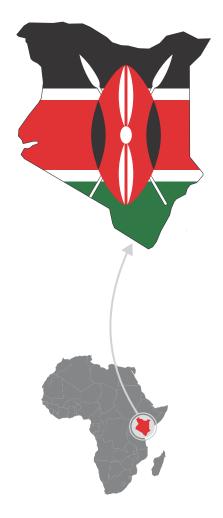
KENYA

In 2021, Kenya witnessed a number of developments in the country's digital rights ecosystem. Despite the challenges presented by the COVID-19 pandemic, the Ministry of Information, Communications and Technology (ICT) Innovation and Youth Affairs (MoICT) led efforts to create a rights-respecting and liberal internet-policy environment.

The report gives an overview of digital rights in Kenya and the intersection between data protection and humanitarian action, digital rights and digital inclusion, data protection and privacy and the threats by public authorities on freedom of expression online.

The report also takes a look at the application of cybercrime laws by the law enforcement and other agencies in Kenya.







Kenya is currently one of the most technologically advanced and rapidly growing Information and Communication Technology (ICT) markets in Sub-Saharan Africa. ICT is identified as an enabler for social economic transformation and the attainment of the aspirations of Kenya's Vision 2030. The country is home to some of the key players in the industry, including Google, Meta, Oracle, IBM and Microsoft, among others.² Notably, Kenya's MPESA is a world recognized mobile banking service that has catapulted the country into greater heights in the field of Mobile Banking.



A number of laws and policies including the Film Bill 2021 were proposed for enactment during the period under review. The Government of Kenya's commitment to supporting ICT development is evident from the promising policy direction the country is currently taking through the ongoing actualization of the country's ICT aspirations through sufficient budgetary allocations. A case in point is the Financial Year 2021/2022 period during which the government allocated USD\$210 million to the Ministry of ICT Innovation and Youth Affairs.

^{1.} Kyem, Peter A. Kwaku. "Is ICT the panacea to sub-Saharan Africa's development problems? Rethinking Africa's contentious engagement with the global information society." Progress in Development Studies 12.2-3 (2012): 231-244. 2. Schachter, Kara. "The Digitalization of Development: Understanding the Role of Technology and Innovation in Development through a Case Study of Kenya and M-Pesa." (2019).



A deliberate, continued push by the government of Kenya to lead by example, by providing more of its services online through the e-citizen service portal (ecitizen.go.ke), has contributed to demand-driven growth of the ICT sector. Following the government's directives that employers allow non-essential workers to work from home, citizens spent more time online during the period under review. As work-related and other engagements shifted online as a result of the government-backed work from home policy, a number of impediments to full enjoyment of digital rights by the majority of Kenyans were noted.

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS



Article 19 of the Universal Declaration of Human Rights, which provides that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek. receive and impart information and ideas through any media and regardless of frontiers" guarantees, among others, the freedom of expression and association³

Kenya has ratified the African Charter on Human and Peoples Rights, considered the general human rights instrument on the continent.

March 2021 is viewed as an important moment for the rights of children online because even though it is often denied the attention it deserves, the United Nations (UN) Committee on the Rights of the Child launched a guiding document on children's rights in relation to the digital environment. The document complements the existing UN Convention on the Rights of the Child.

The African Declaration on Internet Rights and Freedoms was developed to "promote human rights standards and principles of openness in internet policy formulation and implementation" in African countries, including Kenya. The African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) was drafted in 2011 but adopted in June 2014 to "establish a credible framework for cybersecurity in Africa through organization of electronic transactions, protection of personal data, promotion of cyber security, e-governance and combating cybercrime."4 Further, the European Union's General Data Protection Regulations (GDPR) provide, what could be termed as, international best practices in data governance. While not Kenya-specific, the regulations are progressive and are informative.

^{3.} Africa Charter on Human and Peoples Rights https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf (Accessed on 24 January 2022)

^{4.} See The NATO Cooperative Cyber Defence Centre of Excellence (CCDCOE) available at https://ccdcoe.org/organisations/au/ (Accessed on 15 March 2022).

Anecdotally, Kenya's compliance with regional and international frameworks can be deciphered from the fact that it has taken deliberate steps to ensure that the country operates within the confines of international standards and human rights obligations to protect the right to privacy and other digital rights that were threatened online before.

The country continues to improve its legal, policy and institutional framework to, among others, attune it to regional and international frameworks. For instance, the National Communications Secretariat, the policy advisory arm of the Ministry, announced in April 2021, that the Ministry of ICT, Innovation and Youth Affairs had launched a public consultation on draft data protection regulations.

In particular, the Ministry highlighted that it is seeking feedback from members of the public on the following three sets of regulations:5







IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

As a result of the COVID-19 pandemic, there was a noted increase in the number of internet users and internet usage. In June 2021, the Communications Authority of Kenya reported that leading telecom company, Safaricom PLC, had the highest internet users.6

The report notes that this increase was occasioned by the work from home government policy. The onset of the pandemic also saw the introduction of the digital services tax. Further, the government increased surveillance of COVID-19 patients in 2020 at the beginning of the government-imposed lockdowns.7

However, due to an outcry on the manner in which the surveillance was being carried out, the government appeared to have gone slow on the intrusive surveillance.

FREEDOM OF EXPRESSION **ONLINE IN 2021**

Kenya is largely a rights-respecting jurisdiction as a result of the developments that have been made in the country's judicial system.

Freedom of expression online is often guaranteed but in 2021 there were a few instances of threats to freedom of expression online. For instance, the government sanctioned the arrest and prosecution of activist Mutemi wa Kiama for publishing what the government considered offensive graphics. The activist was subsequently prosecuted in a case that attracted international condemnation. The case has since been dismissed.8

^{5.} Data Protection General Regulations https://www.odpc.go.ke/resources/data-protection-general-regulations-2021/ 2 (Accessed on 15 January 2022)

^{6.} See Communication Authority's Sector Statistics Report available at https://www.ca.go.ke/wpcontent/uploads/2021/09/Sector-Statistics-Report-Q4-2020-2021.pdf (Accessed on 19 January 2022).

^{7.} Barasa, Edwine, et al. "Indirect health effects of the COVID-19 pandemic in Kenya: a mixed methods assessment." BMC Health Services Research 21.1 (2021): 1-16.

^{8.} Carolyne Kubwa, "Activist Kiama released over lack of sufficient evidence," The Star, April 21, 2021, Available at https://www.the-star.co.ke/news/2021-04-20-activist-kiama-released-over-lack-of-sufficient-evidence/ (Accessed on 15 March 2022).

PRIVACY, DIGITAL IDS AND SURVEILLANCE

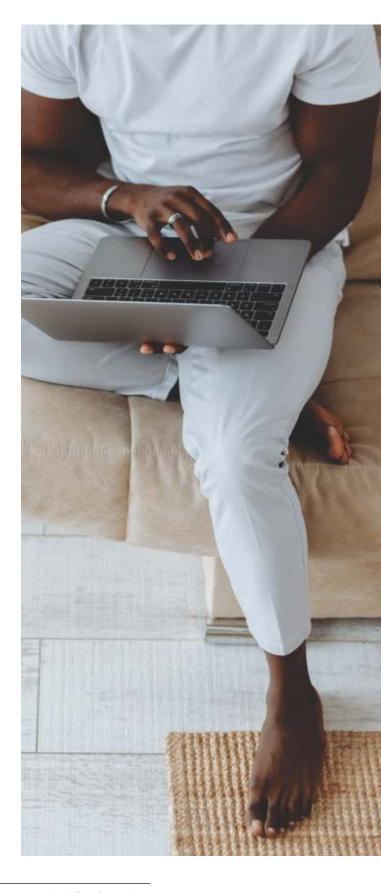
Due to its failure to comply with the express provisions of the Data Protection Act of 2019 (the DPA), the High Court of Kenya annulled the decision to roll out Huduma Cards in October 2021. The Huduma Cards are issued to Kenyan citizens for identification purposes and are set to replace the National Identity Cards that are currently in use. Contrary to the Act, the government kick-started the process of collecting personal data from Kenyans without putting measures in place to ensure that the data would be protected under the National Integrated Identity Management System (NIIMS).9 The court proceeded to issue an order of mandamus which sought to compel the Government of Kenya to first complete a data protection impact assessment before rolling out the Huduma cards as it had intended.

ACCESS TO INFORMATION

Pursuant to Kenya's Access to Information Act of 2016, the right to access to information held by public authorities is codified in statute. As empowered by the Act, the Cabinet Secretary for Information, Communications and Technology (ICT) Innovation and Youth Affairs in liaison with the Commission on Administrative Justice (CAJ) published the Access to Information Regulations, 2021 for comments by members of the public.¹⁰ This was a great milestone as far as access to information in Kenya is concerned.

INTERNET DISRUPTIONS

There were no major government internet disruptions in Kenya in 2021 except for interruptions occasioned by routine maintenance of their respective systems by the respective telecom companies. Internet disruptions were also occasioned by the frequent power outages by the Kenya Power and Lighting Company (KPLC).



^{9.} Bajpai, Nirupam, and John Biberman. "Digital Identification and ICT-Driven Development in Africa." (2021). See also Mosero, Rose. "Analysing the impact of Digital ID frameworks on Marginalised Groups in Sub-Saharan Africa." Available at SSRN 3797506 (2021).

^{10.} See Highlights of the Access to Information Regulations https://vellum.co.ke/highlights-of-the-access-toinformation-regulations-2021/ (Accessed on 16 January 2022).

See also a commentary by Article 19 Eastern Africa on https://www.article19.org/resources/kenya-access-to-informationregulations/ (Accessed on 20 January 2022).

HATE SPEECH, MISINFORMATION AND **CRIMINAL DEFAMATION LAWS**

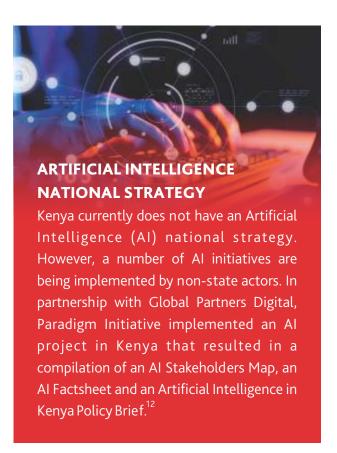
As it usually goes during a campaign season, Kenya is currently marred with rampant cases of politicians engaging in hate speech and misinformation, specifically the spread of fake news. No major hate speech, misinformation and criminal defamation legislative proposals were made during this period.

DIGITAL EXCLUSION IN AFRICA AND ITS IMPACT ON HUMAN RIGHTS

Digital exclusion is still a matter of concern in Kenya's ICT development. Some parts of the country still have either weak 2G connectivity or no mobile network coverage especially in North-Eastern and North-Western regions. The fact that some parts of the country are digitally excluded means that they are not able to take advantage of the internet revolution. As the rest of the country grapples with 4G and 5G, it is unfortunate that some parts of the country have been left out.

DIGITAL INFRASTRUCTURE AND PRIORITIZATION OF ICT

Pursuant to the Constitution, broadcasting, postal and telecommunications services are the mandate of the national government as opposed to the county governments. In order to achieve its ICT aspirations as stated in its ICT Policy, the Government of Kenya has invested in a National Optic Fibre Backbone Infrastructure (NOFBI)." Further, the national government through the Ministry of ICT continues to encourage counties to provide ICT infrastructure and skills development to enable them to benefit from the immense potential and opportunities presented by the national ICT policy.



GENDER AND ICT

Women involvement in ICT in Kenya is critical as women continue to take up necessary space in the ICT sector. There is a growing importance of interagency collaboration and coordination to achieve digital rights for women at the national level. Despite these strides, there is an urgent need for an accountability framework that promotes improved planning, coordination, programming and results for gender equality and women's empowerment at the country level especially in relation to digital rights.

By focusing on gender mainstreaming processes at the country level, the government can work to achieve its aspirations in gaining gender parity in the ICT sector. For now, a lot remains to be done.

^{11.} Makini FM, Mose LO, Kamau G, Mulinge W, Salasya B, Akuku B, Makelo M. The Status of ICT Infrastructure, Innovative Environment and ICT4AG Services in Agriculture. Food and Nutrition in Kenya. 2020;5(11):75.

^{12.} The documents are available through this link

https://drive.google.com/drive/folders/1WEV4zcO9PsprH34GXHy7U50gvBJAxePm?usp=sharing (Last accessed on 18 February 2022).

AN ANALYSIS OF THE COUNTRY'S PERFORMANCE FROM THE PREVIOUS YEAR

As opposed to 2020 when the government was grappling with containing the COVID-19 situation in the country and in the process, violating human rights, 2021 witnessed positive developments in the ICT sector. There is a notable difference from 2020 in terms of the general improvement of the digital landscape, regulatory framework, the institutional arrangement as well as the clarity of what the future looks like for ICT in Kenya. The government appears to be better at managing the COVID-19 pandemic compared to the chaos in 2020 of intrusive government surveillance put down to the containment of the spread of the pandemic.

Following the government's move to slash domestic mobile termination rates (MTRs) and fixed termination rates (FTRs), the mobile operators opposed this move. The implication of this was that mobile operators would still charge as they deemed fit hence negatively impacting on the general public access of digital services. The cost of access to the Internet is a key determinant of digital inclusion and digital rights.

ICT has undoubtedly contributed to Kenya's socioeconomic development, improvement of the Gross Domestic Product (GDP), quality of life of the citizens and literacy levels. Section 4 of the Computer Misuse and Cybercrimes Act 2018, establishes the National Computer and Cybercrimes Coordination Committee (NC4) composed of representatives from various government agencies.

The Committee is charged with the responsibility of overseeing the security related aspects of the Kenyan cyberspace. Kenya launched the National Computer and Cyber Crimes Co-ordination Committee (NCCCC) to combat the rising cyberrelated crimes which has bedeviled Kenya and other countries globally. It is hoped that the operationalization of the Committee will contribute to the early detection, prevention and penalization of cyber crimes.



ICT has undoubtedly contributed to Kenya's socio-economic development, improvement of the Gross Domestic Product (GDP), quality of life of the citizens and literacy levels.



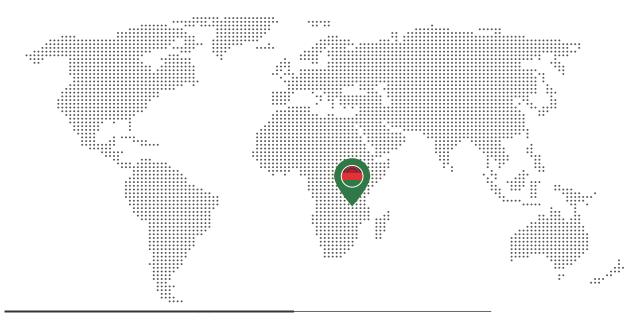
CONCLUSION AND RECOMMENDATIONS

This report has highlighted the challenges that have been witnessed in the digital landscape in Kenya. It urges that the recommendations which have been advanced in this report are put into due consideration for the betterment of the Kenyan populace. The following recommendations are advanced:

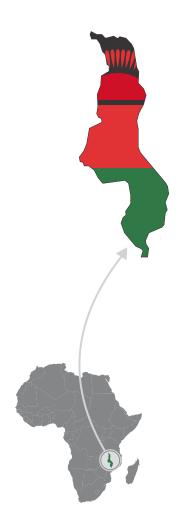
- There is a need for the government to put in place policy measures which ensure that the infrastructural development that is being witnessed in the major cities in the country is cascaded down to other parts of rural Kenya that have not benefited from the digital inclusion programmes.
- There is a need for all stakeholders-public authorities, the private sector and the general population in Kenya to lead efforts to reduce the spread of hate speech and misinformation online. This is critical especially during this period when the country is in an electioneering period.
- The Government of Kenya must adopt a multi-stakeholder approach in gearing towards an ICT-centered economy as envisioned in the country's development blueprint that seeks to transform Kenya into a newly industrialising, middleincome country providing a high quality of life to all its citizens by 2030 in a clean and secure environment.
- There is a need for the national government to spur ICT development at the local county level by initiating programmes in partnership with the county governments.
- · There is a need for promotion and encouragement of self-regulation and strengthening of professional bodies to support the government to ensure adherence to certain guidelines and ethics.
- The Government of Kenya needs to assess the gender perspectives in regards to ICT in the country and to remove bottlenecks that hinder women's involvement in ICT.

MALAWI

This report maps the state of digital rights and inclusion in Malawi in 2021. It concentrates on the country's opportunities and threats to digital rights. The report has established Malawi's decline on the 2021 Internet Freedom ranking due to increased criminalisation of online speech. Prohibitive cost of internet and mobile services; low levels of electricity access, and the absence of legislative and policy framework on personal data protection and Artificial Intelligence (AI) also remained major gaps. However, Malawi rolled out an ambitious five-year Digital Economy Strategy (2021-2025), and the Malawi 2063 (MW2063), the country's long term development plan. Both the Digital Strategy and MW2063 recognise investment in ICT as a critical enabler in industrialization of the economy. There were also significant strides in implementation of the Access to Information Act (ATI Act). The report recommends the following: repealing of defamation and sedition laws in the Penal Code and reforming the Electronic Transactions and CyberSecurity Act of 2016, to bring them into conformity with Malawi's international human rights obligations. In order to safeguard the right to privacy, Parliament should prioritise the enactment of the Data Protection Bill, currently in draft, and also ratify the African Union Convention on Cyber Security and Personal Data Protection. Critically, the government should expedite efforts in providing equal access to Internet and ICTs for all citizens, including marginalized groups. On ATI, the government should accelerate appointment of information officers in all public institutions in conformance to section 12 of the ATI Act. In relation to AI, the government should develop a national strategy on AI.



^{1.} Freedom House 'Freedom on the Net 2021' (2021) https://freedomhouse.org/country/malawi/freedom-net/2021 (accessed on 15 January 2022).





Located in Southern Africa, Malawi shares its borders with Mozambique, Zambia and Tanzania. With an estimated population of 17.5 million, which is expected to double by the year 2038, about 51.7% of the population lives below the poverty line and 25% percent living in extreme poverty.2 The per capita income has remained low, averaging US\$502 over the past decade.



Inequality has also remained high with a Gini Coefficient of 0.6.3 Malawi's development is heavily donor and credit dependent. According to the National Planning Commission, "As at June 2020, public debt stock was as high as K4.1 trillion (around US\$5.5 billion, representing 59 percent of national income) hence posing a threat to the socio-economic development of the country".4

In recent years, however, Malawi has made significant policy, legal and structural reforms in the ICT sector. As aptly noted by Kainja, "there is steady increase in access and proliferation of the Internet and services in the country. Various mobile phone services such as mobile banking and mobile health are available, yet major challenges also remain".5

^{2.} International Monitory Fund 'Country Report No. 17/184' (2017) file:///C:/Users/User/Downloads/cr17184.pdf (accessed on 17 January 2022).

^{3.} National Planning Commission 'Malawi 2063'.

^{4.} As above.

^{5.} J Kainja 'Laws Restricting InternetFreedom in Malawi' (2021).

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Malawi is a State party to key international human rights treaties in relation to freedom of expression (FoE) and access to information (ATI). These instruments include:

- the African Charter on Human and Peoples Rights;
- Universal Declaration on Human Rights (UDHR);
- · International Covenant on Civil and Political Rights (ICCPR);
- The African Union Convention on Preventing and Combating Corruption;
- · The African Charter on the Rights and Welfare of the Child;
- African Youth Charter:
- African Charter on Statistics;
- African Charter on Democracy, Elections and Governance:
- The African Charter on Values and Principles of Public Service and Administration; and
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women.

Critically, the 1994 Constitution entrenched a Bill of Rights which substantially reflects the normative framework set by the international human rights instruments cited above. Notably, however, Malawi has neither signed nor ratified the African Union Convention on Cyber Security and Personal Data Protection.⁶

FREEDOM OF EXPRESSION

Sections 34 and 35 of the Constitution of Malawi and Article 9 of the African Charter on Human and People's Rights (African Charter) guarantee freedom of opinion and expression. While at face value Malawi has a permissive legal and policy regime guaranteeing freedom of expression, in practice, this fundamental right continues to face significant restrictions. According to the Freedom House, in 2021, Malawi's ranking on internet freedom declined, as the government intensified criminalisation of freedom of expression online. Authorities arrested five individuals, two of whom were convicted using criminal defamation and cyber security laws.

On 25 June 2021, the senior magistrate Court in the capital city Lilongwe convicted and sentenced Ignatius Kamwanje to a K 200,000 (US\$ 270) fine or to serve 18 months in jail in default, over a Facebook post in which he alleged that employees of the National Bank of Malawi, were defrauding customers' accounts.8 Kamwanje was convicted for the offence of 'spamming' under section 91 of the Electronic Transactions and CyberSecurity Act of 2016.9

In addition, in May 2021, a woman, Irene Chisulo Majiga was convicted for allegedly publishing a WhatsApp voice note alleging that a suspect detained on rape charges was released from

^{6.} African Union, African Union Convention on Cyber Security and Personal Data Protection, Status List, https://au.int/sites/default/files/treaties/29560-sl-

AFRICAN%20UNION%20CONVENTION%20ON%20CYBER%20SECURITY%20AND%20PERSONAL%20DATA%20PRO TECTION.pdf (accessed 10 February 2022).

^{7.} Freedom House 'Freedom on the Net 2021' (2021) (accessed on 15 January 2022).

^{8.} C Chinoko 'Court convicts Facebook user over malicious post' (22 June 2021) Court convicts Facebook user over malicious post - The Nation Online (mwnation.com) (accessed on 15 January 2022).

https://www.mwnation.com/court-convicts-facebook-user-over-malicious-post/ (accessed on 14 January 2022).

^{9.} Section 91 of the Electronic Transactions and Cyber Security Act of 2016 provides that "Any person who transmits any unsolicited electronic information to another person for the purposes of illegal trade or commerce, or other illegal activity, commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years".

police custody under questionable circumstances.¹⁰ She was charged under section 60 of the penal code which criminalises 'publication of false news likely to cause breach of peace'. She pleaded guilty and was sentenced to a fine of 50,000 kwacha (US\$ 64) or in default serve a one month jail term.

In July 2021, police arrested Joshua Chisambele, a social media critic of President Chakwera's administration over his Facebook post. 11 Similarly, a 20year-old girl, Chisomo Makala, was arrested for reportedly sharing on social media a video clip that appeared to ridicule President Chakwera.¹² Makala was arrested in Lilongwe after police traced a phone number that she had used to share the video clip on a WhatsApp group called 'Mandota Comedy'. She was released on bail.

On 6 April 2021, a freelance journalist, Watipaso Mzungu was summoned to national police headquarters in Lilongwe over the online story he published on Nyasa Times which was deemed critical of the President.¹³ The Media Institute of Southern Africa (Malawi Chapter) condemned the police's action describing it as an attack on media freedom.¹⁴ Similarly, in February 2021, police arrested a community journalist, Raymond Siyaya, on allegations of reporting "fake news" on his Facebook page. Police accused Siyaya of making false allegations that senior security officials had mismanaged COVID-19 relief funds.¹⁵ He was charged under section 60 of the penal code which prohibits 'publication of false news likely to cause breach of peace'. However, the police dropped the charges against him.16



^{10.} The Malavi Post 'Be warned! Malawi Court fines woman over fake viral voice note' (10 May 2021) https://www.maravipost.com/be-warned-malawi-court-fines-woman-over-fake-viral-voice-note/ (accessed on 14 January

^{11.} Chisambele posted a series of Presidents of different countries who were deposed while out of their countries. This was at a time President Chakwera was in London. He was verbally told by the Police that he was being detained on allegations of "incitement". However, after spending two nights in Police cell at Area 18 in Lilongwe, he was released without a charge. $See \ https://www.malawivoice.com/2021/07/28/ralph-kasambara-warns-police-for-arresting-chakwer as-social-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media-media$ critic-joshua-chisa-mbele/ (accessed on 12 January 2022).

^{13.} Centre for Human Rights and Rehabilitation "A call to the Chakwera administration to drop all court cases related to freedom of expression and to repeal all laws that supress freedom of expression" (24 January 2021).

S Chitete 'Police chief justifies journalists' questioning' (7 April 2021) https://www.mwnation.com/police-chief-justifies journalists-questioning/ (accessed on 15 January 2022). 14. As above.

^{15.} R Kondowe 'Journalist Arrested Over Fake News' (27 February 2021) https://malawi24.com/2021/02/27/journalistarrested-over-fake-news/ (accessed on 18 January 2022).

^{16.} Freedom House 'Freedom on the Net 2021' (2021).



Section 36 of the Malawi Constitution guarantees freedom of the press.

This pattern of crackdowns on online dissent and the climate of intimidation may prompt a degree of self-censorship, especially among media practitioners and social media users.¹⁷ Section 36 of the Malawi Constitution guarantees freedom of the press. In addition, Principle 20(1) of the African Commission on Human and Peoples' Rights (ACHPR) Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019 (ACHPR Declaration) calls on states to guarantee the safety of journalists and media practitioners including freedom from intimidation. Further, Principle 22(2) of the ACHPR Declaration provides that states must 'repeal laws that criminalise sedition, insult and publication of false news. '18

ACCESS TO INFORMATION

The right to information is guaranteed under section 37 of the Constitution, as well as the Access to Information I Act (ATI Act) of 2016. In 2021, the Government registered some significant milestones in implementation of the ATI Act. It adopted the ATI Act regulations, and established the ATI Unit under the Malawi Human Rights Commission (MHRC), to oversee overall operationalization of the Act. In addition, 160 information officers were deployed to 123 public institutions.¹⁹ MHRC also developed a comprehensive road map for the operationalization of the Act, conducted a legal and technical analysis of ATI Act, and translated its regulations into local languages.20

However, there is non-compliance by some public institutions in designating information officers, hence undermining citizens' access to information. In addition, lack of proactive disclosure of information by public institutions remained a major setback. For example, the Malawi government did not make a report on Public Sector Reforms public, arguing that the report was only meant for the President.²¹ Underfunding and delayed funding of the MHRC which is responsible for oversight implementation of the Act continued to undermine its oversight mandate on the ATIA Act.²² There was also a low level of awareness among public institutions and the general public on ATIA and ATI regulations. The MHRC also cited COVID-19 protective measures as a challenge which slowed down implementation of some activities.23



^{18.} African Commission on Human and People's Rights (ACHPR) Declaration on Freedom of Expression and Access to Information https://www.achpr.org/legalinstruments/detail?id=69 (accessed on 14 January 2022).

^{19.} P Kachinziri 'Government tough on information access'. https://times.mw/government-tough-on-information-access/ (accessed on 14 January 2022).

^{20.} Malawi Human Rights Commission's PowerPoint presentation made at the International Day on Universal Access to Information in Salima on 30 September 2021.

^{21.} Times News 'Questions over reforms report secrecy' (22 May 2021) https://times.mw/questions-over-reforms-report secrecy/ (accessed on 19 January 2022).

^{22.} P Kachinziri 'Government tough on information access'

https://times.mw/government-tough-on-information-access/ (accessed on 19 January 2022).

^{23.} As above.

DIGITAL INFRASTRUCTURE AND PRIORITIZATION OF ICT



Malawi has in recent years made significant policy and structural reforms in ICT. In 2021, the government rolled out an ambitious five-year Digital Economy Strategy (2021-2026) which sets new targets for different aspects of the digital economy.²⁴Among others, on network access, the government intends to expand internet access from 14.6 % to 80% of the population and broadband coverage to 95 % by 2026. It also seeks to review internet taxes by, among others, cutting out the 10% excise duty on purchasing data and SMS tariffs, and scraping off the 3.5% revenue tax for telecom providers which are significant drivers of high costs of internet and mobile services in Malawi.

Further, Government targets to increase device ownership from 51% to 80% and access to energy to 20%. On digital finance services, the

Government seeks to achieve a 30% increase in mobile bank accounts, thus targeting an additional 2.1 million Malawians. In relation to digital skills, the Strategy seeks to increase availability of relevant digital skills and literacy in secondary schools, aimed at increasing the pass rate from 50 % to 80 % by 2026. The Malawian government also continued to operate the Universal Service Fund (USF) aimed at increasing access to ICTs through expansion of mobile networks across the country.²⁵ As of 2021, the country had over 20 operational Internet Service Providers.²⁶ Further, social media platforms continue to be actively vibrant in giving citizens a voice and influencing policy debates. As aptly stated by Kainja, 'Social media has given Malawians the means to hold power to account, to shape policies, talkback to authorities and to push for *improved governance*'.²⁷

^{24.} World Bank 'Malawi Economic Monitor: Investing in Digital Transformation' (23 June 2021) https://documents.worldbank.org/en/publication/documents-reports/documentdetail/131501624458623473/malawieconomic-monitor-investing-in-digital-transformation(accessed on 19 January 2022). 25. I Kainia.

^{26.} Malawi InternetService Providers Association (MISPA) http://www.mispa.org.mw/members.html (accessed on 21 January 2022).

^{27.} J Kainja 'The State of Internet and Social Media Use in Malawi: Where Are We?' PowerPoint Presentation (accessed on 22 February 2022).

Despite notable strides, the penetration and utilisation of ICTs remained significantly low.²⁸ The most recent survey shows that only 43.2% of Malawians own a mobile phone, and landline penetration is only around 1%. Only 14.6% used the internet, 9.3% of whom are in rural areas as compared to 40.7% of urban areas.²⁹ Strikingly, a recent survey by the Malawi Communications Regulatory Authority (MACRA), established that 46% of Malawians say they don't use the internet because they don't know what it is, and 2.4% say they don't use it because it is too expensive.³⁰ Thus, high digital illiteracy remains a major setback in Malawi's digital space. Reiterating the significance of the Internet in fulfilment of other fundamental democratic rights such as freedom of expression and access to information, the 32nd session of Human Rights Council (2016) affirmed that the same rights enjoyed offline must also be protected online.³¹ Therefore, access to the Internet must be universal and affordable for all citizens.

The country's telecommunications sector is a duo monopoly, with two companies, Telekom Networks Malawi Limited (TNM) and Airtel Malawi Limited who control a market share of 99.6% between them.³² MTL and ACL are the only landline telephone companies both, with 0.1 % market penetration.33 Only 76.2% of the country is covered by mobile network, inclusive of 2G, 3G and 4G;³⁴ thus, around 4.1 million Malawians have no access to mobile network coverage, eventually unable to

use the Internet and other mobile services. Inadequate ICT infrastructure, inadequate investment and high taxes are major drivers of low internet penetration. For example, in 2021, the government maintained a 17.5% value-added tax (VAT) on mobile phones and services, a 16.5% VAT on Internet services, and 10 % excise duty on mobile phone text messages and Internet data transfers.³⁵ Consequently, access to the Internet is exorbitant for a majority of the population, particularly the rural masses.

Unreliable electricity also heavily strains Malawi's ICT sector. Only 12.7 percent of the country's population has access to electricity.³⁶ The urban electricity penetration is only 25 %, compared to a mere 1% of rural households.³⁷ Those with access to electricity also face frequent blackouts. Notably, due to interrupted power supply, half of Malawi's private businesses rely on heavy backup generators, pushing cost of production by firms high, which in turn are compensated through prohibitive costs of services on the market.38



Access to the internet must be universal and affordable to all citizens.

26

^{28.} Freedom House 'Freedom on the Net 2021' (2021).

^{29.} National Statistics Office (2020) 'National Survey on Access and Use of Information and Communication Technologies by Households and Individuals in Malawi 2019'.

^{30.} J Kainja 'The State of Internet and Social Media Use in Malawi: Where Are We?' PowerPoint Presentation (accessed on 22 February 2022).

^{31.} UN Human Rights Council 'Report of the Human Rights Council on its thirty second session' https://documents-ddsny.un.org/doc/UNDOC/GEN/G20/008/73/PDF/G2000873.pdf?OpenElement (accessed on 22 February 2022).

^{32.} J Kainja 'Mapping Digital Surveillance and Privacy Concerns in Malawi' (November 2021) https://www.mediaanddemocracy.com/ (accessed on 1 March 2022)

^{33.} National Statistics Office (2020) "National Survey on Access and Use of Information and Communication Technologies by Households and Individuals in Malawi 2019".

^{34.} GSMA Mobile Connectivity Index

https://www.mobileconnectivityindex.com/#year=2019&zonelsocode=MWl&analysisView=MWl&comparison=1&geograms and the statement of the statementphys=MWI,ZMB,TZA,MOZ&metricsIndex=overall (accessed 17 January 2022).

^{35.} Freedom House 'Freedom on the Net 2021' (2021). (accessed on 21January 2022).

^{36.} The World Bank 'Access to electricity (% of population)' (26 February 2020)

https://data.worldbank.org/indicator/EG.ELC.ACCS.ZS?locations=MW (accessed on 17 January 2022).

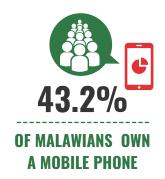
^{37.} Freedom House 'Freedom on the Net 2021'

^{38.} As above.

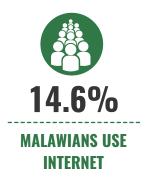
According to the World Bank Malawi Economic Monitor (MEM), low ICT penetration in Malawi hinders "a potential of \$189 million in additional GDP and \$33 million in tax revenues per year". Thus, electrical power challenges adversely affect the delivery of ICT services and the economy at large. ⁴⁰

Implementation of the government's ICT initiatives were also marred by serious challenges. For example, in September 2021, the new political administration announced abolition of the Community Telecentre Program, a program aimed at expanding access to ICT services to members of the public, especially underserved rural communities.⁴¹ It cited politicisation and lack of sustainability plan of the Program by the previous political administrations. The government stated that it will instead prioritize a new program, "Connecta School".

However, civil society groups expressed concerns over government's lack of transparency and accountability in its decision to abandon the Telecentre program demanding that government should "provide a detailed report on the status of the Connect a Constituency Telecentre program and government's justification of its decision to abandon this program as announced by the Minister of Information".⁴² In addition, despite completing a National Optic Fibre Backbone Project in April 2018, promising to deliver faster internet services, as of December 2021, the project's benefits were yet to be seen.⁴³ Stakeholders also raised concerns over the government's lack of accountability in the management of the USF.⁴⁴







^{39.} World Bank 'Malawi Economic Monitor: Investing in Digital Transformation' (23 June 2021).

^{40.} O Chiphwanya 'Improved power supply offers business relief' (19 January 2019) https://mwnation.com/improved-power-supply-offers-businesses-relief/ (accessed 17 January 2022)

^{41.} YAS, DCT and Oxfam's press statement 'Communique On High Level Multistakeholder Conference On Access To Information' (11 October 2021).

^{42.} As above (41)

^{43.} N Tobor 'Malawi to enjoy faster Internetspeeds as the Malawi National Optic Fibre Backbone Project nears completion' (2 February 2018) https://www.iafrikan.com/2018/02/02/malawi-national-optic-fibre-backbon (accessed 15 January 2022).

^{44.} YAS, DCT and Oxfam's press statement.

PRIVACY, DIGITAL IDS AND SURVEILLANCE

The right to privacy is provided under section 21 of the Constitution. The major win for Malawi in 2021 was the development of the long awaited Data Protection Bill, 2021. Overall, the Bill seeks to protect the right to privacy of the individual in line with Malawi's obligations under international human rights law.⁴⁵ However, according to CIPESA, while the Bill contains various positives including core principles on protection of personal data; it has some serious deficits that need redress if it is to serve its full purpose. For example, CIPESA observes that the establishment of the Data Protection Office (DPO) under MACRA as prescribed under section 4 of the Communications Act, 2016, 46 may significantly undermine and limit the financial, decisional and institutional independence of the DPO.47

Malawi continued to enforce the mandatory registration of sim cards as prescribed by the Communications Act, 2016. Use of unregistered SIM cards is punishable under section 93(3) of the Communications Act with a fine of 5 million kwacha (\$6,400) and five years imprisonment. This undermines citizens' ability to communicate anonymously via mobile phones, and perpetuates digital exclusion as individuals without official IDs are unable to register. 48 Further, in the absence of data protection law, the mass personal data collection has increased the possibility of state surveillance.49

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION **IN MALAWI**

The pandemic continued to ravage Malawi's economy and public health system. 2,364 people died of COVID-19, as of 31 December 2021.50 With restrictions put in place to control the spread of COVID-19, the ICT sector continued to play a critical role in providing Malawians with a safe means of communication.

Various online platforms helped in the dissemination of crucial COVID-19 messages. Businesses heavily relied on ICT to continue amidst the pandemic.⁵¹ Notably, the cost of living turned unbearable for most Malawians particularly the poor, attracting a wave of citizen protests in major cities.52

Mismanagement of COVID-19 funds was a major issue of public concern in the year. Most public institutions failed to provide reports to the Presidential Task Force on COVID-19 on how they had spent 6.2 billion MWK (US\$7.9 million), two weeks after the President had ordered them to do so.⁵³

As of February 2021, most public institutions had not accounted for 17 billion MWK (US\$21 million) that the central government had disbursed. In February 2021, President Chakwera suspended several heads of public institutions for failure to

^{45.} CIPESA "Analysis of the Malawi Draft Data Protection Bill, 2021" (May 2021)

file:///C:/Users/User/Downloads/Analysis-of-the-Malawi-Draft-Data-Protection-Bill-2021.pdf

^{46.} Communications Act, 2016 of the Republic of Malawi https://macra.mw/wp-

content/uploads/2021/04/COMMUNICATIONS-ACT-2016.pdf

^{47.} CIPESA, 'Analysis of the Malawi Draft Data Protection Bill, 2021' May 2021. file:///C:/Users/User/Downloads/Analysisof-the-Malawi-Draft-Data-Protection-Bill-2021.pdf (accessed on 17 January 2022).

^{48.} C Handforth & M Wilson "Digital Identity Country Report: Malawi" (2019) https://www.macra.org.mw/?page_id=9582 (accessed on 17 January 2022).

^{49.} J Kainja 'Are Malawians Sleepwalking into a Surveillance State?' (12 August 2019) https://mwnation.com/aremalawians-sleep-walking-into-a-surveillance-st (accessed on 17 January 2022).

^{50.} Ministry of Health 'Ministry of Health's Covid-19 Situation Update' (31 December 2021)

^{51.} J Kaimja 'Laws Restricting InternetFreedom in Malawi'

^{52.} L Masina 'Malawians Protest High Cost of Living' (2 November 2021) https://www.voanews.com/a/malawians-protest high-cost-of-living/6296985.html (accessed on 17 January 2022).

^{53.} W Gwede 'Heads roll in Malawi civil service: 10 PS, 28 DCs interdicted' (17 February 2021)

https://www.nyasatimes.com/more-heads-roll-in-malawi-civil-service-10-ps-28-dcs-interdicted/ (accessed on 8 March 2021).



report on their use of funds.⁵⁴ Chakwera also fired his Minister of Health for alleged abuse of COVID-19 recovery funds. Principles 29(1) and (2) of the Declaration are instructive that public bodies should proactively make information including budget expenditures available to the public.

In a bid to cushion vulnerable and low-income households from the socio-economic shocks of the COVID-19 pandemic, in February 2021, the government rolled out the COVID-19 Emergency Urban Cash Transfer Intervention (CUCI) to support vulnerable households with a three-month subsistence allowance. The cash transfers had a monthly cash payment of MK35, 000 (\$43) over a period of three months, and were delivered using a mobile money system. Two mobile companies, TNM and Airtel Malawi were contracted as disbursement agents.⁵⁵ However, use of mobile money facilities disadvantaged poor households that did not have mobile phones or have registered mobile money accounts.



INTERNET DISRUPTIONS

Under Article 24 of the Electronic Transactions and Cyber Security Act, 2017; the government can restrict online public communications deemed necessary to "protect public order and national security", which could be interpreted to permit network shutdowns or block social media platforms. While in 2021, there were no reports of state-linked internet disruptions in Malawi, the existence of Article 24 above continues to pose a threat to freedoms online. In terms of Principle 38(2) of the ACHPR Declaration, states shall not disrupt access to the Internet and other digital technologies for segments of the public or an entire population.

DIGITAL EXCLUSION AND HUMAN RIGHTS

Section 157 of the Communications Act of 2016 provides for Universal Services and Access to Telecommunication. MACRA as a regulator is mandated "to ensure that the provision of universal services is made on affordable tariffs that are accessible to all." 56 However, the high costs of internet and mobile services and inadequate ICT infrastructure continue to shut out the poor, who are largely rural-based on digital services like mobile banking and money services that could help lift them out of poverty. Notably, the 2021 Inclusive Internet Index report, ranks Malawi as very poor on all four of its indicators:iInternet availability, affordability, relevance, and readiness.⁵⁷ Freedom House attributes this poor rating to "rising costs of the Internet due to poor infrastructure management and lack of investment". 58 The digital divide between the rural and urban areas is also widening.⁵⁹

^{54.} L Masina 'Malawi President Sacks COVID-19 Fund Heads over Alleged Abuse of COVID Funds' VOA 15 February 2021 https://www.voanews.com/africa/malawi-president-sacks-covid-19-fund-heads-over-alleged-abuse-covid-funds/ (accessed on 8 March 2021).

^{55.} L Tembo 'Cash transfers help families during COVID-19' 14 May 2021

https://www.unicef.org/malawi/stories/cash-transfers-help-families-during-covid-19

^{56.} Communications Act of the Republic of Malawi, 2016 http://www.macra.org.mw/wpcontent/uploads/2014/07/Communications-Act-2016.pdf (accessed on 15 January 2022).

^{57.} The Inclusive InternetIndex (2020) https://theinclusiveinternet.eiu.com/explore/countries/performance/avai (accessed on 15 January 2022).

^{58.} Freedom House 'Freedom on the Net 2021'.

^{59.} National Statistics Office 'National Survey on Access and Use of Information and Communication Technologies by Households and Individuals in Malawi 2019' (2020).

In terms of cost of mobile services and internet, in 2021, the two major mobile service companies, Airtel and TNM reduced their cost of internet. In May, the cost of 1GB and 4GB bundles were slashed down by between 10% and 31% respectively.⁶⁰ The reduction in prices followed the engagement between the country's regulator, MACRA, and the two companies. Airtel Malawi also removed the validity period for its 1GB internet bundles. Despite the reduction in bundle prices, the cost of internet and mobile services in Malawi remained exorbitantly high.

ARTIFICIAL INTELLIGENCE NATIONAL STRATEGY

Malawi's Artificial Intelligence (AI) industry is at a nascent stage.⁶¹ Notably, Malawi does not have legislation and national strategy on AI. ACHPR Resolution 473 calls on State Parties to develop a comprehensive legal and ethical governance framework for AI technologies so as to ensure compliance with human rights standards. In addition, AI literacy levels among Malawians and various stakeholders remain low.⁶²

HATE SPEECH, MISINFORMATION AND CRIMINAL DEFAMATION LAWS

Malawi did not make any progress in repealing defamation and sedition laws in its Penal Code. Defamation is criminalised under section 200(1) of the Penal Code. Similarly, sections 61 of the penal code imposes criminal sanctions against the defamation of foreign dignitaries. Furthermore, the government also uses sedition laws in sections 50 and 51(3) of the Penal Code to crack down on critics of the government or the president. Section 50

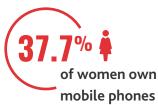
describes seditious intention as, among other things, 'to bring into hatred or contempt or to excite disaffection against the person of the President, or the Government.'

In addition, section 60 of the penal code prohibits 'publication of false news likely to cause breach of peace'. Such provisions on sedition are outdated and subject to arbitrary interpretation and application. Principle 22(2) of the ACHPR Declaration provides that states must 'repeal laws that criminalise sedition, insult and publication of false news. '63 In Lohé Issa Konaté vs The Republic of Burkina Faso, the African Court on Human and Peoples Rights (African Court) found that "criminalisation of defamation is not justified" as it is in conflict with freedom of expression.⁶⁴

GENDER AND ICT

The 2021 Global Gender Gap Index ranks Malawi in position 115 out of 156 countries.⁶⁵ The gender divide in ICT access and usage remained persistent. According to the World Bank, 44.9 % of men own mobile phones as compared to 37.7% of women.⁶⁶ In terms of usage, 68% of men use a mobile phone, compared to just 56.2% of women. Similarly, internet use also remains higher among men at 15.4% relative to 12.4% among women. Thus, it is critical for the government to implement interventions to increase ICT access and use among women.





^{60.} J Kainja 'Malawi Telcos Further Reduce Data Prices But Affordability Concerns Remain' 20 May 2021 https://cipesa.org/2021/05/malawi-telcos-further-reduce-data-prices-but-affordability-concerns-remain/ (accessed on 15 January 2022).

court.org/en/images/Cases/Judgment/Judgment%20Appl.004-

^{61.} D Malanga 'Framing the impact of artificial intelligence on the protection of women's rights in Malawi' (2019) https://giswatch.org/node/6179 (accessed on 16 January 2022). 62. As above.

^{63.} African Commission Declaration of Principles on Freedom of Expression and Access to Information in Africa.

^{64.} Lohé Issa Konaté vs The Republic of Burkina Faso 004/2013 https://www.african-

^{2013%20}Lohe%20Issa%20Konate%20v%20Burkina%20Faso%20-English.pdf (accessed 22 January 2022)

^{65.} Global Gender Gap Index (2021) https://www3.weforum.org/docs/WEF_GGGR_2021.pdf (accessed on 21 January 2022).

^{66.} World Bank 'Malawi Economic Monitor: Investing in Digital Transformation' (23 June 2021).



CONCLUSION

The rolling out of the ambitious Digital Economy Strategy (2021-2026) coupled with the development of Malawi2063 which places ICTs at the heart of its success, demonstrated Malawi's commitment towards expanding the country's digital infrastructure, and realisation of digital rights.

The drafting of the Personal Data Protection Bill was a significant step in ensuring the country's obligation in upholding the right to privacy of all individuals. However, the wanton crackdown on online freedoms through arrests and criminal convictions continued to undermine freedom of expression.

Further, prohibitive costs of internet and mobile services, low access to energy, and low ICT literacy levels remained a major threat to Malawi's development prospects and realisation of digital rights especially among the marginalised groups including women and rural-based Malalawians.



The Malawian government has to take significant steps in upholding digital rights of all Malawians.

RECOMMENDATIONS

In view of the prevailing digital rights climate in Malawi, the following recommendations should be considered:

The Government

- Repeal defamation and sedition laws in the Penal Code, and amend sections 24(1) provisions (e) and (f) of the Electronic Transactions and CyberSecurity Act of 2016.
- Guarantee freedom of expression online and media freedoms.
- Parliament to prioritise enactment of a Data Protection law to provide for protection of personal data.
- Remove barriers to internet and mobile services access particularly prohibitive taxes on internet and mobile services, poor ICT infrastructure, and duomonopoly of the telecommunication industry in order to ensure that access to the internet and mobile services is universal and affordable for all citizens, including rural populations, women and people with specific needs.
- MACRA should ensure transparent and effective management of the Universal Access Fund (USF), as well as account for the expenditure of the funds realised from the facility since its establishment in 2016.
- Expedite appointment of information officers in all public institutions in conformance to section 12 of the ATI Act.
- Provide adequate resources to the Malawi Human Rights Commission to ensure it discharges its oversight role over the implementation of the ATI Act.
- Intensify public awareness on ATI Act.
- Develop legislation and a national strategy on Artificial Intelligence (AI).
- Ratify the African Union Convention on Cyber Security and Personal Data Protection.
- Bridge the gender digital divide by implementing interventions to increase ICT access among women such as increased budgetary allocations for ICT services targeting women and girls.

The Civil Society

- Step up advocacy efforts on decriminalisation of freedom of expression.
- Monitor the implementation of Malawi's five-year Digital Economy Strategy (2021-2026).
- Lobby and demand urgent enactment and implementation of data protection law.
- Advocate for Malawi's ratification of the African Union Convention on Cyber Security and Personal Data Protection.
- Intensify multi-stakeholder engagement on inclusive and affordable access to the Internet and mobile services.
- Establish protection mechanisms for victims of digital violations.

Academia

- Provide intellectual leadership and guidance on issues of digital rights and inclusion.
- Conduct research on issues of digital rights and inclusion and emerging technologies such as Artificial Intelligence.

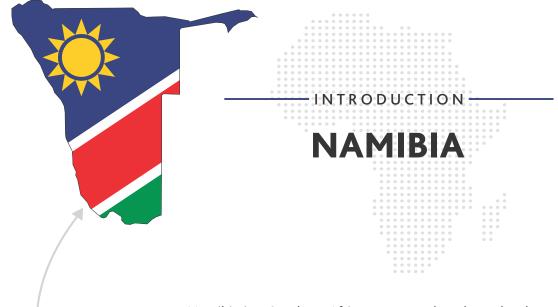
NAMIBIA

The Information, Communication and Technology (ICT) sector has become a prominent backbone of economic and social activities in Namibia especially since the COVID-19 pandemic hit the country in 2020. However, ICTs have been positioned as a key enabler in key national development strategies, even before the pandemic, The strategies however are yet to translate into a clearly identifiable position that places the country in good standing when key technology indices are measured. As such, there are no clear indications on the urgency in implementing laws or policy related to digitalisation. In isolated cases where such laws and policies are passed, adequate budgetary allocations for implementation is lacking. A case in point is the broadband policy of 2020, one of the first such policies to be passed with an implementation plan targeting, amongst others, to "improve digital literacy" by set dates and with specific budget provisions. However, progress has not been visible to date.

While several policies related to technology are in place, many have become out-dated and inapplicable to the growing ICT sector. The country has not passed laws on cybercrime, data protection and access to information. It also does not have an open data policy or an elaborate position on emerging technologies. ICTs have also not been positioned as a tool to mitigate gender-based violence or to empower women.



^{1.} National Broadband Plan (2020) https://gazettes.africa/archive/na/2020/na-government-gazette-dated-2020-08-14no-7308.pdf (accessed on 23 December 2021)



OF THE POPULATION ARE INTERNET USERS Namibia is a Southern African country that shares borders with South Africa, Botswana, Angola, Zambia and Zimbabwe. The country attained independence in 1990 and has a population of 2.5 million.² As of 2021, some key ICT data in Namibia include: mobile subscription is 102%,3 fixed broadband subscription stands at 2.7%, 51%⁴ of the population are internet users, 31.2% are active social media users, and there are three Internet Service Providers. Telecommunications provision is dominated by two state parastatals, Telecom Namibia and MTC Namibia. These parastatals contribute to the slow competition in the mobile market.⁵ The privately-owned Paratus Telecom is currently a notable competitor while MTN Namibia, licenced since 2014,6 struggles to attain a limited market share.

Namibia ranks 102nd in the Inclusive Internet Index, where indicators such as relevant content, infrastructure, usage and trust and safety have recorded deterioration during the period under review. The Networked Readiness Index (2021)8 ranks Namibia's Technology pillar that measures Access, Content and Future technologies at 30.91 the weakest of all four pillars of the index.

^{2.} World Bank Namibia estimated population (2020) https://data.worldbank.org/indicator/SP.POP.TOTL?locations=NA (accessed on 23 December 2021)

^{3.} Work Bank Data Mobile Subscription in Namibia (2020) https://data.worldbank.org/indicator/IT.CEL.SETS?locations=NA(accessed on 26 December 2021)

^{4.} Data Portal Namibia Internet Users (2021) https://datareportal.com/search?q=namibia (accessed on 26 December 2021)

^{5.} Developing Telecoms Namibia plans privatisation of Namibia Telecom and MTC

⁽²⁰²⁰⁾ https://developing telecoms.com/telecom-business/market-reports-with-buddecom/10087-namibia-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-plans-pprivatisation-of-namibia-telecom-and-mtc.html (accessed 27 December 2021)

^{6.} Namibian Sun MTC Questions MTN Licence ((2021) https://www.namibiansun.com/news/mtc-questions-awarding-ofmtn-licence-2021-08-04(accessed on 27 December 2021)

^{7.} The Inclusive Internet Index Namibia https://theinclusiveinternet.eiu.com/explore/countries/NA/(accessed on 27 December 2021)

^{8.} Network Readiness Index Namibia) https://networkreadinessindex.org/country/namibia/ (accessed on 28 December 2021)



In addition, the country is ranked 155th in the Global Cybersecurity Index and 135th in the National Cybersecurity Index.9 Protection of digital services, protection of personal data and cyber incidents responses as indicators all scored 0%. Namibia ranked 100th in the 2021 Digital Quality of life Index where e-security is ranked 102nd, e-infrastructure is ranked 96th and e-government, 90th.¹⁰

While digitalisation is taking place in Namibia, key challenges related to absence of laws and lack of priority in digital security, and ineffective eservices systems to enhance public access and service delivery, face the country. The absence of readily available data on broadband penetration and lack of a national cohesive digital vision for the country has led to scattered social efforts supporting digital inclusion at national level.

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Generally, the rule of law and constitutionalism is perceived to be fully observed in Namibia. The country is amongst the ten (10) African countries that have ratified 11 the African Union Convention on Cyber Security and Personal Data Protection also known as the Malabo convention. Ratification of the Convention however has not led to the country complying to the convention's requirement and the country remains without a cyber security or data protection law.

Efforts such as the development of a cyber security strategy¹² have recently surfaced, however, without further actions to the benefit of the citizenry. The said strategy is aimed at discarding proposed legislation such as the Cybercrime Bill (in draft since

2013) and Data Protection Bill.¹³ The absence of a comprehensive legal protection framework has exposed the country to high level cyber criminal activities.¹⁴ Presently, Namibia is among the most targeted African countries for cybercrime.¹⁵ In 2021, final consultations for the reviews of the Cybercrime Bill were announced and so far, no further progress has been reported. The bill previously received criticism for warranting unnecessary surveillance amongst the citizenry despite providing for most procedural powers required under the Convention on Cybercrime (Budapest Convention) which includes the provisions for searches, seizures, forfeiture, rectification and erasure as set forth in articles 17 through 23 of the Convention.

^{9.} National Cyber Security Index - Namibia \approx https://www.ncsi.ega.ee/country/na/999999999 (accessed on 28 accessed on 28 country/na/999999999) December 2021)

^{10.} The Economist 'Namibia ranks 100th in the World in Digital Quality of Life Index 2021' https://economist.com.na/64988/technology/namibia-ranks-100th-in-the-world-in-digital-quality-of-life-index-2021/ (accessed on 28 December 2021)

^{11.} AU (2020) "African Union Convention on Cyber Security and Personal Data Protection" last accessed at https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection

^{12.} The Namibian (2020) Cabinet Decisions" Development of Cyber security strategy" available at

^{13.} ALT Advisory (2020) Data Protection Africa, Factsheet Namibia https://dataprotection.africa/wp-

content/uploads/2020/03/Namibia-Factsheet-updated-20200331.pdf The Data Protection Bill has been in drfat form since 2013.

^{14.} The Namibian (2020) ISACA talks cyber security in Windhoek available at https://www.namibian.com.na/192858/archive-read/Isaca-talks-cyber-security-in-Windhoek 15. IT Web (2019)" Cybercrime: Namibia most targeted country in Africa" Available at https://itweb.africa/content/mQwkoq6PA9973r9A

On its part, the Data Protection Bill (been in draft format since 2013) was referred by the Minister of Justice to the law crafting processes claiming it is too broad in application and lacks country contextual issues despite having gone through rounds of public consultations. In its current format, the bill contains internationally observed provisions such as the Rights Data Subjects and obligations of Data controllers and processors. Additionally the draft bill also addresses the issues of transborder flow of personal data while making provisions for setting up a Data Protection Supervisory Authority. However these provisions appear to be generally presented in a template format without connecting how the bill will function under the current technological management functions in the country, such as clearly stipulating the relationship with the regulator or provisions with other existing or drafted laws.

Namibia ratified the Convention on the Rights of the Child¹⁶ and further acceded to articles 2 and 3 of the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The country has also ratified 17 the African Charter on Human and People's Rights commonly known as the Maputo Protocol. It is also a party to various other international human rights instruments such as the International Convention on Civil and Political Rights, the Conventional on the Elimination of All forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities amongst others.

To a certain extent, elements of people's protections, especially those related to children, are reflected in both the Communications Act (2009) and the draft Cybercrime Bill. Without effective implementation of the concerned laws, compliance to these regional and international frameworks remains largely missing.

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

Following the global outbreak of COVID-19, several regulations have been enforced in Namibia. These include the e-learning regulations, then understood as a viable option to provide education under the circumstances. An assessment of the effectiveness of e-learning revealed that it might not have yielded the desired results. In 2021, the Minister of Basic Education reported that 30,000 learners could not be traced within the remote learning environment in 2020, while 3,000 learners were lost to teenage pregnancy. 18 These presented statistics reveal the challenges of remote learning and the ineffectiveness of social distancing to a certain extent.

In reality, E-learning regulations met the actualities on the ground such as high data costs and inaccessibility of ICT handsets necessary to effect education, hence efforts were reported to have not been successful.¹⁹ Other concerted efforts such as financial and technical equipment investment were reported in the education sector.²⁰ Unfortunately, without supporting regulations such as zero-rating education sites amongst others as advocated²¹ to increase uptake and access, remained insignificant.

^{16.} UN Human Rights 'Convention on the Rights of the Child'

https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (accessed on 5 January 2021)

^{17.} Namibia ratified the Maputo Protocolin 2004 https://www.maputoprotocol.up.ac.za/index.php/namibia (accessed on 5

^{18.} New Era Newspaper "Nghipondoka discourages parents from visiting boarding learners'

https://neweralive.na/posts/nghipondoka-discourages-parents-from-visiting-boarding-learners (accessed on 5 January

^{19.} N Gervasius "Compulsory e-learning in Namibia's public schools: A commendable idea marred by the digital divide?" https://africaninternetrights.org/sites/default/files/Nashilongo_Gervasius.pdf (accessed on 5 January 2022)

^{20.} Namibian Sun "Education - invests N\$9 million in technology" (2021) https://www.namibiansun.com/news/educationinvests-n9-million-in-technology2021-05-21 (accessed on 5 January 2022)

^{21.} Deloitte "COVID-19 Pandemic: tax relief measures we hope to see" (2020)

https://www2.deloitte.com/za/en/namibia/pages/tax/articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www2.deloitte.com/za/en/namibia/pages/tax/articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www2.deloitte.com/za/en/namibia/pages/tax/articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www2.deloitte.com/za/en/namibia/pages/tax/articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-measures-we-hope-to-see-https://www.articles/COVID19-Tax-relief-we-hope-to-see-https://www.articles/COVID19-Tax-relief-we-hope Namibia.html (accessed on 5 January 2022)

To widen access to the internet and opportunities, the government could have considered other incentives such as data reduction fees. This could have given credence to Kaisara and Bwalya's findings that "accessibility challenges in Namibia during COVID-19 were exacerbated by relatively exorbitant data costs, poor network performance and devices that are not user-friendly when accessing online resources." 22 They questioned the sustainability of e-learning in Namibia against factors such as rural urban digital divide, disability and access to technology as well as gender dynamics surrounding e-learning.

The pandemic regulations related to contact tracing attracted criticism. The concerns are related to data collection as articulated in the report published by ISOC Namibia.²³ The report's findings point to desperate means by data subjects to protect their personal data being collected without guarantees such as stipulating a period of data retention.²⁴ In the absence of a data protection law and regulations and the general lack of awareness in digital rights, users' data continues to be retained without the appropriate privacy and data protection regulations even in the context of a public health emergency, in light of the COVID-19 surveillance applications launched by individuals and institutions.²⁵ ²⁶ ²⁷

FREEDOM OF EXPRESSION ONLINE

In 2021, Namibia's ranking by Reporters Without Borders dropped one position down from 23rd position.²⁸ Even with this drop, the country remains Africa's most freest country in press freedom. The drop in ranking has been attributed to complaints²⁹ and "verbal attacks" 30 reportedly issued by the president's spokesperson towards journalists and the press. Freedom House also ranked Namibia as a free country, with indicators related to freedom of speech and expression ranking at 90% to 100%.31

Freedom House report points that "self-censorship has become common in state media, private media remain critical of the government" and that "the absence of information laws obstructs investigative journalism". Further, the report also points out that Journalists faced impediments during and under the pretext of the COVID-19 crisis.



^{22.} G Kaisara & K Bwalya"Investigating the E-Learning Challenges Faced by Students during Covid-19 in Namibia" (2021) https://files.eric.ed.gov/fulltext/EJ1285672.pdf (accessed on 5 January 2022)

^{23.} Internet Society (ISOC) Namibia "Data Protection and Privacy in Namibia: An Exploratory Study in the Context of COVID-19" (2021) https://isocnamibia.org/wp-content/uploads/2021/04/Data-Protection-During-COVID-19-Study-in-Namibia.pdf (accessed on 7 January 2022)

^{24.} The Namibian Newspaper "First name Apple last name Tomato" (2020)

https://www.namibian.com.na/206468/archive-read/First-name-Apple-last-name-Tomato (accessed on 7 January 2022) 25. University of Namibia (UNAM) Forum) "UNAM launches pioneering COVID-19 Contact Tracing Mobile App:

NamCotrace" (2020) https://forumonline.unam.edu.na/unam-launches-pioneering-covid-19-contact-tracing-mobile-appnamcotrace/ (accessed on 7 January 2022)

^{26.} Namibia University of Science and Technology (NUST) "NUST launches COVID-19 website and mobile app" (2020) https://www.nust.na/?q=news/nust-launches-covid-19-website-and-mobile-app (accessed on 7 January 2022)

^{27.} New Era Newspaper 'Covid-19: Locals develop contact tracing app'

https://neweralive.na/posts/covid-19-locals-develop-contact-tracing-app (accessed on 7 January 2022) 28. Reporters sans Frontier (RSF) "Namibia Real Freedom but frequent threats" (2021)https://rsf.org/en/namibia

⁽accessed on 7 January 2022) 29. Windhoek Observe ("Complaints fly between Hengari and the media" (2020)

https://www.observer24.com.na/complaints-fly-between-hengari-and-the-media/ (accessed on 7 January 2022)

^{30.} All Africa "Namibia: Hengari 'Verbal Attacks' Cited in Press Freedom Report" (2021)

https://allafrica.com/stories/202104210883.html (accessed on 7 January 2022)

^{31.} Freedom House "Namibia Freedom of the World Report 2021" https://freedomhouse.org/country/namibia/freedomworld/2021 (accessed on 7 January 2022)

A case in point in the report indicates the 2020 incident that led to an apology issued by the president's office after journalists were blocked from attending the opening ceremony of a COVID-19 isolation facility in Windhoek that led to two female journalists filing assault complaints against police over their treatment.

Nonetheless, the COVID-19 regulations criminalising misinformation related to COVID-19 remain in place, despite concerns that they limit freedom of expression. In the meantime myths and misinformation are rampant on social media platforms in particular WhatsApp groups. The Institute for Public Policy and Research (IPPR) fact checking project reported that "Since January 2020 COVID-19-related disinformation has become prevalent on Namibian social media".32 It also indicated that the "State of emergency regulations criminalising the spread of COVID-19-related disinformation appear to not have had a deterrent effect on social media users sharing and spreading such content".33

Social media remains a contested space. Many use the platforms to depict injustices in their communities, raise public engagements while seeking accountability from public office bearers. However, in many instances, criticism of those in power, as in the case of the Deputy Chief Justice, leads to heavy-handed condemnation by state institutions.34In this case, critics were deemed to be "undermining confidence in the justice system". Other related and power-handed warnings that can be interpreted as restricting social media engagement and freedom of expression have also been reported from politicians.³⁵



^{32.} Institute for Public Policy and Research (IPPR) "Countering the (dis)infodemic: Namibia Social Media and COVID-19 disinformation" (2020) https://ippr.org.na/wp-content/uploads/2020/07/COVID_PAPER1_disinfo.pdf (accessed on 9 January 2022)

^{33.} Institute for Public Policy and Research (IPPR) "Countering the (dis)infodemic: Namibia Social Media and COVID-19 disinformation" (2020) https://ippr.org.na/wp-content/uploads/2020/07/COVID_PAPER1_disinfo.pdf (accessed on 9

^{34.} New Era Newspaper "Judges condemn social media attacks on Damaseb" (2021)

https://neweralive.na/posts/judges-condemn-social-media-attacks-on-damaseb (accessed on 9 January 2022)

^{35.} New Era Newspaper 'Amutse warns against social media abuse' (2021) https://neweralive.na/posts/amutse-warnsagainst-social-media-abuse (accessed on 9 January 2022)

PRIVACY, DIGITAL IDS AND SURVEILLANCE

In 2021, Namibia launched machine-readable digital identity documents³⁶ supposedly facilitating provisions of e-governance and ease of cross border travelling. While the roll out for this project will be gradual, it's worth monitoring the exclusionary measures³⁷ that Digital IDs have become to be accustomed with in Africa in particular to the elderly and women.

Additionally, mobile telecommunications provider Mobile Telecommunications Company (MTC) announced biometric verification and AI systems³⁸ for its "Know your customer" service solution, with some industry leaders claiming that the operator was only able to implement this after being granted access to Population and Tax registers as part of its temporary mandate³⁹ to implement the COVID-19 Emergency income grant. Without Data Protection law and regulations in place, access such as this leaves room for abuse of personal data retention and re-use without authorised consent by data subjects. Altogether the MTC system has received criticism from civil society actors.⁴¹ In particular, systems such as theirs have been used "for mass

biometric surveillance and political repression, through the tracking, blocking and shutting down of telecommunications and the internet of targeted individuals and groups".

Additionally, already in 2016, the Namibian police became the first law-enforcement agency in southern Africa to introduce an automated biometric identification system.⁴² While no complaints have surfaced amongst the public, generally biometric IDs are known for collecting unwarrantedly large information from the public and regular public audits of such systems would be necessary to ensure citizens trust.

ACCESS TO INFORMATION

Despite several years of being in the making, Namibia's Access to Information law⁴³ is yet to be passed. However, in 2021,44 the Ministry of Information and Communication Technology embarked on a country wide public consultative process 45 46 47 with support from ISOC Namibia and UNESCO in order to gauge public input on the bill while also raising awareness at grassroots on the importance of access to information.

^{36.} Windhoek Express "New ID cards: What to expect" (2021) https://www.we.com.na/news/new-id-cards-what-toexpect2021-10-17 (accesed on 9 January 2022)

^{37.} Research ICT Africa "Why Digital ID Matters" (2021) https://researchictafrica.net/2021/06/21/why-digital-id-matters/ (accessed on 9 January 2022)

^{38.} Africa Tech ("[Namibia] MTC introduces biometrics and AI to protect consumer data and curb identity theft" (2021) https://africabusiness communities.com/tech/tech-news/namibia-mtc-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-and-ai-to-protect-consumer-introduces-biometrics-ai-to-protect-consumer-introduces-biometric-ai-to-protect-consumer-introduces-biometric-ai-to-protect-consumer-introduces-biometric-ai-to-protect-consumer-introduces-biometric-ai-to-protect-consumer-introduces-biometric-ai-to-protect-consumer-introduces-biometric-ai-to-protect-consumer-introduces-biometric-ai-to-protect-consumer-introduces-biometric-ai-to-protect-consumer-introduces-biometric-ai-to-protect-biometric-ai-to-protect-biodata-and-curb-identity-theft/ (accessed on 9 January 2022)

^{39.} Ministry of Finance "FAQ about the Emergency Income Grant of the Economic Stimulus and Relief Package' (2020) https://mof.gov.na/documents/35641/89902/FQA+Emergency+Income+Grant.pdf/cd1b50d2-ef25-d3c6-e4e8d6e2297ec9a4 (accessed on 9 January 2022)

^{40.} Mobile Telecommunications Company (MTC) "NOTICE: Covid-19 Emergency Income Grant"

⁽²⁰²⁰⁾ https://www.facebook.com/MTCNamibia/posts/notice-covid-19-emergency-income-granteligible-individuals-willreceive-a-once-o/3629297440417001/ (accessed on 9 January 2022)

^{41.} All Africa "Namibia: AI, Biometrics and No Protection From Abuse" (2021)

https://allafrica.com/stories/202102240646.html (accessed on 9 January 2022)

^{42.} Informante Newspaper "Nampol digitises crime ID processes" (2016)

https://m.facebook.com/informantenam/photos/nampol-digitises-crime-id-processnadia-medingthe-namibian-policenampol-is-makin/1077181402348819/?locale=zh_CN (accessed on 9 January 2022)

^{43.} Namibia Media Trust (NMT) "Access to information law long overdue in Namibia – media practitioners" (2019) https://www.nmt.africa/News/46/Access-to-information-law-long-overdue-in-Namibia-&ndash-media-practitioners (accessed on 10 January 2022)

^{44.} All Africa "Namibia: 91 Percent of Oshikoto Deprived of Information"

⁽²⁰²¹⁾https://allafrica.com/stories/202110040350.html (accessed on 10 January 2022)

^{45.} New Era Newspaper "MICT Consults Hardap on Information Bill" (2021) https://neweralive.na/in/posts/mict-consultshardap-on-information-bill (accessed on 10 January 2022)

^{46.} Xinhua Net"Feature: Access to health information aids Namibian rural dwellers in COVID-19 fight" (2021

http://www.xinhuanet.com/english/2020-12/19/c_139601535.htm (accessed on 10 January 2022)

^{47.} Caprivi Vision) "Access to Information Bill under Scrutiny in Zambezi" (2021 https://www.caprivivision.com/access-toinformation-bill-under-scrutiny-in-zambezi/ (accessed on 10 January 2022)



In September 2021, the Bill was resubmitted 48 to parliament for the third time and is under scrutiny 49 by parliamentarians to seek clarity on the powers of the Independent Information Commissioner and the broad scope of coverage of their mandate. To date the draft law has been rated as "Strong But Reforms Could Make it an African Leader" by the Center for Law and Democracy, who exerts recommendations such as the "No reasons should be required to be provided when making a request for information and more detailed procedures for making requests should be added," and that "The ATI law should trump secrecy provisions in other laws in case of conflict," and finally adding that "The current exclusions of key information related to the cabinet and judiciary should be removed." 50

To the benefit of the public, the proposed law states that information officers working for public entities can be punished if they provide incorrect, incomplete or misleading information while the law also institutes an appointment of a commissioner and deputy commissioner of information.⁵¹ The latter are also provisions in the Africa Model Law on Access to Information for Africa, which proposes greater inclusion through expert consultations including with Civil Society in Division 2, section 56 that deals with Engagement of Experts (p.47)⁵²Once passed, Namibia's ATI holds prospects to promote digital rights.

Previously, the Access to Information Bill was criticised for the "wide ranging exemptions", that have the potential to negatively impact on the exercise of digital rights and freedoms if passed into law.53 These exemptions included information and records on national security, confidentiality of judicial functions and information in possession of some public bodies such as the cabinet and its committees.

^{48.} All Africa "Namibia: Access to Information Bill Resubmitted" (2021) https://allafrica.com/stories/202109201062.html (accessed on 10 January 2022)

^{49.} Parliament of Namibia "ATI Bill under scrutiny" (2021) https://www.parliament.na/ati-bill-under-scrutiny/ (accessed on 10 January 2022)

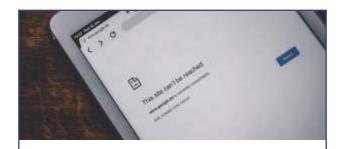
^{50.} The Center for Law and Democracy "Namibia: Access to Information Bill Strong But Reforms Could Make it an African Leader" (2021) https://www.law-democracy.org/live/namibia-access-to-information-bill-strong-but-reforms-could-makeit-an-african-leader/ (accessed on 10 January 2022)

^{51.} Parliament of Namibia "Access to Information Bill" (2020) https://www.parliament.na/wp-

content/uploads/2021/07/Access-to-Information-Bill-B4-2020-min.pdf (accessed on 10 January 2022)

^{52.} ACHRP "Model Law on Access to Information for Africa 2013" https://www.achpr.org/presspublic/publication?id=82 (accessed on 15 March 2022)

^{53.} Collaboration on ICT Policy for East and Southern Africa (CIPESA) "Namibia and Sierra Leone's Digital Rights Record to be Assessed at the 38th Session of the Universal Peer Review" (2021) https://cipesa.org/2021/03/namibia-and-sierraleones-digital-rights-record-to-be-assessed-at-the-38th-session-of-the-universal-peer-review/ (accessed on 10 January 2022)



INTERNET DISRUPTIONS

Internet disruptions are not common in Namibia. However, in 2021,54 reports surfaced that a 30-minute and later 90minute internet outages occurred on the 21st and 22nd of July. It was later confirmed that the internet disruption was caused by a damaged undersea cable, West Africa Cable System (WACS).55

HATE SPEECH, MISINFORMATION AND CRIMINAL DEFAMATION LAWS

Hate speech continues unabated in Namibia particularly related to race⁵⁶ and sexual minorities.⁵⁷ After consultations and requests for intervention by a coalition of individuals and civil society in 2021, Namibia's Ombudsman John Walters informed the media that hate speech is not defined as an offence in Namibia.⁵⁸ The request for intervention as noted above highlights the need for the country to

consider necessary legal frameworks under which hate speech can be considered. Verbal barrages such as those uttered in parliament by Parliamentarian Jerry Ekandjo, are hateful in nature and threatening sexual minorities in the country. These are grounds to undergo legal reform and ensure protection against hate speech especially in the internet era.

Meanwhile, Regulation Proclamation 9 of 2020 of the COVID-19 regulations which created offences and penalties and criminalised 60 Misinformation regarding the virus is still in place despite active raging of misinformation through social media. When found guilty, the regulations set a fine not exceeding N\$2000 or imprisonment. Only one person was arrested and brought to court⁶¹as reported in the 2020 Londa report for Namibia.62

Namibia's defamation law is based on the "actio injuriarum"63 of Roman law.64 To succeed in a defamation action, a plaintiff must establish that the defendant published a defamatory statement concerning the plaintiff. With the increased usage of social media and individuals publishing strong opinions about prominent individuals and politicians, there has been an increase in defamation cases in Namibian courts.

^{54.} Paradigm Initiative "Press Release: Internet outages in Cameroon, Congo and Namibia" (2021)

t https://paradigmhq.org/press-release-internet-outages-in-cameroon-congo-and-namibia/ (accessed on 10 January 2022) 55. Ghana News "Internet goes off for 3 days in Cameroon, Congo and Namibia" (2021)

https://ghanaafricanews.com/internet-goes-off-for-3-days-in-cameroon-congo-and-namibia/ (accessed on 10 January

^{56.} New Era Newspaper "Teacher faces prosecution for alleged racism" (2020) https://neweralive.na/posts/teacher-facesprosecution-for-alleged-racism (accessed on 10 January 2022)

^{57.} The Namibian Newspaper "Ekandjo lashes out at gay marriage, abortion and dagga" (2021)

 $https://www.namibian.com.na/6215434/archive-read/Ekandjo-lashes-out-at-gay-marriage-abortion-and-dagga\ see\ also$ The Namibian (2021) "SPYL goes after satanic homosexuals" available at https://www.namibian.com.na/211637/archiveread/SPYL-goes-after-satanic-homosexuals (accessed on 10 January 2022)

^{58.} All Africa "Namibia: Hate Speech Not Defined As an Offence – Ombudsman" (2021)

https://allafrica.com/stories/202106160346.html (accessed on 10 January 2022)

^{59.} All Africa "Namibia: Ekandjo Lashes Out At Gay Marriage, Abortion and Dagga" (2021)

https://allafrica.com/stories/202111170508.html (accessed on 10 January 2022)

^{60.} The Namibian Newspaper "COVID -19 Fake News now a crime" (2020)

https://www.namibian.com.na/200224/archive-read/Covid-19-fake-news-now-a-crime (accessed on 10 January 2022)

^{61.} The Namibian "Man arrested for spreading fake COVID-19 news" (2020https://www.namibian.com.na/201419/archiveread/Man-arrested-for-spreading-fake-Covid-19-news (accessed on 10 January 2022)

^{62.} N Gervasius, 'Namibia Londa Report 2020'(2020) https://paradigmhq.org/wp-content/uploads/2021/05/lr-Namibia-Digital-Rights-Inclusion-2020-Report.pdf (accessed on 10 January 2022)

^{63.} Actio Injuriarum is committed when a person, without justification, intentionally affronts another's dignity or invades that other's privacy - Zimbabwe Legal Information Institute 'Chapter 3: Defamation and other Actions under Actio Injuriarum" http://old.zimlii.org/content/chapter-3-defamation-and-other-action-under-actio-injuriarum (accessed on 25

^{64.} Ministry of Justice 'E-Justice (various)'(2018) https://ejustice.moj.na (accessed on 10 January 2022)



Some of the prominent cases to date include:

- In March 2021 prominent lawyer, businessman and Chairperson of the Namibia Premier League (NPL) sued ⁶⁵ a certain club owner for defamation of character after the latter accused the businessman of having paid bribes; and acted corruptly or unlawfully in his business dealings, through remarks made in a WhatsApp group.
- In March 2021, socialite, Betty Davids won a court case⁶⁶
 against the spokesperson of the Independent Patriots for
 Change political party Immanuel Nashinge who made
 defamatory remarks against her. She sued him for
 defamation of character.
- In April 2021, the first lady Monica Geingos filed a defamation lawsuit against Abed Hishoono, a mobiliser for the Independent Patriots for Change political party. The case went for mediation.⁶⁷ It involved an audio recording that was widely circulated via social media making false statements claiming amongst others that Geingos had a business interest in the company Westair Aviation through which she was clandestinely involved in the collapse of Air Namibia.
- In July 2021, an Ex-MP⁶⁸ sued a constituent member over Facebook slander posted by the constituent member on their social media page about how the Ex-MP was an untrustworthy politician who puts himself first over his constituent.

DIGITAL EXCLUSION IN NAMIBIA AND ITS IMPACT ON HUMAN RIGHTS

Namibia has made remarkable progress with an ever-narrowing gender digital divide in Africa. However, the country's digital divide largely exists in the majority of rural areas. Unemployment is rife and youth employment is expected to reach 50.30 % by the end of 2021.⁶⁹ The slow broadband adoption and the cost of ICT gadgets are amongst the biggest factors that are contributing to digital exclusion in Namibia. The 2020 assessment by the Alliance for Affordable Internet (A4AI) reported that 1 gig of Data in Namibia cost 6.62 USD, an equivalent of 1.99% a per capita average household income. While digital transformation (characterised by increased accessibility of services through digital means such as e-learning, efinances, e-accessibility of municipalities) has been fast-tracked during COVID-19, and poised to be a changemaker, the pace of adoption remains largely laggard. Some of the reasons for the current circumstances include ICTs skills shortages. Namibia's ICT in Education policy is still under review and ICT skills courses are primarily optional in the mainstream education sector and the extent of inclusivity towards learners with disabilities and gender inclusivity unknown.

DIGITAL INFRASTRUCTURE AND PRIORITISATION OF ICTS

The value of the Information and communication technology (ICTs) sector is undetermined in Namibia. Experts point out that the sector's contribution to the national economy is significantly low as compared to sectors such as tourism, mining and agriculture.71 The Ministry of ICT has, in the past, indicated its challenge in developing the sector. It cited that its ICT Development directorate does not get adequate budget allocations for its infrastructure and policy development component. The country's telecommunications infrastructure development depends on operators' investments and this continues with the network upgrading.⁷² ⁷³ ⁷⁴ ⁷⁵

Hence, As of 2021, mobile broadband coverage stood at 37.7% for 4G coverage countrywide. This is despite partnerships in fibre optics⁷⁶ and linkages to several undersea cables.⁷⁷

Regarding data infrastructure, since 2015 the government of Namibia has been receiving technical assistance from the government of Estonia⁷⁸ to develop and implement an e-Government interoperability system. This is aimed at promoting e-governance solutions.

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69. New Era "Youth unemployment expected to reach 50%" (2021) https://neweralive.na/posts/youth-unemployment-
expected-to-reach-50 (accessed on 11 January 2022)
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^{70.} Alliance for Affordable Internet (A4AI) "Namibia- Data-Only Mobile-Broadband" (2020)

https://a4ai.org/extra/baskets/A4AI/2020/mobile_broadband_pricing_usd# (accessed on 11 January 2022)

^{71.} New Era "ICTs contribution to the Namibian Economy" (2019) https://neweralive.na/posts/icts-contribution-to-thenamibian-economy (accessed on 11 January 2022)

^{72.} Comms Update "Telecom Namibia upgrades its 3G and 4G networks" (2020)

https://www.commsupdate.com/articles/2020/07/17/telecom-namibia-upgrades-its-3g-and-4g-networks/ (accessed on 11 January 2022)

^{73.} Developing Telecoms "MTC completes first phase of Namibian network expansion" (2020)

https://developingtelecoms.com/telecom-business/operator-news/9261-mtc-completes-first-phase-of-namibian-networkexpansion.html (accessed on 12 January 2022)

^{74.} The Namibian "Powercom builds new network towers" (2021) https://www.namibian.com.na/208887/archiveread/PowerCom-builds-new-network-towers (accessed on 12 January)

^{75.} Telecom Namibia "Telecom Namibia brings connectivity to remote areas" (2020) https://www.telecom.na/mediacentre/511-telecom-namibia-brings-connectivity-to-remote-

 $areas \#: \neg: text = Telecom \% 20 Namibia \% 20 brings \% 20 connectivity \% 20 to \% 20 remote \% 20 areas \% 20 Windhoek \% 2C, hub \% 2C areas \#: \neg: text = Telecom \% 20 Namibia \% 20 brings \% 20 connectivity \% 20 to \% 20 remote \% 20 areas \% 20 Windhoek \% 2C, hub \% 2C areas \#: \neg: text = Telecom \% 20 Namibia \% 20 brings \% 20 connectivity \% 20 to \% 20 remote \% 20 areas \% 20 Windhoek \% 2C, hub \% 2C areas \#: \neg: text = Telecom \% 20 Namibia \% 20 brings \% 20 connectivity \% 20 to \% 20 remote \% 20 areas \% 20 Windhoek \% 2C, hub \% 2C areas \% 20 Windhoek \% 20 Windho$ %20aptly%20dubbed%20Satlink%20has%20yielded%20satisfactory%20results (accessed on 12 January 2022)

^{76.} IT News Africa "New Partnership Brings Fibre to Thousands in Namibia's First Smart City" (2021)

https://www.itnewsafrica.com/2021/11/new-partnership-brings-fibre-to-thousands-in-namibias-first-smart-city/ (accessed on 12 January 2022)

^{77.} IT News Africa "New Partnership Brings Fibre to Thousands in Namibia's First Smart City" (2021)

https://www.itnewsafrica.com/2021/11/new-partnership-brings-fibre-to-thousands-in-namibias-first-smart-city/ (accessed on 12 January 2022)

^{78.} Cybernetica "Namibia Governmental Interoperability Framework Nam-X" (2021)

https://cyber.ee/resources/case-studies/namibia-governmental-interoperability-framework-nam-x/ (accessed on 11 January 2022)



AS OF 2021. MOBILE BROADBAND COVERAGE STOOD AT

37.7%

FOR 4G COVERAGE COUNTRYWIDE.

Despite a strategy for e-government in place,79 the success of egovernment Namibia is still limited. Issues of interoperability remain a challenge for data re-use and effective service delivery.

Infrastructure sharing is Namibia's biggest challenge to date with operators fighting against infrastructure sharing. This development has dominated the majority of technology news in 2021. The squabbles referred to above, are based on profit interest and contradicts regulatory provisions⁸⁴ for infrastructure sharing as gazetted by parliament in 2016. Nonetheless the industry infighting against infrastructure sharing, continued despite evidence that such sharing can only be of benefit to customers, through availing them options and offering competitive prices especially given the limited number of players in the market.85

President Hage Geingob's appointment of a 4IR Task Force⁸⁶ mandated to assess the country's prospect of the fourth Industrial revolution in the country, has been seen as the only political statement the country has ever made towards positioning technology as the next frontier of development to date.



79. Office of the Prime Minister "E-Government" (2021) https://opm.gov.na/e-governance (accessed on 11 January 2022)

80. New Era "MTC vows to challenge CRAN infrastructure sharing directive" (2021) https://neweralive.na/posts/mtcvows-to-challenge-cran-infrastructure-sharing-directive (accessed on 11 January 2022)

81. Namibian Sun "MTC can block infrastructure" (2021) https://www.namibiansun.com/news/mtc-can-blockinfrastructure-sharing2021-10-22 (accessed on 11 January 2022)

82. Eagle FM (2021) "MTN doesn't need to co-invest in MTC infrastructure" available at

https://www.eaglefm.com.na/news/mtn-doesnt-need-to-co-invest-in-mtc-infrastructure/

83. The Namibian "Communications regulator MTC clash over infrastructure sharing" (2021)

https://www.namibian.com.na/6214873/archive-read/Communications-regulator-MTC-clash-over-infrastructure-sharing (accessed on 11 January 2022)

84. Communications Regulatory Authority of Namibia CRAN) Government Gazette of the Republic of Namibia. No. 6141 of 2016) (2016) https://www.cran.na/yglilidy/2019/12/6141-Gen_N393-402_4_Oct_2016.pdf (accessed on 11 January 2022)

85. New Era) "Consumers to benefit from infrastructure sharing" (2021https://neweralive.na/in/posts/consumers-tobenefit-from-infrastructure-sharing (accessed on 11 January 2022)

86. Windhoek Observer "Geingob appoints 4IR Task Force" (2021)https://www.observer24.com.na/geingob-appoints-4irtask-force/ (accessed on 11 January 2022)

87. The Namibian "Artificial Intelligence" – a world of opportunity for Namibia" (2021)

https://www.namibian.com.na/6215274/archive-read/Artificial-Intelligence-%E2%80%93-A-World-of-Opportunity-for-Namibia (accessed on 12 January 2022)

88. The Economist "Will Artificial Intelligence solve some of the pressing issues in Namibian agriculture" (2021) https://economist.com.na/65510/special-focus/will-artificial-intelligence-solve-some-of-the-pressing-issues-in-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibian-namibiaagriculture/ (accessed on 12 Jnauary 2022)

89. NUST Faculty of computing and Informatics "Data Science, Machine Learning and Artificial Intelligence (DSMLAI)" (2021) https://www.nust.na/sites/default/files/event/BookletAbstracts2021.pdf (accessed on 12 January 2022)

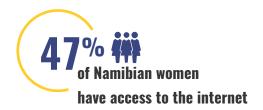
However, in October 2021, the communications regulator (CRAN) invited an expert from Intel 90 to engage on 5G and artificial intelligence to its stakeholders Spectrum harmonisation engagement that was aimed at supporting the implementation of 5G, Wi-Fi 6E and WiGig. Additionally, the Regulator and the Ministry of Environment were tasked by the cabinet to carry out an environmental assessment on the impact of 5G.91 The results of this study have not yet been released to the public. In light of this policy gap, however, allegations of corruption regarding deployment of a 5G network between the City of Windhoek and Chinese Technology company Huawei were reported in the media in 2020.92 The negative media reports resulted in public scrutiny and plans to implement the project being opposed. 93 The old City of Windhoek Council was divided as to how implementation continues and to what extent thereof.

Society Namibia chapter, reveals that only 47% of Namibian women have access to the internet and that the country has no national policy - including the Gender Policy, nor does it recognise ICTs as a tool for - fighting gender inequality. Further the report indicates that there are no clear set targets for using ICTs to empower women. Overall, no ICT sex-disaggregated data is collected regularly to inform policy or gender interventions at all levels.

Given these shortcomings, gender-based violence online⁹⁶ 97 that is manifesting via various forms have⁹⁸ 99 become a common occurrence in Namibia. An indepth report by the Internet Society 100 indicates a worrying trend of violence targeting female journalists, female politicians as well as women in prominent positions. In response, suggestions have been brought forth, seeking for instance the upcoming digital related laws in particular the Data Protection law, to be used to protect women.¹⁰¹

GENDER AND ICT

Currently, Namibia does not have a policy position on the prospect of ICT and its positive prospects towards gender. This is despite isolated calls⁹⁴ for the country to position itself in this regard. A 2020 Women Rights Online report 95 by the Internet



90. Communications Regulatory Authority of Namibia (CRAN) "Presentation: Review of Spectrum Assignment Strategy" (2021) https://www.cran.na/yglilidy/2021/10/Spectrum-harmonization-to-support-implementation-of-5G-Wi-Fi-6E-and-WiGig_Intel-Corporation_20211007_v1.pdf (accessed on 12 January 2022)

91. All Africa "Namibia: Govt Hops On 5G Bandwagon" (2020) https://allafrica.com/stories/202007280803.html (accessed on 12 January 2022)

92. Al Jazeera "Corruption allegations in Namibian 5G deal with Huawei" (2020)

https://www.aljazeera.com/news/2020/7/15/exclusive-corruption-allegations-in-namibian-5g-deal-with-huawei (accessed on 12 January 2022)

93. BIZ Tech Africa "Windhoek's 5G plans opposed" (2020) https://www.biztechafrica.com/article/windhoeks-5g-plansopposed/15770/ (accessed on 12 January 2022)

94. N Gervasius, "Interrogating the role of ICTs in Women Empowerment" (2020)

https://www.namibian.com.na/199049/archive-read/Interrogating-the-role-of-ICTs-in-Women-empowerment (accessed

95. Web Foundation "Namibia Women Rights Online Report" (2020)

http://webfoundation.org/docs/2020/08/GenderReport-Namibia.pdf (accessed on 12 January 2022)

96. Nalebrity "Betty Davids allegedly called a Prostitute" (2021) https://www.facebook.com/Nalebrity/posts/betty-davidsallegedly-called-a-prostitutehttpsbitly2pjotgv/740067599995265/ (accessed on 13 January 2022)

97. Global Citizen "Namibia's First Lady Stands Up to Misogynist Internet Trolls in Powerful Viral Video" (2021)

https://www.globalcitizen.org/en/content/namibia-first-lady-monica-geingos-gender-abuse/ (accessed on 13 January 2022) 98. Namibian Sun "Man arrested over revenge porn" (2017) https://www.namibian.com.na/204429/archive-read/Manarrested-over-revenge-porn (accessed on 13 January 2022)

99. Namibia Daily) "Aftermath of cyberbullying on social media" (2021

https://www.facebook.com/namibiadaily/posts/aftermath-of-cyber-bullying-on-social-media 7-november-2021-runduthe-bullying-on-social-media 7-nove22-year-old-/1650655248461729/ (accessed on 13 January 2022)

100. At the time of writing, the report had not been released.

101. N Gervasius, "Can legislation address Online Gender Based Violence in Namibia" (2021)

https://openinternet.global/news/can-legislation-address-online-gender-based-violence-namibia (accessed on 13 January 2022)



CONCLUSION

Namibia continues to actively pursue greater inclusion in technological development. This is evidenced amongst others by the appointment of a Presidential Taskforce on 4IR. The hope is that this will lead to the harmonisation of different structures of society through technological development by setting one common digital goal for the country.

In regards to infrastructure, the lack of a dedicated capital budget for ICT infrastructure development has presented eminent challenges within the sector that can only be solved through the Implementation of both the special purpose infrastructure vehicle and infrastructure sharing regulations as laid out by the Harambee Prosperity Plan II.¹⁰²

An emerging matter from 2021, is the inaction in passing and implementing the laws on access to information, cybercrime and data protection. The enactment of these laws holds greater value toward digital inclusion for Internet users in the country. A particular case here is the contact tracing during COVID-19 that has proven to have put personal data at risk in Namibia given the absence of guidelines on data retention. Evidence from this research further reveals that COVID-19 regulations on e-learning have proven to have caused further disparities within the education system, and brought into question gender dynamics surrounding e-learning as well as factors such as the rural-urban digital divide, issues of disability as well as access to technology. Significant investments reported in the e-education sector must be guided to deliver total inclusion.

The introduction of Digital IDs is a development worth monitoring given examples from the region and beyond showing exclusionary components for certain members of societies. Further, the implementation of SIM registration, if not handled well, holds the potential for mistrust and public censorship. The much-awaited national digital strategy could provide a clear solution to the country's long lingering challenges with the implementation of the Universal Access and Service Fund amongst others.

RECOMMENDATIONS

In dealing with the country's challenges and to fully realise digital rights and inclusion for the benefit of the citizens, the following recommendations are put forward:

The government is urged to consider the following recommendations:

- Explore liberal spectrum licensing frameworks and pursue unconventional licensing of TV whitespace to increase greater connectivity.
- Take bolder steps to operationalise the Universal Access and Service Fund to ensure accessibility for unconnected and marginalised communities such as women, the rural communities and the disabled access to Internet service.
- Consider a dedicated fiscal budget towards ICT infrastructure development to realise full national digitalisation.
- Engage through a multi-stakeholder model in regards to its official position on 5G including the development of related policy as well as other emerging technologies such as Artificial Intelligence.
- Set clear timelines in regards to the future of COVID-19 regulations on misinformation.

Parliament should:

- Pass the Data Protection and Cybercrime bills without further delays and should guarantee protection of digital rights in this regard.
- Pass the Access to Information law, to demonstrate transparency, prioritise service delivery and ensure trust in connectivity.

Civil society is urged to:

- Raise awareness on social ills stemming from online such as Online Violence targeting vulnerable groups in society.
- Actively engage government and agencies on emerging technological impact on society such as simplifying effects and challenges of Digital Ids.
- · Monitor the impact on the citizens by regulations such as compulsory SIM registrations.

- Raise awareness on developments such as artificial intelligence and its potential impact on society.
- Raise awareness on meaningful engagements online to avoid defaming others.
- Raise awareness on digital rights and inclusion.

Academia is urged to:

- Constantly engage in public awareness activities sharing scientific knowledge on issues such as misinformation, gender and ICT as well artificial intelligence.
- Produce scientific knowledge as compelling evidence for the law-making and implementing purposes.



The government is to consider a dedicated fiscal budget towards ICT infrastructure development to realise full national digitalisation.

NIGERIA

This report focuses on the state of digital rights and inclusion in Nigeria in the year 2021, a country in West Africa with a diverse geography and people. The introduction provides a brief context into Nigeria's population and geography. The report further breaks down the state of digital rights and inclusion into five sub-themes. The first part analyses digital infrastructure and prioritisation of ICT, it breaks down the rate of internet penetration in the country and the next steps the government proposes to take in terms of penetration. The second theme addresses freedom of expression on the Internet and major events that were significant to it. One of such events was the suspension of Twitter. The third theme privacy, digital identity and surveillance analyses national policies and national budgeting that significantly affects the theme in question. The fourth theme was internet disruptions which highlight the network disruptions that were undertaken due to the security situation of the country. The final theme is Artificial Intelligence in Nigeria. As the first African country to establish a National Centre for Artificial Intelligence and Robotics it was important to spotlight this and the approach needed to be taken in terms of Artificial intelligence on the continent. The recommendations, amongst others, note that there is a need for a cost-benefit analysis of the cost of internet shutdowns by governments before undertaking it. Another recommendation identified the need for a comprehensive legislative framework for personal data protection in Nigeria, as well as the necessity for coordination between the government, experts, and relevant parties in enacting such legislation.





Nigeria, a country located on the western coast of Africa, has a diverse geography and diverse people with a population of 208 million. With a median age of 18 and as one of the world's youngest populations,2 according to statistics by the Data Reportal, Nigeria's population grew by 5.2 million (+2.6%) between January 2020 and January 2021, 49.3% of Nigeria's population being female and 50.7% of its population being male. 52.3% of Nigeria's population lives in urban centres, while 47.7%

> live in rural areas. Nigeria has 36 states⁴ and a Federal Capital Territory, administered by the Federal Government. Each of those states operate as a semiautonomous political unit with its own executive, legislative, and judicial arms of government. These numbers and trends positioned Nigeria to have an interesting year in terms of digital inclusion and digital rights.



Transform Nigeria

into a leading digital economy providing quality life and digital economies for all

DIGITAL INFRASTRUCTURE AND PRIORITIZATION OF ICT

In June 2020, the country unveiled the National Digital Economy Policy and Strategy,⁵ to "transform Nigeria into a leading digital economy providing quality life and digital

economies for all," and is expected to be implemented in ten years through eight action points or pillars. The third pillar of the policy is the aim for "Solid Infrastructure" which will allow for "deployment of fixed and mobile infrastructure to deepen broadband penetration in the

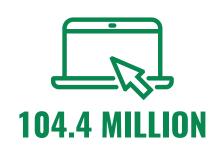
^{1.} World bank Data, https://data.worldbank.org/indicator/SP.POP.TOTL?locations=NG

^{2.} https://www.statista.com/statistics/1121317/age-distribution-of-population-in-nigeria-by-gender/

^{3.} https://datareportal.com/reports/digital-2021-nigeria

^{4.} List of states and Capital, https://www.nigeriagalleria.com/Nigeria/Nigerian-States-Capital-Governors.html

^{5.} Find strategy here https://www.ncc.gov.ng/docman-main/industry-statistics/policies-reports/883-national-digitaleconomy-policy-and-strategy/file



NIGERIA INTERNET USERS AS AT JANUARY 2021



MOBILE CONNECTIONS AS AT JANUARY 2021

country". Resultantly or perhaps due to the impact of Covid-19 and the fast-growing pace of the world today, Nigeria saw an increase in mobile and internet penetration in the year 2021. Data Reportal⁶ highlighted 104.4 million internet users in Nigeria as at January 2021 and 187.9 million mobile connections. They further reported that the number of internet users in Nigeria increased by 19 million (+22%) between 2020 and 2021 while the number of mobile connections in Nigeria increased by 17 million (+10%) between January 2020 and January 2021. In terms of percentages related to internet penetration, these numbers came at 50.0% in January 2021 and mobile connection at about 90.0% of the total population. By December 2021, the National Communications Commission reported 195 million mobile subscribers, all suggesting that Nigeria is becoming increasingly connected - a level of connectivity that increases access and digital inclusion that allows more people to benefit from technology. There have been "significant correlations" between internet adoption and increases in GDP, living standards, and access to education and financial services.8

The country is set to increase its mobile market penetration after issuing a 5G license to two mobile operators, namely MTN Group Ltd. paving the way for the continent's largest wireless carrier supplying faster internet to consumers and businesses. MTN is the West African country's biggest wireless operator.¹⁰ The country approved its Nation 5G policy¹¹ in September 2021 where the Minister of Communications, Isa Pantami, stated that Nigeria aims to deploy 5G over major urban areas of the country and become Africa's biggest network for the spectrum by 2025. "This technology will go a long way in supporting our security institutions, who will leverage it and ensure that we are all secure," he said.¹²



The number of mobile connections in Nigeria increased by 17 million (+10%) between January 2020 and January 2021.

^{6.} https://datareportal.com/reports/digital-2021-nigeria

^{7.} https://www.ncc.gov.ng/statistics-reports/subscriber-data

^{8.} https://www.itu.int/hub/2020/12/how-broadband-and-digitization-impact-the-global-economy/

^{9.} https://www.mtnonline.com/

^{10.} https://www.statista.com/statistics/671676/mobile-subscription-share-in-nigeria-by-operator/

^{11.} Find policy here, https://www.ncc.gov.ng/accessible/documents/1019-national-policy-on-5g-networks-for-nigeria-sdigital-economy/file

¹²https://www.thecable.ng/pantami-5g-will-help-address-nigerias-security-challenges

FREEDOM OF EXPRESSION

Section 39¹³ of the 1999 Constitution, Federal Republic of Nigeria, provides that "every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart information without interference." This is in line with regional frameworks on freedom of expression.14 Although freedom of expression is a right, it has seen a steady decline in Nigeria since the passing of the Cybercrimes Act in 2015,15 with rights violations ranging from media sanctions 16 to arrests of journalists and comedians.17 The country further saw an emergence of legislative attempts at the clampdown of free expression.¹⁸ This trend did not see a decline in the country in the year under review, as a Nigerian news website was blocked from access to the public.¹⁹ On June 5th 2021, the Federal Government of Nigeria announced the suspension of Twitter services ²⁰ in the country. The suspension²¹ was announced by the country's Minister of Information and Culture, Alhaji Lai Mohammed who claimed the ban came because of the persistent use of the platform for activities capable of undermining Nigeria's corporate existence.

The Minister stated the Federal Government had also directed the National Broadcasting Commission (NBC) to immediately commence the licensing process of all social media operations in Nigeria. The suspension of Twitter in the country violated the rights to freedom of association, the right to freedom of expression, amongst others, and had economic impact according to a tool²² developed by the monitoring organization, NetBlocks, to calculate the economic impact of internet disruptions, mobile data blackouts or app restrictions.



^{13.} Constitution of the Federal Republic of Nigeria [Nigeria], Act No. 24, 5 May 1999, available at: https://www.refworld.org/docid/44e344fa4.html

^{14.} African Union. (1981). African Charter on Human and Peoples' Rights. Retrieved from

https://au.int/en/treaties/african-charter-human-and-peoples-rights

^{15.} CYBERCRIMES (PROHIBITION, PREVENTION, ETC) ACT 2015

 $^{16. \} https://www.premiumtimesng.com/news/more-news/-endsars-nbc-imposes-nm-sanction-each-o\ n-ait-channels-arise-tv.html$

^{17.} https://punchng.com/student-arrested-for-opening-jonathan-parody-account-denied-access-to-lawyers/

^{18.} https://www.amnesty.org/en/latest/news/2019/12/nigeria-bills-on-hate-speech-and-social-media-are-dangerous-attacks-on-freedom-of-expression/

^{19.} https://cpj.org/2021/02/nigerian-news-website-peoples-gazette-blocked-threatened-with-legal-action/

^{20.} An american microblogging and social networking site

^{21.} https://www.washingtonpost.com/world/2021/06/04/nigeria-suspends-twitter-buhari/

^{22.} https://netblocks.org/cost/

Many Nigerians who used Twitter to promote their businesses lost revenue. The effects however go beyond economic losses as the right to access to information had been affected as well. Before the indefinite suspension of the platform, the Nigeria Centre for Disease Control (NCDC) tweeted daily updates on the number of new cases, deaths and more, and it seemed to be the most preferred and reliable source of such information.

Several organizations²³ filed lawsuits against the government over the suspension, and against telecommunications companies that enforced it; these matters were filed in both local and regional courts, specifically under the ECOWAS court. At the time of writing, none of the cases had received a judgment and a pronouncement as to the legality, or otherwise of the suspension. The suspension was eventually lifted after 7 months, after Twitter agreed to several demands of the government, as stated in a statement by the Federal Government.24

Some of the demands include the need for Twitter to set up an office in the country, pay taxes, appoint a representative and "act with a respectful acknowledgment of Nigerian laws and the national culture and history". 25 The agreement, though not documented, poses human rights concerns, as it was reached without civil society oversight or contribution.

PRIVACY, DIGITAL IDS **AND SURVEILLANCE**

Nigeria's National Identity Management Commission²⁶ (NIMC) operates a national identity database where digital identities are issued to everyone in the form of a national identity number (NIN). In December 2020, the Nigerian government released a statement mandating all Nigerians to not just obtain their National Identification Number (NIN) but to further link the NIN to Subscriber Identification Module (SIM) card numbers or else the use of unregistered phone numbers would be blocked. Predictably, there was an outpouring of Nigerians all over the country attempting to get their NIN before the deadline, at the end of 2020.

The directive caused a massive uproar amongst Nigerians because it was issued at the height of the COVID-19 pandemic. Since then, the deadline has been pushed back thrice to the end of 2021. The SIM card has become a crucial component for citizens to access many services supplied by telecommunications service providers, so the prospect of restricting access to the SIM card caused major concerns related to access.

As Nigerians continued to struggle with this, the Federal Government developed a revised version of the National Digital Identity Policy for SIM Card Registration²⁷ that initiated the process requiring every SIM to be linked to the NIN 28 in May 2021. The Federal Ministry of Communications and Digital Economy, in that policy, required the agency in charge "to register and capture the International Mobile Equipment Identity (IMEI) of all mobile

^{23.} Some of those organizations include Paradigm Initiative, Socio-Economic Rights and Accountability Project (SERAP), Media Rights Agenda, Enough is Enough Nigeria, Premium Times Centre For Investigative Journalism International Press Centre, Tap Initiative For Citizens Development

^{24.} https://www.bbc.com/news/world-africa-59958417

^{25.} https://www.independent.co.uk/news/world/africa/nigeria-twitter-ban-lifted-b1992259.html

^{26.} More about NIMC here https://nimc.gov.ng/about-us/

^{27.} https://www.ncc.gov.ng/docman-main/legal-regulatory/legal-other/988-revised-national-identity-policy-for-simcard-registration/file

^{28.} https://www.ncc.gov.ng/media-centre/public-notices/999-revised-national-identity-policy-for-sim-card-registration

phones and other smart devices"29 to a Centralized Equipment Identity Register (CEIR), otherwise known as Device Management System (DMS), managed by the National Communications Commission (NCC). Some of the reasons given for the Ministry's action include: curtailing the counterfeit mobile phone market, discouraging mobile phone theft, enhancing national security, protecting consumer interest, increasing revenue generation for the government, reducing kidnapping rates, mitigating the use of stolen phones to commit crime, and facilitating the blocking or tracing of stolen mobile phones and other smart devices. By incorporating IMEI data, they may be able to obtain real-time location data on everyone. Shortly afterwards, an uproar ensued where the Nigerian government responded with a statement saying it is not mandating the submission of IMEI numbers however noting that "the system will capture IMEI automatically without any requirement for subscribers to submit the same. " $^{\rm 30}$

The government is the biggest processor of data in the country, through its agencies such as the Immigration Service, Federal Road Safety Corps, National Youth Service Corps and the Central Bank, which initiated a Bank Verification Number system. All these agencies collect biometric data.

Despite all the data being processed, Nigeria does not yet have comprehensive data protection legislation, raising concerns about privacy rights and leaving Nigerians at the mercy of redress in the event of breach. Laws that exist on data protection are sector-specific.

A draft bill was tabled and reviewed by stakeholders in 2020 with hopes of reaching the National Assembly in 2021. However, the Federal Government has again called for consultations,³¹ despite the government's legitimate concerns and obligations to maintain public order and national security of its population. Nevertheless, any measure restricting freedom of expression or association to attain such goals must be proportional, legal, strictly necessary and reasonable to achieve a legitimate goal.

The Nigeria Data Protection Regulation (NDPR) seeking to fill the gap ahead of a potential legislation has not proved effective in the probing of personal data breaches by government agencies. A lot of effort seems to have been put into the data processing nature of the private sector. In the year under review, the National Information Technology Development Agency (NITDA), the agency that authored and is the self-appointed enforcer of the NDPR, issued its first fine³² against a loan company. The private sector is not exempt from data breaches. Many loan companies have been known to process user data so that in case of non-payment they can send threatening messages to the user's contacts, revealing sensitive personal data.33

The lack of a federal law on data protection seems to have led individual states to attempt passing their own laws on the subject. By October 2021, Lagos State³⁴ had its own data protection bill that had passed second reading.

 $^{29. \} Page\ 23, part\ 3.5\ Objective\ 1.\ https://www.ncc.gov.ng/docman-main/legal-regulatory/legal-other/988-revised-national-identity-policy-for-sim-card-registration/file$

^{30.} Press statement ny NCC, https://ncc.gov.ng/media-centre/news-headlines/1004-press-statement-subscribers-not-required-to-submit-international-mobile-equipment-identity-imei-number

 $^{31. \} https://www.premiumtimesng.com/news/top-news/495768-data-protection-indignation-as-fg-abandons-draft-bill-seeks-consultants-for-fresh-process.html$

 $^{33.\} https://www.dataguidance.com/news/nigeria-nitda-issues-first-ndpr-fine-ngn-10m-against$

 $^{34. \} https://www.premiumtimesng.com/news/headlines/499999-investigation-how-digital-loan-providers-breach-data-privacy-violate-rights-of-nigerians.html$



The lack of a federal law on data protection seems to have led individual states to attempt passing their own laws on the subject.

The Nigerian government has never publicly acknowledged its surveillance capabilities, but in August 2019, it passed and signed the Federal Mutual Assistance in Criminal Matters Bill into law, allowing it to conduct surveillance on citizens on behalf of foreign countries conducting criminal investigations.

The Nigerian government always has a worrisome amount for its security budget.35 In the year under review, the country's National Intelligence Agency (NIA) budgeted 4.7 billion³⁶ to track, intercept and monitor calls and messages on mobile devices, including Thuraya and WhatsApp. This further raises privacy concerns.

INTERNET DISRUPTIONS

Across the world, the Internet has become a tool that cannot do without empowering states and individuals with facts and figures, information, and knowledge for personal, social and economic development. Yet, according to a study, deliberate internet shutdowns by governments throughout the world are becoming increasingly common and sophisticated.³⁷ In 2021, five states³⁸ across Nigeria shut down the Internet at different points. Sources reported that the decision was "to enable relevant security agencies to carry out required activities towards addressing the security challenges in the state." The northern region of Nigeria has suffered various forms of insurgency and insecurity due to an extremist group called *Boko Haram* since 2009.³⁹ Although many governments have tried to contain the menace, there has been none that has been completely successful. This conflict has left many within the region displaced and impoverished. Among those states is Zamfara, which was, according to the National Bureau of Statistics (NBS), reported to have 2,177,431 active subscribers from 2,337,893 connected lines, while internet users are around 1.59 million.

The shutdown caused people to lose access to information about their loved ones, and connectivity, for weeks. Despite the government's legitimate concerns and obligations to maintain public order and national security for its population, any measure restricting the Internet in order to attain such goals must be proportional, legal, strictly necessary and reasonable to achieve a legitimate goal. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are the main structures to consider when using the three-step test based on legality, legitimacy, and proportionality of government acts. They can work together to reduce the number of internet disruptions.

^{35.} https://guardian.ng/news/worsening-insecurity-seven-year-n8tr-defence-spending-fresh-n762b-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-worry-senate-loan-

^{36.} https://punchng.com/nia-gets-n4-87bn-budget-to-track-intercept-calls-messages/

^{37.} https://jigsaw.google.com/the-current/shutdown/

^{38.} https://guardian.ng/technology/sokoto-kebbi-three-others-witness-service-disruptions-as-zamfaras-2-1-millionphone-users-lose-access/

^{. 39.} https://www.brookings.edu/blog/order-from-chaos/2020/04/21/as-conflict-intensifies-in-nigerias-north-east-so-toodoes-a-reliance-on-troubled-militias/



ARTIFICIAL INTELLIGENCE

Nigeria is the first African country to establish a National Centre for Artificial Intelligence and Robotics (NCAIR), as well as specific government entities encouraging a knowledge-based economy and AI research and development. AI-based technologies are gradually becoming part of the global debate and increasingly incorporated into the daily lives of many Nigerians, and it is thus important to think about how they affect Nigerians' fundamental rights. These concerns must begin with the initial design and continue through to the final implementation, as there are various ways in which Al might either help or hurt the human rights of Nigerians. For economic, health, educational, legal, and even cultural endeavors, Nigeria has become more reliant on digital technologies and networks. For instance, in the year under review, some judges in virtual court sessions had to rely on speech-to-text transcription.40

The government's policy focus toward the promotion of science and technology is outlined in Section 18 (2) of the Nigerian Constitution. Many governments' policy objectives, both regional and global, include AI as one of their top goals because various state programmes emphasise the use of Al applications for development and economic progress. Nigeria has shown its willingness to establish a framework for AI research, development, application, coordination, and regulation as a weapon in Nigeria's transformation goal, which includes job creation, economic growth, and governance transparency, among other things. Nigeria has a long way to go in terms of Artificial Intelligence and other modern technologies affecting the global economy but with the correct government policies in place, and if they are implemented, significant progress can be made.

^{40.} The Cable, "COVID-19: Lagos chief judge approves hearing of cases via Zoom, Skype" (April 28, 2020) < https://www.thecable.ng/

covid-19-lagos-chief-judge-approves-hearing-of-cases-via-zoom-skype>; Thisday Nigeria, "Osinbajo: Judiciary Needs to Embrace Technology,

Innovation" (July 27, 2021) < https://www.thisdaylive.com/index.php/2021/07/27/osinbajo-judiciary-needs-to-embracetechnology-innovation/>

RECOMMENDATIONS

- Nigeria, with a median age of 18 years and a high unemployment rate, is in need of a drastic increase in technology upskilling and reskilling initiatives within the workforce, to leverage the potential of the fourth industrial revolution and to sustain the nation's labour market.
- Government must respect the right to freedom of expression forming the foundation of most democracies.
- Nigeria must pass data protection legislation and establish an independent Data Protection Authority that is able to call government agencies and private actors with personal data access to order.
- Governments should identify best practices to solve issues at their source, prioritising alternatives to internet shutdowns. Sharing experiences across and within various countries could lead to solutions that do not rely on access constraints.
- · Governments should do a cost-benefit analysis of the cost of internet shutdowns. Network outages stifle productivity, undermine business confidence, and jeopardise both short- and long-term financial commitments. Individuals should learn more about how to circumvent network disruptions through tools like VPNs, as well as interact with the law and ensure that rights are upheld.
- Nigeria needs a national AI policy that prioritises adherence to Nigeria's democratic ideals, complying to the country's constitutional principles, and assisting the Nigerian people in meeting their socioeconomic demands. The policy should uphold algorithmic accountability, data security, the explainability of machine-learning decision-making, and the protection of citizens' human rights against infringement.
- · Civil society organisations, along with other stakeholders, must continue to monitor the consequences of digital rights violations and play a key role in pressuring governments to be more accountable and transparent.

RWANDA

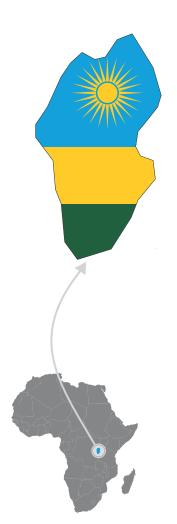
The report assesses the state of digital rights and inclusion in 2021 through an analysis of primary and secondary data on Rwanda. The report analyses the country's performance on various themes such as online freedom of expression, surveillance, digital inclusion, and compliance with international frameworks. It also highlights key achievements, challenges and provides recommendations.

The enactment of legislation on data protection and privacy was a major development in 2021. The digital acceleration project is expected to boost inclusion as it will target more women and contribute to various areas such as digital literacy and entrepreneurship. Students resumed their studies after the government eased the COVID-19 restrictions. However, remote learning was marred by various difficulties.

Despite positive developments, the report notes a worrying trend on online freedom of expression manifested in prosecutions of a number of content producers that human rights and media watch bodies have condemned. The report reveals that some provisions of the law that are used to prosecute content creators do not meet international human rights standards, as many human rights bodies affirm.

Lastly, the study proposes recommendations including legal reforms; transparency on surveillance practices; and acceleration of existing programmes to tackle digital gaps such as digital illiteracy among others. The COVID-19 pandemic has demonstrated that digital technologies play an important role and authorities should address violations and challenges to advance digital rights and digital inclusion.







Rwanda is a landlocked country in East Africa with a population of approximately 12.6 million people. The capital city, Kigali plays both administrative and economic roles, and is continuously growing with smart technology services such as cashless transportation and rapid urbanisation that have shaped the city over the past two decades.

In 2021 the East African country continued to fight the COVID-19 pandemic and its efforts were boosted by the vaccination uptake that is among the highest in Africa.² Rwanda is considered to be politically stable and is known for its gender inclusive policy in governance and fast-growing social-economic transformation in Africa.³ The government led by President Paul Kagame has received global praise and financial support from donors and international financial institutions over the past two decades for its development model.⁴ Since the 1994 genocide against Tutsis, the political landscape has been dominated by the ruling Rwanda Patriotic Front (RPF). There are other small political parties allies mainly in what is known as the National Consultative Forum of Political Organizations.5

^{1.} The National Institute of Statistics 'Size of the resident population' (2021) https://www.statistics.gov.rw/publication/size-resident-population (accessed on 14 January 2022).

^{2.} World Health Organization 'Rwanda meets WHO year-end target with over 40 % COVID-19 vaccination coverage' https://www.afro.who.int/news/rwanda-meets-who-year-end-target-over-40-COVID-19-vaccination-coverage (accessed on 14 January 2021). Over 40 % of the population had been vaccinated as of 24 December 2021

^{3.} Article19 Eastern Africa 'Securing Digital Rights and Online Freedom of Expression in Eastern Africa' (2020) https://www.article19.org/regional-office/eastern-africa/.

^{4.} BBC Africa 'The loyalty Oath of Keeping Rwandans Abroad in Check' https://www.bbc.com/news/world-africa-54801979 (accessed on 14 January 2021).

^{5.} National Consultative for Political Organizations, https://forumfp.org.rw/index.php?id=2 (accessed on 14 January 2022)



RWANDA INTERNET SUBSCRIPTION



MOBILE PENETRATION

Although President Kagame is often praised for turning Rwanda into a remarkable development model, his leadership style is often criticised by human rights organisations and the opposition for the poor human rights record, silencing of critics and the media, weakening the civil society, and the government's pervasive surveillance practices.6

The Ministry of ICT and Innovation coordinates ICT policies.⁷ There is a regulatory authority, the Rwanda Utilities Regulatory Authority (RURA), which was created by Law n° 39/2001 of 13th September 2001.8 The mandate of RURA is to regulate certain public utilities including telecommunications services. This law was reviewed and replaced by Law N. 09/2013 of 01/03/2013, giving RURA the mandate to regulate telecommunications, information technology, broadcasting and converging electronic technologies, including the Internet and any other audio-visual information and communication technology. Additionally, the Rwanda Information Society Authority, an agency affiliated to the Ministry of ICT helps the government in digitisation.¹⁰

Data from RURA shows that as of 30 September 2021, mobile subscriptions were at about 11,5 million, which is nearly the whole population, but some users own more than one mobile phone.¹¹ Fixed subscription was at 11,657.¹² Mobile penetration stood at 85,16% while fixed subscription was at 0,1%. Internet subscription was 8,552,221 which means that 66 out of 100 inhabitants subscribed to the Internet. However, data published in the Digital 2021 Rwanda report shows that as of January 2021 Internet penetration was at 31.4% lower than the government's agency penetration rate.¹³

As of September 2020, Rwanda's telecommunication market is composed of two mobile network operators, 24 Internet Service providers (ISPs), one 4G wholesaler and network provider, two network facility providers, and one capacity reseller. The major telecom operators are MTN-Rwanda and Airtel.14

^{6.} Freedom House 'Freedom on the net 2021' https://freedomhouse.org/country/rwanda/freedom-net/2021 (accessed on 14 January 2022).

^{7.} MINICT, 'Ministry of Information Communication Technology and Information',https://www.minict.gov.rw/about (Accessed on 31 March 2022)

^{8.} RURA, 'Law establishing an agency for the regulation of certain utilities',

https://www.google.com/search?client=firefox-b-d&q=law+no+39%2F2001+of+13+September+2001+creating+RURA+(1.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0.0001+0Accessed on 31 March 2022).

^{9.} RURA, 'Law establishing RURA' https://rura.rw/index.php?id=202 (accessed on 14 January 2022).

^{10.} Rwanda Information Society, https://www.risa.rw/home/ (accessed on 14 January 2021.)

^{11.} RURA, 'Report for ICT Sector as of the Third quarter of the year 2021' https://rura.rw/index.php?id=194 (accessed on 14 January 2021).

^{12.} RURA, 'Report for ICT Sector as of the Third quarter of the year 2021' https://rura.rw/index.php?id=194 (accessed on 14 January 2021).

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Rwanda ratified the African Union Convention on Cyber Security and Personal Data Protection (the AU Convention) in 2019. This is a major development that culminated in the enactment of a data protection and privacy legislation.¹⁵Article 8(1) of the AU Convention states that:



Each State Party shall commit itself to establish a legal framework aimed at strengthening fundamental rights and public freedoms, particularly the protection of physical data, and punish any violation of privacy without prejudice to the free flow of personal data.16

Law No. 058/2021 of 13 October 2021 Relating to the Protection of Personal Data and Privacy was published on 15 October 2021, in the Rwanda Official Gazette, a major development in 2021.¹⁷ The law establishes among other obligations: maintaining records, personal data processed, the designation of Data Protection Officer, and

carrying out data protection impact assessment. It also provides a two-year grace period before implementation.

While the new legislation is a positive development, critics noted that it lacks safeguards for freedom of expression and information. According to Article 19 Eastern Africa, the draft bill would undermine traditional and digital media outlets who serve the public interests, because they would not be able to access certain information. The law does not give them a public interest exception, meaning the media would face criminal and civil sanctions for using some information. This is against article 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR) that promote freedom of expression, rights to information and media freedom.¹⁸ The lack of "independence" of the institution in charge of the law implementation is also another challenge.¹⁹The National Cybersecurity Authority, a public agency that coordinates cybersecurity functions will oversee the implementation of the law. However, the body lacks the appropriate mandate and powers to supervise the new law which can hinder its efforts to protect the rights to privacy.²⁰ Rwanda is one of few African jurisdictions that enacted the data protection legislation without creating a separate data protection authority.²¹

^{15.} African Union 'African Union Convention on Cyber Security and Personal Data Protection' https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection (Accessed on 14 January

^{16.} African Union ' African Union Convention on Cybersecurity and Personal Data Protection', https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection (Accessed on 17 February

^{17.} DataGuidance 'Rwanda: Data protection Law published in the Official gazette'

https://www.dataguidance.com/news/rwanda-data-protection-law-published-official-gazette (Accessed on 14 January 2022).

^{18.} United Nations: International Covenants on Civil and Political Rights', (1976), https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx(Accessed on 23 February 2022).

^{19.} Article 19 ' Rwanda: Draft Data Protection Bill must incorporate freedom of expression and information safeguards' https://www.article19.org/resources/rwanda-data-protection-bill-must-incorporate-free-speech-safeguards/ (Accessed on 14 January 2022).

^{20.} Article 19 Eastern Africa, "Rwanda: Draft Data Protection Bill must incorporate freedom of expression and information safeguards' (2021), https://www.article19.org/resources/rwanda-data-protection-bill-must-incorporate-free-speechsafeguards/ (Accessed on 23 February 2022).

^{21.} Lexology, 'Key features of the new Rwandan data protection law' (2021),

https://www.lexology.com/library/detail.aspx?g=35219233-31c8-43ed-9ca7-db759c412b13 (Accessed on 23 February 2022).

Rwanda ratified the International Covenant on Civil and Political Rights (ICCPR) in 1975 and Second Optional Protocol to the International Covenants on Civil and Political Rights aiming to the abolition of death penalty.²² ICCPR promotes various human rights and signatories states agreed to respect 53 articles in the covenant.²³ In October 2021 Human Rights watch documented intensification of crackdown on opposition and media. This was manifested in the arrest of nine people linked to an unregistered opposition party including a journalist in October and the prosecution of online commentators that use youtube channels.24

The 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa (the ACHPR 2019 Declaration) establishes principles that promote freedom of expression and Access to Information.²⁵ Principle 16(1) on media selfregulation states that "States shall encourage media self-regulation which shall be impartial, expeditious, cost-effective, and promote high standards in the media". In the past media watch bodies have criticised authorities for weakening Rwanda's media-self regulation body and hindering its work. This hindered media freedom in the country.²⁶

The Declaration's principle 26 says the right to access to information shall be guaranteed by law. Rwanda enacted the law relating to access to information in 2013.²⁷A media development report released by Rwanda Governance Board, a government affiliated institution, in 2021 ranked the country's media sector performance at 80.6% saying the media was doing well.²⁸ The same study states that the media scored 77.8% on access to information.²⁹ The high score means that the right to information is entrenched in the country. However, another report released in late 2020 that documented the state of access to information in Rwanda revealed a culture of secrecy, increasing denial of information.30



another challenge.

^{22.} UN Treaty Body database, 'Ratification Status for Rwanda',

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=145&Lang=en (accessed on 17

^{23.} United Nations Human Rights Office of the High Commissioner, 'International Covenant on Civil and Political Rights', https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (Accessed on 17 February 2022).

^{24.} Human Rights Watch, 'Rwanda: Crackdown on Opposition, Media intensify',

https://www.hrw.org/news/2021/10/19/rwanda-crackdown-opposition-media-intensifies (accessed on 17 February 2022). 25. African Commission on Human and Peoples' rights,' Declaration of Principles on Freedom of Expression and Access to Information', https://www.achpr.org/legalinstruments/detail?id=69 (access on 16 February 2022). The 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa was adopted by the African Commission on Human and Peoples' Rights (the African Commission) at its 65th Ordinary Session.

^{26.} Reporters Without Borders' Rwanda's Media Self-regulatory body subjected to intimidation campaign',

https://rsf.org/en/news/rwandas-media-self-regulator-subjected-intimidation-campaign (accessed 16 February 2022).

^{27.} Rwanda Governance Board 'Law No 04/2013 of 08/02/2013 relating to access to information',

https://www.google.com/search?q=law+relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+to+access+to+information+rwanda&client=firefox-b-d&sxsrf=APq-law-relating+firefox-b-d&sxsrf=APq-law-relating+firefox-b-d&sxsrf=APq-law-relating+firefox-b-d&sxsrf=APq-law-relating+firefox-b-d&sxsrf=APq-law-relating+firefox-b-d&sxsrf=APq-law-relating+firefox-b-d&sxsrf=APq-law-relating+firefox-b-d&sxsrf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+firefox-b-d&sxsf=APq-law-relating+fire $WBs_JT1_o3xHaCCyqGCOt8CgHpJ00g:1645020251993\&ei=WwQNYruHPle6sAfKkJD4Ag\&start=10\&sa=N\&ved=2ahUKE$ wj To JL-s YT2AhUHHew KHU oIBC8Q8t MDegQIARA 2&biw=1366&bih=643&dpr=1

^{28.} Rwanda Governance Board 'Rwanda Media Barometer 2021' (2021)

 $https://www.rgb.rw/publications?tx_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Bcontroller\%5D=File\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist_filelist\%5D=list\&tx_filelist_filelist\%5D=list\&tx_filelist_filelist\%5D=list\&tx_filelist_filelist\%5D=list\&tx_filelist_filelist\%5D=list\&tx_filelist_filelist\%5D=list\&tx_filelist_filelist\%5D=list\&tx_filelist_filelist_filelist\%5D=list\&tx_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist_filelist$ st_filelist%5Bpath%5D=%2Fuser_upload%2FRGB%2FPublications%2FRWANDA_MEDIA_BAROMETER-

RMB%2F&cHash=18adf18f968c1d51377ae9d2fb1422ca (Accessed on 15 January 2022).

^{29.} Rwanda Governance Board 'Rwanda Media Barometer 2021' (2021)

 $https://www.rgb.rw/publications?tx_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5Baction\%5D=list\&tx_filelist_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx_filelist\%5D=list\&tx$ st_filelist%5Bpath%5D=%2Fuser_upload%2FRGB%2FPublications%2FRWANDA_MEDIA_BAROMETER-

RMB%2F&cHash=18adf18f968c1d51377ae9d2fb1422ca (Accessed on 15 January 2022).

^{30.} PanafricanVisions 'Despite a progressive law, access to information remains a challenge)

https://panafrican visions.com/2020/11/despite-a-progressive-law-access-to-information-remains-a-challenge-in-rwanda-complexity and the statement of the progressive of the progressivreport/ (Accessed on 15 January 2022)

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

The Global pandemic and relevant regulations affected the general life in the country. This led to the hindrance of digital rights and inclusion.

Education was a main sector badly affected as schools were closed and ordered to adopt remote learning that was difficult for many. Online Freedom of expression was marked by the arrests and prosecutions of commentators.

Education is one of sectors that have been severely impacted by the COVID-19 regulations. After lockdowns, schools were closed and re-opened several times to prevent the spread of the virus. Education authorities encouraged schools to resort to remote learning using the Internet, radio and TV.31 Amidst lockdown the ministry of education announced programs that would allow students to pursue their studies remotely.32Affordability of digital devices such as laptops and smartphones and high Internet cost was the main challenge. One college principal elaborated that "a big number of students or parents do not have laptops or smartphones, and most of them cannot access assignments that teachers have been sending through WhatsApp groups since the COVID-19 closure."33

In August 2021, the Ministry of Education ordered all learning institutions to repeat all courses that were taught remotely during the lockdown. Some educationists supported the directive and said it could help to contain rising inequalities in education.34



^{31.} Xinhua net, 'Rwanda closes schools in capital to curb COVID-19 spread', http://www.xinhuanet.com/english/2021-01/18/c_139676237.htm (Accessed on 18 February 2022).

^{32.} Ministry of education, 'Students should embrace e-learning amidst schools' closure due to Covdi-

^{19&#}x27;,https://www.mineduc.gov.rw/news-detail/students-should-embrace-elearning-amidst-schools-closure-due-to-covid-19 (accessed on 31 March 2022).

^{33.} VVOB Rwanda 'Online and Distance Learning: Educational response to the COVID-19 crisis' https://rwanda.vvob.org/news/online-and-distance-learning-educational-response-COVID-19-crisis page 12 (2020) (Accessed on 14 January 2022).

^{34.} The East African, 'For Rwanda, all e-learning lessons to be retaken in in-person classes', $https://www.theeastafrican.co.ke/tea/news/east-africa/e-learning-lessons-to-be-retaken-in-in-person-classes-3529904 (\cite{tea/news/east-africa/e-learning-lessons-to-be-retaken-in-in-person-classes-3529904}). The state of th$ Accessed on 18 February 2022)

All learning institutions re-opened on 2 August 2021 for the third term after the government lifted the 15-day lockdown in Kigali and other eight districts.35 The repeat of lessons taught remotely highlights ICT gaps in learning institutions despite efforts to promote smart learning. The Higher Education Council audits exposed a lack of ICTs tools, Internet connectivity challenges and digital skills gap among lecturers and learners.³⁶

According to a report released by UNESCO, the impact of the COVID-19 pandemic on education systems has made it challenging for special education teachers to ensure equal learning for students with disabilities. As of 2019 about 1% (17,193) of children enrolled in primary schools had a disability.³⁷ As a response to COVID-19 impact on education of people with disability, most of the support was given to teachers and students at special schools and resources centres for people with intellectual disability for remote learning, however, inclusive schools received relatively little attention and assistance.³⁸ According to a UNESCO study, inclusive schools continued to use materials they had before the pandemic.³⁹ Rwanda ratified the Convention on the Rights of People with Disability and its Optional Protocol in 2008.⁴⁰

FREEDOM OF EXPRESSION ONLINE

Online conversation is dominated by progovernment views and any criticism is met with trolling by government supporters, while other users exercise self-censorship to avoid trouble or being labelled "enemies of the country". According to Freedom House, in 2021, Rwanda ranked as not free. "Pro government accounts also mobilise to retweets and post positive comments in response to President Kagame's tweets, to project an image of widespread support". The so-called "Twitter Army" consistently attacks and discredits individuals and media houses that criticise the government.⁴²

The intolerance of online divergent views and other forms of silencing critics on social media platforms are against principle 5 of the 2019 ACHPR Declaration which says:

The exercise of the rights to freedom of expression and access to information shall be protected from interference both online and offline, and States shall interpret and implement the protection of these rights in this Declaration and other relevant international standards accordingly.⁴³

Meanwhile, online content producers who post content on Youtube are arrested or subjected to other actions that appear to silence them. The government often accuses them of genocide denial, genocide ideology and rumours. In 2020 most of the arrests of YouTubers were linked to violations of COVID-19 regulations, while in 2021 the arrests and warnings were linked to the content they produce.

^{35.} The East African 'For Rwanda, all e-learning lessons to be taken in-person classes' (2021)

https://www.theeastafrican.co.ke/tea/news/east-africa/e-learning-lessons-to-be-retaken-in-in-person-classes-3529904 (Accessed on 14 January 2022).

^{36.} The East African 'For Rwanda, all e-learning lessons to be taken in-person classes' (2021)

https://www.theeastafrican.co.ke/tea/news/east-africa/e-learning-lessons-to-be-retaken-in-in-person-classes-3529904 (Accessed on 14 January 2022).

^{37.} Unesco, 'COVID-19 and inclusive and inclusive open and distance learning solutions',

https://unesdoc.unesco.org/ark:/48223/pf0000377831 (accessed on 19 February 2022).

^{38.} Unesco, 'COVID-19 and Inclusive open and distance learning solutions'

https://unesdoc.unesco.org/ark:/48223/pf0000377831 (accessed on 19 February 2022).

^{40.} United Nations, 'Conventions on the Rights of Persons with Disability',

 $https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html (\ Accessed \ Accessed$ on 18 February 2022)

^{41.} Freedom House 'Rwanda Freedom on the net 2021' (2021) https://freedomhouse.org/country/rwanda/freedomnet/2021#footnote3_urb5moo (Accessed on 14 January 2022).

^{42.} Freedom House 'Rwanda Freedom on the net 2021' (2021) https://freedomhouse.org/country/rwanda/freedomnet/2021#footnote3_urb5moo (Accessed on 14 January 2022).

^{43.} African Union, 'Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019', https://www.achpr.org/legalinstruments/detail?id=69 (Accessed on 19 February 2022).

In June 2021 Aimable Karasira, a popular YouTuber with over 62,000 subscribers was arrested for alleged genocide denial.44 Authorities said that they had arrested the Youtuber on charges of denying the 1994 Genocide and if found guilty, he could be jailed for more than 10 years.⁴⁵

In March 2021 police arrested Yvonne Idamange for calling for protests against President Kagame's "dictatorial rule". 46 She faces other charges related to the genocide. 47 A popular poet, Innocent Bahati, who posted critical poems on social issues disappeared.⁴⁸ At the time of publication of this report Mr. Bahati had not been found. Recently, over 100 acclaimed writers signed an open letter urging President Kagame to intervene in the case.49 In October 2021, the Rwanda Investigative Bureau (RIB) arrested Rashid Abdou Hakuzimana, a Youtube content creator who founded Rashid TV. Mr. Hakuzimana was being investigated for allegedly denying and trivializing the genocide.⁵⁰

RIB spokesperson, Thierry B Murangira warned social media users against using online platforms to spread "hate speech, rumours, or words that can provoke divisionism, cause intimidation and chaos in the public".51 Theoneste Nsengimana, an online journalist, was arrested on October 13.52 The reporter had aired a video clip announcing an opposition event on his channel. The promo cited various people that were alleged political prisoners and others whose disappearance were allegedly linked to the government.⁵³ The reporter's Youtube channel, the 'Umubavu TV' had planned to host a discussion.⁵⁴ According to the Rwanda Investigation Bureau (RIB), journalist Nsengimana and other people were arrested for "publication of rumours intended to cause uprising or unrest among the population."55

While authorities justify the prosecution of several online commentators as a fight against divisionism, hate speech, genocide ideology in order to prevent acts that led to the 1994 genocide, human rights organisations assert that "current laws and practices go beyond this purpose", silence critics, debate and divergent opinions on the country's governance and history.56

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44. News 24 'Rwandan Police arrest a youtuber for alleged Genocide denial' (2021)
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https://www.news24.com/news24/africa/news/rwanda-police-arrest-youtuber-for-alleged-genocide-denial-20210601 (Accessed on 14 January 2022).
45. Eye Witness News, 'Rwandan Police arrest youtuber for alleged Genocide denial',

 $https://ewn.co.za/2021/06/01/rwanda-police-arrest-youtuber-for-alleged-genocide-denial (\ Accessed on 21\ February \ 20) and the property of the property of$ 46. The New Times, 'Yvonne Idamange arrested, charged with inciting public disorder,

 $as sault', https://www.newtimes.co.rw/news/yvonne-idamange-arrested-charged-inciting-public-disorder-assault\,(Accessed and Control of the C$ on 31 March 2022)

^{47.} The New Times, 'Yvonne Idamange's case file sent to the prosecution', https://www.newtimes.co.rw/news/yvonneidamanges-case-file-sent-prosecution (accessed on 31 March 2022).

^{48.} News 24 ' Rwandan Police arrest a youtuber for alleged Genocide denial' (2021)

https://www.news24.com/news24/africa/news/rwanda-police-arrest-youtuber-for-alleged-genocide-denial-20210601 (Accessed on 14 January 2022).

^{49.} Open country, 'Over 100 writers sign open letter on missing Rwandan poet' (2022),

https://opencountrymag.com/over-100-writers-sign-open-letter-on-missing-rwandan-poet-innocent-bahati/ (Accessed on 24 February 2022).

^{50.} The New Times 'Man arrested for allegedly denying and minimizing Genocide' (2021)

https://www.newtimes.co.rw/news/man-arrested-allegedly-denying-minimising-genocide (Accessed on 14 January 2022). 51. The New Times, 'Man arrested for allegedly denying and minimizing Genocide', (2021),

https://www.newtimes.co.rw/news/man-arrested-allegedly-denying-minimising-genocide (Accessed on 21 February

^{52.} The Committee to Protect Journalists, 'Rwandan journalist Theoneste Nsengimana detained since October 13',https://cpj.org/2021/11/rwandan-journalist-theoneste-nsengimana-detained-since-october-13/ (Accessed on 31 March

^{53.} The Committee to Protect Journalists, 'Rwandan journalist Theoneste Nsengimana detained since October 13',https://cpj.org/2021/11/rwandan-journalist-theoneste-nsengimana-detained-since-october-13/ (Accessed on 31 March

^{54.} Human Rights Watch 'Rwanda: Crackdown on Opposition, Media Intensify' (2021)

https://www.hrw.org/news/2021/10/19/rwanda-crackdown-opposition-media-intensifies (Accessed on 14 January 2022).

^{55.} Human Rights Watch, 'Rwanda: Crackdown on Opposition, Media intensify' (2021),

https://www.hrw.org/news/2021/10/19/rwanda-crackdown-opposition-media-intensifies (Accessed on 21 February 2022).

^{56.} Human Rights Watch 'Rwanda: Arrests, Prosecutions over Youtube posts' (2021)

https://www.hrw.org/news/2021/03/30/rwanda-arrests-prosecutions-over-youtube-posts (Accessed on 15 January 2022).



The commonly used law to prosecute online content producers who discuss public affairs and genocide issues is Law No 59/2028 of 22/8/2010 on the crime of Genocide Ideology and related crimes.⁵⁷ The law on prevention of cybercrimes is also applied to prosecute online content producers as it prohibits publication of "rumours". 58 The law's purpose is to prevent and punish cybercrimes. However, some articles are vague and can be misinterpreted. Article 39 on publishing rumours says that "Any person who, knowingly and through a computer or a computer system, publishes rumours that may incite fear, insurrection or violence amongst the population or that may make a person lose their credibility, commits an offence." Also article 38 on publishing indecent information in electronic form provides that "Any person who publishes, transmits or causes to be published any indecent message using a computer or a computer system, commits an offence." It is not clear what is "indecent" as it can be a subject of interpretation leading to the misuse of this provision.

ONLINE VIOLENCE AGAINST WOMEN

Since COVID-19 broke out many people shifted their work online and others spent more time on social media than before. This has to an extent increased online against women especially targeting those who are more active in the digital space. 59 A detailed online report documented rising cases of bullying and online harassment against women, noting "they have gone out of hand on many occasions".60

The director of Women at Web Rwanda, an organisation that promotes online participation of women in Rwanda, highlighted that, "with many people joining online spaces and having more time to kill on social networks, online harassment and bullying peaked and on many occasions has gotten out of hand."61 A local journalist who experienced cyberbullying as a response to her articles said: "I get harassed and bullied online from the articles I share online. It is very common to be attacked on the way I look instead of people focusing on my work. Sometimes people ask for a picture of the writer and share insulting remarks."62

^{57.} Rwanda Law Reform Commission 'Genocide Ideology Law No 59 of 2018' (2018) Accessed on 15 January 2022). 58. Rwanda Law Reform Commission ' Law No 60/2018 of 22/8/2018 on Prevention and Punishment of Cybercrimes'

 $https://www.rlrc.gov.rw/index.php?id=233\&L=0\%27\&tx_filelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5Bpath\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5D=\%2Fuser_upload\%2FLaws3\%2F4._titlelist\%5D=\%2FUser_upload\%2FLaws3\%2F2._titlelist\%5D=\%2FUser_upload\%2FLaws3\%2F2._titlelist\%5D=\%2FUser_upload\%2FLaws3F2._titlelist\%5D=\%2FUser_upload\%2FLaws3F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2F2._titlelist\%2$ Criminal%2F4.5. Cyber_crimes%2F&tx_filelist%5Baction%5D=list&tx_filelist_filelist%5Bcontroller%5D=File&cHa sh=f035dd39ed8ccea73f92fde56a49a78b (Accessed on 15/1/2022).

^{59.} Andariya, 'Gender-based violence online: Has Women's participation decreased in Rwanda?', (2021),

 $https://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (\cite{thm:ps://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (\cite{thm:ps://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (\cite{thm:ps://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (\cite{thm:ps://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (\cite{thm:ps://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (\cite{thm:ps://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (\cite{thm:ps://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (\cite{thm:ps://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (\cite{thm:ps://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-violence-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-s-online-has-women-$ Accessed on February 21, 2022)

^{60.} Andariya, 'Gender-based violence online: Has Women's participation decreased in Rwanda?', (2021),

https://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (Accessed on February 21, 2022)

^{61.} Andariya, ' Gender-based violence online: Has women's participation decreased in

Rwanda?',https://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-inrwanda (Accessed on 31 March 2022)

^{62.} Andariya, 'Gender-based violence online: has Women's online participation decreased in Rwanda?', (2021), https://www.andariya.com/post/gender-based-violence-online-has-women-s-online-participation-decreased-in-rwanda (Accessed on 21 February 2022).

PRIVACY, DIGITAL IDS AND **SURVEILLANCE**

Rwanda's digital ID is increasingly being used to access several public services through Irembo, a government e-portal that is used to request various documents and services. 63 The ID is also used for other private sector's services such as banking, education and access to some institutions 'premises. A recent study on digital IDs in Africa noted that despite the tremendous functional development of Rwanda's ID system, the institutional and legal framework in its support seems to be weak.64

The digital ID is supported by Law No.14/2008 of 04/6/2008, which governs the registration of the population and issuance of the national identity card, and was amended in 2018.65 Despite the supporting legislation and a relevant ministerial order, the application of the digital Identity goes beyond these legislative instruments.66 The adoption of legislation on the use of digital ID in addition to the recent promulgation of data protection and privacy law could strengthen the existing framework.⁶⁷

LEGALISING SURVEILLANCE

In the past Rwanda has enacted laws that facilitate surveillance and communications interception using security as a justification. Similarly, the country was reported to use highly efficient software in surveillance against critics. Evidence gathered via communication interception are often used in court cases against opposition politicians and activists.68 In 2008 Rwanda enacted the Interception of Communication law (amended in 2013) that allows national security services to apply for issuance of interception warrants to monitor citizens voices and data communication using national security as a justification.⁶⁹ Warrants are issued by the national prosecutor who is appointed by the justice minister. In urgent security matters, a warrant may be issued verbally, "but the written request shall be completed in a period not exceeding twenty-four hours." A warrant is valid for three months. Also, article 7 of the interception of communications law as amended in 2013 requires service providers to ensure that their systems "are technically capable of supporting interceptions at all times". The law on communication interception can be abused to violate rights to privacy and target critics as it does not guarantee the independence of the oversight mechanism.

^{63.} IremboGov 'Irembo ' (2022) https://irembo.gov.rw/home/citizen/all_services (Accessed on 15 January 2022).

^{64.} Research ICT Africa, 'Digital Identity Rwanda: Case study conducted as part of ten-country exploration of socio-Digital ID systems in parts of Africa',https://researchictafrica.net/publication/digital-identity-in-rwanda-case-study-conducted-aspart-of-a-ten-country-exploration-of-socio-digital-id-systems-in-parts-of-africa/ (Accessed on 2 April 2022)

^{65.} Official Gazette of the Republic of Rwanda, Law no44/2018 of13/08/2018 amending law n°14/2008 of 04/6/2008 governing registration of the population and issuance of the national identity card' (2018), https://www.ecoi.net/en/countries/rwanda/national-laws/ (Accessed on 21/2/2022).

^{66.} Digital Identity in Rwanda: Binda, E.M. 'Digital Identity in Rwanda: Case study conducted as part of a ten-country exploration of socio-digital ID systems in parts of Africa' (2021) https://researchictafrica.net/publication/digital-identityin-rwanda-case-study-conducted-as-part-of-a-ten-country-exploration-of-socio-digital-id-systems-in-parts-of-africa/ (Accessed on 21 February 2022).

^{67.} Digital Identity in Rwanda: Binda, E.M. 'Digital Identity in Rwanda: Case study conducted as part of a ten-country exploration of socio-digital ID systems in parts of Africa' (2021) https://researchictafrica.net/publication/digital-identityin-rwanda-case-study-conducted-as-part-of-a-ten-country-exploration-of-socio-digital-id-systems-in-parts-of-africa/ (Accessed on 15/1/2022)

^{68.} Centre for International ICT policy and Eastern and Southern Africa, 'State of Internet Freedom in Rwanda 2019' (2020), https://cipesa.org/resources/?wpfb_s=state+of+internet+freedom+in+Rwanda+2019&ixsl=1 (Accessed on 22 February 2022).

^{69.} Rwanda Law Reform Commission, 'Law No 60/2013 of 22/08/2013 regulating the interception of communications,' (2013), https://www.google.com/search?client=firefox-b-d&q=communication+interception+law+Rwanda (Accessed on 22 February 2022).

^{70.} Rwanda Law Reform Commission, , 'Law No 60/2013 of 22/08/2013 regulating the interception of communications,' (2013), https://www.google.com/search?client=firefox-b-d&q=communication+interception+law+Rwanda (Accessed on 22 February 2022).

Principle 41(3) of the 2019 ACHPR Declaration provides that states shall ensure any law that authorises targeted communication provides adequate safeguards for the right to privacy.⁷¹ Safeguards include:

- the prior authorisation of an independent and impartial judicial authority;
- due process safeguards;
- specific limitation on the time, manner, place and scope of the surveillance;
- notification of the decision authorising surveillance within a reasonable time of the conclusion of such surveillance:
- proactive transparency on the nature and scope of its use; and
- effective monitoring and regular review by an independent oversight mechanism

The law on communication interception does not limit authorities' capacity to intercept communications. The legislation does not require them to justify the reason for interference with people's privacy and also the interception is not proportionate to legitimate aim.⁷²

Amnesty International and other International Media outlets revealed the alleged use of Israel's NSO Group Technologies surveillance software by the Rwandan government to target activists, journalists and the opposition. According to Amnesty International, Rwandan authorities used the famous spyware to potentially target more than 3,500 activists, journalists and politicians.⁷³

Amnesty International noted that evidence uncovered in collaboration with a non-profit media organisation called 'Forbidden Story' shows that the spyware was used in the phone of Carine Kanimba, Paul Rusesabagina's daughter. 74 Mr. Rusebagina is a hero in 'Hotel Rwanda' famous movie on Genocide.⁷⁵ However, the Rwandan government denied the use of the surveillance software saying surveillance reports were false accusations that "are part of an ongoing smear campaign". 76

While authorities have denied using spyware to target critics, mass surveillance has been reported before. According to media reports published in 2018, Kigali used Israeli spyware to target dissidents living abroad. This was allegedly done by using a software developed in Israel to hack dissident's WhatsApp communications.77

EFFORTS TO BOOST DIGITAL INFRASTRUCTURE, ACCESS, GENDER GAP AND CHALLENGES

In December 2021, the World Bank provided US\$100 million to accelerate the country's digital transformation.⁷⁸ The 'Digital Acceleration Project'

^{71.} African Commission on Human and Peoples' rights, 'Declaration of Principles on Freedom of Expression and Access to Information' (2019), https://www.google.com/search?client=firefox-b-

d&q = the + Declaration + of + Principles + On + Freedom + Of + Expression + And + Access + To + Information + In + Africa (Accessed on the Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Access + To + Information + In + Africa (Accessed on the Access + To + Information + In + Access + To + Information + I22 February 2022)

^{72.} Centre for International ICT policy and Eastern and Southern Africa, 'State of Internet Freedom in Rwanda', (2019) e (Accessed on 22 February 2022)

^{73.} Amnesty International, Pegasus Project: Rwandan authorities chose thousands of activists, journalists and politicians to target with NSO spyware' (2021), https://www.amnesty.org/en/latest/news/2021/07/rwandan-authorities-chosethousands-of-activists-journalists-and-politicians-to-target-with-nso-spyware/ (Accessed on 22 February 2022) 74. Amnesty International, 'Pegasus Project: Rwandan authorities chose thousands of activists, journalists and politicians to target with NSO spyware' (2021), https://www.amnesty.org/en/latest/news/2021/07/rwandan-authorities-chosethousands-of-activists-journalists-and -politicians-to-target-with-nso-spyware/ (Accessed on 22 February 22, 2022) 75. Amnesty International 'Pegasus Project: Rwandan authorities chose thousands activists, journalists, and politicians to target with NSO spyware' (2021) https://www.amnesty.org/en/latest/news/2021/07/rwandan-authorities-chosethousands-of-activists-journalists-and-politicians-to-target-with-nso-spyware/ (Accessed on 15 January 2021) 76. Anadolou Agency 'Rwanda denies use of Pegasus spyware' (2021) https://www.aa.com.tr/en/africa/rwanda-deniesusing-pegasus-spyware/2318398 (Accessed on 15/1/2022).

^{77.} Financial Times, 'Inside the WhatsApp Hack: how an Israeli Technology was used' (2018), https://www.ft.com/content/d9127eae-f99d-11e9-98fd-4d6c20050229 (Accessed on 22 February 2022) 78. World Bank 'World Bank provides \$ 100 million to accelerate Rwanda 's digital transformation' (2021) https://www.worldbank.org/en/news/press-release/2021/12/01/world-bank-provides-100-million-to-accelerate-rwanda-sdigital-transformation (Accessed on 15 January 2022).

supported by the World Bank is expected to address some challenges Rwanda faces to bridge the digital gap. The project seeks to support the government to expand digital access and adoption of new digital technologies. This will include supporting 250,000 households with finance to help acquire smart devices, training 3 million people with basic digital literacy with targets for girls and women. Data from the World Bank released in 2020 shows that 37% of the population don't own phones, while the majority relies on 2G services with limited features.⁷⁹ The 2019 Gender statistics report shows that computer literacy is still low, but much lower among females than males aged 15-30 years (10.7% compared to 13.8%). According to the same report, digital literacy among women from 2014 to 2018 increased but remained very low.80

ANALYSIS OF THE COUNTRY'S PERFORMANCE IN COMPARISON TO THE PREVIOUS YEAR

The country has made remarkable progress on compliance with regional frameworks and instruments. In 2021 the country enacted the data protection and privacy law, which is one of the recommendations under the African Union Convention on Cybersecurity and Personal Data Protection. The World Bank financial support is expected to increase access to digital services and skills and contribute to inclusion in the digital economy. The easing of the COVID-19 restrictions including the reopening of schools allowed students to pursue their studies after facing challenges with the remote learning programmes.

ARTIFICIAL INTELLIGENCE

Artificial Intelligence's application in various areas is growing in the country. AI has played a big role in the health sector. Unmanned aerial vehicles popularly known as drones are being used for blood delivery to rural hospitals and healthcare. Rwanda also hosts the Centre for Fourth Industrial Revolution that promotes artificial intelligence among other new technologies.81 In July 2021 the country launched a chatbot that provides all relevant information about COVID-19.82 Amid growing use of AI technologies there is a need to mitigate risks and ethical concerns the technology brings. The Ministry of ICT is developing an AI policy that will create a road map with objectives that will help the country to reap from the use of AI.83 The Ministry of ICT and stakeholders in the AI ecosystem have developed a priority area of "effective" Al policy in Rwanda.84 Priority areas are; the 21st Century skills and High AI literacy, Reliable infrastructure and Computer capacity, robust data strategy, trustworthy AI adoption in the public sector, widely beneficial AI adoption in the private sector, and practical ethical guidelines. 85 According to the Digital Transformation Centre, a local organisation that promotes collaboration between public sector, private sector, academia and civil society, the National AI policy is being developed by the government.

^{79.} World Bank 'Rwanda Economic Update: Accelerating Digital Transformation in Rwanda' (2020). https://documents.worldbank.org/en/publication/documents-reports/documentdetail/912581580156139783/rwandaeconomic-update-accelerating-digital-transformation-in-rwanda (Accessed on 15 January 2022).

^{80.} National Institute of Statistics Report (2019) https://www.statistics.gov.rw/publication/national-gender-statisticsreport-2019 (accessed on 15 January 2022).

^{81.} Ministry of ICT and Innovation, Inside Rwanda's Fourth Industrial Revolution', (2020) https://www.newtimes.co.rw/news/inside-rwandas-centre-fourth-industrial-revolution (accessed on 23 February 2022). 82. wanda Biomedical Centre, 'Rwanda Biomedical Centre launches RBC Mbaza', (2021), https://rbc.gov.rw/index.php?id=100&tx_news_pi1%5Bnews%5D=615&tx_news_pi1%5Bday%5D=23&tx_news_pi1%5Bm onth%5D=7&tx_news_pi1%5Byear%5D=2021&cHash=8a8c2ed1b2760f2b1c4919614bee0601(accessed on 23 February

^{83.} Digital Transformation Centre, 'How Rwanda Al policy helps to shape the evolving Al ecosystem' (2021), https://digicenter.rw/how-rwandas-ai-policy-helps-to-shape-the-evolving-ai-ecosystem/ (Accessed on 23 February 2022). 84. The Future Society, 'The Development of Rwanda's National Artificial Intelligence policy', https://thefuturesociety.org/2020/08/31/development-of-rwandas-national-artificial-intelligence-policy/ (Accessed on 30 March 2022).

^{85.} Digital Transformation Centre, 'How Rwanda Al policy helps to shape the evolving Al ecosystem', (2021), https://digicenter.rw/how-rwandas-ai-policy-helps-to-shape-the-evolving-ai-ecosystem/ (Accessed on 23 February 2022)



CONCLUSION

The state of digital rights and inclusion in 2021 was exacerbated by COVID-19 pandemic. The legislation on data protection and privacy is a positive development. However, online freedom of expression remains a challenge as documented arrests of online content producers show. This has raised concerns that the country's laws could be abused to prosecute suspects who are often government critics and online commentators. The report also highlighted the low access to internet, digital services in the education sector that led to inequalities, plus low smartphone ownership. It is anticipated that the adopted digital acceleration programme will address some of the digital gaps. The mass surveillance trend is worrisome and infringes on the right to privacy.



The state of digital rights and inclusion in 2021 was exacerbated by COVID-19 pandemic.

RECOMMENDATIONS

In view of the status of digital rights in Rwanda, the following recommendations are proposed.

The government should:

- Amend laws on genocide ideology and cybercrimes that appear to criminalize free speech, in compliance with international human standards.
- Allow online content producers to produce their content without any interference and any prosecution should be fair and transparent in accordance with international human rights standards.
- Accelerate efforts to address digital skills gap and prioritise programmes such as digital ambassadors to reduce the digital gender gap.
- Be transparent to ensure that rights to privacy of citizens are not violated in any surveillance practice.
- · Ensure proper law, procedures and human rights are respected in case of surveillance.
- Ensure legislative protection where there is the increased use of digital IDs to avoid any data privacy violation.
- Support persons with disabilities inclusion in education by increasing interventions in inclusive schools and rehabilitation centres.
- Address ICT use in education challenges by facilitating access to digital devices, affordable internet and increasing digital literacy programmes.

Civil Society organisations and the media should:

- Educate social media users to tolerate divergent opinions.
- Educate the public about Internet freedom, online freedom of expression, respecting other users and refraining from any form of abuse online.

SENEGAL

Senegal is a republic dominated by a strong executive branch. Although often cited as an example of democracy in Africa, human rights are often questioned due to certain violations. Among the human rights violations, those cited included the use of torture and arbitrary arrest by security forces, harsh and potentially harmful prison conditions, a lack of independence of the judiciary, the arrest of political opponents, and the restriction of freedom of expression to specific periods.

This report aims to provide an overview of the human rights situation and shortcomings in Senegal since the beginning of the COVID-19 in 2020. Therefore, the report look at the themes of privacy and mass surveillance, and the impacts of COVID-19 on places of deprivation of liberty, or freedom of expression on communication networks in 2021. Key recommendations are also made.







PRIVACY, DIGITAL IDENTITY AND MASS SURVEILLANCE IN SENEGAL

Personal data management has become a serious issue worldwide and legislation has become a relevant tool for the protection of personal data, in particular the right to privacy. Today, personal data is one of the most important assets traded in the private and commercial sectors as well as in the public sector, between law enforcement and surveillance agencies.

Aware of this, Senegal has had a law on personal data since 2008, Law No. 2008-10 of January 25, 2008 on the Information Society Orientation Law (ISOL) [https://www.cdp.sn/textes-legislatifs], one of the few African countries to have adopted such a law. In addition, it should be said that it is one of the first African countries to have signed the Malabo Convention of 2014 (23rd ordinary session of the AU summit) [Ibid].2

This agreement between member countries aims to strengthen confidence and security in cyberspace in Africa. Indeed, Senegal was the first signatory of this convention, followed by Mauritius in 2018. Massive and individual surveillance as well as tracking techniques are not without flaws, however, despite the monitoring carried out in this area. In this report, it will be appropriate to take stock of privacy, digital identity and mass surveillance in Senegal.



^{1.} https://www.cdp.sn/textes-legislatifs

^{2.} IBID



MOTIVATIONS FOR THE ADOPTION OF LAW NO. 2008-10 OF JANUARY 25, 2008 ON THE INFORMATION SOCIETY ORIENTATION LAW (LOSI)

This broad and comprehensive data protection law covers the collection, processing, transmission, storage and use of personal data by legal entities under public or private law. The law applies to all data processing in Senegal and in any place where Senegalese law applies.

The adoption of Law No. 2008-10 of January 25, 2008 on the protection of personal data covers different protection regimes and settles the question of institutional anchoring by creating an independent administrative authority responsible

for implementing the protection regimes.

This administrative authority, the Data Protection Commission (DPC), is the guarantor of privacy in the processing of personal data. Its role is to ensure that any processing of personal data complies with the law. Its responsibilities also include informing data controllers and data subjects of their rights and obligations, handling complaints, conducting audits and sanctioning data controllers who violate the law.

FROM A NATIONAL PERSPECTIVE

The use and exploitation of personal information is of paramount importance in today's society and is expected to increase in the future. As a result, states are threatened by the practice of surveillance. Senegal has adopted a set of legal provisions to regulate this practice.³

First of all, the Senegalese Constitution in its article 13 governs that:



"The secrecy of correspondence,
postal, telegraphic, telephone and
electronic communications is inviolable.
It can only be ordered to restrict this
inviolability in application of the law".

 $^{{\}it 3. (Texts\ available\ on\ this\ link: https://www.cdp.sn/textes-legislatifs)}\\$

The law N°2008-12 of 25 JANUARY 2008 on the protection of personal data regulates the surveillance and use of personal data.

Article 1:

The law ensures that ICTs do not infringe on privacy. "The purpose of this law is to set up a mechanism to combat breaches of privacy that may be caused by the collection, processing, transmission, storage and use of personal data."

It guarantees that all processing, in whatever form, respects the fundamental rights and freedoms of individuals; it also takes into account the prerogatives of the State, the rights of local authorities, the interests of businesses and civil society.

It ensures that Information and Communication Technologies (ICT) do not infringe individual or public freedoms, in particular privacy.

Article 18:

Declaration of any monitoring device to the CDP: "Apart from the cases provided for in Articles 17, 20 and 21 of this law, the processing of personal data is subject to a declaration to the Data Commission Personal".

The Commission shall certify receipt of any declaration. It issues, within one (1) month, a receipt that allows the applicant to implement the processing without, however, exonerating him from any of his responsibilities. This time limit may be extended once by the reasoned decision of the Commission.

The declaration, which conforms to a model established by the Commission, includes an undertaking that the processing operation meets the requirements of the law. However, only the receipt of the receipt shall entitle the implementation of a processing operation.

Article 33:

Consent: "The processing of personal data is considered legitimate if the data subject gives his consent."

However, this consent requirement may be waived when the processing is necessary:

- i) to comply with a legal obligation to which the controller is subject;
- ii) the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or the third party to whom the data are disclosed
- iii) for the performance of a contract to which the data subject is party or for the performance of precontractual measures taken at his request;
- iv) to safeguard the interest or the fundamental rights and freedoms of the data subject.

Article 34:

Unlawful collection: "The collection, recording, processing, storage and transmission of personal data must be lawful, fair and not fraudulent."

Article 35:

Data must be collected for specified, explicit and legitimate purposes and may not be further processed in a way incompatible with those purposes.

It must be adequate, relevant and not excessive in relation to the purposes for which it is collected and further processed. They must be kept for no longer than is necessary for the purposes for which they were collected or processed. Beyond this required period, the data may only be kept for the specific purpose of processing for historical, statistical or research purposes in accordance with the legal provisions.

Article 58:

Right to prior information: When personal data are collected directly from the data subject, the controller must provide the data subject, at the latest at the time of collection and regardless of the means and media used, with the following information:

- i) the identity of the controller and, where applicable, of his representative.
- ii) the specific purpose(s) of the processing for which the data are intended
- iii) the categories of data concerned.
- iv) the recipient or recipients or categories of recipients to whom the data may be disclosed.
- v) whether replies to the questions are obligatory or voluntary, and the possible consequences of failure to reply.
- vi) the possibility of requesting to be removed from the file;
- vii) the existence of a right of access to and rectification of data concerning him/her.
- viii) how long the data will be kept.
- ix) where applicable, any transfers of personal data envisaged to foreign countries.

Law N°2016-29 of November 08, 2016 amending the Penal Code: Art.363 bis: Of the invasion of privacy. These include:

- The invasion of privacy and the representation of the person by capturing image or sound;
- The endangerment of others, the false alarm.

In addition, in order to fight terrorism more effectively, it is imperative to modify certain offences and provide for new ones.

ON THE PROHIBITION OF UNLAWFUL RECORDING

Law N°2016-30 of November 08, 2016 amending the Penal Code: Art.90-11. - If the necessities of the search for evidence are so required, the investigating judge or the judicial police officer in the execution of a judicial delegation, may use the appropriate technical means to collect or record in real time the data relating to the content of specific communications transmitted by means of a computer system.

Therefore, the judge may oblige a service provider, within the framework of its technical capabilities and in the application of the existing technical means, to collect or record or to assist the competent authorities in collecting or recording such computer data.

PROCESSING OF PERSONAL DATA

Thus, the direct collection of personal data from users, the keeping of files, the recording, the simple handling of personal data, the consultation, dissemination, transfer of such data, storage, etc. constitute the processing of personal data. All companies processing personal data must scrupulously respect the terms of the law of January 25, 2008. However, this law excludes from its scope the processing of data by a natural person exclusively in the context of his or her daily or domestic activities, provided that there is no subsequent communication to a third party. Temporary or transitory technical copies are also excluded.

Examples of processing operations often carried out by companies include payroll, customer and prospect management, video surveillance, list of partners and suppliers, access control to premises, management of applications and hiring, management of telephone calls, and the news register.

Therefore, the CDP ensures that the processing of personal data is carried out in accordance with legal provisions. To do so, it does the following:

- · informs data subjects and data processors of their rights and obligations;
- ensures that information and communication technologies (ICT) do not pose a threat to the public freedoms and privacy of Senegalese citizens:
- approves the charters of use presented by those responsible for the processing of information or data;
- keeps a directory of personal data processing available to the public;
- advises persons and organizations that have recourse to the processing of personal data or that carry out tests or experiments likely to result in such processing;
- · presents to the government any suggestion likely to simplify and improve the legislative and regulatory framework for data processing;
- publishes the authorizations granted and the opinions issued in the directory of personal data processing;
- draws up a report on the processing of personal data;
- draws up an annual activity report submitted to the President of the Republic and to the President of the National Assembly;
- formulates all useful recommendations to ensure that personal data processing is carried out in accordance with the provisions in force;
- cooperates with the personal data protection authorities of third countries and participates in international negotiations on personal data protection.

LIMITATIONS AND IMPROVEMENTS TO CONTROL AND PROCESSING LAWS

Senegal has made significant progress in the monitoring and management of personal data. However, despite the legal framework for personal data processing, there are still gaps in the regulation of this sector.

For this reason, it is important to put in place new mechanisms to update the legal framework for personal data protection in Senegal.



REGISTRATION OF THE MOBILE SIM (SUBSCRIBER IDENTITY MODULE) CARD

The Director of the Regulatory Agency for Telecommunications and Posts (RATP) of Senegal, in his decision 2006-001 ART/DG/DRJ/DT/D.Rég of December 5, 2006 on the obligation to identify mobile telephone service subscribers, imposes in its first article: "Operators are required, at the time of subscription to the mobile telephone service, to identify their customers."

In addition, "they shall take all measures to oblige their distributors to carry out this identification before any sale of a mobile network smart card."

This policy is justified for reasons of public safety and peace of mind of citizens.

This decision does not refer to users' rights to access their data or to rectify errors in their data.

Operators are not obliged to inform users about the use and processing of their data. No information is given to users about procedures for deleting their data when they change operators, and RATP has not provided any response on this issue.

This law does not provide security for users of registered SIM cards and the right to be forgotten is not guaranteed. It, therefore, facilitates surveillance, but also monitoring and control of users by law enforcement authorities.



Operators are required, at the time of subscription to the mobile telephone service, to identify their customers.

THE IMPACTS OF COVID-19 ON DEPRIVATIVE MEASURE **OF FREEDOM**

While COVID-19-19 is still not eradicated and cases continue to increase in Senegal, the government has taken measures to reduce the number of cases. In 2020, the government took measures that affected the functioning of the justice system. Thus, the Minister of Justice had decided to suspend hearings in the country's courts and tribunals, starting March 16, 2020, for three weeks.

These measures have contributed to the overcrowding of prisons and the deprivation of liberty of people whose guilt has not yet been established. Ultimately, this undermined the effectiveness of the authorities' congestion relief measures.

EXCESSIVE USE OF FORCE

Security forces used excessive force in maintaining public order.⁴ In January 2020, a man died in police custody in the city of Fatick after reportedly being beaten by police. His autopsy findings that he died of "natural causes" sparked violent protests. The authorities then opened an investigation into the three police officers suspected of being responsible for the death.

In May, gendarmes used tear gas at a press conference held by youth in Cap Skirring to protest the lack of potable water in their town. At least two participants, a man and a woman, were seriously injured. In June, four people protesting the 2013 demolition of their homes in Gadaye on the outskirts of the capital Dakar were injured when police violently dispersed their rally.

 $^{4. \} https://www.amnesty.org/fr/location/africa/west-and-central-africa/senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal/report-senegal$

FREEDOM OF EXPRESSION ONLINE IN 2021: THE GOVERNMENT OF SENEGAL PLAN TO REGULATE SOCIAL NETWORKS

The communiqué of the Council of Ministers of the Government of Senegal of February 03, 2021⁵ [Council of Ministers of February 03, 2021, Government of Senegal (sec.gouv.sn)] announced that the President of the Republic has invited the Government to put in place a regulation and supervision system specific to social networks. According to the results of a new Afrobarometer survey in Senegal, the majority of citizens consider that social media facilitate the spread of false information and intolerance.6

However, even more believe that social media make people better informed and more effective citizens, and overall, the majority prefer unrestricted access.

The majority of Senegalese are in favor of limiting false information, false news and hate speech against the President of the Republic; but they oppose regulating access to social media and the internet.

However, the motives for the implementation of this device are questionable when you consider that the legal framework is existing.

Developed in 2016 and based on the following laws: Law No. 2016-33 on Intelligence Services, Law No. 2016-29 on the Criminal Code, Law No. 2016-30 on the Criminal Procedure Code, Law No. 2017-27 of July 13, 2017 on the Press Code, and Law No. 2018-28 of December 12, 2018 on the Electronic Communications Code, [JOURNAL OFFICIEL DE LA REPUBLIQUE DU SENEGAL] the current legal framework constitutes a real danger to freedom of expression online and the right of access to information but also to freedom of the press.



Also, this project of regulation of social networks could have as a consequence the reinforcement of the powers attacking the freedom of the press. The reasons given by the Head of State are to ensure the quality of programs broadcast on radio and television to strengthen social peace, national cohesion, the authority of the State and the interests of Senegal. But in the context of elections and political and social tension since the events of March 2021 and the prospect of presidential elections in 2024 in Senegal, it is doubtful of the good faith of this device, which seems to restrict the freedom of expression and social protest movements.

We know that social networks have allowed various political and social leaders a media presence that traditional media do not offer. Therefore, it is the treatment that journalists make of information on social networks that this device should address.

Faced with the discourse of citizens, civil society organizations, and opposition politicians who criticize government action and demand transparency, accountability, and good governance, those who claim to govern us are trying to legitimize the adoption of a legal strategy to control the way in which this information disseminated on the networks is treated by the mass media, namely radio and television.

^{5.} Conseil des ministres du 03 février 2021 | Gouvernement du Sénégal (sec.gouv.sn)

 $^{6\} https://a frobarometer.org/press/conscients-des-effets-positifs-et-negatifs-des-reseaux-sociaux-la-majorite-des-senegalais$

^{7.} JOURNAL OFFICIEL DE LA REPUBLIQUE DU SENEGAL

RECOMMENDATIONS

This report highlights that freedom of expression is a fundamental human right. Every citizen can therefore speak, write and print freely, except for the abuse of this freedom in cases determined by laws and regulations. The study found that restrictions on freedom of expression in the context of platform regulation are of the legislative origin or emanate from the will of public authorities.

States tend to infringe on freedom of expression through Internet blackouts, use of force, invasion of privacy through continuous surveillance of citizens, and blocking of Internet access. These methods of regulation used by the rulers can subsequently harm the rights and freedoms of citizens. The following recommendations to the government are pertinent:

- · There is a need for the government to update the legal framework for the protection of personal data. To do this, new legislation should be adopted and provisions made to adapt the legal arsenal to the digital ecosystem.
- There is a need for proper management of personal data in accordance with international standards.
- Government should ensure improved institutional frameworks for personal data protection and change the status of the personal data commission into a national regulatory authority.
- The government needs to constantly inform citizens about its surveillance practices, ensure respect for the right to privacy and personal data protection and defend against unjustified and illegal surveillance of communications.
- Ensure that any regulation of communications surveillance complies with the 13 international principles on the application of human rights to government communications surveillance.
- Ensure that the rights of cell phone subscribers with respect to their personal data are guaranteed in accordance with the Personal Data Protection Act 2008-2012.
- Establish a climate of trust, and serenity and focus on raising awareness about hate speech and disinformation.
- Invite the press to be responsible in the way they disseminate information obtained on social media platforms.

SOUTH AFRICA

This report captures the state of digital rights and inclusion in South Africa and notes developments. South Africa made several positive steps in developing policies that promote digital inclusion in 2021. This includes changes to the law to address online dimensions of gender-based violence.

Yet, there are serious barriers in implementing digital rights policies, ongoing challenges with disinformation and hate speech, and many continue to lack meaningful access to ICTs.







SOUTH AFRICA



South Africa has strong protections for human rights, but the legacy of colonialism and apartheid has left enduring racial and economic inequalities, and the country continues to grapple with high rates of poverty, unemployment, and gender-based violence. This is coupled with significant digital inequality, with about 64% of the population having access to the Internet. Nonetheless, in 2021 there were several developments in law and jurisprudence to adapt existing legal frameworks to advance digital inclusion and extend protections for digital rights.



POPULATION HAVE **ACCESS TO THE INTERNET**

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

South Africa subscribes to a range of regional and international frameworks that protect and advance various information rights – such as the International Covenant on Civil and Political Rights,² the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, and the African Charter on the Rights and Welfare of the Child (which recognises children's rights to privacy and freedom of expression, among others).⁵

^{1.} Digital 2021: South Africa (2022), https://datareportal.com/reports/digital-2021-south-africa (accessed 4 February 2022).

^{2.} International Covenant on Civil and Political Rights, https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf (accessed 6 March 2022).

^{3.} Universal Declaration of Human Rights, https://www.un.org/sites/un2.un.org/files/udhr.pdf (accessed 6 March 2022).

^{4.} African Charter on Human and Peoples' Rights, https://www.achpr.org/legalinstruments/detail?id=49 (accessed 6

^{5.} Articles VII and X, African Charter on the Rights and Welfare of the Child,

https://au.int/sites/default/files/treaties/36804-treaty-0014_-

_african_charter_on_the_rights_and_welfare_of_the_child_e.pdf (accessed 4 February 2022).



The African Commission on Human and Peoples' Rights 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa is also applicable. While there were no major developments in South Africa's compliance with these instruments in the year under review, its human rights record will be examined as part of the UN Human Rights Council's Universal Periodic Review in 2022. Notably, South Africa is yet to ratify the African Union's Convention on Cybersecurity and Personal Data Protection (the Malabo Convention), which provides various safeguards for privacy and data protection.8

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

In 2021, South Africa continued to operate under a National State of Disaster, which was declared in March 2020 after the first locally detected cases of COVID-19. As noted in the 2020 Londa report for South Africa, several of the South African government's policy responses to COVID-19 have implications for digital rights.

The Independent Communications Authority of South Africa (ICASA) released an emergency temporary spectrum to mobile operators in April 2020 to help reduce network congestion and help meet the spike in demand due to the COVID-19 pandemic. This temporary allocation of emergency spectrum continued through the end of 2021, allowing operators to pilot 5G networks and increase network capacity in high-demand areas.9 Other temporary measures also promoted digital inclusion, such as the zero-rating of certain health and education-related websites.

Unfortunately, and possibly in part due to preexisting challenges to digital inclusion, recent research suggests that disruptions to schooling resulted in South Africa's children losing up to 1.3 years of learning during the pandemic.10

However, other measures in the government's COVID-19 response have been less laudable in their impact on digital rights. Notably, the State of Disaster regulations include provisions that criminalise the spreading of disinformation about COVID-19.11 There appear to have been no documented cases of a person being charged or prosecuted for contravening this provision in 2021. However, COVID-19-related disinformation was the biggest source of reported content to Real411.org, a civil society-run platform to document and counter disinformation, which indicates the scale of challenges relating to disinformation in the pandemic.¹²

^{6.} Declaration of Principles on Freedom of Expression and Access to Information in Africa,

https://www.achpr.org/legalinstruments/detail?id=69 (accessed 8 March 2022). 7. United Nations Human Rights Council, Universal Periodic Review - South Africa,

https://www.ohchr.org/en/hrbodies/upr/pages/zaindex.aspx (accessed 8 March 2022).

^{8.} African Union Convention on Cybersecurity and Personal Data Protection

https://au.int/sites/default/files/treaties/29560-treaty-0048_-

_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf (accessed 4 February 2022).

^{9.} ICASA (2021) 'Three months grace period to allow licensees to wind down their use of temporary radio frequency spectrum', https://www.icasa.org.za/news/2021/three-months-grace-period-to-allow-licensees-to-wind-down-their-useof-temporary-radio-frequency-spectrum (accessed 2 February 2022).

^{10. 2030} Reading Panel, '2022 Background Report',

https://www.readingpanel.co.za/_files/ugd/e4cf67_fc97218559fb49dc9afd7942a81a4f61.pdf (accessed 8 March 2022). Section 14, Regulations issued in terms of Section 27 (2) of the Disaster Management Act 2002 (GNR 480 of 2020 to GNR.1659 of 2021) (accessed 2 February 2022).

Real411 Trends (n.d.), https://www.real411.org/trends (accessed 9 March 2022)

The emergency regulations also provide for extensive collection and retention of personal data of people who undertake the COVID-19 test. While the relevant provisions include commendable safeguards, such as a limitation on how that data can be used, and the establishment of oversight and reporting mechanisms, the whole regime has drawn criticism from human rights advocates, in part due to a lack of ongoing reporting and limited scrutiny from lawmakers and oversight bodies.¹³ Moreover, it is not clear to what extent the data collection provisions or the oversight mechanisms are in operation, if at all, which is cause for concern.

In October 2021, the Department of Health launched a digital coronavirus vaccine certificate, which fully vaccinated users can generate via a web portal. While there are no stipulations currently as to how the vaccine certificate would be used, at the time of its launch it was envisaged that the certificate would be used to grant access to certain venues and events for vaccinated individuals. While this initiative is still in the early stages of implementation, other jurisdictions have seen concerns that digital vaccine certificates create risks of digital exclusion; in the context of South Africa's digital divide, this matter will need to be monitored.

PRIVACY, DIGITAL IDS AND SURVEILLANCE

Data Protection

In July 2021, the provisions of South Africa's data protection law, the Protection of Personal Information Act (POPIA), came into effect following a one-year grace period for all relevant bodies to become compliant.¹⁶ This milestone comes seven years after the Act was first signed into law.

During the period under review, the Information Regulator, South Africa's data protection authority, developed the data protection framework further. It issued guidance notes on the processing of children's personal data,¹⁷ and "special personal information". 18 This is a category of sensitive data which is given extra protection under the law and it includes information such as details of a person's race, beliefs, health and sex life, biometric information or union membership.¹⁹ Despite the positive developments, there are still implementation challenges for data protection in 2021. Examples include: a ransomware attack on the Information Regulator's own IT systems in September 2021,²⁰ and a further data breach at Experian, a private credit agency, which had already reported a large data breach the previous year.²¹

^{13.} Hunter (2020) 'Track and trace, trial and error: Assessing South Africa's approaches to privacy in Covid-19 digital contact tracing'

https://www.researchgate.net/publication/350896038_Track_and_trace_trial_and_error_Assessing_South_Africa%27s_ap proaches_to_privacy_in_Covid-19_digital_contact_tracing (accessed 1 February 2022).

^{14.} Electronic Vaccination Data System, https://www.gov.za/covid-19/vaccine/evds (accessed 7 March 2022).

^{15.} Address by President Cyril Ramaphosa (2021), https://www.gov.za/speeches/president-cyril-ramaphosa-south-africas-response-coronavirus-covid-19-pandemic-30-sep-2021 (accessed 7 March 2022).

^{16.} Information Regulator South Africa (2021) '100 Day Countdown to be POPIA Compliant',

 $https://www.justice.gov.za/inforeg/docs/ms/ms-20210324-POPIA-Compliance.pdf \ (accessed\ 5\ February\ 2022).$

^{17.} Information Regulator South Africa (2021) 'Guidance Note: Processing Personal Information of Children',

https://www.justice.gov.za/inforeg/docs/InfoRegSA-GuidanceNote-Processing-PersonalInformation-Children-20210628.pdf (accessed 5 February 2022).

^{18.} Information Regulator South Africa (2021) 'Guidance Note: Processing of Special Personal Information', https://www.justice.gov.za/inforeg/docs/InfoRegSA-GuidanceNote-Processing-SpecialPersonalInformation-20210628.pdf (accessed 5 February 2022).

^{19.} Information Regulator South Africa (2021) 'Guidance Note: Processing of Special Personal Information', https://www.justice.gov.za/inforeg/docs/InfoRegSA-GuidanceNote-Processing-SpecialPersonalInformation-20210628.pdf (accessed 5 February 2022).

^{20.} Information Regulator South Africa (2021) 'Information Regulator's IT systems affected by a ransomware attack', https://www.justice.gov.za/inforeg/docs/ms/ms-20210913-ITsystems.pdf (accessed 5 February 2022).

^{21.} ITWeb (2021) 'Experian struggles to quell breach as data leaked again',

https://www.itweb.co.za/content/o1Jr5qx9OpbvKdWL (accessed 7 March 2022).

Surveillance

In February 2021, the Constitutional Court ruled that key provisions of South Africa's interceptions law, the Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA), were unconstitutional.²² The Court found that RICA failed to provide adequate safeguards against abuse, which created a chilling effect on the right to privacy, freedom of expression, and other rights. The matter was brought by the amaBhungane Centre for Investigative Journalism after evidence emerged that state intelligence operatives had spied on one of their journalists. The court ordered RICA to be amended to boost transparency, oversight and safeguards in state surveillance operations.

Unfortunately, despite this resounding judgment in favour of greater privacy protections, in particular for journalists, 2021 saw evidence of continued state harassment and spying of journalists. For example, in March the media company News24 lodged a complaint with the surveillance oversight judge, after receiving evidence that an investigative journalist who had reported on corruption within the police was being monitored.²³ While the outcome of this complaint has yet to be made public, it has underscored concerns that there will be patchy compliance with both the letter and spirit of the Constitutional Court's judgment.

In July 2021, South Africa was embroiled in global media exposés surrounding the controversial Pegasus spyware, which has been used by governments across the world to spy on dissidents, journalists, human rights actors and public servants.²⁴ Leaked documents suggested that South African President Cyril Ramaphosa was one of 14 heads of state apparently targeted by client agencies of the spyware. While the responsible party is unknown, and there is no evidence that South Africa itself was a Pegasus client, this incident underscored the dire need for better domestic and international protections against the trafficking and use of surveillance tools.

Digital ID

In early 2021, the Department of Home Affairs received public comments on a draft Official Identity Management Policy, which seeks to create an updated framework for the government's maintenance of data about the identities of its population.²⁵ Among other things, the draft policy was criticised for its state-security-centric approach, and for a proposal to collect biometric data of all infants registered in South Africa.²⁶

^{22.} AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC and Others (CCT 278/19; CCT 279/19) [2021] ZACC 3; 2021 (4) BCLR 349 (CC); 2021 (3) SA 246 (CC) (4 February 2021) (accessed 8 March 2022)

^{23.} News24 (2021) 'Rogue Crime Intelligence cops 'bug' News24 investigative journalist'

https://www.news24.com/news24/SouthAfrica/Investigations/breaking-rogue-crime-intelligence-cops-bug-news24investigative-journalist-20210308 (accessed 2 February 2022).

^{24.} News24 (2021) 'Ramaphosa one of 14 world leaders targeted in Pegasus spyware case - report '

https://www.news24.com/news24/southafrica/news/ramaphosa-one-of-14-world-leaders-targeted-in-pegasus-spywarecase-report-20210721 (accessed 2 February 2022).

^{25.} Home Affairs (2020) Draft Official Identity Management Policy, https://www.gov.za/sites/default/files/gcis_document/202101/44048gon1425.pdf (accessed 4 February 2022).

^{26.} Reuters (2021) 'Government's plan to record all babies' biometrics raises privacy fears',

https://www.iol.co.za/news/politics/governments-plan-to-record-all-babies-biometrics-raises-privacy-fears-e9a7c8cc-547d-5e0a-924c-d56c23cef5c4 (accessed 2 February 2022).

ACCESS TO INFORMATION

There were developments in legislation and jurisprudence that advanced access to information and transparency. In January 2021, the legal provisions requiring political parties to disclose all major donors and financial records finally came into force.²⁷ However, it should be noted that only a few political parties made financial disclosures to South Africa's electoral commission.²⁸ Further, in December 2021, the High Court found that public officials should also be required by law to disclose any donations they receive in internal party elections.29

In November 2021, the High Court also found in favour of media houses seeking access to taxcompliance records of former President Jacob Zuma, in short finding that a person's right to confidentiality about their tax affairs should in narrow circumstances be balanced with the public's right to know (for example, in this case a powerful politician who is believed not to have been fully tax compliant).30

These developments show strong policy moves towards greater access to information in the realm of politics and influence, which could promote greater accountability. However, as ever, these policies rely on better compliance and African civil society organisations have drafted proposed amendments to South Africa's access to information law to emphasise the requirement for proactive disclosure of information and seek to align the law with regional frameworks and best practice³¹

Another area where overall improvements to access to information and public participation should be noted is in the digitisation of the court system, after the judiciary fast-tracked a transition to virtual hearings and digital filing in 2020.³² The Department of Justice and Constitutional Development augmented these changes by developing draft rules for virtual court hearings in April 2021.33 This promising use of technology to enhance access to justice is welcome, though it underscores the urgent need for policies and programmes to address South Africans' unequal access to ICTs.



Finding that a person's right to confidentiality about their tax affairs should in narrow circumstances be balanced with the public's right to know.

^{27.} ALT Advisory (2021) 'President signs proclamation on the commencement of the Political Party Funding Act', https://altadvisory.africa/2021/01/27/president-signs-proclamation-on-the-commencement-of-the-political-partyfunding-act/ (accessed 4 February 2022).

^{28.} Independent Electoral Commission (2022), 'Electoral Commission issues Third Quarter Disclosure Report in terms of the Political Party Funding Act and Regulations', https://www.elections.org.za/pw/News-And-Media/News-List/News/News-Article/Electoral-Commission-issues-Third-Quarter-Disclosure-Report-in-terms-of-the-Political-Party-Funding-Act-and-Regulations?a=AISDGvpz75ps1usOfX7oiq3Rh9rH6i1aeCRCnFVG1BI= (accessed 9 March 2022). The IEC's most recent quarterly report noted that 11 parties had made funding disclosures, an increase from 3 and 6 parties in previous quarters.

^{29.} AmaBhungane Centre for Investigative Journalism NPC v President of the Republic of South Africa (55578/19) [2021] ZAGPPHC 813 (2 December 2021) www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAGPPHC/2021/813.html (accessed 1 February 2022). This case stems from a legal battle between South African President Cyril Ramaphosa and the Public Protector surrounding donations he received in the internal party election to become president of the African National Congress (ANC). The media outlet amaBhungane successfully argued in an amicus intervention that, irrespective of the outcome of the dispute, there should be a legal requirement for such donations to be disclosed.

^{30.} AmaBhungane (2021) 'Zuma tax case: five reasons why the panic over confidentiality is wrong', https://amabhungane.org/advocacy/211122-zuma-tax-case-five-reasons-why-the-panic-over-confidentiality-is-wrong/ (accessed 4 February 2022).

^{31.} Media Monitoring Africa and others (2021) 'Making South Africa's Promotion of Access to Information Act fit for $purpose\ in\ the\ digita\ l\ age',\ https://mediamonitoringa\ frica.org/democracy-governance/paia-reform/\ (accessed\ 10\ March\ 10)$

^{32.} The South African Judiciary (n.d.) About Courts Online, https://www.judiciary.org.za/index.php/court-online/aboutcourt-online (accessed 15 March 2022).

^{33.} E-rules: Draft Amended Uniform Rules (2021), https://www.justice.gov.za/rules_board/invite/20210309-E-Rules-AnnexureA.pdf (accessed 15 March 2022).

HATE SPEECH, MISINFORMATION AND CRIMINAL DEFAMATION LAWS

In July 2021, the Constitutional Court made a ruling which further developed jurisprudence on hate speech, in Qwelane v South African Human Rights Commission.³⁴ The Court affirmed that hate speech "is the antithesis of the values envisioned by the right to free speech – whereas the latter advances democracy, hate speech is destructive of democracy".35 However, its ruling noted that a healthy democracy requires a degree of tolerance towards expression or speech that shocks or offends. The Court ordered revisions to the Equality Act which had the effect of narrowing the definition of hate speech to exclude speech that is intended to be 'hurtful' but not harmful or inciting of harm.

The courts have also been called to examine other questions of online harm. For example, in 2021 the Equality Court started hearings on a harassment complaint brought by the South African Human Rights Commission against Mr. Anthony Matumba, a politician who is accused of posing as a white woman on social media and publishing a series of racist and derogatory posts about black women.³⁶ After various delays the case has continued into 2022, during which time Mr. Matumba was sworn in as a member of Parliament.³⁷

Perhaps most significantly, in July a period of violent civil unrest in parts of South Africa raised questions about the role of disinformation and incitement in sharpening political tensions and socio-economic frustrations in the country.³⁸ The unrest, which resulted in devastating violence, loss of life, and economic damage in parts of KwaZulu-Natal and Gauteng provinces, ostensibly resulted from popular outrage at a decision of the Constitutional Court to jail former President Jacob Zuma for contempt of court, following his refusal to appear before a judicial inquiry on corruption.



^{34.} ALT Advisory (2021) 'Constitutional Court rules on the constitutionality of the hate speech provision in the Equality Act', https://altadvisory.africa/2021/08/02/constitutional-court-rules-on-the-constitutionality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-activationality-of-the-hate-speech-actiprovision-in-the-equality-act/ (accessed 1 February 2022).

^{35.} Qwelane v South African Human Rights Commission and Another (CCT 13/20) [2021] ZACC 22; 2021 (6) SA 579 (CC); 2022 (2) BCLR 129 (CC) (31 July 2021) (accessed 10 March 2022).

^{36.} SAHRC (2021), 'Media Alert: SAHRC v "TRACY ZILLE" commences in the Louis Trichardt's Equality Court, Limpopo', https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2825-media-alert-sahrc-v-tracy-zille-commences-in-thelouis-trichardt-s-equality-court-limpopo (accessed 1 February 2022).

^{37.} News24, (2022) 'EFF councillor accused of using fake 'Tracy Zille' account sworn in as MP',

https://www.news 24.com/news 24/south a frica/news/just-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-account-in-eff-councillor-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-fake-tracey-zille-accused-of-using-of-using-of-using-of-using-of-using-of-using-of-using-of-using-of-using-ofsworn-in-as-mp-20220126 (accessed 1 February 2022).

^{38.} Report of the Expert Panel into the July 2021 Civil Unrest (2022), https://www.thepresidency.gov.za/content/reportexpert-panel-july-2021-civil-unrest (accessed 15 February 2022).

However, in hearings held by the South African Human Rights Commission investigating the causes of the unrest, a range of witnesses argued that the unrest was at least in part orchestrated by individuals and political factions supportive of Zuma, and fuelled by a pattern of disinformation and inciting messages on social media. In addition, several people were charged for incitement relating to messages allegedly posted to Twitter, Facebook, or WhatsApp.39

These events raise searching questions about the effectiveness of law enforcement in identifying and acting on legitimately harmful speech, the ability of digital platform companies and public bodies to coordinate, and the effectiveness (and localappropriateness) of disinformation and content moderation tools adopted by the digital platforms. These events will likely spur policy proposals to more aggressively police speech online, which could erode freedom of expression.

DIGITAL EXCLUSION IN SOUTH AFRICA AND ITS IMPACT ON HUMAN RIGHTS

Several major developments in South Africa highlighted concerns about digital exclusion and the role of multinational corporations in internet governance and inclusion.

After WhatsApp drew global criticism for privacy policy changes affecting its non-EU customers, South Africa's data protection authority, the Information Regulator, said it was considering litigation.40 WhatsApp's parent company, Meta, faced further criticism after it withdrew from a roundtable with South African members of Parliament to discuss content moderation, as well as the company's disinformation responses and privacy policies. This would have been the company's first appearance before an African legislature.41

The Competition Commission launched an inquiry into competition in the digital economy, with a focus on 'online intermediation platforms' such as eCommerce services, online classifieds, food delivery services and accommodation aggregators.⁴² Among other things, the Commission expressed interest in the extent to which dominant platforms, particularly those with a global reach, may affect small businesses' ability to participate in the economy. The Commission also expressed disappointment in the decision of certain global platforms not to participate.⁴³

A consortium of news publishers also approached the Competition Commission to make submissions on competition issues related to major digital platform companies such as Google and Meta,

^{39.} See News24 (2021) '#UnrestSA: Twitter's 'Sphithiphithi Evaluator' in court for allegedly inciting public violence', https://www.news 24.com/news 24/south a frical news/unrests a-twitters-sphit hip hith i-evaluator-in-court-for-all eged ly-evaluator-in-court-for-all egedinciting-public-violence-20210830 and Mail & Guardian (2021) 'Six 'instigators' arrested as 'insurrection' investigation in KZN and Gauteng gains momentum', https://mg.co.za/news/2021-07-20-six-instigators-arrested-as-insurrectioninvestigation-in-kwazulu-natal-and-gauteng-gains-momentum/ (accessed 4 February 2022).

^{40.} Reuters (2021) 'South African regulator seeking legal advice on WhatsApp's new privacy policy', 13 May 2021, https://www.reuters.com/world/africa/south-african-regulator-seeking-legal-advice-what sapps-new-privacy-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-2021-policy-05-13/ (accessed 1 February 2022).

^{41.} News24 (2021) 'Facebook refuses to appear before SA Parliament on its own', https://www.news24.com/fin24/companies/ict/facebook-refuses-to-appear-before-sa-parliament-on-its-own-20210525

⁽accessed 1 February 2022). 42. Competition Commission South Africa (2021), 'Online Intermediation Platforms Market Inquiry: Terms of Reference,' https://www.compcom.co.za/wp-content/uploads/2021/04/44432_09-04_EconomicDevDepartment.pdf (accessed 1

^{43.} Competition Commission South Africa (2021), 'Public Hearings for the Online Platforms Market Inquiry, https://www.compcom.co.za/wp-content/uploads/2021/10/PUBLIC-HEARINGS-FOR-THE-ONLINE-PLATFORMS-MARKET-INQUIRY-1.pdf (accessed 1 February 2022).

which brings a local dimension to a growing global question for the digital ecosystem.44

While these matters are expected to further play out in 2022, it is clear that addressing digital exclusion is likely to involve greater accountability and possibly regulation of dominant global platforms. It remains to be seen whether this will be achievable by South African policymakers.

DIGITAL INFRASTRUCTURE AND PRIORITISATION OF ICT

South Africa faces an enduring digital divide, with severely unequal access to ICTs and digital infrastructure which follow the contours of South Africa's other underlying inequalities, along the boundaries of race, class, gender, and geography.

Recognising the considerable shortfall between ambitions and delivery, in 2021 the Department of Public Works and Infrastructure released a draft National Infrastructure Plan 2050 for comment, with an ambitious vision for digital transformation in the coming 30 years. Its goals include universal access to highspeed internet, full digitisation of government services, and an ICTskilled society. 45 In a separate process, the Ministry of Communications and Digital Technologies published a draft National Data and Cloud Computing policy for public comment.⁴⁶ While the proactive development of policies to advance ICT infrastructure is to be welcomed, the framing in the draft policy of data as property or infrastructure, and less in terms of the implications for personal data, emerged as a noted concern in public responses.47

The high cost of internet and airtime continues to be a feature of the digital divide in South Africa, although these costs have declined following an inquiry by South Africa's Competition Commission in 2019, and South Africa's main network operators all announcing price cuts in 2021.48



^{44.} TechCentral (2021), 'SA publishers to drag Google, Facebook to the Competition Commission', https://techcentral.co.za/sa-publishers-to-drag-google-facebook-to-the-competition-commission/205495/2006.45. Draft National Infrastructure Plan 2050 (10 August 2021), https://altadvisory.africa/wpcontent/uploads/2021/08/National-Infrastructure-Plan-2050-released-for-comment.pdf (accessed 1 February 2022).

^{46.} Department of Communications and Digital Technologies (2021) Proposed Data and Cloud Policy, https://legalbrief.co.za/media/filestore/2021/04/44411_01-04_TeleCommunication.pdf (accessed 31 January 2022). 47. Research ICT Africa (2021), 'Submission on Proposed National Data and Cloud Policy',

https://researchictafrica.net/wp/wp-content/uploads/2021/06/RIA_Submission_DATA_and_Cloud_Policy.pdf (accessed 8 March 2022)

^{48.} ITWeb (2021) 'SA's big telcos take #DataMustFall trend further', https://www.itweb.co.za/content/LPp6V7rDkdmqDKQz (accessed 26 January 2022).

However, one of the most significant measures to address ICT costs and access in South Africa—a plan by South Africa's communications regulator to auction off 'high demand' spectrum to network operators⁴⁹— continued to face delays in 2021, due to protracted litigation by various network operators challenging procedural aspects of the process.⁵⁰ The delay is seen as a major obstacle to reducing prices and expanding high-speed networks.

By early 2022, the regulator indicated that it would proceed with the auctioning of high demand spectrum.⁵¹ In the event of further delays, it is likely that users will continue to bear the brunt of continued high costs and reduced access to ICTs.

In a positive policy development for digital inclusion for people with disabilities, South Africa's communication regulator published a Code for Persons with Disabilities, which mandates certain accessibility standards for broadcast media, telephony and internet service providers.⁵²

GENDER AND ICT

South Africa continues to grapple with severe challenges regarding gender equality, including deplorably high levels of gender-based violence, and a gender disparity in access to ICTs. There has been growing concern at levels of online gender-based violence in South Africa – for example, the 2021 World Press Freedom Index noted the online harassment of women journalists as a challenge to press freedom in South Africa.⁵³

However, in 2021 South Africa adopted several policy developments that bolster efforts to combat online gender-based violence.

In July, the President signed into law the Cybercrimes Act, and the first key provisions of the Act came into effect in December 2021. The Act creates several new criminal offences relating to online harms and provides for new forms of recourse for online- and technology-based crimes. For example, the Act explicitly criminalises the publishing or sharing of intimate images of a person without their consent and provides for a person who has been subject to malicious communication to seek a protection order.⁵⁴ The remaining provisions of the Act, which provide for the establishment of institutions and mechanisms to enforce the Act, and investigate and prosecute cybercrimes, have yet to come into effect.⁵⁵

Parliament also passed amendments to South Africa's Domestic Violence Act which makes provision, among other things, for survivors of domestic violence to apply online for a protection order, which – if implemented effectively – could reduce the administrative hurdles for survivors to get access to the recourse that is envisaged in law.⁵⁶ In addition, the amendments to this Act have expanded the definition of harassment to include various harms committed via electronic means; this signals a notable effort by South African lawmakers to create protections for vulnerable groups against online harms.

^{49.} ICASA (2021) 'ICASA issues an invitation to apply for high demand radio frequency spectrum,' https://www.icasa.org.za/news/2021/icasa-issues-an-invitation-to-apply-for-high-demand-radio-frequency-spectrum (accessed 26 January 2022).

^{50.} ITWeb (2022) 'Cell C, Vodacom join the fray as spectrum row escalates',

https://www.itweb.co.za/content/LPp6VMrD8kGvDKQz (accessed 26 January 2022).

^{51.} ICASA (2022) 'Brief on the process for the imminent auction of high-demand radio frequency spectrum', https://www.icasa.org.za/news/2022/brief-on-the-process-for-the-imminent-auction-of-high-demand-radio-frequency-spectrum (accessed 8 March 2022).

^{52.} ICASA (2021) 'Code for Persons with Disabilities', https://www.icasa.org.za/uploads/files/Code-for-Persons-with-Disabilities-Regulations-2021.pdf (accessed 8 March 2022).

^{53.} Reporters Without Borders (2021) 'South Africa', https://rsf.org/en/south-africa, (accessed 4 February 2022).

^{54.} The Cybercrimes Act (2020), s16 and s20.

^{55.} ALT Advisory (2021) 'President signs the Cybercrimes Bill', https://altadvisory.africa/2021/06/01/president-signs-the-cybercrimes-act/ (accessed 4 February 2022).

^{56.} ALT Advisory (2022) South Africa: President signs trio of GBV laws, https://altadvisory.africa/2022/02/07/south-africa-president-signs-trio-of-gbv-laws/ (accessed 5 February 2022).



Notably, the Domestic Violence Amendment Act also strengthens protections for other vulnerable groups, for example by explicitly extending its definition of domestic violence (both on- and offline) to include abuse of elders, children, and economically vulnerable members of a household.⁵⁷

NATIONAL ARTIFICIAL INTELLIGENCE STRATEGY

Though the Presidential Commission on the Fourth Industrial Revolution called in 2020 for a prioritisation of policy and skills development on Artificial Intelligence (including establishment of an AI institute focused on training and ensuring use of AI for positive social impact), progress has been slow. Flagship interventions include the establishment of South Africa's Centre for the Fourth Industrial Revolution, affiliated to the World Economic Forum, 59 and a pilot AI training programme funded by the German government.⁶⁰

Some legal protections do exist against misuse of Artificial Intelligence; for example, South Africa's data protection law, POPIA, includes limitations on automated decision-making based on the processing of personal information.61

However, there continues to be a lack of comprehensive policy to promote ethical use of AI and ensure human rights protections. This was underscored in early 2021 in the findings of an inquiry into racial discrimination in medical schemes: the inquiry found that, while it did not see evidence that the algorithms used by medical schemes contributed to trends of racial discrimination observed in their decisions on claims, there was an alarming lack of transparency in the working of those algorithms.⁶² Indeed, two of three companies before the inquiry did not have the capacity to assess the workings of their own algorithms. In the context of South Africa's severe social and economic discrimination, the lack of clear legal standards to ensure transparency and accountability in Artificial Intelligence is a major concern.

^{57.} Domestic Violence Amendment Act (2021), s1

^{58.} Report of the Presidential Commission on the 4th Industrial Revolution (2020), p 50,

https://www.gov.za/documents/report-presidential-commission-4th-industrial-revolution-23-oct-2020-0000 (accessed 15 March 2022).

^{59.} CSIR (n.d.), Centre for Fourth Industrial Revolution South Africa, https://www.csir.co.za/centre-fourth-industrialrevolution-south-africa (accessed 15 March 2022).

^{60.} Smart Africa (n.d.), South Africa: Artificial Intelligence, https://smartafrica.org/sas-project/artificial-intelligence/ (accessed 15 March 2022)

^{61.} Protection of Personal Information Act of 2013, s 71.

^{62.} Council of Medical Schemes, Interim Report of Section 59 Investigation (2021), https://cmsinvestigation.org.za/index.php/interim-report/ (accessed 15 March 2022).



CONCLUSION

Despite the significant challenges noted, there were hopeful developments for digital rights in South Africa in 2021. However, the hurdles of implementation, and continued lack of access for many ordinary South Africans, remain a concern. While the continued advancements in policy, law and jurisprudence are to be welcomed, South Africa's digital rights record tends to be strong on paper and weaker in execution.

The following recommendations therefore emerge:

- Policymakers, regulators and network providers must continue steps towards universal, affordable and secure access to ICTs for everyone in South Africa.
- Government and Parliament, in consultation with civil society, should review all emergency regulations relating to the Covid-19 pandemic, especially those pertaining to digital rights, and where necessary to repeal or revise these for the current state of the pandemic.
- Government and civil society should prioritise capacitating institutions, including the court system, the Information Regulator, the South African Human Rights Commission, and Parliament, to respond effectively to emerging digital rights questions and to ensure meaningful protections for the digital rights of more vulnerable and marginalised people.
- Policymakers should work to establish clear legal standards to ensure the ethical and accountable use of Artificial Intelligence, with wide public consultation and participation from academia and civil society.
- All relevant stakeholders should work to ensure further development of overall legislation, policy and jurisprudence that enhance digital rights and protections, and which advance the vision set out in South Africa's Constitution for a truly vibrant, responsive democracy in which all people participate meaningfully.

TANZANIA

The fuel for democracy is freedom of expression. This report examines internet rights in the United Republic of Tanzania 2021. The emphasis is on online freedom of expression, online freedom of association and assembly, online access to information, and the impact of COVID-19 on exercising these rights. Further, the report highlights the state of digital rights, the legal framework of digital rights at the international, regional, and national level, to which Tanzania is a signatory.

The thematic focus has covered impacts of COVID-19 regulations on digital rights and inclusion, freedom of expression online, freedom of online media, privacy, digital ID and surveillance, access to information online, hate speech, misinformation and criminal defamation, digital exclusion in Tanzania and its impact on human rights, digital infrastructure and prioritisation of ICT, Artificial intelligence and national strategy as well as gender and ICT. Key recommendations include advocating for the amendment of all repressive laws which adversely affect the enjoyment of digital rights in the United Republic of Tanzania.





INTRODUCTION .

TANZANIA



Tanzania is a country in East Africa with a population of 57.6 million, this is according to the Tanzanian National Bureau of Statistics. According to Trading Economics, the Gross Domestic Product (GDP) per capita in Tanzania was last recorded at 976.16 US dollars in 2020. The GDP per capita in Tanzania is equivalent to 8% of the world's average.² In 2003, Tanzania recognized the advancement of the ICT sector and the role it plays in the growth of the country's economy by formulating the

> National ICT Policy of 2003 with an overall mission, "To enhance nation-wide economic growth and social progress by encouraging beneficial ICT activities in all sectors through providing a conducive framework for investments in capacity building and in promoting multi-layered co-operation and knowledge sharing locally as well as globally." The country is making good progress in using ICT in its sectors. For instance, in December 2020 the government formed the Ministry of Information, Communication and Information Technology which is vested with the mandate of furthering Tanzania through the Fourth Industrial Revolution (4IR) commonly referred to as the digital economy.

THE GDP PER CAPITA IN TANZANIA IS EQUIVALENT TO OF THE WORLD'S AVERAGE

Further, the government has created a system through which customers can pay for public services via cards, internet banking and mobile money transfer. The system is called the Government Electronic Payment Gateway (GePG).

^{1. 2021 (}URT). 2020 Tanzania in Figures. National Bureau of Statistics. Ministry of Finance and Planning. https://www.nbs.go.tz/nbs/takwimu/references/2020_Tanzania_in_Figure_English.pdf

^{2.} https://tradingeconomics.com/tanzania/gdp-per-capita (Accessed on 23/2/2022)



Despite the ICT progress in the country, challenges were still witnessed in this sector. For the past five years, Tanzania had been under the regime of the Late President John Pombe Joseph Magufuli. During his term, many digital rights violations have been reported including shrinking of civic space, infringement of freedom of expression, suspension of online media, intimidation, threats and arrests of internet users, surveillance and data privacy, internet disruption, the proliferation of laws and regulations which infringe digital rights, etc. However, there is new hope for the new regime of President Samia Suluhu Hassan after it ordered the Minister for Information, Communication and Information Technology to reinstate the suspended online TV and newspapers with a condition to observe laws of the country.3

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Tanzania is a signatory to various international and regional instruments of human rights. These include the Universal Declaration of Human Rights (UDHR) which provides under Article 19 that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" and the International Convention on Civil and Political Rights (ICCPR). Article 19 of the ICCPR provides for freedom of expression.

At the regional level, Tanzania is a signatory to the African Charter on Human and Peoples' Rights (ACHPR).⁴ Article 9 of ACHPR provides for the rights of freedom of expression and access to information, stating "every individual shall have the right to receive information", as well as "the right to express and disseminate his [sic] opinions within the law." In 2016, the African Commission adopted a Resolution on the Right to Freedom of Information

and Expression on the Internet in which it recognized that privacy online is important for the realisation of the right to freedom of expression and to hold opinion without interference and the right to freedom of peaceful assembly and association.6

Tanzania has incorporated provisions relating to freedom of expression, privacy and personal security as well as freedom of association in its Constitution of 1977 under Articles 16, 18 and 20.



Tanzania is a signatory to various international and regional instruments of human rights.

^{3.} https://www.malunde.com/2021/04/Samia-Uhuru-Habari.html (Accessed 11/3/2022)

^{4.} Https://www.achpr.org/legalinstruments/detail?id=49

^{5.} https://www.ohchr.org/en/issues/freedomopinion/pages/standards.aspx (Accessed 26/7/2021)

^{6.} Centre for Human Rights MOOC (2021): The Right to Privacy in the Digital Age in Africa. Module 2; Overview of Legal Framework on Privacy



IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

As of January 19, 2022, Tanzania reported a total of 32,393 confirmed COVID-19 cases. The country only started releasing data on the disease in July 2021, after denying the spread of the pandemic in its territory for over a year. Online TV and other media houses which were previously suspended for publishing misleading content that contravened professional standards contrary to the Electronic and Postal Communications (Online Content Regulations of 2020) commonly referred as EPOCA Online Content Regulations were reinstated upon the declaration of the current president with a condition to follow the laws of the country.8 However, there is still a challenge since the same laws (EPOCA Online Content Regulations of 2020, Cybercrimes Act No 14 of 2015 and Media Service Act No. 12 of 2016) are still operating in the country without any amendments. The above-mentioned laws received some criticism that they contravene digital rights as well as the Constitution of Tanzania.

The Electronic and Postal Communications (Online Content Regulations of 2020) has introduced new legal requirements to bloggers, internet users and online media.

Some of these legal requirements threaten the rights to freedom of expression online, freedom of assembly and association online as well as right to privacy. For example, Regulation 4 which provides "a person shall not provide online content services without obtaining a licence from the Authority". However, the process of obtaining these licences is a long process and it requires that person to pay some taxes to Tanzania Revenue Authority (TRA). Therefore, this regulation restricts freedom of expression in the country. The regulation also restricts simulcasting, where Regulation 10 provides that "any mainstream content service provider with district or regional licence shall not simulcast content using online platform". Further, the Regulations impliedly restrict the use of VPN since Regulation 16 provides "(1) A person shall not publish any prohibited content as set out in the Third Schedule. (2) A person shall not render, possess or distribute technology, program, application or any other related thing that allows or helps users to have access to prohibited content". Additionally, the Regulation also contravenes the right to privacy by obligating internet café providers to install surveillance cameras to record and archive activities inside the cafe.9

^{7.} https://www.statista.com/statistics/1258560/confirmed-covid-19-cases-in-tanzania/ (Accessed 23/2/2022)

^{8.} https://ipi.media/new-tanzania-president-to-lift-ban-on-media-organizations/ (Accessed 11/3/2022)

^{9.} Regulation 13 (1) (d)

FREEDOM OF EXPRESSION ONLINE

According to section 16 of the Cyber Crimes Act, "any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public or councelling commission of an offence, commits an offence, shall on conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years or to both."

Regulation 14 of the Content Online Regulation 2020 provides that "every subscriber and user of online content shall be responsible and accountable for the information he posts in an online forum, social media, blog and any other related media"

The above-cited provisions were being used by the Authority to arrest online users who breached them. For example, Tanzanians began to speculate about President John Magufuli's health and whereabouts in March 2021.10 Many Tanzanian citizens took to social media with their questions and concerns. In response, the government issued threats of mass arrests to anyone who used social media to share false information about the President. Tanzania's 2015 Cybercrimes Act and the 2020 Electronic and Postal Communications (Online Content) Regulations were quickly invoked by authorities to arrest and detain those who violated its rules.¹¹ In the same month Innocent Bashungwa, Tanzania's Minister of Information, Culture, Arts and Sports, issued a warning specifically to the media to desist from spreading "rumours" about Magufuli's whereabouts, who had not been seen in the public eye since February 27 2021.12

FREEDOM OF ONLINE MEDIA

In 2021, two magazines and two media houses were suspended in Tanzania. Uhuru magazine owned by the CCM party was suspended for one month from 11 August 2021 for publishing what was called a false story stating President Samia Suluhu Hassan would not vie for presidential office in 2025. Uhuru was said to have breached professional standards and had violated sections of Tanzania's Media Services Act.13

On 6 September 2021 Raia Mwema magazine was suspended for 30 days and charged with false publication about the political situation in Tanzania.¹⁴ Wasafi Tv was suspended for six months from January to June 2021 due to broadcasting live content of naked artists. Also suspended was the Jahazi program of Clouds FM for 14 days due to broadcasting content using abusing language.¹⁵ All these incidents continue to restrict Tanzanians' enjoyment of freedom of expression, which is clearly in violation of international treaties to which Tanzania is a signatory.



Every subscriber and user of online content shall be responsible and accountable for the information he posts in an online forum, social media, blog and any other related media.

^{10.} Https://www.nytimes.com/2021/03/11/world/africa/magufuli-tanzania-president-covid-19.html

^{11.} Https://www.bbc.com/news/world-africa-56405313

^{12.} Https://www.bloomberg.com/news/articles/2021-03-09/tanzanian-opposition-leader-questions-president-swhereabouts

^{13.} https://www.voanews.com/a/africa_tanzania-suspends-second-newspaper-less-month/6219286.html (Accessed

^{14.} https://www.thecitizen.co.tz/tanzania/news/government-slaps-raia-mwema-with-a-30-day-ban-3538632

^{15.} https://nairobinews.nation.africa/wasafi-tv-banned-in-tanzania-for-six-months-video/ (Accessed 11/3/2022)

PRIVACY, DIGITAL IDS AND SURVEILLANCE

Concerns have been raised in Tanzania about the broad and excessive powers granted to state agencies (police) to search and seize computer disclosure of data without clear guidelines and proper safeguards. The interference with the oversight and accountability for communications interceptions, and provisions that allow for interception without a warrant are of concern.16 In Tanzania, for an interception to occur a warrant or order from a judicial officer is needed in order to conduct monitoring and interception of communications. However, this isn't the practice, even in circumstances where the law provides a limitation, wide and vague words are then used which are undefined or sometimes a warrant for interception can be made orally which provides grounds on which interception of communications can easily be conducted in Tanzania.

In breach of privacy, section 31 of the Tanzania Cybercrimes Act, 2015 gives powers to the police officer in charge of a station to search and seize or authorise the search and seizure of communication devices or data in conducting investigations without a warrant. On biometrics, it's not possible to register a SIM card unless the biometric information collected is verified against the National Identification Authority (NIDA) database, which was itself created under the Registration and Identification of Persons Act.

Additionally, the EPOCA Regulations are also criticised for breaching the right to privacy by requiring persons operating internet cafés to install surveillance cameras to record and archive activities inside the cafés.¹⁷ The same provision requires the registration of all customers of internet

cafes, who are required to produce a national ID card. Tanzania has no specific law in regards to data protection. However, recently the Minister of Information, Communication and Technology, Hon. Minister Nape Nauye (MP) stated, "There is a process which is going on of enacting data protection law and certain matters will be addressed within the law."

ACCESS TO INFORMATION

Tanzania continues to use autocratic legalism as an indirect way to prevent people from accessing and sharing content online, as a result of weak legislatures, and requiring long processes to be followed when accessing information for public use and hefty fines complimented with criminalisation of free speech.18 Despite the fact that Tanzania is a signatory and has ratified international and regional instruments as a commitment to adhere to the right to seek, receive and, or disseminate information,¹⁹ having laws that prohibit its people from enjoying that same right which is stipulated in the constitution is unconstitutional. For instance, the EPOCA Regulation 4 sets a mandatory requirement for everyone who wants to provide online content to secure a licence from TCRA failure of which would attract a fine upon conviction. This provision restricts people from receiving and disseminating information online, contrary to the Constitution. In 2020 and 2021 various online media/ channels and magazines were fined and others suspended for failure to comply with this provision. For instance, the banning of the Shule na Uongozi Youtube channel of Humphrey Polepole.²⁰ Similarly, the law punishes officials who improperly release information with prison terms, but there are no clear penalties for those who improperly withhold information. Therefore, the suspension of these media led to limited access to information.

^{16.} Https://bti-project.org/en/reports/country-report/TZA

^{17.} Rule 13 (1) (d) of the Electronic and Postal Communications (Online Content) Reguations, 2020

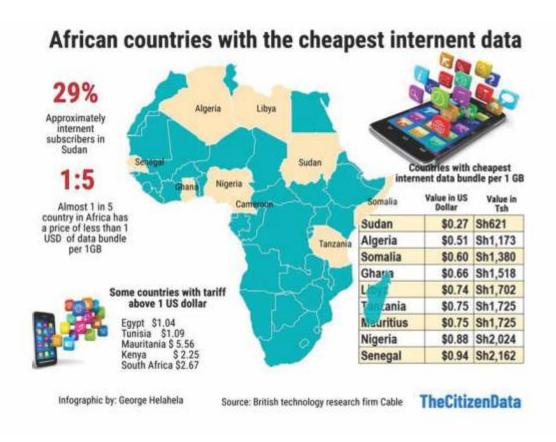
^{18.} https://www.article19.org/resources/tanzania-repeal-entire-online-regulations-2020/

^{19.} Article 18 (b) of the Constitution of United Republic of Tanzania

^{20.} https://www.thecitizen.co.tz/tanzania/news/tcra-suspends-shule-ya-uongozi-on-polepole-s-online-tv--

^{3656362#:~:}text=Dar%20es%20Salaam.,regulations%20in%20broadcasting%20online%20content. (Accessed 17/3/22)

Further, the cost for internet bundles for the year of 2021 has substantially increased. This limits the enjoyment of the right to access to information aAlthough statistics still show that Tanzania has the cheapest data bundles amongst East African countries. Sudan - with a population of more than 45 million and at least 13 million internet subscribers - is at par with Italy (\$0.27), but trails Israel (\$0.05), Kyrgyzstan (\$0.15) and Fiji (\$0.19) in the global rankings. African countries that charge mobile internet subscribers less than a dollar to browse the web and run mobile apps are Ghana (\$0.66), Libya (\$0.74), Tanzania (\$0.75), Mauritius (\$0.75), Nigeria (\$0.88), Cameroon (\$0.90) and Senegal (\$0.94).²¹



HATE SPEECH, MISINFORMATION AND CRIMINAL DEFAMATION

In 2021 in Tanzania, independent voices argued that the government frequently used fake news and hate speech as a pretence to prevent civil society organisations and opposition political actors from saying or accessing specific information²² in the lawsuit number 220/2018 where its judgement was offered on 28th October 2021.

Benard Membe sued Cyprian Musiba for allegedly accusing him, without proof, of sabotaging President Magufuli's efforts to bring about development for the people while claiming that one of the methods was in the carrying out of the run-up to the 2020 General Election in the early stages of approving the candidate for the position

^{21.} https://www.thecitizen.co.tz/tanzania/news/business/data-bundles-in-tanzania-cheapest-in-east-africa-3544188 (Accessed 11/3/2022)

^{22.} Https://www.tandfonline.com/doi/full/10.1080/1369118X.2021.1994623

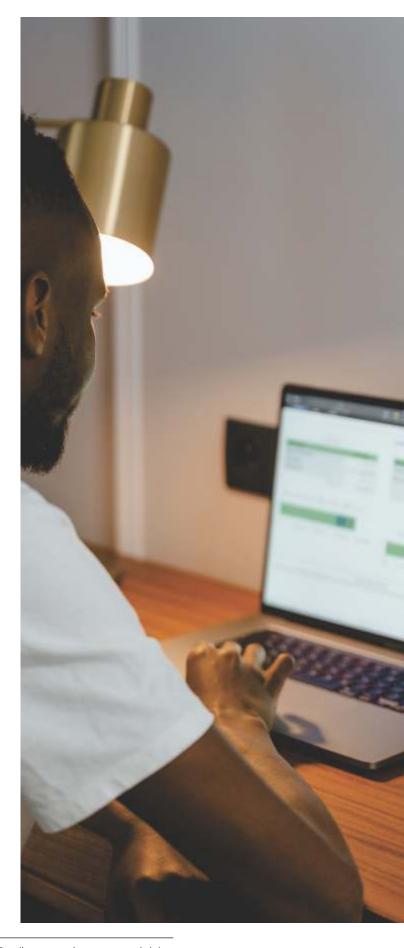
to represent the Chama Cha Mapinduzi CCM party. Msiba, who described himself as a 'free activist' claiming to defend the former President Dr John Pombe Magufuli, was also using his media to explain what he claimed was done by the government in power. Members claimed to have been tainted through the media, which led to the former Editor and other executives of the media, the 'Tanzanite newspaper' being included with Msiba in the case. Membe became Minister of Foreign Affairs in the five-term government under former President Jakaya Mrisho Kikwete, and became the Presidential Candidate of the United Republic of Tanzania in the 2020 General Election, on the ACT Wazalendo Party ticket. In the case, Benard Membe is demanding compensation of 10 billion shillings for his name being tarnished by what he claimed was a scandal against him.²³

DIGITAL EXCLUSION IN TANZANIA AND ITS IMPACT ON HUMAN RIGHTS

In Tanzania, the digital divide between urban and rural, low income and middle income is large. Currently the country is facing the following challenges which create digital exclusion in the country. These include challenges of internet disconnection, unstable connection, unavailability and unaffordability of hardware and software, unaffordability of internet bundles and digital literacy.

DIGITAL INFRASTRUCTURE AND PRIORITISATION OF ICT

Tanzania has seen considerable investment in fibre infrastructure in recent years. The governmentbacked National ICT Broadband Backbone (NICTBB) now extends over 7,500km in regions and districts across the country, and the Fibre Consortium (comprising Airtel, Tigo, Vodacom and Zantel) has constructed about 400 km of metro fibre in Dar es Salaam, Dodoma, Morogoro,



^{23.} https://watetezi.co.tz/hukumu-kesi-ya-membe-kuwadai-fidia-ya-bilioni-10-msiba-na-wenzake-yasogezwa-mbele/ (Accessed 11/3/2022)

Mwanza and Arusha, as well as over 1,500km of backbone fibre linking the major cities of Dar es Salaam, Dodoma, Arusha and Moshi. However, mobile technology has emerged as the key driver of digital transformation in the country. The technology enables last-mile connectivity for people without access to fixed network infrastructure, while the convenience and affordability of mobile devices, relative to other communications devices, enables personal connectivity to digital services. Mobile networks cover a wide area, making it a more cost-effective option relative to fixed-line technologies for connecting underserved areas, while rising smartphone adoption is allowing more people to use advanced, feature-rich digital services.²⁴

Despite the said efforts, the country is still experiencing some challenges with regards to digital infrastructure including unstable limited installation of cellular tower telecoms in remote/rural areas, unstable connection of communication and internet as well as limited power (electricity).

ARTIFICIAL INTELLIGENCE AND NATIONAL STRATEGY

Tanzania's technological push on Artificial Intelligence (AI) is gaining traction, and the country has now taken a step forward by investing in it, as evidenced by the recently opened laboratory in Dodoma. The Sh1.8-billion project multidisciplinary Artificial Intelligence for Development of Africa's Anglophone research lab at the University of Dodoma (Udom) in partnership with Nelson Mandela African Institution of Science and Technology (NM-AIST) is clear evidence.25

The AI laboratory is to allow Tanzania to realise its goal of creating and benefiting from a vibrant digital economy while also transforming the nation's manufacturing sector. In echoing Vision 2025, the late President Dr. John Pombe Magufuli emphasised during the inauguration of the 12th Parliamentary Session on 13th November 2020 the need of expanding the Broadband coverage to 80% by the year 2025. The Ministry of Information, Communication and Information Technology stated that in the 60 years of independence the industry has been developing, and currently has 270 registered newspapers and publications, more than 200 Radio, 48 Television Stations, 122 Blogs, more than 20 online radio and more that 500 online televisions.26

GENDER AND ICT

Tanzania is currently facing an undeniable challenge with few girls in the ICT field. This leads to a scarcity of women role models who have thrived in STEM (Science, Technology, Engineering and Mathematics) and ICT.²⁷While the Cyber Crimes Act protects women and girls from cyber bullying, child pornography and other online attacks, the number of women using online platforms is still low compared to their male counterparts. Zaina Foundation recently noted during one of its forums that this problem has worsened so much that most women Parliamentarians are not using social media to avoid cyberbullying. Quoting the speech of Hon. Neema Lugangira (Member of Parliament), "Currently we have about 143 – 145 women MP's in the current Parliament, but those who are active on social media are only 12 - 15 women MP's." 28

^{24.} GSMA Association (2019): Digital transformation in Tanzania. The role of mobile technology and impacts on development goals.

^{25.} https://africa.ai4d.ai/blog/introducing-ai4d-africas-anglophone-multidisciplinary-research-lab/

^{26.} https://habari.sokofind.com/2021/11/16/waziri-ashatu-aelezea-mafanikio-ya-wizara-ya-habarimawasiliano-nateknolojia-ya-habari-tangu-uhuru/ (Accessed 11/3/2022)

^{27.} https://news.itu.int/bridging-the-stem-and-ict-gender-gap-in-tanzania/ (Accessed 23/2/2022)

^{28.} This is a direct quote during her speech tendered during the US department on Democracy, Human Rights and Labour in short referred to as DRL Policy Shaping Workshop which was held in February 2022.



CONCLUSION

The right to freedom of expression in Tanzania was repeatedly violated in 2021. Online gender-based violence, suspension of the media, threats, intimidation and arrest of online users and government surveillance remain issues. A data protection law is yet to be enacted in Tanzania although the government through its Minister for Information, Communications and Information Technology has promised that the law formulation process is still ongoing. However, despite this situation, various state initiatives in promoting and protecting digital rights in the country are noteworthy such as the raising of citizens' awareness and the reinstatement of the suspended online media (Kwanza TV, Mwanahalisi).

In view of the issues raised in this report, there is a need for the following:

- There should be an establishment of a national coalition by civil society that will advocate for the review and amendment of the Electronic and Postal Communication (Online Content Regulations of 2020, Media Service Act No 12 of 2016 and the Cyber Crime Act No. 14 of 2015, etc. This coalition should necessitate the interest of citizens in terms of decision-making and accountability.
- Civil society organisations are urged to develop a strategic plan on how to advocate for digital rights and civic space in Tanzania.
- Digital rights organisations should create more platforms and forums which will offer more digital literacy and awareness to Tanzanians. They should focus mostly on raising awareness in rural areas and capacitating government officials (policy and lawmakers).
- The government through its responsible Ministries should work together with stakeholders in formulating a data privacy law.
- The government should ensure a safe and enabling environment that will enhance and motivate young girls and women to engage in ICT studies and the use of online platforms.
- The government should reconsider the licence fee for online users to be reasonable in order to allow low-income earners to enjoy their freedom and rights on online platforms.
- Telecommunications companies that provide internet services should reduce the cost of internet bundles to end-users.

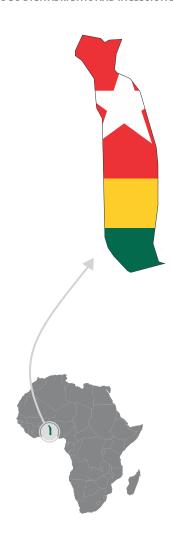
TOGO

"This closed space, cut up, monitored at all points, where individuals are inserted in a fixed place, where the slightest movements are controlled, where all events are recorded, where an uninterrupted work of writing connects the center and the periphery, where power is exercised without sharing, according to a continuous hierarchical figure, where each individual is constantly located, examined and distributed between the living, the sick and the dead." This impressionistic picture of the plague painted by Michel Foucault in 1975, in his essay "Surveiller et punir", has never been more acute than in the era of the health crisis in Togo.

Since the beginning of the pandemic, the fundamental principles of the law on the protection of personal data have been violated. These include the principles of the right to information, the right to access, the right to object, the right to rectification, deletion, and erasure, the right to update personal data after death and the transfer of data.

The report highlights violations of digital rights in Togo, from internet blackouts to cyber espionage and the introduction of new technologies creating exclusion of a segment of the population. In addition, the report reveals that there has been little communication about the massive collection of data related to the pandemic to allow citizens to take a stand. Only terse statistics related to the evolution of contact cases and deaths are regularly published by the government.









Togo, a coastal country in West Africa, shares borders with Ghana, Benin and Burkina Faso¹ and is home to just over 8 million people in 2022.² Although the poverty rate declined from 61.7% to 53.5% between 2006 and 2021, poverty and inequality remain very high, especially in rural areas where 69 per cent of households live below the poverty line.³

Togo's Human Capital Index (HCI) remains low at 0.41. This means that a child born today in Togo will reach only 41% of his or her potential as an adult in terms of health, education and nutrition. The government would like to increase the human development index to 0.554 by the end of 2022, as well as reduce the unemployment rate to 2.6% and the underemployment rate to 19.4%.

Despite an unfavourable international environment, marked by crystallisation of trade tensions and the persistence of the security threat, the Togolese economy has maintained its good performance in recent years with growth driven by the confirmed recovery of public investment, the expansion of activity in the construction sector, and improved agricultural productivity.⁵ The COVID-19 pandemic could limit the economic momentum of recent years.

https://fr.countryeconomy.com/pays/togo#:~:text=Le%20Togo%2C%20avec%20une%20population,146%20personnes %20par%20km2

 $https://www.banquemondiale.org/fr/country/togo/overview\#: \sim : text=Pays\%20c\%C3\%B4tier\%20d'Afrique\%20de, urbain\%20(26\%2C5\%25)$

4.

https://www.tg.undp.org/content/togo/fr/home/presscenter/pressreleases/2019/lancement-rapport-2019-sur-ledeveloppement-

 $humain.html\#:\sim text=Quant\%20 au\%20 Togo\%2C\%20 la\%20 valeur,\%C3\%A8 me\%20 rang\%20 sur\%20189\%20 pays$

5.

https://www.togofirst.com/fr/economie/1504-7671-togo-le-taux-de-croissance-economique-2020-en-hausse-par-rapport-aux-previsions

^{1.} https://www.gallimard.fr/Catalogue/GALLIMARD/Bibliotheque-des-Histoires/Surveiller-et-punir

[.]

⁷⁰²⁰pai 7020i

Being the only country in West Africa that has never experienced a peaceful and democratic political changeover since its independence in 1960, Togo began a slow and difficult process of democratization in 1990. Today, the political system can be characterized as a republic in transition to democracy.

The ruling party, the Union for the Republic (UNIR), has dominated the Togolese political scene since 2013. It holds 59 of 91 seats in the National Assembly following the 2018 legislative elections. President since 2005, Faure Gnassingbé remains one of the oldest heads of state in the West African sub-region in terms of longevity in power.⁶

2012-2022, A DECADE OF LAWS AND VIOLATIONS

The Togolese Constitution of October 14, 1992 lays the foundations of confidentiality and guarantees each citizen "respect for his private life, his honour, his dignity and his image". In addition, Article 29 states that "the State quarantees the secrecy of correspondence and telecommunications. Every citizen has the right to the secrecy of his correspondence and his communications and telecommunications".

Drafted in 1992 and then amended by the revision of May 8, 2019, this Constitution came into being at a time when human rights were beginning to assert themselves and when the democratic conditionality of development aid was still a palpable reality to which the French-speaking African states were trying to adapt.

However, it is worth noting that these provisions of the fundamental law, while remaining a general statement of faith in the principle of privacy, are nonetheless explicit enough to be interpreted to the benefit of the citizen who is the victim of an online violation. But, in spite of this, the judges up to now interpret this fundamental law in a primary sense, not taking into account the digital era and the Internet revolution. This fundamental interpretation remains very attached to the generalities of the inviolability of private correspondence.

The secrecy of communications and telecommunications in the strict sense was mainly attached to telephone and radio communications. They can allow the judge to establish a link with respect to the private life of individuals online, even if an update of this article is indeed desirable. However, the recent constitutional revision in 2019 did not take this into account.



The State guarantees the secrecy of correspondence and telecommunications. Every citizen has the right to the secrecy of his correspondence and his communications and telecommunications.

^{6.} https://www.lemonde.fr/afrique/article/2020/05/03/au-togo-faure-gnassingbe-investi-president-l-oppositioncontinue-a-contester-l-election_6038504_3212.html

https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/38025/110367/F-1481961433/TGO-38025%20(VERSION%20CONSOLIDEE).pdf

It should be noted, however, that a legal framework has been built on the issue of digital law in Togo since 2012. First of all, there are texts that regulate the information society and the electronic communications sector in general, but most recently texts that are now interested in digital rights have been adopted.

Law No. 2019-014 of October 29, 2019 on the protection of personal data regulates the collection, processing, transmission, storage and use of personal data.8 It applies to individuals, the State, local authorities, legal entities under public or private law, as well as to automated or nonautomated data processing carried out on the territory of Togo or in any jurisdiction where Togolese law applies.

According to this law, the rights of the persons concerned are access to information, the right of opposition, the right to rectification and deletion of personal data and the right to erasure.

However, in Togo, digital rights are still a new reality and this notion was not necessarily assimilated into human rights at the beginning. There is a great deficiency related to the knowledge of their rights by citizens, even if in recent years, we are witnessing a strong interest of the legislator and the government in the digital issue, not for the sake of protecting the citizen, but rather for the sake of adopting the policies of the State to the digital policies and also to comply with the regional trend of fighting for digital freedoms in African countries.

INTERNET BLACKOUTS

On June 25, 2020, the Community Court of Justice of the West African regional bloc, ECOWAS (Economic Community of West African States), ruled that internet blackouts in Togo during antigovernment protests in September 2017 were illegal and violated freedom of expression.9 The court also called on the Togolese authorities to take all necessary measures, including the adoption of laws and policies that are consistent with human rights to prevent a recurrence. A few months before this conviction, Togo had passed a law on the protection of personal data.

Although this law sets out the legal and institutional framework for personal data protection, it is clear that the state's extensive prerogatives lead it to make decisions on data protection that are not well received. Since this data is kept on a large scale, the risks and effects of its misuse are also vast. The dark side of the digital spectrum not only threatens privacy and security, but also jeopardizes free and fair elections and jeopardizes freedom of expression, information, thought and belief, and hides the truth under false information.

INCREASING ATTACKS ON HUMAN RIGHTS DEFENDERS

The news in this area continues to be occupied by blatant violations of the online privacy of citizens. Between 2019 and 2021, several reports and investigations referred to state-led cyber espionage activities targeting political leaders, journalists, and Catholic clergy.¹⁰

In August 2020, an investigation by Le Monde, The Guardian and Citizen Lab revealed that two Togolese Catholic clergymen, Benoît Alowonou and Father Pierre Chanel Affognon, had been targeted through a WhatsApp vulnerability exploited by NSO Group through its highly sophisticated spyware called Pegasus. These voices that criticised the power of President Faure Gnassingbé unknowingly suffered interruptions of

^{8.} https://jo.gouv.tg/sites/default/files/JO/JOS_29_10_2019-64E%20ANNEE-N%C2%B026%20TER.pdf#page=1

 $^{9.\} https://www.amnesty.org/fr/latest/news/2020/06/togo-envoie-un-message-clair-que-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-internet-les-coupures-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontaires-volontair$

 $^{10. \} https://www.lemonde.fr/afrique/article/2020/08/03/au-togo-un-espion-dans-les-smartphones_6048023_3212.html$

their smartphones during 2019.

Pegasus is a digital weapon developed and sold to states by the Israeli company NSO Group Technologies, officially to fight terrorism and serious crime. In Togo, it has been used against Catholic clerics, civil society activists and opposition politicians.

Another investigation by Amnesty International and several media outlets in the Forbidden Stories network reported later in 2021 that more than 300 Togolese numbers appear on the list of potential targets of the Israeli spyware, Pegasus. These numbers include political leaders, associations and journalists.¹¹

In the last quarter of 2021, yet another Amnesty International investigation revealed that the notorious group of hackers Donot Team also used fake Android applications and spyware-infected emails to attack a well-known Togolese human rights defender, with the aim of illegally placing him under surveillance.12

According to the investigation report, this is the first time Donot Team spyware has been identified in attacks outside of South Asia. The investigation also uncovered links between the spyware and the infrastructure used in these attacks, and Innefu Labs, an India-based cyber-security firm.

Innefu Labs does not have a human rights policy and does not appear to implement human rights due diligence - despite the enormous risks its products pose to civil society.



^{11.} https://www.dw.com/fr/togo-journalistes-espionnage-pegasus/a-59338602

^{12.} https://www.amnesty.org/en/latest/news/2021/10/togo-activist-targeted-with-spyware-by-notorious-hacker-group/

RESTRICTING THE SPACE FOR ONLINE **IOURNALISTS TO OPERATE IN 2021**

In late 2021, two journalists, Ferdinand Ayité and Joël Egah, were arrested and jailed in Lomé prison for their online opinions.¹³ They are accused of comments made in "The other newspaper", a very popular news and debate program broadcast on YouTube by the web TV of the newspaper "The Alternative". In the course of the discussion, two ministers, who were not named, were linked to embezzlement. In Togo, the Press Code has not provided for a custodial sentence since 2004, but since the events took place on a "social media network," the prosecution considered that the facts fell under common law.

Although the two journalists were released on New Year's Eve, they are now under strict judicial supervision. The directors of the newspaper L'Alternative and Fraternité have been deprived of their passports, ordered not to leave the country, forced to visit the judge once a week, and not to publish or broadcast apologies to the two ministers targeted by their remarks. These measures were deemed "despicable" by their lawyer, Mr. Elom Kpade.

COVID-19, THE STATE OF HEALTH EMERGENCY AND VACCINATION DATA

In order to contain the pandemic that is devastating the world, the Togolese government, with the support of the legislator, adopted particularly derogatory measures.

The purpose of these measures was to suspend the ordinary rules in order to apply other "obviously less liberal rules, which lead to a greater concentration of power and restrictions on fundamental rights".

The Togolese legislator, relying on the theory of

"extraordinary circumstances" enshrined in article 94 of the constitution of the Fourth Republic, hastily adopted a law on which the entire derogatory regime will have its basis, notably the state of health emergency.

Therefore, the government is allowed to take "any measure" in order to prevent and limit the consequences of possible threats to the health of the population. The use of this phrase, which is particularly extensible and even unpredictable, deserves attention. It would seem that the Togolese government has been given a blank check.

In the name of the right of exception, many freedoms have been alienated by the accumulation of new regulations adopted in a panic, to the detriment of an overall reflection, in an unprecedented global context. Thus, the freedom to come and go on the national territory was restricted by the requirement of confinement of the population in certain cities considered close to the opposition, notably Tsévié, Sokodé and Aného.

Privacy, which includes the protection of personal data, was and continues to be abused despite the mandatory introduction of the vaccine among the Togolese population.

In fact, in order to control the spread of the virus, two prejudicial measures, such as quarantine and tracking of patients, were endorsed by the law requiring patients, travellers and citizens wishing to be tested to register on the government's online platforms, for which no law governs the management of personal data and the responsibilities of the holders of such data.

The launch of the TogoSafe tracking application for travellers was widely discussed as being an invasion of privacy.14

 $^{13. \} https://www.ifj.org/media-centre/news/detail/article/togo-deux-journalistes-arretes-et-detenus-pour-avoir-critique-linearity. The statement of the stat$ des-ministres.html

^{14.} https://numerique.gouv.tg/lancement-de-togo-safe-une-application-mobile-pour-lutter-contre-la-propagation-de-lacovid-19-au-togo/



This data-gathering intensive application uses the Bluetooth function of its user's phone to alert them when they have been in contact with someone who has tested positive for the Coronavirus. To do this, the application relies on the Bluetooth connection data of the user's Coronavirus-positive phone to identify the various people with whom the user has been in contact. The recommendations provided by the experts for transparency in the collection and management of data by the application are still unheeded by the government.

For example, it is necessary to ensure that the downloading and use of a tracking application is truly voluntary and that no citizen refusing to use it can suffer any disadvantage (for example, being denied access to a good or service). Also, other recommendations had proposed that the source code of this application be published beforehand, in order to give a reasonable time to experts to check its functioning. Two years after its launch, there are no reports on the impact or effectiveness of the TOGOSAFE application.

The same is true for the https://voyage.gouv.tg platform launched to dematerialise the management of travellers at the Lomé Airport.¹⁵ The personal data collected by the platform is transferred to other government entities, notably the immigration services, without the user being informed beforehand. Filiation information, notably the name of the traveller's parents, is also collected without any use, whereas before the pandemic, travellers could only travel with the information recorded in their biometric passports and travel documents and an immigration form whose information was strictly related to the trip.

However, in a state governed by the rule of law, these infringements of fundamental freedoms cannot be carried out without any framework. The legislator requires that the adoption of these derogatory measures be motivated, "proportionate to the risks incurred and appropriate to the circumstances of time and place" in order to limit the consequences of possible threats to the health of the population.

^{15.} https://numerique.gouv.tg/ouverture-des-frontieres-aeriennes-voyage-gouv-tg-lance-pour-digitaliser-la-gestion-desvoyageurs-a-laeroport-de-lome/

In Togo, the establishment of the Personal Data Protection Authority (PDPA), which is an application of the law on the protection of personal data, has been slow in coming into being. And as long as the implementation of the Authority is delayed, data breaches related to COVID-19 will continue to occur.

WHAT ABOUT ARTIFICIAL **INTELLIGENCE?**

The use of digital solutions by the Togolese government is growing. Indeed, even if Togo has considerably enriched its legal framework to adapt it to the digital revolution, the issue of artificial intelligence is still under the carpet. However, artificial intelligence, although not yet having a clearly defined legal or regulatory framework, is increasingly used in the fight against COVID-19, in defiance of the most basic human rights rules.

This is the case of the "Novissi" system, which was put in place by the Togolese government at the time of the first sanitary restrictions. 16 This system, in its first phase, had used data from the basic data of biometric voter cards without the consent of users, to the great indignation of political actors who had considered this a lack of inclusion, because the establishment of these biometric cards had been surrounded by controversy against the backdrop of a boycott by opposition militants.

The very use of this data at the time, without the intended beneficiaries' affirmed consent to the use of the collected electoral data for this purpose, was itself a violation of Article 14 of the Personal Data Protection Act.

The telephone data of the inhabitants were sifted without their knowledge: frequency and duration of calls, amount of credit available on the telephone, etc.

This algorithm, which was made operational without the user's consent, presented several biases that led to other violations and situations of inequality:

- The use of telephone data de facto excludes the rural population that does not use cell phones, as they lack the means to access them.
- · The telephone data do not indicate the real precariousness of the targeted populations.
- Mobile money services are not available in rural
- Operators have transferred their clients' data to the State without informing or asking for their consent as prescribed by law.

In addition to these very real dangers (underregulation, regulation, and deliberate abuse), we are also experiencing unprecedented risks to the right to privacy. The guarantees of privacy are floundering in too many cases. Many people are completely unaware of who holds their data and how it is being used.

This situation, in which the Togolese government communicates very little or not at all, seems to reveal the Togolese state's eagerness to hide existing disparities.



Given that the issue of artificial intelligence is unclear in Togo, the lack of a clear definition is likely to open the door to even greater abuse.

^{16.} https://novissi.gouv.tg/

RECOMMENDATIONS

In light of the various violations of citizens' digital rights in recent years, it is important to make some recommendations to the various stakeholders, including the Togolese government.

Regarding the collection of data related to the pandemic and the use of new technologies, the government must:

- Take into account all international human rights standards that may be affected by the use of tracking technologies, artificial intelligence, etc. to ensure compliance with internationally accepted standards;
- Ensure the temporary nature of the devices concerned: they had to end as soon as possible and no later than September 16, 2021, as provided by the law concerning the state of emergency;
- Consider the possibility of also using other means besides artificial intelligence in order to ensure the inclusion of everyone and to keep the voluntary nature of the TOGOSAFE application and the publication of the application's source code;
- Minimise the collection of unnecessary data related to PCR tests;
- Make only the following personal data accessible to the persons authorized to check the documents (border authorities): surname, first names, date of birth of the person concerned as well as the positive or negative result of the possession of a compliant document, excluding, in particular, the nature of the document (vaccination, negative test, certificate of recovery);
- Evaluate existing data protection laws to determine whether they sufficiently protect the right to privacy and the right to data protection in the context of pandemics and government crisis management;
- Take measures to introduce legislative and regulatory provisions framing the use of new technologies, in particular artificial intelligence, taking into account human rights achievements;
- Conduct an evaluation of the respect of human rights by all past, present and future systems based on Artificial Intelligence and being deployed to the public by the Togolese government and its partners;

- Inform and consult with Internet and human rights stakeholders on the deployment of public solutions;
- Provide all the information that is necessary for individuals to understand when and how technologies are used, particularly in the context of public services;
- Comply with the legal and regulatory provisions and the existing principles of transparency on the award of contracts for services or supplies in the field of data management;
- · Enforce existing legislation where necessary to comply with the State's obligation to protect individuals from human rights violations committed by State entities or providers;
- Take steps to ensure that all relevant regulatory bodies have access to sufficient expertise, have received appropriate training on new technology systems and their human rights implications, and have the financial and other resources they need to effectively carry out their functions;
- Prevent and mitigate the risks of discrimination associated with the use of new technologies for groups that are at increased risk of having their rights disproportionately affected by these systems;
- Allowing each user, at any time, to self-delete data on the mobile app on the central server by unsubscribing and uninstalling the app and PCR testing data.



The Government must evaluate existing data protection laws to determine whether they sufficiently protect the right to privacy and the right to data protection in the context of pandemics and government crisis management.

TUNISIA

In 2021, Tunisia commemorated a decade since the uprising protests that toppled the 23year-rule of the autocratic former president Ben Ali. While crucial reforms affecting digital rights took place during this last decade, major gaps in the legislation remained in effect at a time when the country witnessed major setbacks to online freedom of expression following the president's announcement of exceptional measures on July 25, 2021.

The report provides an overview of Tunisia's current digital rights environment, focusing on freedom of expression and the right to access to information, the national laws used to repress it, as well as the country's adherence to international and regional commitment to the protection of human rights.







The Republic of Tunisia covers an area of 163,610 km2, and shares borders with Algeria and Libya. Following the overthrow of a longstanding dictatorial regime, in 2011 Tunisia began the transition to democracy. However, on July 25th, 2021, the President proclaimed the dismissal of the Prime Minister, a freeze of the elected parliament, and his ruling by decree. The announcement has fueled growing concerns about the country entering a major political crisis.

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Tunisia is co-signatory to several international and regional treaties and conventions, such as the International Covenant on Civil and Political Rights (ICCPR) and the African Union's Convention on Cyber Security and Personal Data (Malabo Convention). Article 20 of the Tunisian Constitution reiterates the State's engagement to international treaties adopted and ratified by the Assembly of the Representatives of the People. It establishes the primacy of international treaties over domestic legislation. However, in its sixth periodic report of Tunisia, the Human Rights Committee expressed concerns that the Tunisian courts rarely apply such treaties.1

The legal framework in Tunisia comprises several texts that are in contradiction with the provisions of signed treaties. For instance, for violations of International Human Rights law, defamation and slander are criminalised under the Penal Code and subject to prison sentences.



THE LEGAL FRAMEWORK **IN TUNISIA COMPRISES** SEVERAL TEXTS THAT ARE IN **CONTRADICTION WITH THE PROVISIONS OF SIGNED** TREATIES.

^{1.} Human Rights Committee Concluding observations on the sixth periodic report of Tunisia (27 March 2020) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshmKtQJn68GxgXXTdAYdq%2ft twMVHhGRP3qVL6wOK3YX6MZZqQmxEb2zWM7SDcgF%2bASrTCdzjmayBB05%2f9feUIKejNt7OszprXjfceSMUNC%2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM2fQNCM



Moreover, guidelines from the African Commission on Human and Peoples' Rights (ACHPR), mandated to interpret the African Charter on Human and Peoples' Rights ratified in Tunisia in 1983, state that military courts should not "under any circumstances whatsoever exercise jurisdiction over civilians." However, while Article 110 of the Constitution stipulates that "military courts are courts of competent jurisdiction for military crimes", civilians continue to be prosecuted before military courts, as laws in force have not yet been amended in accordance with the provisions of Article 110 of the Constitution.

FREEDOM OF EXPRESSION ON THE INTERNET IN 2021

In 2021, Tunisia witnessed an alarming increase in the number of prosecutions against journalists, political activists, and social media users for the content they shared online. Amid the protests that broke out in January 2021, on the 10th anniversary of Tunisia's revolution, hundreds of protestors were detained, some for their online activity, and a number of activists were targeted through online harassment and physical attacks as a result of their social media posts on the protests. Protesters further used social media to document the disproportionate response taken by security forces.²

Following the July 25th presidential takeover, the military courts were increasingly used by the Presidency to press charges for "insulting the president" and "slandering the army". According to an Amnesty International statement, over three months, between July 25 and November 2021, the military justice system investigated or prosecuted as many as ten civilians.

To contextualise, the statement reads that in the seven years between 2011 and 2018, human rights organisations documented only six cases of civilians brought before the military justice system.

Freedom of expression is protected under article 31 of the Constitution's Rights and Freedoms chapter which is one of the two chapters of the Constitution remaining in force after the publication of the presidential decree No. 2021-117 of September 22nd, 2021, on exceptional measures.

Decree 117 includes several major measures:

- · It suspended the Constitution with the exception of its preamble and the first two chapters, relating to general provisions and to rights and freedoms;
- It gave the possibility for the President of the Republic to legislate in all areas with no possibility of appealing against the unconstitutionality of decree laws.



The measures enshrined in this decree grant the President of the Republic unprecedented confiscatory power by the president, with no institutional controls.

^{2. &}quot;Injured Tunisian protester dies, fuelling new clashes". Reuters, January 25, 2021, https://www.reuters.com/article/ustunisia-protests-idUSKBN29U2HP

ACCESS TO INFORMATION

In April 2021, Tunisian Minister of Health Faouzi Mehdi issued a ministerial order threatening sanctions against doctors and health workers issuing unauthorised statements about the COVID-19 pandemic in the media or online. The order faced backlash from civil society actors, who accused the government of censorship and of attempting to falsely portray the country's public health situation.3

In December 2021, Article 19, an international human rights organisation criticised the government for removing private media outlets from accessing press conferences, and curbing journalists from addressing questions to the president. The organisation called out the Presidency's approach of refraining from holding press conferences and giving interviews, restricting Tunisians' right to access to information and to free and pluralistic media.⁵

Access to information has been enshrined in the Constitution under Article 32. Decree-law No. 115 on freedom of the press, printing, and publishing also states under Article 9 that "it is forbidden to impose any restriction impeding the free circulation of information, or which prevents equal opportunities between the various media outlets in obtaining information, or that would impede the citizen's right to a free, pluralistic and transparent media."

In 2016, Parliament voted for the Organic Law on the Right to Information No. 22 of 2016. The law regulates, amongst others, government bodies, public agencies, and organisations and entities that receive government funding, among others.



^{3.} Amnesty International Tunisia: Rescind ministerial order censoring health workers over Covid-19 (2021) https://www.amnesty.org/en/latest/news/2021/04/tunisia-rescind-ministerial-order-censoring-health-workers-overcovid19/ (Accessed on 15 January 2022).

^{4.} Article 19 Tunisia: The President must guarantee free press and access to information (2021) https://www.article19.org/resources/tunisia-the-president-must-guarantee-free-press-and-access-to-information/ (Accessed on 15 January 2022).

It requires all of these entities to publish specific types of information, including policies and programs that concern the public, regulatory text governing activities, and certain types of statistical data all on a website that is updated at least once every three months.

Under this law, an "Access to Information Commission" consisting of nine members elected by the Parliament for six-year terms was formed in 2017. Members include judges, a journalist, a representative of The National Authority for the Protection of Personal Data, and a representative of Associations active in the fields related to the right of access to information. While law No. 22 might have shortcomings regarding the specification of deadlines for appeal, it has generally been praised in the region as a progressive step. However, the implementation of this law remains limited for several reasons, including poor understanding of this right, lack of resources and a penchant to overrely on exemptions stated in the law including "damage to security or national defence", as well as Protection of Personal Information.



CONCLUSION AND RECOMMENDATIONS

The findings presented in this report point to increased restrictions of Tunisians' digital rights, compared to the previous year. Legal loopholes continue to be used to restrict freedoms, interfere in the judicial process, and stifle critics. The following recommendations are made:

- The government must withdraw the prosecutions of journalists and internet users over opinions shared online.
- The government must reform the legal framework including the penal code, the telecommunication code and the military justice code as well as undertake more efforts to protect the citizens' rights within the digital sphere.
- The government and civil society organisations are urged to collaborate in increasing joint efforts to raise awareness over the right to access information, the implementation of the relevant law and its procedures.

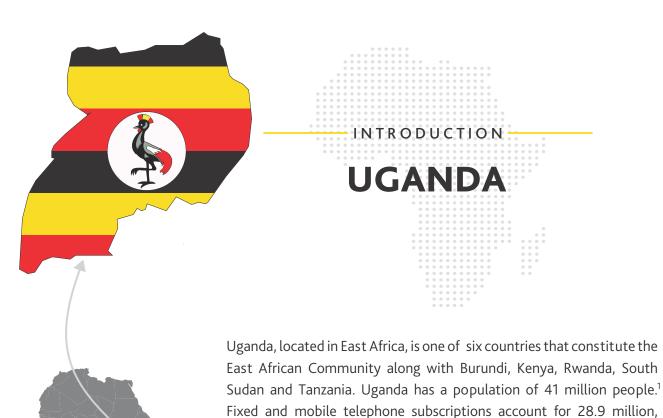
^{5.} Article 19 Tunisia: The President must guarantee free press and access to information (2021) https://www.article 19.org/resources/tunisia-the-president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information/president-must-guarantee-free-press-and-access-to-information-guarantee-free-press-and-access-to-information-guarantee-free-press-access-to-information-guarantee-free-press-access-to-information-guarantee-free-grand-guarantee-free-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-free-grand-guarantee-grand-guarantee-grand-guarantee-grand-guarantee-grand-guarantee-grand-guarantee-grand-guarantee-grand-guarantee-grand-guarantee-grand-guarantee-grand-guarantee-grand-guarantee-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-grand-(Accessed on 15 January 2022).

UGANDA

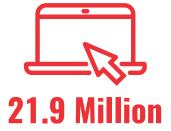
The year 2021 saw some positive advances for digital rights in Uganda, although it may be said they may not have amounted to much. The abolition of the Over-The-Top tax which was replaced by an excise duty on data is a case in point. The government tightened their grip on social media further controlling freedom of speech in the country. This is largely due to the fact Ugandans generally rely on social media as an avenue for their free expression. In 2020, when measures were introduced to mitigate the spread of COVID-19, we began to witness the infringement of the principles that protect digital rights, namely internet access and affordability, Freedom of expression and right to information, privacy and data protection. The violation of these rights continued, albeit not because of the enforced measures against COVID-19. More recently, violations have mostly infringed on freedom of expression, with several individuals arrested and detained for purported online attacks on high ranking government officials.

Freedom of expression online was the most violated digital right in 2021, with several individuals arrested, charged and detained over supposedly offensive communication, computer misuse, and other charges. Despite prolonged school closure, the government of Uganda made no interventions to facilitate access to the Internet; the only available and most secure means for education and business. Moreover, e-learning left the less privileged at a disadvantage as they had no access to online classes. The report makes a number of recommendations directed at government, Parliament, civil society and the private sector in Uganda to address the continued clawback on the enjoyment and realisation of online freedoms in the country.

The report urges the government of Uganda to stem misinformation and disinformation through deliberate collaboration and partnerships with other stakeholders rather than resorting to clamping down on free expression. Further, the report enjoins the government to keep online spaces open and accessible to ordinary citizens as the basic foundation for the enjoyment of digital rights. The report calls upon the Parliament of Uganda to enact legislation that creates conditions and boundaries that define circumstances that may warrant the disruption of online access. In addition, the civil society community is urged to strengthen their advocacy initiatives for greater internet freedoms and free speech, as well as to empower citizens to identify misinformation and disinformation. Lastly, the report calls upon the private sector to implement data privacy protection measures that ensure the safety and security of private data in their possession.







UGANDA INTERNET SUBSCRIPTION

Uganda Communications Act 2013, the Anti-pornography Act, 2014, the Regulation of Interception of Communication Act 2010, the Registration of Person Act, 2015, the Nita-U Act (Act No. 4 of 2009) and the Electronic Signatures Act 2011 (Act No. 7 of 2011). As the Financial Year 2020/21 came to an end, the Government introduced a host of tax amendments affecting the sector, including:

- the abolition of the Local Excise Duty on Over-the-Top Services (OTT),
- the introduction of a new excise tax on data services, and
- the revision of Value-added Tax (VAT) on telecom Value Added Services.

^{1.} Uganda Household Survey Report, 2019/2020, https://www.ubos.org/wpcontent/uploads/publications/09_2021Uganda-National-Survey-Report-2019-2020.pdf, (accessed on 19 January 2022)

^{2.} Tele density refers to the number of phone connections available per 100 people within a given geographical area.

^{3.} Uganda Communications Commission Blog, New Report: 29m use phones, 22m on internet, 14-09-2021, https://uccinfo.blog/2021/09/14/new-report-29m-use-phones-22m-on-internet/ (Accessed on 19 January 2022)

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Uganda is party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Rights of Persons with Disabilities (CRPD), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and the African Charter on the Rights and Welfare of the Child (ACRWC). However, being a state party to these international and regional instruments, and having domesticated them into national legislation has not insulated citizens from violation of various rights including freedom of expression, the right to privacy, access to information and protection from discrimination.

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

During the course of 2021, the country remained under lockdown with pre-primary, primary and secondary schools closed. According to Unicef⁴ Uganda's schools recorded the longest COVID-19 induced closure of schools. While government COVID-19 prevention guidelines recommended online classes and the use of radio programmes, and printed materials, given the lack of access to smartphones, computers, poor networks and the high costs of data, multitudes of learners were closed out of the education system.

FREEDOM OF EXPRESSION **ONLINE IN 2021**

As observed in 2020, measures introduced to mitigate the spread of COVID-19 infringed internet access and affordability, freedom of expression and access to information, privacy and data protection. While in 2020, these rights were violated under the guise of COVID-19 measures enforcement, the violations continued into 2021 on account of committing offenses including defamation, criminal libel and offensive communication, and promotion of sectarianism.

In 2021, freedom of expression online was greatly threatened, notably through the use of The Computer Misuse Act, 2011 and the penal code. Those charged under this law included online publishers, bloggers, writers and ordinary netizens. On December 28 2021, plain-clothed gunmen arrested renowned novelist and political activist Kakwenza Rukirabashaija, taking him to an unknown destination. The situation seemed to be linked to a tweet from December 27 appearing to ridicule the first son and commander of the Land Forces, Lt Gen Muhoozi Kainerugaba. Before he was arrested, Rukirabashaija tweeted: "I'm under house arrest. Men with guns are breaking down my door. They say they're policemen but are not in uniform. I've locked myself inside." ⁵ At the close of 2021, Rukirabasaija was still in custody, incommunicado and had not been arraigned in any court of law, nor had his family or legal representatives been granted communication.

^{4.} Unicef, Uganda, School at last | UNICEF Uganda, (Accessed on 3 APRIL 2022)

^{5.} Nilepost Political activist Kakwenza arrested after calling Gen. Muhoozi obese

http://nilepost.co.ug/2021/12/29/political-activist-kakwenza-arrested-after-calling-lt-gen-muhoozi-obese/

This was the third time he was being arrested in the last two years, following arrests in April and September 2020, on account of his political writing.6

PRIVACY, DIGITAL IDS AND SURVEILLANCE

Throughout the year, there were concerns about data protection and data privacy in Uganda. The Data Protection and Privacy Act 2019 (DPPA) was passed into law in 2019, giving effect to the right to privacy under Article 27(2) of the 1995 Constitution of the Republic of Uganda. In March 2021, the Data Protection and Privacy Regulations, 2021 were passed and approved. The regulations provide additional provisions aimed at protecting digital privacy. However, according to a report published by Unwanted Witness, evidence on the ground shows the majority of Ugandans are not guaranteed those rights in daily practice.

A report released November 5th 2021 by Unwanted Witness, titled "A Privacy Policy Scorecard Report: The Scorecard Approach," reveals glaring gaps in most Ugandan organizations' compliance with data protection and privacy laws. The average company score assessed was 35%, a worrying start for compliance with Uganda's Privacy and Data Protection Act, in a wider, already troublesome context of governmental digital rights suppression and digital surveillance. More than half of the organizations assessed had robust data security, and 40% complied with privacy best practices.

However, when it comes to providing users with information before collecting their data, indicating the third parties with whom that data will be shared, and disclosing how much data will be provided to those parties (including the government and law enforcement), the organizations perform poorly across the board.⁷

The report argues that there are gaps in digital privacy in Uganda, and without stringent compliance with data protection and privacy rules, as pointed out by the report, both government and corporations are indeed at risk of violating citizens' rights. On the brighter side, CSOs in Uganda, petitioned the National Information Technology Authority (NITA-U) over SafeBoda, a motorbike taxi-hailing company that did not have a privacy policy. SafeBoda made effective changes and has one of the best privacy policies today as a result.



Ndaga Muntu is Uganda's national digital ID. It was primarily conceived to address national security concerns with a focus on fighting terrorism and illegal employment, creating an inclusive and human-centric identification system that assures all citizens and non-nationals access to social and basic services without exclusion or discrimination.

Unfortunately, the system has fallen short of its aspirations and instead exacerbated already existing exclusions. The inability to obtain a digital

^{6.} Chimpreports Uganda security arrest writer Kakwenza Rukirabashaija https://chimpreports.com/uganda-security-arrest-writer-kakwenza-rukirabashaija/ (Accessed 20 January 2022) 7. Unwanted Witness, titled "A Privacy Policy Scorecard Report: The Scorecard Approach https://global voices.org/2021/12/17/despite-updates-in-legislation-organisations-in-uganda-struggle-with-data-properties of the control ofprotection-and-privacy-compliance/

ID has grave ramifications for the enjoyment of basic human rights and services. The situation is even more dire for women who consequently face barriers in accessing public health facilities and the elderly who cannot access social security as they cannot provide their date of birth, and age. There are however, several other services such as applications for a passport or driving license, opening a bank account or even registering a sim card that by law require a national ID or a National Identification Number (NIN).

In March 2020, the Minister of Internal Affairs, in a statement to Parliament of Uganda revealed that at least 16.8 million Ugandans aged 16 and above registered with the National Identification and Registration Authority (NIRA) had not accessed their National Identity Cards.8

ACCESS TO INFORMATION

The abolition of the unpopular OTT tax, however, did not amount to much, as this tax was simply disguised as an excise tax on data services, of 12%. This keeps data costs high and might potentially affect online access for some populations unable to afford to] use as much data as they would like to stay online. This law, enacted in 2018, was criticized for undermining the efforts to increase access to and affordability of ICTs by a large majority, thus denying a large population access to critical information and citizen participation in democratic processes. Within the first year of the social media tax, Uganda lost five million internet subscriptions due to the negative effects of the tax.¹⁰

INTERNET DISRUPTIONS

The year kicked off with a bout of internet disruptions. In the run-up to the January 2021 general elections, Facebook shut down several supposedly 'fake and duplicate' accounts that the social media network claimed had been connected with the Ministry of ICT to impersonate users and boost the popularity of posts.¹¹



^{8.} Daily Monitor, 17m Ugandans have no national IDs - government, 5 March 2020

¹⁷m Ugandans have no national IDs - government | Monitor

^{9.} https://www.independent.co.ug/parliament-passes-12-tax-on-internet-data/ (Accessed on 20 January 2022)

^{10.} https://cipesa.org/2019/01/%ef%bb%bfsocial-media-tax-cuts-ugandan-internet-users-by-five-million-penetration-down-

^{11.} PCTECH Facebook Confirms Shutting Down Government-linked Accounts (pctechmag.com) (Accessed 13 January 2022

In a televised address, hours later, President Museveni accused Facebook of being arrogant and instructed the government to close the platform, along with other social media outlets. Speaking at the time of the closure, the government spokesperson, revealed that the "government of Uganda would maintain its shutdown of the Internet, Facebook, Twitter and other social media platforms, until the government deemed it safe to be used to inflame tensions", adding that the government was analyzing the situation and sites would be restored on "a case-by-case basis." Four days after the elections, the internet and other social media sites apart from Facebook resumed operations.

In June 2021, a senior government official was quoted saying that "Facebook had been restored". However, many individuals can to this day still not access either, unless accessed through a costly VPN. It is not clear why the government made the false claim about re-opening Facebook. The shutdown continues to affect people running and promoting their businesses on the platform.¹²

HATE SPEECH, MISINFORMATION AND CRIMINAL DEFAMATION LAWS

Earlier in the year, a magistrate court on 27th May 2021 remanded two journalists, Pidson Kareire and Darious Magara of Drone Media and the East African Watch respectively, to Kitalya Prison on charges of criminal libel and offensive communication, contrary to section 179 of the Penal Code Act. The prosecution alleged that the pair and others at large, published defamatory stories about road construction company, Dott services Ltd. between October and November 2020 in Kampala and thereabout by means of online platforms Drone Media and East African Watch.¹³

The story challenged the company's ability to build quality roads linking Uganda to Democratic Republic of Congo. However, said stories stemmed from a debate in Parliament regarding Dott Services' performance. The charges against the two journalists were on 17 December 2021 withdrawn by the Director of Public Prosecutions.¹³

On November 4 2021, a group of about seven people in plain clothes kidnapped a journalist, Pidson Kareire, the Managing Editor of The Drone Media, who they tortured for a week before they arraigned him before Buganda Road Court. He was charged with offensive communication and criminal defamation. The abductors claimed he had defamed Deputy Speaker of Parliament, Anita Among.14 The case was adjourned to January 2022.15 On 7 March 2022, the case came up for mention at Buganda Road Court but was further adjourned.¹⁶



^{12.} Anadolu Agency https://www.aa.com.tr/en/africa/ugandan-government-quietly-restores-facebook/2281259# (Accessed 13 January 2022)

^{13.} Human Rights Network for Journalists https://hrnjuganda.org/?tag=pidson-kareire (Accessed 10 January 2022

^{14.} The Drone Media Thugs kidnap, torture journalist in the name of police - The Drone Media (Accessed 0 January 2022

^{15.} Human Rights Network for Journalists https://hrnjuganda.org/?p=9356 (Accessed 10 January 2022

^{16.} Update provided by Ms. Diana Nandudu, Legal Officer, Human Rights Network for Journalists on 18 March 2022

In a separate incident, 58-year-old blogger, Ibrahim Tusubira aka Isma Olaxess, was arrested on November 21, and appeared before court on November 24 to answer charges of promoting sectarianism contrary to section 41(1) (a) and (d) of the penal code. According to his prosecutors, on 17 November 2021, Tusubira recorded and published "a video with utterances degrading, reviling, exposing to hatred or contempt; raise discontent or disaffection and promoting in many other ways feelings of ill will or hostility among or against any group of persons on account of religion". In the viral video, Tusubira urged terrorists to bomb Parliament and churches so as to kill Christians in revenge for what he called "continued persecution of Moslems". The video was recorded in the aftermath of four bombings in two months that led to the death of nine people.¹⁷

DIGITAL EXCLUSION IN AFRICA AND ITS IMPACT ON HUMAN RIGHTS

A 0.5% levy imposed on all mobile money transactions under the Excise Duty (Amendment) Act 2018 continues to lock many out of the digital economy. This law remains in effect. Furthermore, this tax was introduced during the prolonged school closure, noted as the longest education institutions closure globally, 18 a period during which students were being taught online. These online classes left many children of low-income families without education.

Moreover, a June 2021 report¹⁹ Chased Away and Left to Due: How a National Security Approach to Uganda's National Digital ID has led to Wholesale Exclusion of Women and Older Persons shows how the national ID has led to mass exclusion, shutting out as many as one third of Uganda's adult population and has become a barrier for women and older persons, as well as many other marginalised individuals, in accessing their human rights. The report argues that the Ugandan government has sacrificed the potential of digital ID for social inclusion and the realization of human rights at the altar of national security.

Section 66(2) of the Registration of Persons Act, 2015²⁰ sets mandatory prerequisite of having an identification number issued by the government of Uganda to enjoy a wide range of key services including;

- issuance of a passport, or drivers license,
- registration of a mobile phone number/sim card,
- opening bank accounts,
- purchase, transfer and registration of land,
- transactions pertaining to pensions and health insurance and
- application for public government services.

Consequently, millions of people that have no national identification number/card have been excluded from accessing services and enjoyment of basic rights.



The report argues that the Ugandan government has sacrificed the potential of digital ID for social inclusion and the realization of human rights at the altar of national security.

^{17.} Newsday Blogger Isma Olaxes charged, granted bail

^{18.} https://newsday.co.ug/2021/11/25/blogger-isma-olaxess-charged-granted-bail/ (Accessed 13 January 2022

The Eastafrican Uganda Kept Schools closed longest - UNICEF

 $https://www.thee a stafrican.co.ke/tea/news/east-africa/uganda-kept-schools-closed-longest-unicef-3590854 \ (Accessed Longest-unicef-3590854) \ (Accessed Longest-unicef-359$

^{19.} Social Protection.org, https://socialprotection.org/discover/publications/chased-away-and-left-die-how-nationalsecurity-approach-uganda%E2%80%99s-national (Accessed on 1 April 2022)

^{20.} The Registration of Persons Act, 2015,

http://www.mia.go.ug/sites/default/files/download/The %20 Registration %20 of %20 Persons %2 C%20%20 Act-2015.pdf when the property of the p(Accessed on 4 April 2022)



DIGITAL INFRASTRUCTURE AND PRIORITIZATION OF ICT

The African Union has prepared a Digital Transformation Strategy for Africa.²¹ The strategy recognises the efforts of the continent's leadership to prioritise and accelerate digital transformation. In Uganda, the ICT sector, one of the fastest growing sectors is also viewed as one of the potential catalysts for a post-COVID-19 recovery. According to the World Bank Group (WBG)'s 2020 Uganda Digital Economy for Africa (DE4A) report,²² this growth is driven by a number of conducive Government policies, such as the increased investment by the Government and private sector in fiber infrastructure, and the significant uptake of mobile phone subscribers.

While at least 95% of the population is covered by mobile telephony networks (2G), mobile broadband (3G and 4G) geographic coverage is only at 50%. Given the limited broadband access, the use of the Internet by enterprises and the public sector remains very low. The quality of service also remains problematically low.²³

According to the WBG, the government of Uganda's (GoU) ability to deliver public services digitally has in recent years been spurred by investments in shared IT facilities and service delivery platforms. In fact, Uganda is currently ranked 137 out of 193 countries on the 2020 UN e-Government Development Index, up from 156 five years ago. These investments include government cloud-based data centers, data exchange and integration platforms, SMS and e-payment gateways as well as in digital authentication services-translating into over 80 sectoral e-services shared by Ministries, Departments and Agencies (MDAs). There have also been efforts to strengthen and streamline the ICT sector through the implementation of policy and regulatory mechanisms such as a policy for achieving universal internet access in the country.

The GoU is also working on the Digital Uganda Vision (DUV), and the Digital Transformation Program (DTP) - whose aim is to increase ICT penetration and use of ICT services for social and economic development.

^{21.} African Union, The Digital Transformation Strategy for Africa (2020-2030) | African Union (au.int) (Accessed on 3 April 2022)

^{22.} World Bank Group, Uganda Digital Economy Assessment: Country Diagnostic (worldbank.org) (Accessed on 1 April

^{23.} World Bank Group, Project-Information-Document-Uganda-Digital-Acceleration-Program-P171305.pdf (Accessed on 1 April 2022)

ARTIFICIAL INTELLIGENCE NATIONAL STRATEGY

The government of Uganda has produced a National Fourth Industrial Revolution (4IR) Strategy²⁴ that outlines how the government plans to implement and adopt the fourth industrial revolution technologies in the country. The strategy covers the government's plans to leverage technologies such as blockchain, IoT, Big Data for competitiveness and human development in Uganda.

The strategy highlights key enablers that will facilitate the strategy namely;

- 4IR connectivity,
- agile governance,
- upskilled population,
- e-Government and
- Resource mobilisation.

The strategy recognises the immense opportunities of 4IR in trade, health services and other public affairs sectors. However, the poor digital infrastructure, a restrictive legal and policy regime, coupled with poor access to the internet will greatly hamper progress on the AI front for now.

GENDER AND ICT

Uganda scored 0.717 in the 2021 global gender gap (GGG Index) which measures economic participation and development. According to Wougnet,²⁵ a majority of women in Uganda are excluded from freely expressing themselves and accessing information on social media because of the retrogressive existing legal and policy frameworks, lack of access and affordability of ICTs, increased incidences of online gender-based violence, as well as lack of knowledge and skills to safely navigate the online platforms.

Similarly, women are still lagging behind men in their ability to take advantage of the power of digital technologies, with only 48% of women being online, compared to 58% of men globally. In Africa, only 22.6% of women are online, compared to 33.8% of men while in Uganda only 44% of women are online, compared to 62% of their male counterparts, further reflecting the gender digital divide.26

Moreover, women remained locked out of digital rights access owing to negative cultural and gender norms, poor ICT infrastructure and the costs of internet enabled gadgets, as well as data for connectivity. During the COVID-19 lockdown, girls were more unlikely to access online classes because they had been assigned household and other chores by their parents. The gender divide in accessing ICTs in Uganda remains debilitating and will require strategic and systematic interventions to address it.



Women are still lagging behind men in their ability to take advantage of the power of digital technologies.

^{24.} Executive-Summary-Ugandas-National-4IR-Strategy.pdf (ict.go.ug)

^{25.} WOUGNET - Home

^{26.} WOUGNET, Towards a Gender-Friendly Legal Framework Governing Freedom of Expression and Access to Information on Social Media, Policy Brief (wougnet.org) (accessed on 3 April 2022)



CONCLUSION

The upholding of digital rights in Uganda remained in a state of flux, with growing connections and subscriptions, while the government continued to stifle freedom of expression. However, violations significantly decreased in 2021 compared to 2020. This decline is attributed to the end of the violent Presidential and Parliamentary elections held in January 2021, and the easing and eventual lifting of the COVID-19 lockdown that had been a key excuse for security agents to arrest journalists, detain and mistreat media, political and civil society actors. Despite this decline, the number of individuals whose online freedoms were violated remains high.



Despite this decline, the number of individuals whose online freedoms were violated remains high.

RECOMMENDATIONS

Government

The government must do the following:

- Establish mechanisms to stem misinformation and disinformation. This is best achieved through collaboration with key stakeholders, and not through the stifling of free expression.
- The government must work closely with platforms and internet businesses to provide affordable quality gadgets and reliable internet services, ensuring wide access to and enjoyment of digital rights.
- · Desist from disrupting and closing online spaces as this denies citizens vital information, spaces to express themselves and opportunities to carry out business.
- Revise national laws to repeal ethnic discrimination in acquiring Ugandan nationality.
- Support the adoption of the draft protocol to the African Charter on the Right to a Nationality and the Eradication of Statelessness in Africa.
- Enact laws that stipulate internet governance, such as circumstances under which it may be disrupted.

Civil Society Organisations (CSOs)

CSOs must do the following:

- Continue advocating for the decriminalization and implementation of measures that undermine free speech.
- Advocate and empower ordinary citizens with the skills and tools to identify hate speech, as well as misinformation and disinformation.

Private Sector

 Organisations having access to private data should establish safety policies to ensure responsible and ethical data management.

ZAMBIA

The Londa Zambia report highlights the state of digital rights and inclusion in the country in the year 2021. The year under review was notable in the Zambian ICT policy and legal landscape and the African Union Convention on Cybersecurity and Personal Data Protection was ratified. In addition, the Cybersecurity and Cybercrimes Act and Data Protection Act came into force while the Electronic Commerce and Transactions Act was repealed. Furthermore, there was commitment to review and enact the long awaited Access to Information bill which has been in existence for about 20 years. The country experienced a partial internet shutdown, which was challenged by a local human rights organisation during the highly contested August general elections which saw the introduction of a new government. Generally, there was a spike in cases of online gender based violence, especially during the election period where female politicians were targeted.

This report proposes some key recommendations targeted at government, CSOs, academia and human rights defenders focused on harmonisation of the country's ICT legal frameworks in line with the standards of the African Union Convention on Cybersecurity and Personal Data Protection, enforcement of the new data protection law and review of the Cybersecurity Act. Further recommendations on maintaining an open, safe and secure internet environment, raising awareness among the public on the new cyber and data protection laws as well as generating efforts to understand the nature and prevalence of online GBV in the country are made.





Known as one of the first countries in sub-Saharan Africa to receive full Ilinternet connectivity in late 1994, Zambia's population rose to 18.4 million in 2021. The population of Zambia continues to be dominated by a youthful citizenry representing over 50% of the country's total population.3

In August of 2021, Zambia ushered in a new government after a tightly heated race that saw President Hakainde Hichilema emerging as the winner, having secured 59% of the total votes.4

USD 18.1 BILLION

2020 GROSS DOMESTIC PRODUCT (GDP)

The Gross Domestic Product (GDP) decreased to USD 18.1 billion in 2020 from USD 23 billion in 2019.5 At the close of 2021, the country's annual inflation rate decreased to 16.46 from the highest record of 22, recorded earlier in February 2021. The projected growth was due to growth in the ICT, manufacturing and construction sub-sectors coupled with investor confidence in the new administration which is expected to enact business friendly policies and negotiate for a comprehensive debt restructuring deal with the International Monetary Fund (IMF).

^{1.} Robinson, N. (1996), "Bringing the Internet to Zambia" in Bridge Builders: African Experiences with Information and Communication Technology. Washington: National Academy Press.

^{2.} Zambia Statistics Agency (2021) - https://www.zamstats.gov.zm/ (accessed 11 January 2022).

^{3.} Zambia Statistics Agency (2021) (n 1 above).

^{4.} Election Institute of Sustainable Democracy in Africa (2021) Zambia: 2021 Presidential election results https://www.eisa.org/wep/zam2021results.htm (accessed 11 January 2022).

^{5.} World Bank (2020) Zambia Data GDP https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=ZM (accessed 11 January 2022).

^{6.} Zambia Statistics Agency (2021) Monthly Bulletin-December https://www.zamstats.gov.zm/ (accessed 11 January 2022).

^{7.} Zambia Statistics Agency (2021) (n 5 above).

^{8.} Focus Economics (2022) Zambia Economic Outlook https://bit.ly/2JgMgkL (accessed 11 January 2022).



ZAMBIA INTERNET **PENETRATION**



107%

MOBILE PHONE PENETRATION

Information Communication Technologies (ICTs) are governed under the newly created Ministry of Technology and Science⁹ and regulated by the Zambia Information Communications Technology Authority (ZICTA).

The internet penetration rate in 2021 stood at 56.3% representing 10.4 million people while the mobile phone penetration rate stood at 107%, a percentage that is attributed to the fact that people in Zambia often own more than one mobile phone and multiple sim cards.¹⁰ In contrast, estimates from DataReportal's Digital in 2022 report identify an internet penetration rate of 29.4%. Majority of the population accessing internet services in the country use mobile broadband (56%) compared to those who use fixed line subscriptions (0.5%).¹²

Zambia continues to maintain 17 internet service providers and three mobile network providers,13 although a licence was granted to Beeline Telecommunications in February 2021, whose operations are now expected to launch in June 2022, after the company failed to launch six months after securing a licence.14

GENDER AND ICT

In terms of the mobile gender gap, the 2018 ZICTA ICT survey revealed a relatively small difference in percentages of mobile phone access and ownership by women and men.

Out of all the active mobile phone users 51% were women while 57% were men, and as for mobile phone ownership more men at 87% owned mobile phones compared to women at 81%. On the other hand, 6% of women had knowledge on how to use a computer, compared to their male counterparts who were pegged at 8%.15



^{9.} IT Web Africa (2021) (n 11 above).

^{10.} Zambia Information and Communications Technology Authority (ZICTA) (2021) ICT Indicators http://onlinesystems.zicta.zm:8585/statsfinal/ICT%20Indicators.html (accessed 11 January 2022).

^{11.} Hootsuite & We Are Social (2022) Digital 2022: Zambia https://datareportal.com/reports/digital-2022-zambia (accessed 7 March 2022).

^{12.} ZICTA (2021) (n 8 above).

^{13.} ZICTA (2021)(n 8 above)

^{14.} IT Web Africa (2021) Zambia's Beeline Telecoms runs into early trouble https://itweb.africa/content/JBwEr7nBOnE76Db2 (accessed 11 January 2022).

^{15.} Zambia Information and Communications Technology Authority (ZICTA), (2021) ICT Statistics, http://onlinesystems.zicta.zm:8585/statsfinal/index.html (accessed 01 March 2022)

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS, POLICY DEVELOPMENT

The Constitution of Zambia, 1996¹⁶ recognises and guarantees the rights to freedom of expression,¹⁷ access to information,¹⁸ freedom of assembly and association ¹⁹ and the right to privacy.²⁰

In March 2021, Zambia enacted its first Data Protection Act (2021) and Cyber Security and Cybercrimes Act (2021)²¹ and passed a National Cybersecurity Policy (2021)²² and National Postal Policy.²³ In addition, the Electronic Commerce and Transactions Act (2021) was reviewed while several other bills such as the e-Government Bill (2021) and the Postal and Courier Services Bill (2021)²⁴ were drafted. The National ICT Policy of 2006 is still under review.

The right to privacy is to some extent protected through the Cybersecurity and Cybercrimes Act 2021 and Data Protection Act 2021 while freedom of expression and the press is protected through the Independent Broadcasting Authority Act (as amended in 2010) and Zambia National Broadcasting Corporation (ZNBC) Act (as amended in 2017), however, these two legislations do not apply to non-broadcast areas such as the Internet. Furthermore, Zambia lacks explicit laws on the right to assembly and association, and on access to information.

The 20 year old Access to Information bill (2013) is still awaiting enactment and reasons for the delay could be attributed to the previous government's concerns over national security in that the bill could compromise classified information.²⁵

However, in November 2021, government announced that it was prioritising the enactment of the Access to Information Bill (2013) and Zambia Media Council (ZAMEC) bill (2019),²⁶ a bill meant to provide media self-regulation mechanisms and promote professionalism and accountability in the media sector. In 2020, then Ministry of Information and Broadcasting Services launched the revised Media Development Policy 2020²⁷ that aims to set out the Government's vision and mission to promote freedom of expression by guaranteeing press freedom.



The Constitution of Zambia, 1996
recognises and guarantees the rights to
freedom of expression, access to information,
freedom of assembly and association and
the right to privacy.

^{16.} Constitution of Zambia Act 18 of 1996

^{17.} Constitution of Zambia Act 18 of 1996 art 20.

^{18.} As above n 13.

^{19.} n 13 above. art 21.

^{20.} n 13 above, art 17.

^{21.} Lusaka Times (2021) President Lungu has Signed the Cyber Security and Cyber Bill into Law,

https://www.lusakatimes.com/2021/03/26/president-lungu-has-signed-the-cyber-security-and-cyber-bill-into-law/, (accessed 11 January 2022).

^{22.} MISA Zambia (2021) National Cyber Security Policy approved, https://zambia.misa.org/2021/01/27/national-cyber-security-policy-approved/ (accessed 11 January 2022).

^{23.} National Postal Policy of 2021, http://www.mtc.gov.zm/wp-content/uploads/2021/06/National-Postal-Policy-2021-2031.pdf (accessed 11 January 2022).

^{24.} E-Government Bill of 2021, https://www.parliament.gov.zm/node/8951 (accessed 11 January 2022).

^{25.} K Manchishi (2021) The Struggle for Access to Information in Zambia: Looking to new media as an enabler, Mulungushi University.

^{26.} Zambia Nationa Broadcasting Corporation (ZNBC), (2021) ACCESS TO INFORMATION BILL

https://www.facebook.com/znbctoday/videos/access-to-information-bill/571311514201071/ (accessed 11 January 2022).

^{27.} Media Institute of Southern Africa (MISA) (2022) Media Development Policy launched https://misa.org/blog/media-development-policy-launched/ (accessed 11 January 2022).



In November 2021, Zambia ratified the African Union Convention on Cybersecurity and Personal Data Protection (Malabo Convention)²⁸ which fosters harmonisation of the new cyber laws with other national frameworks and regional cooperation on matters of cybersecurity, cybercrime and data protection. Zambia is party to the African Charter on Human and Peoples Rights (ACHPR)²⁹ and International Convention on Civil and Political Rights (ICCPR)³⁰ which affirm the protection of access to information and freedom of expression both offline and online.31

FREEDOM OF EXPRESSION IN 2021

In the year under review, the enjoyment of freedom of expression and access to information online was tried. According to a 2021 report by Amnesty International, human rights in Zambia had deteriorated in the last five years with restrictions on freedom of expression, assembly and association both offline and online, which were

based on national security and public health concerns.32 Furthermore, the enactment of the Cybersecurity and Cybercrimes Act (2021) incited fears among internet users that the law would be used to penalise online conversations especially on social media, and this led to a culture of selfcensorship among users who feared being cited for cyberbullying. A group of civil society organisations including Chapter One Foundation, Bloggers of Zambia, Gears Initiative and Peoples Action for Accountability and Good Governance in Zambia (PAAGZ) challenged in the High Court, several provisions of the Cybersecurity Act on grounds that it is unconstitutional and threatens the right to freedom of expression, among others.33

In particular, Section 54 was challenged for being overly vague and prone to abuse by facilitating detentions and arrests of journalists and other internet users.

^{28.} African Union Convention on Cyber Security and Personal Data Protection https://au.int/en/treaties/african-unionconvention-cyber-security-and-personal-data-protection (accessed 11 January 2022).

^{29.} African Commission on Human and People's Rights (ACHPR) Declaration on

Freedom of Expression and Access to Information, https://www.achpr.org/legalinstruments/detail?id=69 (accessed 11 January 2022).

^{30.} Universal Declaration of Human Rights (UDHR), https://www.un.org/en/aboutus/universal-declaration-of-humanrights (accessed 11 January 2022).

^{31.} Article 9 and Article 19 respectively.

^{32.} Amnesty International (2021) Zambia: Ruling by fear and repression

https://www.amnesty.org/download/Documents/AFR6340572021ENGLISH.PDF (accessed 13 January 2022).

^{33.} Lusaka Times (2021) New Cyber law goes to Court https://www.lusakatimes.com/2021/04/02/new-cyber-law-goesto-court/ (accessed 13 January 2022).



Section 54 of the Cybersecurity Act states that:

"A person who, with intent to compromise the safety and security of any other person, publishes information or data presented in a picture, image, text, symbol, voice or any other form in a computer system commits an offence and is liable, on conviction, to a fine of not less than five hundred thousand penalty units or to imprisonment for a term exceeding five years or to both'.

In addition, the legislation provides excessive powers to the enforcers such as cyber inspectors, law enforcement, and the Minister in charge of ICTs and prescribes broad and vague provisions that have the potential to shrink the democratic space which has largely been aided by online communications.

Attempts for wider consultation with various stakeholders in 2020 and 2021 prior to enacting the three ICT legislations were made through Internal Legislative Committee meetings by the Ministry of Justice and then Ministry of Transport and Communications, however this process was criticised for being done in a rushed manner.³⁴

PRIVACY AND SURVEILLANCE

Despite the erection of Closed-Circuit Television (CCTV) cameras across the country on major highways and in public places under the Smart City Project in 2020,³⁵ legal frameworks specific to CCTV that could govern the use and management of these technologies are still lacking, sparking fears that the cameras could be used for surveillance and spying activities on political opponents, Human Rights Defenders (HRDs) and the public.³⁶

IMPACT OF COVID-19 REGULATIONS, ONLINE GBV AND ELECTIONS ON DIGITAL RIGHTS AND INCLUSION

The COVID-19 pandemic continued to be a growing problem in 2021. The country was hard hit in June and went on a partial lockdown.³⁷ During this period, schools, universities and workplaces turned to remote working as a lifeline. The Zambia National Women's Lobby (ZNWL) noted that online gender based violence (OGBV) increased during this period due to the increased use of internet and digital technologies and further increased during the election period and female politicians were most affected by cyberbullying, hate speech and sexual harassment.38

In the same month, the Electoral Commission of Zambia (ECZ) announced a 14 day suspension on campaigning by two major political parties due to political violence in Lusaka and three other districts, in addition, roadshows and physical campaigning that involved large groups of people were banned to avoid the spread of COVID-19.39

^{34.} TRTWorld (2021) Zambia passes sweeping cyber laws ahead of elections https://www.trtworld.com/africa/zambia-passes-sweeping-cyber-laws-ahead-of-elections-44869 (accessed 18 January

^{35.} Lusaka Times (2019) Huawei to plant 24 Hour cameras across Lusaka

https://www.lusakatimes.com/2019/12/07/huawei-to-plant-24-hour-cameras-across-lusaka/ (accessed 13 January 2022). 36. The Potsdam eGovernment Competence Center (IfG.CC) (2020) Surveillance camera projects deployed to watch on people http://www.ifg.cc/aktuelles/nachrichten/regionen/568-zm-sambia-zambia/58826-zm-surveillance-cameraprojects-deployed-to-watch-on-people.html (accessed 18 January 2022).

^{37.} Crisis 24 (2021) Zambia: Authorities maintain COVID-19 restrictions nationwide, June 30 /update 11 https://crisis24.garda.com/alerts/2021/06/zambia-authorities-maintain-covid-19-restrictions-nationwide-june-30-line-strictions-nationwide-june-30-line-strictions-nationwide-june-30-line-strictions-nationwide-june-30-line-strictions-nationwide-june-30-line-strictions-nationwide-june-30-line-strictions-nationwide-june-30-line-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-strictions-nationwide-june-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-striction-supdate-11 (accessed 13 January 2022).

^{38.} Zambia National Women's Lobby (2021) Statement by the Zambia National Women's Lobby on the social media monitoring initiative and WhatsApp tip line aimed at curbing Cyberbullying, hate speech and sexual harassment against women in Politics https://znwl.womenslobby.org.zm/# (accessed 18 January 2022).

^{39.} Xinhua (2021) Zambia's electoral body suspends two major political parties from campaigning due to violence http://www.xinhuanet.com/english/africa/2021-06/15/c_1310009314.htm (accessed 13 January 2022).

Political parties turned to online platforms for campaigning, although the media was also barred from covering political activities in the affected districts. In the same vein, an opposition political party leader was barred from campaigning for using hate speech and breaching the electoral code of conduct.40

INTERNET DISRUPTIONS AND OTHER DIGITAL RIGHTS VIOLATIONS

In the period covered by this report, no digital rights related arrests were recorded, however, on polling day on August 12 2021, the country experienced a partial internet shut down which lasted until 14th August 2021. Connectivity to social media platforms such as WhatsApp, Facebook, Messenger and Twitter were slowed down and eventually graduated into a complete social media blackout. Reports from the Open Observatory of Network Interference (OONI) indicate that social media sites were blocked and there was a significant loss in internet connectivity, confirming that the three network providers were using the same technique to restrict internet access and social media sites.⁴² While people used Virtual Private Networks (VPNs) to bypass the partial network shutdown, Chapter One Foundation filed a high court order against ZICTA to restore the Internet.43

AN ANALYSIS OF THE **COUNTRY'S PERFORMANCE** FROM THE PREVIOUS YEAR

The year 2021 saw a lot of movement in the Zambia ICT policy and legal landscape. Several pertinent ICT related laws and policies were enacted and reviewed - the country enacted its first data protection law, although the institutional frameworks for its enforcement are yet to be established. The Malabo Convention was ratified within record time and the Ministry of Technology and Science established, spurring hope for the growth of ICTs through a new ICT policy, innovation and digital inclusion. Through the swift restoration of the 2021 partial internet shutdown, the year also highlighted a commitment by local authorities to safeguard digital rights and a renewed commitment by CSOs to push back on digital rights violations and internet shutdowns.



Connectivity to social media platforms such as WhatsApp, Facebook, Messenger and Twitter were slowed down and eventually graduated into a complete social media blackout.

^{40.} Lusaka Times (2021) ECZ suspends Kambwili indefinitely from taking part in Campaigns https://www.lusakatimes.com/2021/06/30/ecz-suspends-kambwili-indefinitely-from-taking-part-in-campaigns/ (accessed 13 January 2022).

^{41.} Open Observatory of Network Interference (OONI) (2021) Zambia: Social media blocked amid 2021 general elections https://ooni.org/post/2021-zambia-social-media-blocks-amid-elections/ (accessed 21 January 2022). 42. OONI 2021 (n 36 above).

^{43.} All Africa (2021) High Court Orders Restoration of Internet Services https://allafrica.com/stories/202108150063.html (accessed 21 January 2022).



CONCLUSION

Zambia faced a number of digital rights challenges in the past that have remained detrimental to the tenets of a free internet freedom environment. These challenges have been caused by the existence of certain unconstitutional legal provisions, the absence of laws such as access to information and the non-ratification of the Malabo Convention. However, the policy and advocacy actions in 2021 spurred a renewed hope for enhanced internet freedom in the country. Nonetheless, Zambia has a vibrant ICT sector whose policies and practice require a multi-stakeholder and comprehensive approach.

RECOMMENDATIONS

Legal and Policy landscape

- Following the ratification of the African Union Convention on Cybersecurity and Personal Data Protection, there's a need for the government to harmonise both old and new ICT legal frameworks in line with the standards of the Convention.
- Following the enactment of the Data Protection Act (2021), there is a need for the government to establish institutional frameworks for data protection enforcement - Data Protection Authority, including the appointment of a competent and independent Data Protection Commissioner.
- There is a need for government to review problematic clauses in the Cybersecurity and Cybercrimes Act (2021) and complete the review process of the National ICT Policy (2006) alongside establishing strategies for making the Internet affordable, meaningfully accessible, enhancing citizens' digital literacy skills and facilitating the access to e-services such as e-gov, e-health, e-learning etc.
- There is a need for the government to enact policies to govern the procurement, development and use of Smart City Initiates in the country.

• Civil society and HRDs must continue to push for the review of the Cybersecurity Act, National ICT Policy and enactment of policies for Smart City initiatives.

Network disruptions and other digital rights violations

- · The government must commit to maintaining a free and open internet environment that promotes online platforms as spaces for civic engagement, access to information, innovation and development in line with Part 5 of the African Commission on Human and Peoples' Rights' (ACHPRs) Declaration of Principles of Freedom of Expression and Access to Information on the Internet in Africa.
- In addition, there is a need for civil society organisations and HRD to continue playing the watchdog role to ensure that the Internet is kept open, safe and secure.

Public Awareness on National Cyber Laws and Data Protection

 There's a need for awareness-raising efforts by government, government agencies, civil society and other stakeholders toward creating citizen awareness and understanding of existing cyber laws, particularly for journalists, and their associated safeguards and application to everyday online life. In addition, there is a need to sensitise internet users on data protection and privacy.

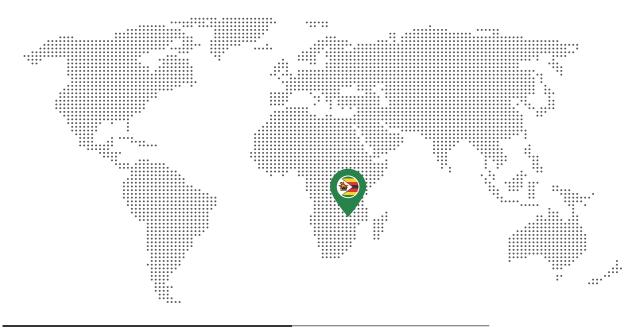
Online Gender-Based Violence

• There is a need for civil society organisations, academia and government agencies to further understand the true extent and prevalence of online GBV in the country and to further craft the necessary advocacy strategies and policy protective measures in order to discourage digital exclusion based on gender, especially for women politicians who are most affected during election periods.

ZIMBABWE

This report highlights new developments in Zimbabwe's digital rights and digital inclusion landscape. It analyses freedom of expression, access to information and privacy in the digital age. Emerging technologies such as Artificial Intelligence (AI); internet use and access including gender and ICTs; and digital rights in the context of the COVID-19 pandemic are also discussed. The African Commission on Human and Peoples' Rights (ACHPR) adopted the 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa (the ACHPR Declaration).¹

The ACHPR Declaration elaborates the scope of article 9 of the African Charter on Human and Peoples' Rights (the African Charter), which provides for the right of freedom of expression and access to information. The Declaration provides a yardstick against which Zimbabwe's performance in this report will be assessed. The report concludes with proposed key recommendations for key stakeholders that can foster a digital rights culture in Zimbabwe. These include the need for the government to respect and promote human rights in the digital age through the adoption and implementation of legal, policy and institutional frameworks that are aligned with international standards.



^{1.} ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) https://www.achpr.org/legalinstruments/detail?id=69 (accessed on 20 January 2022).





Zimbabwe is a Southern African country with an estimated population of 15 209 973 people, of which 67.7% live in rural areas and 32.3% in urban areas.³ The digital divide is a serious concern as the majority of the population lives in rural areas. This was more evident in the context of the COVID-19 pandemic. This divide calls for the government to prioritise rural areas and employ a digital rights budgeting lens in ICT development and increase broadband access.

The Zimbabwean ailing economy worsened by the impacts of COVID-19 is on a slow recovery trajectory.4 The country's ailing economy slightly improved in 2021, a development attributed to a good agricultural yield, improved use of capacity in the industry and stable exchange rates.⁵ The Gross Domestic Product (GDP) was US\$25,79 billion at the end of 2021.

The education sector was hard hit as the school calendar remained wavering. Children's erratic access to education in 2021 was a result of the constant shifts in the school calendar spotlighting the need for the Internet as an enabler of human rights such as the right to education.

USD 25.79 BILLION

2021 GROSS DOMESTIC PRODUCT (GDP)

^{1.} ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) https://www.achpr.org/legalinstruments/detail?id=69 (accessed on 20 January 2022).

^{2.} Worldometer https://www.worldometers.info/world-population/zimbabwe-population/ accessed on 23 January 2022).

^{3.} DatarePortal 'Digital 2021: Zimbabwe' https://datareportal.com/reports/digital-2021-zimbabwe (accessed on 23 January 2022).

^{4.} DatarePortal 'Digital 2021: Zimbabwe' https://datareportal.com/reports/digital-2021-zimbabwe (accessed on 23

^{5.} The World Bank https://www.worldbank.org/en/country/zimbabwe/overview#1 (accessed on 23 January 2022).

^{6.} Statista https://www.statista.com/statistics/455285/gross-domestic-product-gdp-in-zimbabwe/ (accessed on 4 March

^{7.} Chronicle 'Government amends 2021 school calendar' https://www.chronicle.co.zw/government-amends-2021-schoolcalendar/ (accessed on 23 January 2021).

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Zimbabwe is a state party to the African Charter, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of Persons with Disabilities (CRPD), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These frameworks entrench human rights standards for promoting equality, non-discrimination and human dignity.⁸ Zimbabwe's commitment to human rights is reflected in its efforts to comply with these international standards.

The Constitution of Zimbabwe (the Constitution) provides for the right to privacy under section 57, freedom of expression under section 61, access to information in section 62, equality and non-discrimination under section 56 and human dignity under section 51.9 Zimbabwe is yet to ratify the 2014 African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention). The Malabo Convention seeks, among other things, to address issues related to the protection of personal information, the risks and dangers associated with the use of electronic data and cybercrimes. However, there is an inadequate implementation of the stated standards.

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION

The COVID-19 pandemic necessitated the migration of offline education to online platforms. However, in Zimbabwe, children in rural communities were left behind in accessing virtual learning. Learners in rural areas constitute about 70% of the total learner enrollment in the country but they do not have meaningful internet access. COVID-19 in essence unearthed the need for internet access for all. The reliance on COVID-19 regulations to stifle freedom of expression and access to information in the form of criminalisation of disinformation has an adverse impact on digital rights. Section 14 of Statutory Instrument 83 of

2020 (S.I 83) criminalises false publishing of information about any public officer, official or enforcement officer involved with enforcing or implementing the national lockdown or any private individual that has the effect of prejudicing the implementation of the national lockdown with a criminal penalty not exceeding level fine or 20 years imprisonment.¹² The criminal penalty has a chilling effect on freedom of expression and access to information offline and online. This offence has in the past been used to prosecute media practitioners for sharing information online.¹³

^{8.} See arts 2, 5 and 9 of the African Charter, arts 3, 10 and 19 of the ICCPR, arts 2 and 3 of the Maputo Protocol and art 2 of CEDAW.

^{9.} Constitution of Zimbabwe Amendment (No.20) Act of 2013 (the Constitution). See secs 51,56, 57, 61 and 62.

^{10.} See the African Union Convention on Cyber Security and Personal Data Protection preamble.

^{11.} Good Governance Africa Reimagining rural education in Zimbabwe post COVID-19 https://allafrica.com/stories/202004210574.html (accessed on 16 March 2022).

^{12.} Statutory Instrument 83 of 2020 (S.I 83) https://www.veritaszim.net/node/4046 (accessed on 23 January 2021). Section 14 reads as follows: 'For the avoidance of doubt any person who publishes or communicates false news about any public officer, official or enforcement officer involved with enforcing or implementing the national lockdown in his or her capacity as such, or about any private individual that has the effect of prejudicing the State's enforcement of the national lockdown, shall be liable for prosecution under section 31 of the Criminal Law Code ("Publishing or communicating false statements prejudicial to the State") and liable to the penalty there provided, that is to say a fine up to or exceeding level fourteen or imprisonment for a period not exceeding twenty years or both.'

^{13.} See Aljazeera Zimbabwe president threatens fake news author with 20 years' jail https://www.aljazeera.com/economy/2020/4/14/zimbabwe-president-threatens-fake-news-author-with-20-years-jail (accessed on 16 March 2022) and All Africa Zimbabwe: Man Remanded in Custody for Circulating Fake News https://allafrica.com/stories/202004210574.html (accessed on 16 March 2022).

FREEDOM OF EXPRESSION

Freedom of expression is a fundamental right that is guaranteed in international law and standards. It is provided for under article 9 of the African Charter and further elaborated in the ACHPR 2019 Declaration. In terms of compliance, States must 'facilitate the rights to freedom of expression and access to information online and the means necessary to exercise these rights.¹⁴ In view of the incidents in 2021, this right is not fully protected in Zimbabwe. The Movement for Democratic Change Alliance (MDC) politician, Job Sikhala was charged for communicating falsehoods on Facebook and Twitter. 15 This was in violation of the declared unconstitutional section 31(a) (iii) of the Criminal Law (Codification and Reform) Act, 2004 (the Criminal Code).¹⁶ A journalist, Hopewell Chin'ono and then MDC politician Advocate Fadzayi Mahere were arrested and charged with the same outlawed provision.¹⁷ Such charges tend to impose undue self-censorship on political actors, human rights defenders or media practitioners, thwarting the enjoyment of freedom of expression.

On 26 May 2021, a journalist, Jeffrey Moyo was arrested in Harare and charged with violating the Immigration Act, 1979. The allegations were that he misrepresented to an immigration officer about the accreditation of two New York Times journalists. 19 Arbitrary arrests of journalists are tantamount to intimidation and harassment of media practitioners in the performance of their mandate and interfere with their ability to express themselves freely both offline and online. On 2 March 2021, a ZANU-PF legislator moved the motion in Parliament for a debate on the Patriotic Bill.²⁰



^{14.} See n 1 above, principle 37(1).

^{15.} ZimLive 'Sikhala, Chin'ono charged under non-existent falsehoods law' https://www.zimlive.com/2021/01/10/sikhalachinono-charged-under-non-existent-falsehoods-law/ (accessed on 23 January 2022).

^{16.} Criminal Law (Codification and Reform) Act (Chapter 9:23), 2004 https://www.veritaszim.net/node/225 (accessed on 23 January 2022).

^{17.} Amnesty International Zimbabwe: Authorities must drop malicious charges against opposition leaders and journalist https://www.amnesty.org/en/latest/news/2021/01/zimbabwe-authorities-must-drop-malicious-charges-againstopposition-leaders-and-journalist/ (accessed on 16 March 2022).

^{18.} Immigration Act (Chapter 4:02) of 1979.

^{19.} Committee to Protect 'Journalists Zimbabwe detains NY Times freelancer Jeffrey Moyo over alleged accreditation misrepresentation' https://cpj.org/2021/05/zimbabwe-detains-ny-times-freelancer-jeffrey-moyo-over-allegedaccreditation-misrepresentation/ (accessed on 23 January 2022).

^{20.} Veritas 'BILL WATCH 15/2021 - Debate on the Need for a "Patriotic Bill" http://www.veritaszim.net/node/4827 (accessed on 23 January 2022).

Veritas 'BILL WATCH 15/2021 - Debate on the Need for a "Patriotic Bill" http://www.veritaszim.net/node/4827 (accessed on 23 January 2022).

The proposed law poses a threat to freedom of expression in that it proposes criminalisation of any acts that are deemed to give a bad image of the country or false news made to foreign governments about Zimbabwe.²¹ If passed, the Patriotic Bill will likely be used to stifle the voices of human rights defenders, civil society organisations and political activists in performing their designated mandates. While a possible motivation behind such a law is to categorise such speech as prohibited speech, principle 23(1) of the ACHPR Declaration states that prohibited speech is speech that 'advocates for national, racial, religious or other forms of discriminatory hatred which constitutes incitement to discrimination, hostility or violence.' Merely presenting a bad record of a country cannot fall within the definition of prohibited speech to warrant a justifiable limitation on freedom of expression. The Declaration provides that States must not prohibit speech that merely lacks civility or which offends or disturbs them. In this lies the reason Zimbabwe should not adopt this law that will infringe on freedom of expression.

city and was directly linked to many other COVID-19 cases in the city.²⁴ The Ministry of Health released a health report disclosing that the now deceased Kwekwe businessman Robson Kadenhe and his wife had both contracted COVID-19, suspectedly, the Delta variant following contact with a relative, Nataly who turned out to be COVID-19 negative upon testing.²⁵ The story was reported by the media²⁶ and the government disclosed the health status of the late Kadenhe together with other contacts, supposedly linked to him who tested COVID-19 positive. The report paid no regard to the protection of his personal health data disclosing his health history, age, home address and the personal data of other individuals concerned like Zvichauya Midzi. Also, the report disclosed that three minor children in contact with Midzi aged between 4 and 12 years and learning at Goldridge Primary School also tested positive leaving anyone interested in the identity of the children with a good lead. This example raises critical questions about the protection of individuals' health data.

PRIVACY, DIGITAL IDS AND SURVEILLANCE

The Constitution guarantees the right to privacy.²² Privacy is not an absolute right and any limitation must be fair, reasonable, necessary and justifiable in a democratic society.²³ While the COVID-19 pandemic presented some justifiable limitations to the right to privacy, some of the limitations were unjustifiable. In May 2021, the city of Kwekwe was in a state of panic after the disclosure of the first case in Zimbabwe of what became known as the Delta variant. The case had been identified in the



Privacy is not an absolute right and any limitation must be fair, reasonable, necessary and justifiable in a democratic society.

^{21.} Veritas 'BILL WATCH 15/2021 - Debate on the Need for a "Patriotic Bill" http://www.veritaszim.net/node/4827 (accessed on 23 January 2022).

^{22.} See section 86(2) of the Constitution, n 8 above.

fair, reasonable, necessary and justifiable in a democratic society

^{23.} See section 86(2) of the Constitution, n8 above.

^{24.} New Zimbabwe https://www.newzimbabwe.com/indian-covid-19-variant-scare-as-man-returning-from-india-dies-in-kwekwe/ (accessed on 23 January 2021).

^{25.} Ministry of Health Kwekwe City Outbreak Preliminary Report (2021) http://pillars.mohcc.org.zw:2020/covid19-pillars/2021/06/01/kwekwe-city-outbreak-preliminary-report/ (accessed on 23 January 2023).

^{26.} New Zimbabwe https://www.newzimbabwe.com/indian-covid-19-variant-scare-as-man-returning-from-india-dies-in-kwekwe/ (accessed on 23 January 2021).

Although the right to privacy is guaranteed in the Constitution, the Kadenhe COVID-19 case occurred at a time when Zimbabwe was in the process of adopting a data protection law. Therefore an adequate data protection framework was not yet in place. The possible effects of the stigma and effects of such disclosures on the public were not considered. The former United Nations (UN) Special Rapporteur on the right to privacy, Prof. Joe Cannataci presented in a report to the UN General Assembly that states must, on one hand, protect the health of citizens and also protect their privacy. The Special Rapporteur indicated that both rights are not contradictory. 27 Policy or legislation should in effect promote privacy even where there is a need for surveillance. However, in the Kadenhe case, the disclosure was overly broad and unjustifiable. In reporting the incidents, attention should have been paid to ethical and human rights considerations and protected the data and identity of the identified individuals, in line with the UN Recommendation on the protection and use of health-related data.²⁸

The National Development Strategy 1 (NDS1) included the enactment of a Cyber Security Act.²⁹ The government enacted the Data Protection Act, 2021 (DPA) whose objective is "to increase data protection in order to build confidence and trust in the secure use of information and communication technologies by data controllers, their representatives and data subjects".30 The DPA is a welcome development as it provides for data

protection in Zimbabwe. Section 12 is instructive on the processing of personal health data. It highlights the need for consent from data subjects before processing personal health data and also provides for the option for a data subject to withdraw their consent. While there are several circumstances for derogating from the requirement to get consent under section 12(3), fundamental rights and freedoms must remain a guiding factor in the processing of health data.³¹

The DPA also amends sections 162 to 166 of the Criminal Code. It provides for the investigation and collection of evidence of cyber crimes and unauthorised data collection and breaches, and the admissibility of electronic evidence for such offences. It also amends the Interception of Communications Act [Chapter 11:20], 2007 establishing a Cyber Security and Monitoring Centre for monitoring cyber security, a unit to be established in the Office of the President. Its functions include effecting authorised interceptions and advising the government on cyber crime policies.³² There are concerns that this Centre may facilitate violations of fundamental rights and intensify state surveillance.33 The Act bestows the role of the data protection authority on the Postal and Telecommunications Regulatory Authority (POTRAZ), over and above its mandate as a telecommunications industry regulator which may be an overload of mandates on POTRAZ. This may interfere with the effective execution of both roles.34

^{27.} United Nations Report on the Right to Privacy (2020) https://undocs.org/A/75/147 (accessed on 23 January 2022). See paragraph 39.

^{28.} United Nations Report of the Special Rapporteur on the right to privacy. https://undocs.org/en/A/74/277 (accessed on 23 January 2022). See Chapter two parts 4, 5 and 6.

^{29.} National Development Strategy 1 (2021-2025) para 558 https://www.veritaszim.net/sites/veritas_d/files/NDS.pdf (accessed on 23 January 2022).

^{30.} Data Protection Act (Chapter 11:22) of 2021 sec 2

https://www.veritaszim.net/sites/veritas_d/files/Data%20Protection%20Act%205%20of%202021.pdf (accessed on 23 January 2022).

^{31.} MISA Zimbabwe Analysis of the Data Protection Act https://zimbabwe.misa.org/2021/12/06/analysis-of-the-dataprotection-act/ (accessed on 4 March 2022).

^{32.} Interception of Communications Act (Chapter 11:20), 2007 http://www.veritaszim.net/node/252 (accessed on 23 January 2022).

^{33.} MISA Zimbabwe Analysis of the Data Protection Act https://zimbabwe.misa.org/2021/12/06/analysis-of-the-dataprotection-act/ (accessed on 4 March 2022).

^{34.} See n 24 above on the DPA, secs 37(2).



Apart from this legislative development, the Bulawayo City Council (BCC) partnered with a company called Tendy Three to implement a US\$2.2 million project which includes the installation of CCTV cameras in the city of Bulawayo.³⁵ Details of the procurement process and the reasons for the deployment of the CCTV cameras were not publicly disclosed and this raised transparency concerns. Key stakeholders were not consulted before the deployment of the surveillance technology nor was the relevant information proactively disclosed. While public safety is a justifiable ground for limiting fundamental rights such as privacy, the limitation must happen within the confines of human rights standards.36

ACCESS TO INFORMATION

The Freedom of Information Act, 2020 provides the legal architecture for the promotion of the right of access to information in Zimbabwe. It outlines the mechanism for accessing information. The government enacted Statutory Instrument 229 of 2021 as Freedom of Information (General) Regulations 2021(SI 229).³⁷ The regulations mandate public entities to provide information

institutions and functions within a six-month timeline which promotes the proactive disclosure of information by public bodies.³⁸ The regulations also provide for the designation and function of Information Officers, procedures for requesting information and also creates offences and penalties³⁹ The SI 229 is a commendable development but could be improved. For instance, the regulations give discretion to the Zimbabwe Media Commission (ZMC) to appoint an appeals committee known as the Public Information Appeals Committee (PIAC). However, the regulations are silent as to the nomination and appointment of members of the PIAC, information that is critical for purposes of transparency. 40 The ZMC is the authority with the mandate to ensure access to information for all in terms of section 249(1)(f) of the Constitution and the Freedom of Information Act, 2020. However, the ZMC may decide to hear the appeal itself if it so chooses. The provision could have been more resolute as to the establishment of the PIAC and the appeals determining body instead of making that process discretionary. The appointment criteria of the committee members to the PIAC is also not clear in the regulations.

^{35.} CITE https://cite.org.zw/activists-worried-street-cameras-could-be-used-to-spy-on-citizens/ (accessed on 23 January 2022).

^{36.} See Principe 34 of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf (accessed on 16 March 2022).

^{37.} SI 2021-229 Freedom of Information (General) Regulations, 2021 (SI 229) http://veritaszim.net/node/5252 (accessed 23 January 2021).

^{38.} See section 2(1) of SI 229 above.

^{39.} See section 3 and 4 of the SI 229 above.

^{40.} MISA Zimbabwe Unpacking the Freedom of Information Regulations https://zimbabwe.misa.org/2021/10/20/unpacking-the-freedom-of-information-regulations/ (accessed on 16 March 2022).

INTERNET ACCESS

In January 2021, there were 5.01 million internet users in Zimbabwe. Internet penetration was at 33.4% and social media users were 1 300 000 which was an increase from 2020. Timbabwe has five mobile service providers. TelOne, NetOne and Telecel are owned by the government and Econet and Africom are privately owned. Econet is the leading mobile service provider in Zimbabwe. The cost of data is high. For instance, eight gigabytes of data costs roughly US\$23.42 The high cost of data in Zimbabwe affects the growth in internet users. The Internet is enabling the free flow of information and advancing activism. Hopewell Chin'ono released a rap song online which was tweeted on the looting of resources in Zimbabwe by government officials.⁴³ A number of hashtags were trending showing the use of the Internet for digital activism. The #SaveChilonga⁴⁴ and #BoycottDendairy were some of the hashtags trending online in 2021 calling for 12500 families to be spared from eviction from the Chilonga area to make way for grass farming by a farmer for the purposes of dairy farming.⁴⁵ During the period under review, no internet shutdown was experienced. However, internet access was inhibited by factors such as erratic electricity supply.46

DIGITAL EXCLUSION IN AFRICA AND ITS IMPACT ON HUMAN RIGHTS

The COVID-19 pandemic continues to spotlight the importance of the Internet, access to digital technologies and digital infrastructure. One way of enhancing inclusion is digital literacy for marginalised communities.

From the time the pandemic hit digital Zimbabwe in 2020, less than 30% of children in rural areas were able to access online education as compared to those in the higher-income bracket in urban areas, who were able to access education remotely through online learning.⁴⁷ As a result, those in rural areas and low-income families in urban areas lagged behind in their learning.

In the NDS1, the government proposes mainstreaming ICTs into the national curriculum and rolling out ICT capacity development programmes during the strategy period.⁴⁸ The digital divide is a lived reality for persons with disabilities in Zimbabwe who do not have access to digital technologies. Digital exclusion for persons with disabilities affects important aspects of their lives including access to education, information and economic empowerment.49

^{41.} Datareportal 'Digital 2021: Zimbabwe' https://datareportal.com/reports/digital-2021-zimbabwe (accessed on 23 January 2022).

^{42.} AA 'Zimbabweans hit by exorbitant internet costs' https://www.aa.com.tr/en/africa/zimbabweans-hit-by-exorbitantinternet-costs/2307947 (accessed on 23 January 2022).

^{43.} VOA 'Zimbabwe Journalist Hopewell Chin'ono Anti-Corruption Song DemLoot Sets Social Media on Fire' https://www.voazimbabwe.com/a/zimbabwe-song-demloot-sets-social-media-on-fire/5767607.html (accessed on 23

^{44.} https://twitter.com/search?q=%23SaveChilonga (accessed on 23 January 2022).

^{45.} Savanna News '#BoycottDendairy trends on social media in an attempt to save Chilonga farmers' https://savannanews.com/boycottdendairy-trends-on-social-media-in-an-attempt-to-save-chilonga-farmers/

^{47.} The World Bank https://www.worldbank.org/en/country/zimbabwe/overview#1 (accessed on 23 January 2022). 48. National Development Strategy 1 (2021-2025) para 559 https://www.veritaszim.net/sites/veritas_d/files/NDS.pdf (accessed on 23 January 2022).

^{49.} See the Article 9(2)(g) of the United Nations Convention on the Rights of Persons with Disabilities which states as follows; 'State Parties shall promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;'. See also The Herald Zimbabwe: People With Disabilities Need Access to Technology https://allafrica.com/stories/202110130324.html (accessed on 22 March 2022).

DIGITAL INFRASTRUCTURE AND PRIORITISATION OF ICT

The COVID-19 pandemic resulted in an increase in demand and acquisition for ICT services.⁵⁰ The government plans to increase ICT access centres as indicated in the NDS1 and aims to focus on the development of ICTs.⁵¹ The government seeks to increase the internet penetration rate from 59.1% to 75.42% by 2025.⁵²

In 2021, the Post and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) installed Community Informations Centres in several districts aimed at ensuring marginalised communities have internet access.⁵³ The NDS1 highlights the prioritisation of e-services for enhancing education and health as well as smart initiatives and the development of Community Information Centres (CICs) for marginalised communities.⁵⁴ CICs are places where the public can easily access digital technologies and internet access.

POTRAZ launched a number of CICs in 2021 including a CIC in Murambinda, a rural area on 14 May 2021⁵⁵ and launched four base stations and 13 CICs in one of the provinces, Matabeleland South.⁵⁶ These CICs are a positive step in bridging the digital divide.

ARTIFICIAL INTELLIGENCE AND EMERGING TECHNOLOGIES

In addressing new and emerging technologies such as AI and robotics, the ACHPR adopted Resolution 473 in 2021.⁵⁷ In the Resolution, the ACHPR affirmed the importance of the Internet and "that new and emerging technologies such as artificial intelligence (AI), robotics and other new emerging technologies present both opportunities and perils for the promotion and protection of human and people's rights in *Africa*". 58 The Resolution calls on African States to ensure that the development and use of AI, robotics and other new and emerging technologies is compatible with regional and international human rights standards. In this regard, the development and use of AI, robotics and other new and emerging technologies should be guided by the underlying human rights principles of human dignity, privacy, equality, non-discrimination, inclusion, diversity, safety, fairness, transparency, and accountability.59

However, Zimbabwe does not have a national AI strategy and as such, there is a need for such a framework that will take into account human rights protection in the use of AI and emerging technologies.

^{50.} POTRAZ Abridged Sector Performance Report Q3 (2021) https://www.techzim.co.zw/wp-content/uploads/2021/12/Abridged-Sector-Performance-Report-Q3-2021-HMed.pdf (accessed on 23 January 2022). 51. National Development Strategy 1 (2021-2025) para 528 https://www.veritaszim.net/sites/veritas_d/files/NDS.pdf (accessed on 23 January 2022).

^{52.} See n 42 bove, para 537.

^{53.} See note 19 above (NDS1), paras 544 to 547. See also TechZim 'POTRAZ unveils Community Information Centre (CIC) in Murambinda' https://www.techzim.co.zw/2021/05/potraz-unveils-community-information-centre-cic-in-murambinda/ (accessed on 23 January 2022) and The Chronicle https://www.chronicle.co.zw/potraz-erects-base-stations-cics-in-mat-south/ (accessed on 4 March 2022).

^{54.} See note 19 above (NDS1), paras 529 to 530.

^{55.} TechZim 'POTRAZ unveils Community Information Centre (CIC) in Murambinda' https://www.techzim.co.zw/2021/05/potraz-unveils-community-information-centre-cic-in-murambinda/ (accessed on 23 January 2022).

^{56.} The Chronicle https://www.chronicle.co.zw/potraz-erects-base-stations-cics-in-mat-south/ (accessed on 4 March 2022).

^{57.} ACHPR Resolution 473 on the need to undertake a Study on human and peoples' rights and Artificial Intelligence (AI), robotics and other new and emerging technologies in Africa (2021) https://www.achpr.org/sessions/resolutions?id=504 (accessed on 20 January 2022).

^{58.} ACHPR Resolution 473.

^{59.} ACHPR Resolution 473 on the need to undertake a Study on human and peoples' rights and Artificial Intelligence (AI), robotics and other new and emerging technologies in Africa (2021) https://www.achpr.org/sessions/resolutions?id=504 (accessed on 20 January 2022).



In the absence of a national AI strategy, human rights violations may occur. Some measure of protection to data subjects is now provided for in the DPA. It provides that a data subject 'shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her'. There is room for more to be done to regulate the acquisition and use of emerging technologies.

GENDER AND ICT

Zimbabwe scored 0.732 in the 2021 global gender gap (GGG Index) which measures economic participation and development. According to the World Bank, in 2020, women comprised 52,3% of the population in Zimbabwe.⁶⁰ Notwithstanding the fact that there are more women than men in Zimbabwe, the majority of mobile subscribers are men.⁶¹ Access to digital technologies enhances economic empowerment.

Government intervention in promoting growth in the use of ICTs should consider the gender gap and map key strategies for increasing women's access to digital technologies. Apart from the low digital literacy rate, women in Zimbabwe experience different forms of violence online such as cyber bullying.⁶² Online violence has an adverse social, economic and political impact on women. For example, it can deter women from participating in public and political affairs online.



^{60.} The World Bank https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS?locations=ZW (accessed on 4 March 2022). 61. Postal and Telecommunications Regulatory Authority of Zimbabwe 'Abridged Postal & Telecommunications Sector Performance Report' (2021) https://www.techzim.co.zw/wp-content/uploads/2021/07/Abridged-Sector-Performancereport-1st-Q-2021.pdf (accessed on 4 March 2022).

^{62.} Standard Zimbabwe Cyberbullying weighs more heavily on women, girls https://www.pressreader.com/zimbabwe/thestandard-zimbabwe/20210926/281981790738091 (accessed on 16 March 2022)



CONCLUSION

Zimbabwe's digital rights and digital inclusion records are still not impressive and require improvement. A data protection law was enacted and it is anticipated that it will offer data protection across all spectrums including the area of health. The DPA only came into force in December 2021 and so its implementation will only be witnessed from 2022. There is no marked shift toward the protection of freedom of expression since the publication of the 2020 report. In fact, with the motion for a Patriotic Bill and the DPA facilitating a Cyber Centre housed in the President's Office, freedom of expression online is facing a heightened risk.

RECOMMENDATIONS

In light of the gaps and concerns raised in this report, various recommendations have been proposed.

The government of Zimbabwe is urged to:

- · Ratify the African Union Convention on Cyber Security and Personal Data Protection.
- Repeal section 14 of Statutory Instrument 83 of 2020 that deals with the publication of false news during the national COVID-19 lockdown.
- Repeal section 31 of the Criminal Code that criminalises the publication of false news in favour of civil sanctions. This will be in conformity with principle 22 (2) of the ACHPR Declaration which stipulates that States shall repeal laws that criminalise sedition, insult and publication of false news.
- Discard any plans to enact a patriotism law.
- Take measures to protect journalists and other media practitioners from arbitrary arrests and detention, and unlawful surveillance.
- Develop a comprehensive legal and ethical governance framework for AI technologies, robotics and other new and emerging technologies in compliance with international standards.
- · Increase the annual budget towards the growth of ICTs and take into consideration the needs of rural communities, PWDs, women and children.
- Engage and partner with the private sector on ensuring affordable data for all.
- Ensure a human-rights respecting application of the DPA.

- Ensure an uncompromised discharge of the function of regulatory authorities such as POTRAZ, the data protection authority and the Zimbabwe Media Commission.
- Take steps to implement the ACHPR Resolution 473 which calls on States to also work towards a comprehensive legal and ethical governance framework for AI technologies, robotics and other new and emerging technologies so as to ensure compliance with the African Charter and other regional treaties.

The Private Sector is urged to:

- Collaborate with the government in ensuring universal, equitable, affordable and meaningful access to the Internet without discrimination.
- Implement appropriate measures to ensure and enhance compliance with the DPA with respect to data governance.
- Produce regular transparency reports disclosing their commitment to upholding human rights.

Civil Society Organisations (CSOs) are urged to:

- Raise awareness on digital rights and digital inclusion in Zimbabwe.
- Conduct advocacy engagements with the government and private sector aimed at policy and legislative reforms.
- Partner with the government in its implementation of Resolution 473 which calls for the respect of fundamental human rights in the use of AI and emerging technologies. In this regard, CSOs can play an oversight role and provide the necessary expertise in the development of human rights-based policy and legal frameworks.

The academia is urged to:

- Conduct more research on digital rights and digital inclusion including studies on Artificial Intelligence and emerging technologies.
- Collaborate with the government in the development of a national AI strategy and other issues related to the enhancement of digital rights

CONCLUSION

Digital rights are human rights and therefore inalienable. Notwithstanding, the prolongation of the COVID-19 lockdowns in 2021 provided a cover for continued violations of digital freedoms indicated by rising incidents of gender-based violence, heightened surveillance and the unjustified sanctioning of media outlets across the continent.

Valid concerns from state actors over preserving security and public order should not warrant restrictive tyrannical measures but rather catalyse proportional responses executed within strict legal bounds where absolutely necessary. Structures such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide a framework for developing rights-respecting legislation and must be considered when developing such responses.

Even with the growth noted in countries like Kenya and Ghana, a yawning gap remains in countries like Malawi, where infrastructural and economic concerns threaten the progress of digitalisation and policy implementation. This highlights the need for effective policies and programmes focused on developing ICT infrastructure, bridging the digital divide and, by extension, fostering open governance and inclusion. A human rights-based framework that supports digital inclusion should take precedence in national policy discussions to promote the digital economy. The importance of enacting inclusive digital policies cannot be overstated; however, it is imperative to note that there is a lingering gender divide that, if left unattended, will lead to the failure of these policies. The manipulation of information and public opinion infringes on the rights of citizens and must stop. Governments must set policies that keep the Internet open and safe for all and work with relevant stakeholders to eliminate online violence, bullying, hate speech and misinformation. There is also a need for thorough fact-checking of information online through set guidelines and tools. Nonetheless, this should not serve as an opportunity for governments to surveil their citizens. The digital rights of every citizen must be respected. Private institutions are also implored to demonstrate their commitment to digital policy development and work closely toward the shared objective of protecting citizens, businesses, and organisations in the digital era.

The country reports in Londa 2021 renew calls for greater transparency in digital governance and the collective responsibility to understand the crosscutting issues that lead to abuse, disabling environment and poor policies in the digital ecosystem. A digitally inclusive and rightsrespecting Africa is attainable with sub-national, national, regional and continental commitment and collaboration to deepen digital inclusion and protect human rights online.

