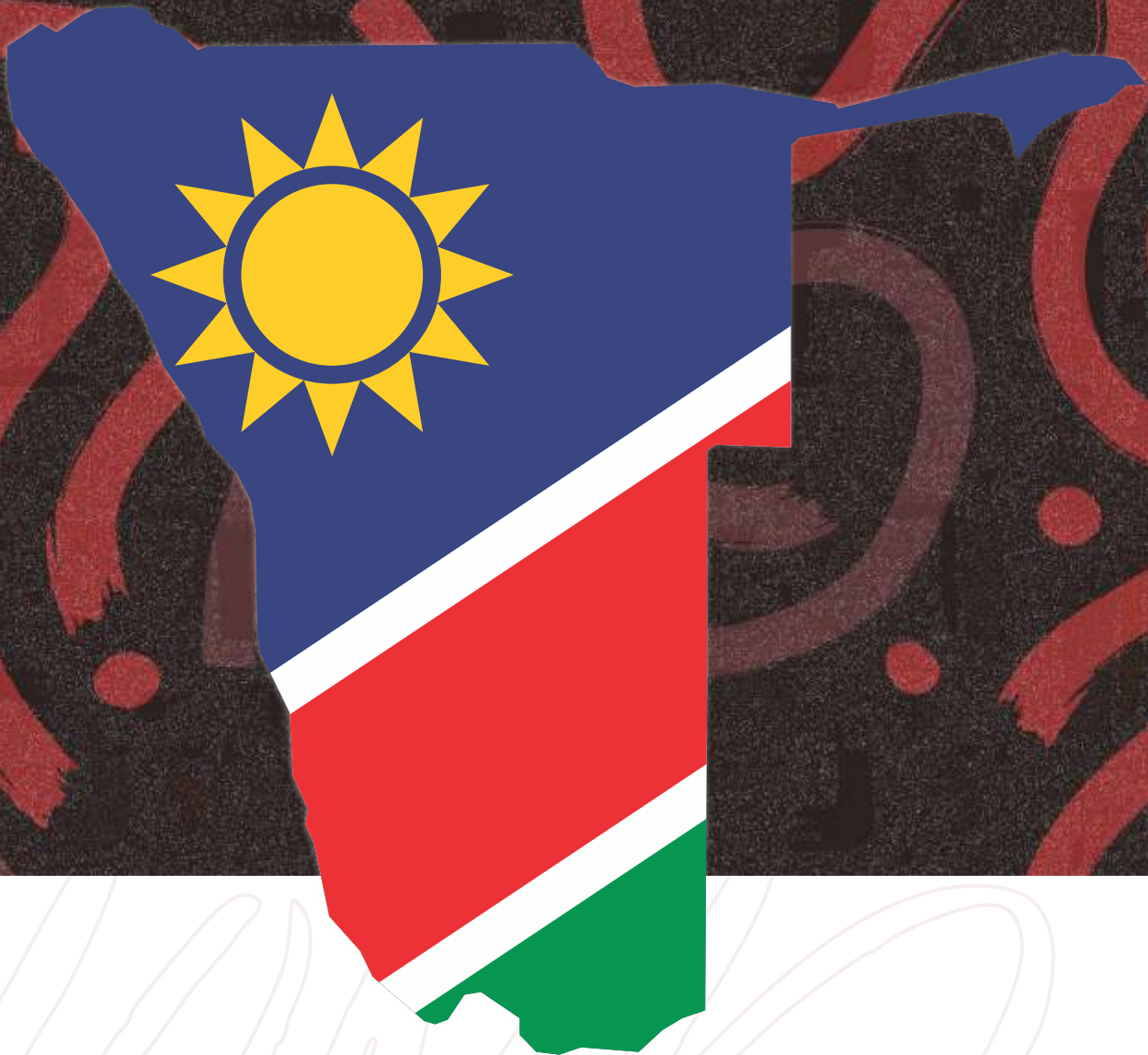


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2021



Namibia Digital Rights and Inclusion Report

LONDA

NAMIBIA DIGITAL RIGHTS AND INCLUSION 2021 REPORT

A PARADIGM INITIATIVE PUBLICATION

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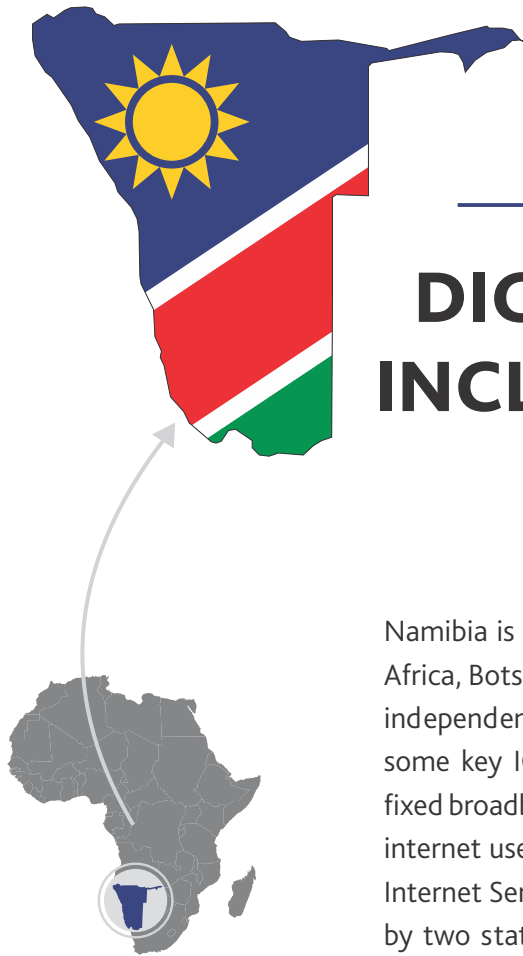
EXECUTIVE SUMMARY

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 2020,¹ 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-2020-08-14-no-7308.pdf> (accessed on 23 December 2021)



INTRODUCTION

DIGITAL RIGHTS AND INCLUSION IN NAMIBIA

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.

51%



**OF THE POPULATION
ARE INTERNET USERS**

Namibia ranks 102nd in the Inclusive Internet Index,⁷ 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://dataportal.com/search?q=namibia> (accessed on 26 December 2021)

5. Developing Telecoms Namibia plans privatisation of Namibia Telecom and MTC (2020)<https://developingtelecoms.com/telecom-business/market-reports-with-buddecom/10087-namibia-plans-privatisation-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-of-mtn-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 e-services 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 ratified¹¹ 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 ≈ <https://www.ncsi.ega.ee/country/na/999999999/> (accessed on 28 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 <https://m.facebook.com/TheNamibianNewspaper/photos/a.287882347907943/3730364760326334/?type=3&p=60>

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 draft 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 ratified¹⁷ 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 Protocol in 2004 <https://www.maputoprotocol.up.ac.za/index.php/namibia> (accessed on 5 January 2022)

18. New Era Newspaper "Nghipondoka discourages parents from visiting boarding learners"
<https://newera.live.na/posts/nghipondoka-discourages-parents-from-visiting-boarding-learners> (accessed on 5 January 2022)

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/education-invests-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-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.



**Namibia remains Africa's
most freest country
in press freedom.**

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-app-namcotrace/> (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 Observer "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)

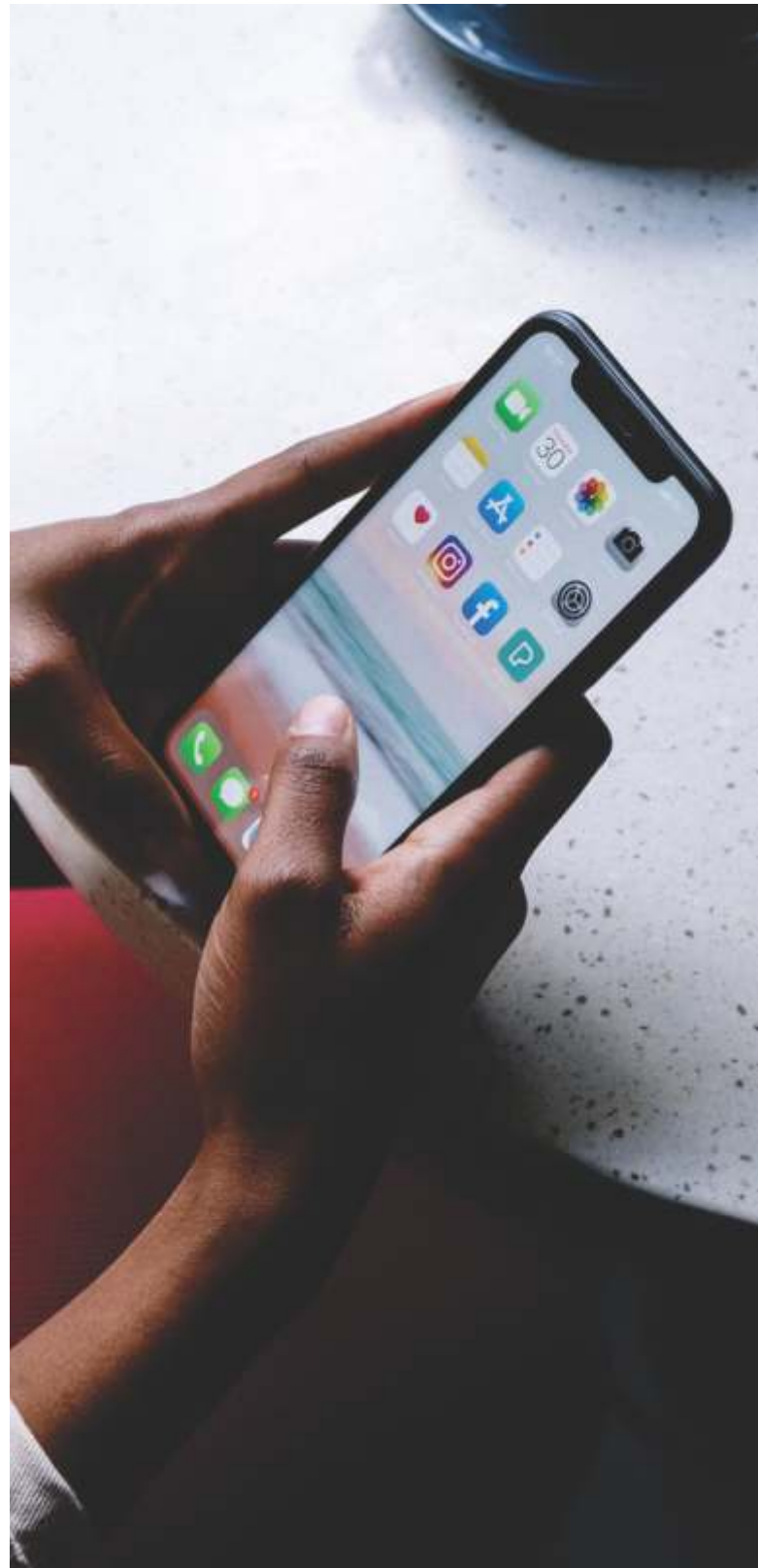
30. All Africa "Namibia: Hengari 'Verbal Attacks' Cited in Press Freedom Report" (2021) <https://allafrica.com/stories/202104210883.html> (accessed on 7 January 2022)

31. Freedom House "Namibia Freedom of the World Report 2021" <https://freedomhouse.org/country/namibia/freedom-world/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.³⁴ In 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 January 2022)

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-warns-against-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.⁴⁰ 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-to-expect2021-10-17> (accessed 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://africabusinesscommunities.com/tech/tech-news/namibia-mtc-introduces-biometrics-and-ai-to-protect-consumer-data-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-e4e8-d6e2297ec9a4> (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-will-receive-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-police-nampol-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-&dash-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-consults-hardap-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-to-information-bill-under-scrutiny-in-zambezi/> (accessed on 10 January 2022)



In September 2021, the Bill was resubmitted⁴⁸ to parliament for the third time and is under scrutiny⁴⁹ 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).⁵² Once 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)

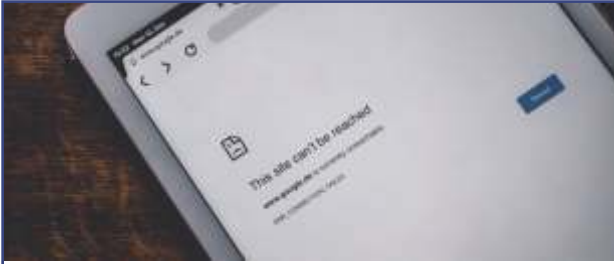
49. Parliament of Namibia “ATI Bill under scrutiny” (2021) <https://www.parliament.na/ati-bill-under-scrutiny/> (accessed on 10 January 2022)

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-make-it-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-sierra-leones-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 90-minute 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,⁵⁹ 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 criminalised⁶⁰ 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 court⁶¹ as 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) <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://ghanafrikanews.com/internet-goes-off-for-3-days-in-cameroon-congo-and-namibia/> (accessed on 10 January 2022)

56. New Era Newspaper "Teacher faces prosecution for alleged racism" (2020) <https://neweralive.na/posts/teacher-faces-prosecution-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/archive-read/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" (2020) <https://www.namibian.com.na/201419/archive-read/Man-arrested-for-spreading-fake-Covid-19-news> (accessed on 10 January 2022)

62. N Gervasi, '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.zimlil.org/content/chapter-3-defamation-and-other-actions-under-actio-injuriarum> (accessed on 25 February 2022)

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) sued⁶⁵ 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.

65. New Era Newspaper "Kauta slaps Ngarizemo with N\$500 000 defamation suite" (2021)

<https://neweralive.na/posts/kauta-slaps-ngarizemo-with-n500-000-defamation-suite> (accessed on 10 January 2022)

66. Nalebrity "Betty Davids Wins Court Case Against Immanuel Nashinge" (2021)<https://nalebrity.com/drama/betty-davids-sues-immanuel-nashinge-for-calling-her-a-prostitute> (accessed on 11 January 2022)

67. All Africa "Namibia: Geingos' Slander Lawsuit Goes for Mediation" (2021)
<https://allafrica.com/stories/202104060720.html> (accessed on 11 January 2022)

68. All Africa "Namibia: Ex-MP Sues Over Facebook 'Slander'" (2021) <https://allafrica.com/stories/202107290900.html> (accessed on 11 January 2022)

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.⁷⁰ While digital transformation (characterised by increased accessibility of services through digital means such as e-learning, e-finances, 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.

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)

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-the-namibian-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-network-expansion.html> (accessed on 12 January 2022)

74. The Namibian "Powercom builds new network towers" (2021) <https://www.namibian.com.na/208887/archive-read/PowerCom-builds-new-network-towers> (accessed on 12 January)

75. Telecom Namibia "Telecom Namibia brings connectivity to remote areas" (2020) <https://www.telecom.na/media-centre/511-telecom-namibia-brings-connectivity-to-remote-areas#:~:text=Telecom%20Namibia%20brings%20connectivity%20to%20remote%20areas%20Windhoek%2C,hub%2C%20aaptly%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.itnewsafrika.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.itnewsafrika.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
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37.7%
FOR 4G COVERAGE
COUNTRYWIDE.**

Despite a strategy for e-government in place,⁷⁹ the success of e-government 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.^{80 81 82 83} 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.

ARTIFICIAL INTELLIGENCE NATIONAL STRATEGY

The topic of artificial intelligence is gaining momentum among individuals^{87 88} and the academia.⁸⁹ However, the country has not yet adopted a national position or national strategy on AI. Similarly, Namibia does not yet have any policy proposition with regards to 5G.



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/mtc-vows-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-block-infrastructure-sharing-2021-10-22> (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" (2021) <https://neweralive.na/in/posts/consumers-to-benefit-from-infrastructure-sharing> (accessed on 11 January 2022)

86. Windhoek Observer "Geingob appoints 4IR Task Force" (2021) <https://www.observer24.com.na/geingob-appoints-4ir-task-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-agriculture/> (accessed on 12 January 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)

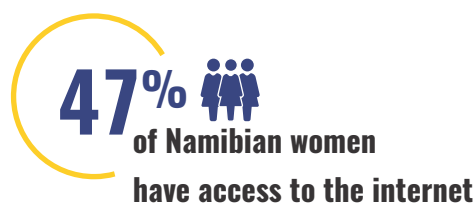
However, in October 2021, the communications regulator (CRAN) invited an expert from Intel⁹⁰ to engage on 5G and artificial intelligence to its stakeholders Spectrum harmonisation engagement that was aimed at supporting the implementation of 5G, Wi-Fi 6E and WiGig. Additionally, the Regulator and the 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.

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 report⁹⁵ by the Internet

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 online^{96 97} that is manifesting via various forms have^{98 99} become a common occurrence in Namibia. An in-depth report by the Internet Society¹⁰⁰ 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



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.biztechfrica.com/article/windhoek-5g-plans-opposed/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 on 12 January 2022)

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-davids-allegedly-called-a-prostitutehttpsbitly2pjotgy/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/Man-arrested-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-media7-november-2021-runduthe-22-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.

102. Office of the President "Harambee Prosperity Plan II - 2021 - 2025" (2021) <http://hppii.gov.na/storage/2021/03/HPP2.pdf> (accessed on 30 March 2022)

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.***

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.



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