PARADIGM INITIATIVE

LONDA
2022

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

THESE
CONTRIBUTIONS
REPRESENT KEY
FINDINGS AND
HIGHLIGHT
RECOMMENDATIONS TO
ADVANCE DIGITAL RIGHTS
AND INCLUSION

AN
ANALYSIS OF
24
COUNTRIES

LONDA

Digital Rights and Inclusion in Africa Report 2022

Table of Contents

2022

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 'Londa' is of Zulu origin and echoes a call for action to protect and 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!

Acknowledgements

Londa features country reports authored by digital rights and inclusion experts from Africa. A special thanks to the authors. These contributions present key findings and highlight recommendations to advance digital rights and inclusion in Africa. We acknowledge and appreciate the Research and Editorial Team for the undertaken editorial process. The support from our funding partners is most appreciated and ensures that we continue to deliver on our mandate to monitor, document and report on digital rights.

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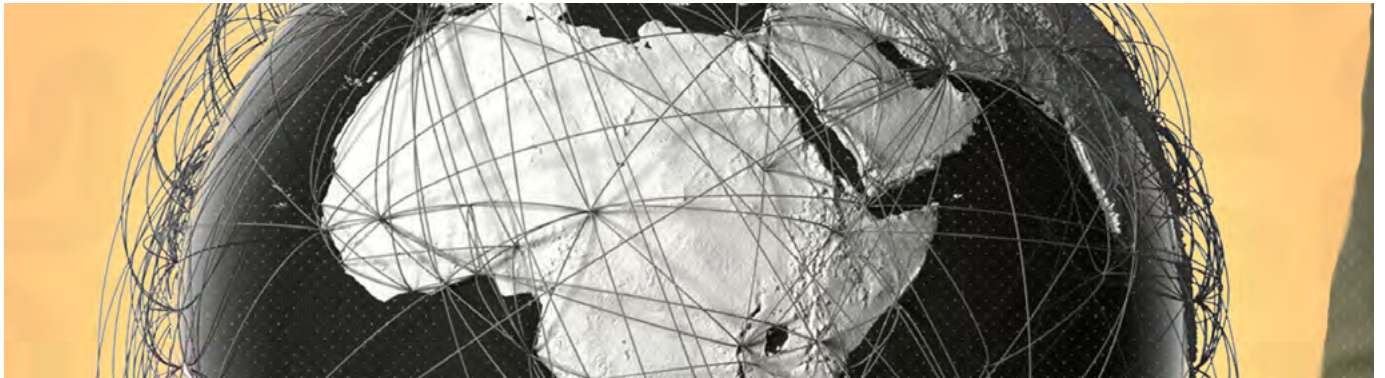Sandra Mulluka

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EXECUTIVE SUMMARY

Paradigm Initiative published its first Digital Rights in Africa report in 2016 to highlight digital rights violations and harmful policies or laws, and ensure the protection of human rights online in Africa. In the years since, annual reports, now known as Londa, provide in-depth analysis and recommendations to address emerging and persisting digital rights issues. As the world recovers from the COVID-19 pandemic, access to digital life has become increasingly important. This edition of Londa focuses on cross-cutting issues affecting digital rights and Internet freedom in 2022. It also evaluates the Universal Service Fund's existence and performance across the 24 countries under review.

Technology is crucial in connecting marginalised communities to the rest of the world in an increasingly globalised society. It also significantly impacts human rights and socioeconomic growth. With this understanding, governments continued efforts to bridge the digital divide and build digital economies. Zambia shared its National ICT Policy and new National Digital Transformation Strategy for stakeholder consultation. At the same time, Zimbabwe continued its technological advancements by implementing the Integrated Electronic Case Management System, which facilitates virtual court proceedings. Across West Africa, notable policies, including the Nigeria Digital Agriculture Strategy and National Policy on Information and Communication Technologies

(ICT) in Education, have been introduced. South Sudan is currently in the process of implementing its broadband strategy to facilitate the achievement of sustainable development goals.

Nonetheless, the perennial gaps in access persist on the continent. People with disabilities and under-served communities face significant barriers, including a lack of accessible infrastructure, digital literacy skills, and affordability of assistive devices. Access to digital opportunities by women and girls, including ICT education, still needs improvement. Despite progress in bridging this divide, men continue to outrank women in various indices, from the adoption and use of ICT tools to employment opportunities. The introduction of prohibitive levies and taxes, which emerged as a common theme in the period under review, further impeded general access, as seen in Ghana, Malawi, and Uganda, amongst others.

The Universal Service Fund (USF) exists in 22 of the 24 countries reported, including Zimbabwe, Zambia, Tunisia, Uganda, Togo, The Gambia, Tanzania, Sudan, Rwanda, Nigeria, Malawi, Kenya, Ethiopia, Central African Republic, Benin, South Sudan, Namibia and Botswana. However, information on the amount of funds raised, transparency, and impact varies widely among these countries. Two countries, Angola and the Gambia do not currently have a USF. The Ghana Investment Fund for Electronic

Communication (GIFEC) is Ghana's equivalent of a USF, but information on its funding and project expenditure reports are not readily available.

As emerging technologies like Artificial Intelligence (AI) gain traction, awareness and adoption are growing on the continent. Recent developments with AI tools demonstrate not only the potential the technology possesses to accelerate socio-economic growth but also to aggravate existing inequalities. This underscores the need for rights-respecting AI frameworks across all sectors. For a continent where frameworks can be an afterthought and legislation often a knee-jerk reaction, playing catchup must desist. Frameworks and strategies need to be be well-intentioned, adequately safeguard human rights, accommodate emerging trends and issues, and be transparently implemented.

Londa also discusses the issues surrounding data privacy and governance and the lack of accountability and oversight mechanisms for digital identification systems. Nigeria has taken steps towards a better data protection framework by releasing a draft Data Protection Bill, improving the Nigeria Data Protection Regulation. In contrast, privacy concerns surround the newly introduced Ghana card and e-levy bill, much like its continental counterparts. Out of the 24 countries reported, only 17 have data protection legislation in place, and some have data protection bills with varying levels of progress towards implementation. While the Central African Republic has no specific data legislation and relies on provisions of existing bills, South Sudan has no data legislation or framework.

In the period under review, Ghana was reported by the Media Foundation for West Africa (MFWA) to be the most repressive West African country in the first quarter of 2022, with 11 violations of press freedom recorded, followed by Nigeria with five violations; a concerning development for Ghana with a reasonably exemplary report in Londa 2021. The Nigerian government also blocked online content and social media platforms directing media groups to stop using Twitter and threatening legal action against Nigerians who accessed the service via circumvention techniques. On July 14, 2022, the Economic Community of West African States (ECOWAS) court ruled against the Nigerian government, setting precedence and contributing jurisprudence on this issue in Africa. Similarly, Angola had challenges with Internet freedom as Internet access remained expensive. Network challenges made it difficult for users to access the Internet without interruptions, especially in rural areas – a common refrain across the continent. On the other hand, Botswana took a pro-Internet freedom stance with no credible reports of Internet disruptions, government interference or the use of digital technologies for political repression or social control, while Malawi decriminalised sedition and related offences.

Londa's recommendations cover a range of stakeholders, including the private sector, civil society, governments, the media and academia. By implementing these recommendations and working together, stakeholders can build a strong and sustainable digital environment in Africa where everyone can exercise their rights online.
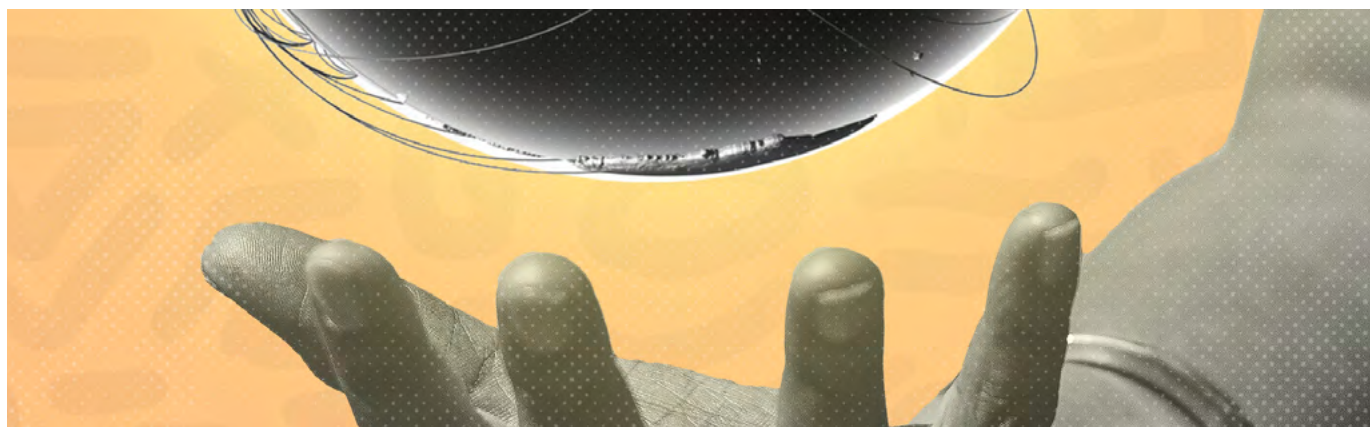
PRIVATE SECTOR

Ensure that practices around content moderation and surveillance practices do not stifle diverse political views and perspectives.

Resist governments' unethical pressures to allow illegal access to personal data and digital abuse, especially blockage of Internet networks and services.

Increase investment in digital literacy for staff and stakeholders.

Collaborate with non-state actors in advocating for a conducive policy and legislative environment for digital rights and ICT actors.

Appoint data protection officers and set up complaint units while keeping up with global best practices.

Transparently publish the quantity of state and security services surveillance requests and types of devices and tools used in monitoring citizens to advance transparency and public confidence.

Dialogue with civil society to understand the effects of company policies and products and the needs of consumers.

Conduct reviews of internal practices to ensure adherence to ICT and Internet-related laws and produce annual analysis reports on the state or impact of the private sector operations on digital rights.

MEDIA

Uphold professional ethics in reporting to avoid misinformation and disinformation.

Ensure the protection of media practitioners by building strong coalitions and pushing against repressive laws.

Provide digital security training to its members.

ACADEMIA

Encourage interdisciplinary collaboration between fields to tackle complex digital rights and Internet freedom issues.

Participate in developing digital literacy training and teaching curricula and promoting best practices in using emerging technologies in local communities and schools.

CIVIL SOCIETY

Streamline the flow of information between grassroots community organisations and NGOs to build effective domestic human rights monitoring mechanisms.

Encourage activism and citizenship movements using social media networks, particularly in rural areas, and take action to report violations of digital rights. Conduct more critical analyses of the impact of digital IDs in the global south

and the actors involved in designing and implementing them.

Create national reference guides on digital rights strategies and collaborate with governments to promote more meaningful deliberations on digital rights-related resolutions.

Consolidate joint efforts to oppose the adoption of laws and decrees threatening digital rights in the country.

Conduct early-warning analysis on election interference tactics likely to occur and mobilise advocacy campaigns to prevent adverse impacts.

Provide Digital Safety training to all stakeholders.

GOVERNMENT

Uphold constitutional and international obligations and refrain from digital authoritarianism characterised by aggressive and sophisticated measures that curtail Internet freedoms.

Establish robust multi-stakeholder consultative processes for policies, laws and regulations.

Review policies and regulations periodically to address new and emerging technologies, including AI, big data, Internet of Things (IoT) and cloud computing.

Develop and provide periodic updates to the public on policy and legislative processes.

Exercise caution when applying disinformation laws and prosecuting individuals. Always consider 'intent' and 'harm'.

Remove barriers to Internet and mobile services access, particularly prohibitive taxes on Internet and mobile services, and poor ICT infrastructure to ensure universal access.

Prioritise Digital Literacy Education and strengthen digital literacy at all levels.

Commit to keeping the Internet on and inform citizens of network disruptions within a reasonable timeframe.

In conclusion, the 2022 Londa report provides a comprehensive overview of the digital rights landscape in 24 African countries, highlighting violations and documenting notable developments and milestones.
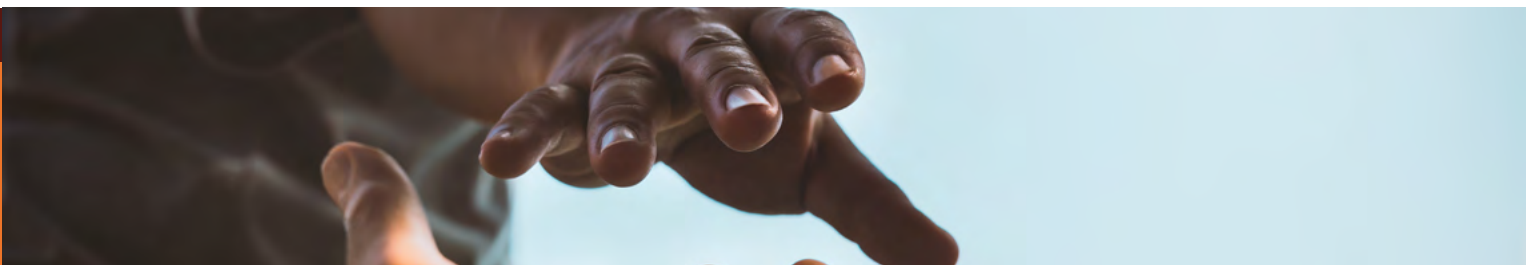
Country Reports

Angola

▸ Executive Summary

Access to the internet in Angola remains very low but has been increasing steadily. With a population of about 30 million, more than half of Angolans do not have internet access. While the occasional arrest of protesters who started online and took to the streets negatively impacted the growth of digital activism and mobilisation in the past, the use of social media to garner support for various causes has become common in recent years. The Constitution enshrines freedom of expression and of the Press and the right to privacy. There are pieces of legislation that regulate the use and services of the internet such as the Electronic Communications and Information Companies Services Act of 2011 which, for instance, provides for the right to privacy and online security.

This report demonstrates that although progress has been recorded in some instances, a number of violations occur while using technology or in internet-facilitated digital spaces such as social media platforms. Violations against freedom of expression are examples of this. Journalists and activists are subjected to legal proceedings in Angola, and during the period under review, members of the press and civil society were charged for various reasons. Generally, association and assembly rights are regularly subject to interference and prone to government restrictions. Citizens and associations that criticise the government do not exercise these rights freely. Equally, internet access is still prohibitively expensive for most people, especially in rural areas. A number of stakeholder-specific recommendations are proposed for enhancing the protection and promotion of digital rights.

Introduction

Angola is a Southern African Portuguese-speaking country with an estimated population of 31 million.[1] It is ranked 99 out of 180 countries in the 2022 World Press Freedom Index.[2] Also, investigative reporting on subjects involving politics and the judicial system often leads to prosecutions and sometimes heavy sentences. Despite this low ranking, no reporters/journalists were killed in 2022. However, journalists Daniel Fernandes and Romão De Jesus, who were reporting on the demolition of homes in Luanda, lost their equipment after being assaulted by military and police officers for reporting on the demolition of homes to make way for a new airport in the city.[3] Following three assaults on media organisations in Angola,[4] the Union of Angolan Journalists (SJA) called for a protest against restrictions on Press freedom in December 2022.[5]

More than half of the population does not have internet access. Data from the *Digital 2022* report indicates that in January 2022, there were 12.41 million internet users. At the start of 2022, the internet penetration rate was at 36.0 per cent of the total population.[6] Kepios analysis indicates that internet users increased by 389,000 (+3.2 per cent) between 2021 and 2022.[7] There are four mobile telecommunication companies: Movicel, Unitel, Angola Telecom and Africell. Africell started operations in April 2022. Angola is ranked 61 out of 100 in the *Freedom on the Net* report (2022).[8] The Internet is still only accessible to a small number of people in Angola, as shown in the graph below. This partly inhibits Internet accessibility and does not contribute to the enjoyment of digital rights.

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1   https://www.cia.gov/the-world-factbook/countries/angola/ (accessed on 30 December 2022). Since independence in 1975, it has been governed by the Popular Movement for the Liberation of Angola (MPLA). The current President, João Lourenço, was elected in August 2022, after more than 30 years of governance by the previous head of state, José Eduardo dos Santos, who died in September 2022. See Angolan President Joao Lourenco wins re-election bid https://www.dw.com/en/angola-incumbent-president-joao-lourenco-wins-reelection/a-62963836 (accessed 30 December 2022) & José Eduardo dos Santos: State funeral for Angola ex-president https://www.bbc.com/news/world-africa-62705492 (accessed 30 December 2022).

2   Reporters Without Borders 'Press freedom still fragile despite the old dictator's departure' https://rsf.org/en/angola (accessed on 31 December 2022).

3   Angolan journalists attacked by security forces https://ifex.org/angolan-journalists-attacked-by-security-forces/ (accessed 31 December 2022).

4   Journalists march on the 17th against attacks on the class https://www.verangola.net/va/en/122022/Telecommunications/33603/Journalists-march-on-the-17th-against-attacks-on-the-class-after-a-new-assault-on-the-Union.htm (accessed 27 December 2022).

5   https://crisis24.garda.com/alerts/2022/12/angola-unionized-journalists-members-likely-to-protest-in-luanda-dec-17 (accessed 28 December 2022).

6   Hootsuite, Digital in Angola, Data Reportal, 2022 https://datareportal.com/reports/digital-2022-angola (accessed 16 January 2022).

7   *Op cit.,* Hootsuite.

8   Freedom House ' Freedom on the Net 2022: Angola' https://freedomhouse.org/country/angola/freedom-net/2021 (accessed on 28 December 2022).
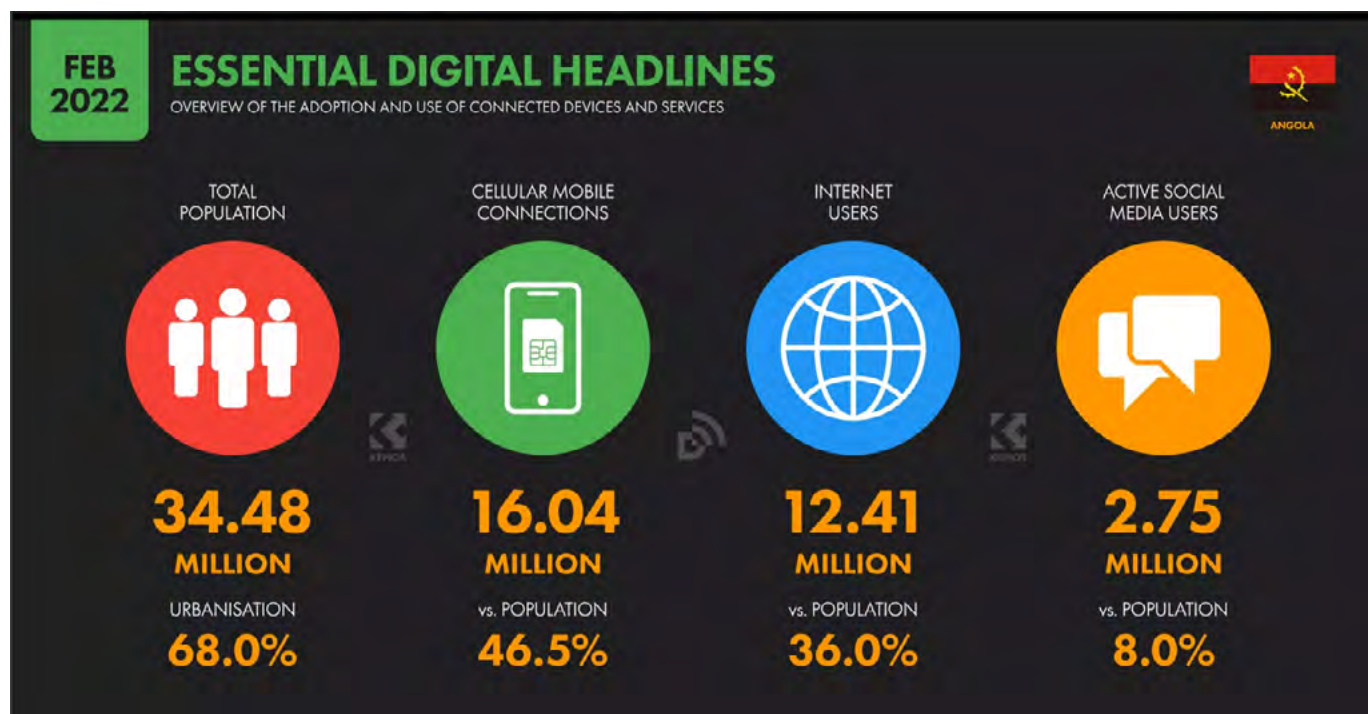
Figure 1: Digital in Angola (Hootsuite, 2022)

Country Analysis

INTERNET FREEDOM

According to Freedom House, internet freedom in Angola remained under threat as the country prepared for General Elections in August 2022.[9] Network challenges make it difficult for users to access the internet without interruptions, as well as infrastructure deficits in rural areas. Internet access is still prohibitively expensive for many people (only 36 per cent have access)[10], especially in rural areas. The government and some private companies have made efforts to install free wireless access points. For example, Angola Online, a project promoted by the government, installed several wireless posts aimed at expanding internet availability and accessibility. In Luanda and other cities, private companies have gradually installed free wireless hotposts in public spaces.[11]

There were no connectivity restrictions on fixed and mobile telephone networks during the period under review. Social media and communication applications such as YouTube, Facebook and Twitter, and the services

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9   *Op cit.* (Freedom House 2022)
10   See Figure 1.
11   Angola Online https://www.menosfios.com/projecto-angola-online-com-30-mil-conexoes-no-pais/ (accessed on 28 December 2022).

of international blog hosting platforms, can be freely used. However, indirect control of telecommunications infrastructure by the Angolan government, through the state-owned company Angola Telecom, may be an alternative for the government to maintain its control in the mobile communication companies.[12]

While the government does not block or censor online content, violence against activists and journalists contributes to self-censorship and this creates a climate of fear that limits public debate on governance issues. During the period under review, there were violations against freedom of expression and other internet violations. For example, on November 7, 2022, reports indicated that one person was arrested, and two others were confirmed as wanted by police, in relation to an online video that criticised president João Lourenço.[13] It was revealed that the individuals in question are employed by a construction company that is building the new Agostinho Neto International Airport in Luanda.[14] In the video posted to Facebook and shared on WhatsApp, the trio criticised the President for prioritising the construction of the airport while many citizens were wallowing in poverty. They also alleged that construction workers were earning more than teachers.[15]

The Criminal Investigation Service (SIC) confirmed that the video was offensive to the State, and that social media should be used for positive purposes, although the exact charges levelled against the three individuals remain unclear.[16] This development is illustrative of the limited tolerance for criticism of the government, and the State's willingness to pursue legal action against those with dissenting views, whether expressed online or in physical spaces. There is no clarity on the legal explanation to take this action, even if the laws on State security and defamation are contrary to constitutional guarantees.

For example, Article 26 of the 2010 State Security Law punishes individuals who insult the country or the president in "public sessions or by disseminating words, images, texts or audio" with a prison sentence of up to three years. Equally, it is contrary to international standards, as the 2019 ACHPR Declaration (Part IV, Principle 38) states that "states shall not interfere with the right of individuals to seek, receive and impart information through any means of communication and digital technologies, through measures such as the removal, blocking or filtering of content, unless such interference is justifiable and compatible with international human rights law and standards."

DATA GOVERNANCE

The Electronic Communications and Information Companies Services Act of 2011 provides for citizens' rights to privacy and security online, among other legislation regulating the use and services of the internet. Regarding data protection, a distinctive dual legal structure for data protection is used in Angola. The Presidential Decree 214/2016[17] effectively establishes the office of the Data Protection Agency (DPA) to ensure adherence to the data protection law, despite the Personal

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12   Angola Telecom http://www.angolatelecom.ao/ (accessed on 26 December 2022).

13   Vídeo no Tik Tok leva jovem angolano à prisão por difamar o Presidente https://angola24horas.com/component/k2/item/25779-video-no-tik-tok-leva-jovem-angolano-a-prisao-por-difamar-o-presidente (accessed 28 December 2022).

14   Vídeo no Tik Tok leva jovem angolano à prisão por difamar o Presidente https://www.cmjornal.pt/mundo/africa/detalhe/video-no-tik-tok-leva-jovem-angolano-a-prisao-por-difamar-o-presidente?ref=Famosos_CmaoMinuto (accessed 26 December 2022).

15   Vídeo no Tik Tok leva jovem angolano à prisão por difamar o Presidente https://www.lusa.pt/article/39965506 (accessed 26 December 2022).

16   Vídeo no Tik Tok leva jovem angolano à prisão por difamar o Presidente https://www.dn.pt/internacional/video-no-tik-tok-leva-jovem-angolano-a-prisao-por-difamar-o-presidente-15446061.html (accessed on 26 December 2022).

17   Presidential Decree 214/16 of 10 October - Organic Statute of the DPA https://www.apd.ao/fotos/frontend_1/editor2/161010_dp_214-16_de_10_outubro-estatuto_organico_apd.pdf (accessed 18 January 2022).

Data Protection Law's[18] extensive procedural provisions for the observance of data protection principles and the enforcement of rights.

The data protection law regulates the processing of personal data by both public and private entities.[19] It is applicable to both manual and electronic processing of personal data by controllers and processors based in the country or to processing activities by any means in the country regardless of the location of controllers. The law essentially only applies to processing carried out domestically. The Angolan DPA, known as Agência de Protecção de Dados (APD),[20] was founded on October 10, 2016, five years after the country's data protection law was passed. Since the DPA's founding in 2019, it has received over 100 requests and complaints about privacy invasion related to sites without privacy notices, processing of personal data without consent and lack of legalisation of personal data files. However, as of 2022, there are no verifiable reports indicating that these investigations have resulted in punishment or exoneration.

In January 2020, the agency announced that it had a strategic plan for the years 2020 to 2024.[21] However, little is known about how it was implemented because it has not been made available to the public. In 2022, the work consisted of monitoring some complaints, but the lack of information makes it difficult to understand the outcome of cases. In June 2022, the DPA became, along with five other authorities from five countries on the continent, a member of the African Network of Personal Data Protection Authorities (RAPDP).[22] This was one of the few public actions that can be highlighted in 2022. In December 2022, the DPA announced that there is a proposal to review the Law on the Protection of Personal Data in 2023, as current legislation is outdated in its ability to protect data.[23] However, the APD has not specified which provisions need to be modified in the current law.

Angola does not have a consolidated digital identity (ID) mechanism. However, the National Directorate of the Angolan Civil and Criminal Identification Archive provides Computerised Identity Cards. The Computerised Identity Card is issued within 72 hours upon payment of 15 Kwanzas (U$D 0.030). The service is provided by the electronic government system (official government portal) called 'sete.gov.ao'.[24] It is unknown how closely this digital identification adheres to the legal requirements for the security and privacy of the data it collects or keeps on file in terms of data protection as the platform is silent on this matter.

CYBERSECURITY AND DATA PRIVACY

Another important topic for this report is cybersecurity and personal data. Although the government has not yet adopted a cybercrime strategy, a new Penal Code was approved by the National Assembly. It includes a few provisions on cybercrime. Regarding the protection of critical infrastructure, Law no. 7/2017 provides for the protection of networks and computer systems. Article 444 stipulates that "if access is obtained by violation of security rules or to a protected service, the punishment is imprisonment for two to eight years".[25]

18   Data Protection Law Decree 214/2016 https://www.apd.ao/fotos/frontend_1/editor2/110617_lei_22-11_de_17_junho-proteccao_dados_pessoais.pdf (accessed 18 January 2022).
19   Paradigm Initiative: Data Protection Authorities in Africa https://paradigmhq.org/report/data-protection-authorities-in-africa-dpas-report/ (accessed on 17 January 2023).
20   Agência de Protecço de Dados (APD) https://www.apd.ao/ (accessed on 17 January 2023).
21   APD aprimora estratégia de actuação para 2023 https://www.apd.ao/ao/noticias/apd-aprimora-estrategia-de-actuacao-para-2023/ (accessed on 17 January 2023).
22   Agência de Protecção de Dados (APD) eleita membro da Rede Africana de Autoridades de Protecção de Dados pessoais (RAPDP) https://www.apd.ao/ao/noticias/agencia-de-proteccao-de-dados-apd-eleita-membro-da-rede-africana-de-autoridades-de-proteccao-de-dados-pessoais-rapdp/ (accessed on 17 January 2023).
23   APD aprimora estratégia de actuação para 2023 https://www.apd.ao/ao/noticias/apd-aprimora-estrategia-de-actuacao-para-2023/ (accessed on 17 January 2023).
24   Government Portal https://www.sepe.gov.ao/ao/catalogo/mais-servicos/pessoa-familia-e-sociedade/pedido-de-bilhete-de-identidade-informatizado/ (accessed on 28 December 2022).
25   Protection of critical infrastructures, Law no. 7/2017 https://minttics.gov.ao/fotos/frontend_10/gov_documentos/redes_e_sistemas_informaticos_20864175955f109a14374be.pdf

State also highlighted the importance of young people using the internet in their personal and professional life.[27] He also underscored the need to refrain from sharing personal and other information that may undermine human dignity.

The law also criminalises computer crimes, for example, illegitimate access to information systems. There seems to be an increase in cybercrime attacks in Angola.[28] This information was revealed during a workshop promoted by the Ministry of Telecommunications, Information Technology and Media (MINTTICS) to discuss issues related to information and cybersecurity. The director in the Ministry, Hectiandro Men, also stressed that Angola cannot ignore threats such as online child pornography and drug trafficking on social media networks.[29] In response to these crimes, the government introduced legislative initiatives such as the Protection of Personal Data, Electronic Communications, and Information Society Services and the Law of Industrial Property and Copyright, to protect citizens.

The government has been raising awareness on the need for individual attention over their privacy and security online. For example, on April 28, 2022, Secretary of State for Telecommunications and Information Technology Mário Oliveira, announced[26] the government's work on promoting responsible use of the internet, with specific focus on the protection of women and girls online. However, the meaning of "responsible use of the Internet" has not been adequately explained by the Executive. At the 'Girls in ICT Day 2022' celebrations, the Secretary of

In addition, Angola Cables[30] introduced a new tool to prevent and fight against internet crimes.[31] The initiative is called "Shields2Africa" – a security service that protects structures against cyberattacks. According[32] to Angola Cables Product Manager, Crisóstomo Mbundu, the innovation is envisaged to revolutionise the technology sector in Angola, as it protects infrastructures against DDoS-type[33] cyberattacks on Layers 3 and 4 of the OSI

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26   MINTTICS apoia envolvimento de meninas as TIC https://minttics.gov.ao/ao/noticias/minttics-apoia-envolvimento-de-meninas-as-tic/ (accessed on 28 December 2022).

27   *Op cit.* MINTTICS apoia.

28   MINTTICS realiza palestra sobre crimes na internet e segurança da informação https://minttics.gov.ao/ao/noticias/minttics-realiza-palestra-sobre-crimes-na-internet-e-seguranca-da-informacao/ (accessed on 27 December 2022).

29   Crimes informáticos estão a aumentar anualmente em Angola https://pti.ao/crimes-informaticos-estao-a-aumentar-anualmente-em-angola/ (accessed on 28 December 2022).

30   Angola Cables is a multinational company operating in the global ICT marketplace providing tailored connectivity solutions for the wholesale and corporate segments.

31   Angola Cables desenvolve solução para mitigar ataques cibernéticos https://pti.ao/angola-cables-desenvolve-solucao-para-mitigar-ataques-ciberneticos/ (accessed on 28 December 2022).

32   *Op cit.* (Angola Cables).

33   It occurs when a group of systems flood a server with fraudulent traffic. Eventually, the server is overwhelmed, causing it to either go down, or become unresponsive, even to legitimate requests.

model,[34] a reference model for the exchange of information at the internet level. Angola Cables also presented another service, "Clouds2Africa", a cloud computing solution that is aimed at promoting small technological ideas at reduced costs. The initiative is designed to scale up robust technology solutions to connect businesses. The objective is to reduce costs and increase the adoption of technological solutions through the internet.[35]

On 14 November 2022, President João Lourenço inaugurated[36] the first Huawei Technology Park in Angola. It is located in the Talatona urban district and is the third in Africa, after Egypt and South Africa. According[37] to the Minister for Telecommunications, Information Technologies and Media, Mário Oliveira, the Huawei Technology Park is equipped with the latest technology in line with the international standards on data privacy and artificial intelligence. The Minister also noted[38] that the facility will be used to provide training to Angolans and staff from other African countries, particularly from those from the SADC region, given its technological potential. It is targeted at training over 10,000 Angolans, as well as teachers of technical and technological courses at Angolan universities by 2027. The Park is a significant advancement in boosting the technology sector in Angola.

REVIEW OF THE UNIVERSAL SERVICE FUND

Presently, Angola does not have the Universal Access Fund (UAF). Some initiatives such as Angola Online[39] that are aimed at promoting digitalisation and massification of internet

access are carried out by the government and cooperation partners. The project is an initiative of the National Institute for the Promotion of the Information Society (INFOSI) approved by the Ministry of Telecommunications and Information Technology. Each access point, where the educational institutions are located, has the capacity to support 60 simultaneous users up to two hours a day. Once this time has

elapsed, the user no longer has access, and this allows others to enter the network. Although it is considered an interesting project, the limitation of access time and the restriction to the main urban centres compromise meaningful access to the Internet for many Angolans. Several criticisms have been made about the poor quality of the signal, as well as the deactivation of access points in urban centres, and power cuts in places where

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34   It describes seven layers that computer systems use to communicate over a network. It was the first standard model for network communications, adopted by all major computer and telecommunication companies in the early 1980s.

35   Angola Cables on Facebook https://web.facebook.com/AngolaCables/posts/5367723523265342/?_rdc=1&_rdr (accessed on 27 December 2022).

36   Presidente da República inaugura Parque Tecnológico da Huawei https://www.jornaldeangola.ao/ao/noticias/presidente-da-republica-inaugura-parque-tecnologico-da-huawei/ (accessed on 28 December 2022).

37   Parque Tecnológico da Huawei vai formar com qualidade de padrão internacional https://www.jornaldeangola.ao/ao/noticias/parque-tecnologico-da-huawei-vai-formar-com-qualidade-de-padrao-internacional/ (accessed on 28 December 2022).

38   Parque Tecnológico da Huawei em Angola vai formar com qualidade de padrão internacional https://www.plataformamedia.com/2022/11/14/parque-tecnologico-da-huawei-em-angola-vai-formar-com-qualidade-de-padrao-internacional/ (accessed on 29 December 2022).

39   Angola Online https://www.menosfios.com/projecto-angola-online-com-30-mil-conexoes-no-pais/ (accessed on 27 December 2022).

access points are located.[40]

Though there is no Universal Access Fund in the country, it is important to highlight that on 10 August 2022, the local press reported[41] that the capital of Angola will have the first Luanda Science Centre (CCL). This is a public institution with the mission[42] of spreading scientific and technological knowledge in the country. During the visit to the headquarters, President João Lourenço was apprised of the progress at the institution and the commencement of operations that is anticipated in July 2023. The Centre will have administrative and financial autonomy and may contribute to managing Angola's natural resources, environmental and health issues. According[43] to the Minister of Higher Education, Science, Technology and Innovation, Maria do Rosário Bragança, the CCL is the first network of science and technology centres that will be built in the country to increase digital literacy in Angola. This is an exciting effort which should complement USF ideally, as it is private sector led and can inspire other telecommunications companies to be as proactive in advancing the use of ICTs and Internet access.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

Angola does not have a policy on Artificial Intelligence (AI). Generally, there is no public debate on emerging technologies. In 2022, a satellite that is expected to enable the country to enter the new sphere of research and development of emerging technologies was launched.[44] In February 2022, the former Minister of Telecommunications, Information Technologies and Media, Manuel Homem, visited the United Arab Emirates (UAE) to discuss the proposal for the Digital Transformation Programme (Digital Angola 2024).[45] It is a programme for the digital revolution in the country, especially for the implementation of an AI plan. However, such a plan was never made available for public discussion, and was only known from the interview given by the Minister in 2022. In addition, it is important to note that new companies like Africell have chosen Angola as their preferred market for telecommunications, given that there are only two mobile companies and it seems to be an apparently free and open market for competition.

Another highlight is that, on April 7, 2022, Africell launched[46] its operations in Angola. Since then, Africell has invested[47] more than $150 million in the telecoms market to build a high-quality 5G-capable network with an initial capacity of over six million subscribers. The telecom company has enlisted the expertise of international and local technology providers such as Nokia, Oracle, MSTelcom and Angola Cables. It has also set up a data centre in the capital Luanda.[48] Africell will be the first fully foreign-owned service provider – and the fourth overall – to operate in Angola. The firm's entry should improve[49] competitiveness, and possibly prices in the local market (which is

40   Projecto Angola Online quase sempre em offline https://valoreconomico.co.ao/artigo/projecto-angola-online-quase-sempre-em-offline (accessed on 27 December 2022).
41   Luanda contará com um centro dedicado à ciência e tecnologia a partir de 2023 https://pti.ao/luanda-contara-com-um-centro-dedicado-a-ciencia-e-tecnologia-a-partir-de-2023/ (accessed on 28 December 2022).
42   Centro de Ciências pode entrar em funcionamento em Julho de 2023 https://www.tpa.ao/ao/noticias/centro-de-ciencias-pode-entrar-em-funcionamento-em-julho-de-2023/ (accessed on 28 December 2022).
43   Op cit. Luanda contará.
44   Angola Launches its Second Satellite, Angosat-2 https://africanews.space/angola-launches-its-second-satellite-angosat-2-today/ (accessed on 27 December 2022).
45   Angola prtende criar uma plataforma de AI https://pti.ao/angola-pretende-criar-uma-plataforma-de-inteligencia-artificial-para-acelerar-a-transformacao-digital/ (accessed on 29 December 2022).
46   Africell to launch On 7 April https://www.telecompaper.com/news/africell-angola-to-launch-on-07-april--1419969 (accessed on 29 December 2022).
47   Africell a démarré officiellement ses activités commerciales en Angola https://www.agenceecofin.com/operateur/0704-96485-africell-a-demarre-officiellement-ses-activites-commerciales-en-angola (accessed on 29 December 2022).
48   Africell launches mobile services in Angola https://www.totaltele.com/513006/Africell-launches-mobile-services-in-Angola (accessed on 29 December 2022).
49   Africell becomes Angola's fourth operator https://www.insidetelecom.com/africell-becomes-angolas-fourth-operator/ (accessed on 29 December 2022).

dominated by state-owned UNITEL).

On April 28, 2022, the National Directorate of Advertising (DNP) announced[50] plans to establish Meta[51] offices in Angola, with a view to attracting digital entrepreneurship in the country. The revelation was made by José Matuta Cuato, director of DNP, who was speaking at the National Conference on Ethics and Advertising Legislation, held[52] by the Ministry of Telecommunications, Information Technology and Media, together with the DNP.

Referring to the difficulty that digital entrepreneurs face in the current advertising scenario in Angola, José Matuta Cuato revealed that work is underway to bring platforms such as Facebook to the country, although it is in its initial phase. He said:
"It is in an embryonic phase, but we are working to bring Facebook here. We know what businesses today in the digital space go through. For example, if we have these platforms in Angola, people will be able to pay in local money Kwanzas.[53]

Angola may become the first country in African Portuguese-speaking countries to have Meta offices, which will enable the presence of content in Portuguese to expand to other countries in the region.

On May 18, 2022, Angola Cables announced[54] a partnership with leading US data centre owner and developer Flexential, becoming the world's first operator to guarantee the connectivity of 59 data centres from different global providers on its submarine cable network. With access to Angola Cables' MONET cable, hosted at Flexential's data centre in Fort Lauderdale, USA, this partnership will offer the Angolan company's customers low latency, high-capacity connectivity, and cloud solutions across the 40 highly redundant data centres, seven cloud nodes and management of over 13,000 cross connects that Flexential's network offers in the USA. Ângelo Gama, CEO of Angola Cables, noted[55] that the new high-capacity connectivity is the most suitable in terms of cost and efficiency to serve multiple industries that link Africa to the US, such as the oil sector, e-commerce, scientific and academic research, among many others.

It is also important to highlight that on May 27, 2022, Unitel and Huawei signed[56] a three-year agreement to lay a solid foundation for long-term cooperation in the future. The framework agreement consists of a full range of services including Radio Access Network (RAN) solutions, transmission, and innovative services such as 'Home Service' and mobile money. In reaction, Unitel CEO Miguel Geraldes said that Huawei and Unitel have maintained a long-term partnership of trust, and as digitalisation continues, this partnership will further enable Unitel to enhance user experience and improve O&M efficiency.

On July 30, 2022, the Ministry of Education and telecommunications company, Unitel, launched an initiative to promote digital literacy in Angola. The initiative intends to provide public education institutions with free access to the internet, covering and fostering digital education for teachers and students in the initiation classes. The plan was signed by the National Director for Secondary Education, Orlando Lundoloqui, and by Unitel's General Manager, Miguel Geraldes, and it is planned to start in 2024. For its operationalisation, the project will also involve Huawei Angola, which

50   Direcção nacional de publicidade quer trazer Meta ao país https://pti.ao/direccao-nacional-da-publicidade-quer-trazer-escritorios-da-meta-para-o-pais/ (accessed on 29 December 2022).
51   The parent company for Facebook, Instagram and WhatsApp.
52   MINTTICS realiza evento nacional sobre ética e legislação publicitaria https://minttics.gov.ao/ao/noticias/minttics-realiza-2-conferencia-nacional-sobre-etica-e-legislacao-publicitaria/ (accessed on 29 December 2022).
53   *Op cit.,* Direcção nacional de publicidade.
54   Angola Cables firma parceria com maior operador de data center dos EUA https://pti.ao/angola-cables-firma-parceria-com-o-maior-operador-de-data-center-dos-eua-e-passa-conectar-59-data-centers-mundiais/ (accessed on 29 December 2022).
55   *Op cit.,* Angola Cables firma.
56   Unitel e Huawei assinaram acordo quadro para fortalecer parceria https://pti.ao/huawei-e-unitel-assinam-acordo-quadro-para-fortalecer-parceria/ (accessed on 29 December 2022).

20   LONDA - DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

will provide equipment and technological solutions such as computers and projectors, while Unitel intends to promote Internet access and connectivity in schools. Speaking at the protocol signing ceremony, Luísa Grilo, Ministry of Education, said that technologies are fundamental resources for education.

During that occasion, Miguel Geraldes, representing Unitel, pointed out the need to renew education to face the accelerated pace of technological innovations, to make teaching more creative, stimulate the interest in learning and place the school on a platform to respond to the educational challenges necessary for future generations. This is an initiative to be considered as it promotes digital literacy and may allow more Angolans to have access to the internet. The new agreement comes at a time when the government has been implementing new initiatives to promote digital connectivity in the country.

On November 30, 2022, the State-owned telecommunications operator, Unitel, announced[57] its intention to phase out 2G and 3G network mobile phones in the country. According to Unitel, the discontinuity of such devices should expedite the development and expansion of the more advanced 4G and 5G networks. Unitel acknowledged[58] that 4G and 5G network devices are more expensive and has suggested[59] a possible subsidy or tax exemption scheme to reduce the cost and ensure consumer access. Unitel currently dominates Angola's telecommunication market with 11 million subscribers, followed by Africell with five million, and Movicell with 1.5 million.

The strategy envisaged by Unitel is prudent given that demand for more advanced networks is currently suppressed due to the high use of older generation mobile phones (anchored by their lower price and availability), which has impeded the expansion of 4G and

5G in the country. However, Unitel's success in its touted endeavour will be dependent on its ability to lower the costs of new generation devices sufficiently, as well as ensure buy-in from Africell and Movicell. The technological transition is seen as an advantage that could bring benefits to more Angolans. However, it should be a phased process so as not to create a digital divide or unequal access in Angola.

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57   Unitel e Africell divergem sobre eliminação da rede 2G https://www.angop.ao/noticias/economia/unitel-e-africell-divergem-sobre-eliminacao-da-rede-2g/ (accessed on 29 December 2022).
58   Unitel defende descontinuidade de telefones 2G para "acelerar" inclusão digital em Angola https://www.lusa.pt/article/39927781 (accessed 27 December 2022).
59   *Op cit.*

Conclusion and Recommendations

In conclusion, this report has shown that there are still occasional violations of internet freedom of expression. In addition, many people still cannot afford internet access, particularly in rural areas. In Angola, many cases have been launched against the press and civil society during the time period examined in this research. Journalists and activists are susceptible to legal processes. Despite the fact that there are no known instances of internet outages or access restrictions, many Angolans find the rules governing the ICT industry to be burdensome due to their ambiguous language about the exercise of digital rights. Press freedom tends to deteriorate, particularly as private and government-owned media companies are dominated by the ruling party MPLA.

GOVERNMENT	ACADEMIA	CIVIL SOCIETY
• As there is confusion over the use of digital media to encourage acts of defamation or public criticism, legislation that targets public and political institutions, such as the President of the Republic, should be clarified. • To enable more people to genuinely have access to high-quality internet outside of urban areas, the government should broaden its plans for governance through "Angola Online", as well as ensure that this programme has better signal quality. • To prevent governmental influence, it is necessary to explicitly specify the standards that have been utilised	• Participate in the development of digital literacy training and teaching curricula and the promotion of best practices in the use of emerging technologies in local communities and schools. • In order to better inform choices about the adoption of ICT strategies and best practices, it is necessary to do accurate research on the trends and evolution of the usage of digital tools in Angola.	• Create local efforts to encourage activism and citizenship movements using social media networks, particularly in rural areas, and take action to report violations of digital rights. • In order to prevent instances of cybercrime and other infractions in the digital sphere, establish a national movement that encourages digital literacy and aids Angolans in adopting policies that promote the responsible use of technology.

GOVERNMENT	ACADEMIA	CIVIL SOCIETY
for private and public participation in mobile communication enterprises in Angola.		

Benin
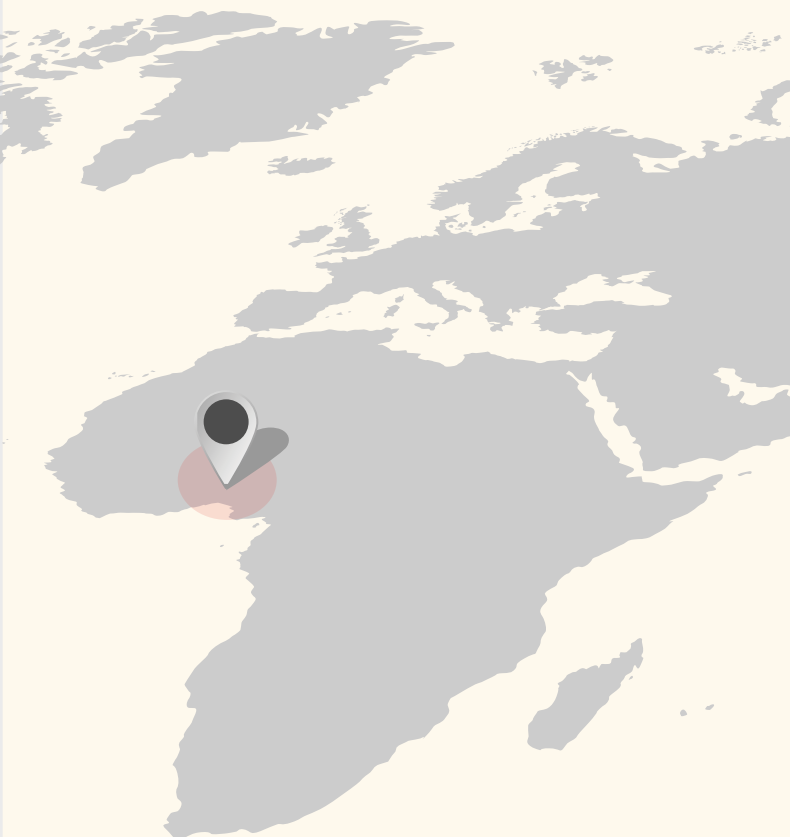
▶ Executive Summary

Benin Republic is currently undergoing a digitisation reform that aims to enable easy transmission of communications in society. By encouraging the use of online portals as intermediary platforms between public authorities and the population, the government is generating new mechanisms of communication that have recorded early successes. This report analyses some of the actions carried out by the Government of the Benin Republic in the Information and Communication Technology sector. These actions are part of the Government Action Programme (GAP) called Bénin Révélé (Benin Revealed) and therefore deserve significant public controversy and criticism. For this very reason, although the actions currently deployed are promising, this contribution highlights the need for a stronger and more transparent conceptual and regulatory framework. Such a framework is important as it can protect against malicious abuse of personal data for private gain or public control. In addition to the possibility of avoiding privacy breaches, a more transparent regulatory framework will help to reduce the political influences which can limit the use of freedom of expression in Benin.
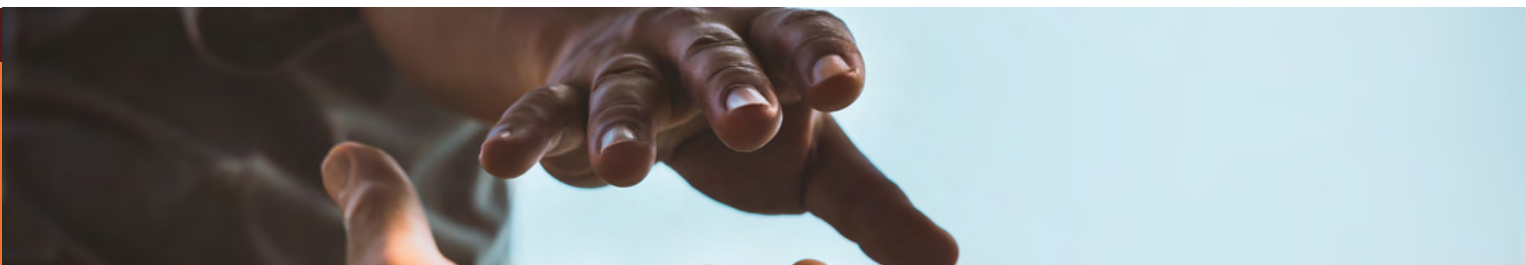
Introduction

Over the past three years, Benin has made remarkable progress in digital transformation, designing national e-government frameworks, and developing e-services for citizens and businesses. Although the government clearly defined a strategy for electrification, the country proved incapable of driving the process.[1].Thus, pitfalls can be encountered with digital deployment if sufficient attention is not paid to the electrification issue. Thirty-three years ago, Benin was seen as a model of democracy in Africa. The country was known as a peaceful place where smooth administration transitions and media freedom had been the norm since 1990. In recent years, this has changed as Benin is now following a repressive trend in terms of freedom of expression. For instance, journalists' freedom of expression has been severely weakened. Beninese journalist Virgile Ahouansè, faces charges of spreading false news to disturb the peace that stems from his December 14, 2022 investigation which accused police of carrying out extrajudicial killings. Given the issue's complexity, the people whose statements were relayed by Ahouansè have changed their versions of the stories. In this regard, it is worth bearing in mind that the people who spoke to Ahouansè may fear reprisal attacks.

Furthermore, the country has adopted a digital law presented as an instrument that was supposed to fight online abuse. In practice, it seems that the new law creates a chilling effect on media freedom, both offline and online[2]. According to Amnesty International, at least 17 journalists, bloggers and political opponents have been prosecuted in less than two years under this digital law[3]. Two years ago, a Beninese investigative journalist spent six months in prison for harassment through electronic communication. He was arrested and jailed in violation of international laws after a government prosecutor alleged that the journalist had posted libellous and defamatory posts on Twitter. Such examples show that after three decades of peace and progress, the West African nation is facing a democratic recession.

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1   See https://energypedia.info/ Benin Energy Situation and Key problems hampering access to electricity https://energypedia.info/wiki/Benin_Energy_Situation#Key_Problems_Hampering_Access_to_Electricity (accessed on December 3rd 2022).

2   See https://rsf.org/ Bénin : RSF appelle les autorités à réformer le Code du numérique, menace pour le journalisme dans le pays https://rsf.org/fr/b%C3%A9nin-rsf-appelle-les-autorit%C3%A9s-%C3%A0-r%C3%A9former-le-code-du-num%C3%A9rique-menace-pour-le-journalisme-dans-le (accessed on December 8 th 2022).

3   See https://www.amnesty.org/ Bénin. Opposants et voix critiques en détention à l'approche de l'élection présidentielle https://www.amnesty.org/fr/latest/press-release/2021/03/benin-opposants-et-voix-critiques-en-detention-election-presidentielle/ (accessed on 09 December 2022).

Country Analysis

INTERNET FREEDOM

Until recently, Benin was held in high esteem by the world's democracy watchers, ranking near the top of several well-regarded indexes on governance, freedom of the press, political participation, and more. In December 1995, Benin was connected to the Internet to cover the sixth Sommet de la Francophonie[4]. During this event, the initial internet bandwidth was 1Mbps, which allowed the country to start with basic services such as e-mail and access to the web. In January 2002, the bandwidth was increased to 2Mbps. On May 6, 2003, the bandwidth capacity of the country was increased and the change was favoured by the inauguration of the SAT-3 cable. After it went live, the fibre optic cable provided a 45Mbps international connection to the existing 2Mbps, bringing the national bandwidth managed by Bénin Télécoms SA, to 47bps. Until 2004, this bandwidth was only available in the southern part of the country, in Cotonou, and Parakou in the North. Later in 2007, this bandwidth was increased to 155 Mbps. To improve teledensity, the State decided to mobilise new investments. The idea behind this strategy was to acquire investments to expand and upgrade the existing networks.

INTERNET SHUTDOWNS

Despite an overall global increase of internet shutdowns in Africa, civil society organisations in Benin drove collaborative efforts to prevent the government from cutting access to the Internet in 2022. According to NetBlocks and the Internet Society, two non-profit organisations focused on internet freedom, a one-day shutdown cost the country $1.54 million in 2019. This year, successful collective actions carried out by civil society organisations in Benin against internet shutdowns offered a model to counter any blackout of Internet services that may happen in the future.

FREEDOM OF SPEECH AND MEDIA FREEDOM

Freedom of expression is not only a fundamental human right but also constitutes one of the essential elements in the establishment of a democratic society. Freedom of expression also enables citizens to question their government, which helps to keep them accountable. In Article 23 of Benin's Constitution, freedom of expression is expressly guaranteed as a constitutional right. Additionally, several instruments which guarantee the right to freedom of opinion have been ratified by Benin, such as the International Covenant on Civil and Political Rights (Article 19) and the African Charter on Human and Peoples' Rights, which embraces free expression (Article 9).

According to Article 25 of the Constitution of Benin, the State must recognise and guarantee, under conditions fixed by law, freedom of expression. Furthermore, Benin is a State party of the Universal Declaration of Human Rights, and the African Charter on Human and Peoples' Rights. The two legal documents promote freedom of expression including the right of all to seek, receive and impart information and ideas through any media and regardless of frontiers.

At the time of concluding this report, Virgile Ahouansè, the director of a web radio, was placed under judicial supervision[5]. Arrested on December 20, 2022, Ahouansè spent two days in custody at the police station. After a long hearing by a special court named ECTRC (Economic Crimes and Terrorism Repression Court), he was released, but his trial is scheduled for February 13, 2023. Ahouansè was

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4   See https://paradigmhq.org/ Benin Digital Rights Inclusion 2020 Report https://paradigmhq.org/wp-content/uploads/2021/05/lr-Benin-Digital-Rights-Inclusion-2020-Report.pdf accessed on December 05 2022).

5   See https://www.afro-impact.com/ Beninese journalist Virgile Ahouansè is in custody at the criminal brigade https://www.afro-impact.com/en/beninese-journalist-virgile-ahouanse-is-in-custody-at-the-criminal-brigade/ accessed on December 10, 2022).

arrested after the publication of a radio piece online where he referred to a case of summary execution, implicating the Republican police. The journalistic production is entitled "Panic in Porto-Novo: the Republican Police carries out summary executions in a school.[6]" The radio programme, which was made available to the public on December 14, 2022, has drawn out many social media reactions. In February 2022, two journalists from Benin and The Netherlands experienced media censorship; the two media professionals were arrested in the northern town of Tanguieta for not notifying local authorities of their presence.[7] In the Press Freedom Index published by Reporters Without Borders, Benin fell to number 121 in 2022. In 2016, before President Talon took office, the country was in position 78 and ten years earlier in the top 25.[8]

PRIVACY AND SURVEILLANCE

In Article 5 of the Constitution of Benin, the right to privacy is guaranteed. In 2007, the Heads of State and government within the Economic Community of West African Countries (ECOWAS) adopted the Supplementary Act A/SA.1/01/07. This document addresses the Harmonisation of Policies and the Regulatory Framework for the ICT Sector. The 2007 Act formed the basis for a 2010 Supplementary Act on personal data protection to regulate the collection, processing, transmission, storage and use of personal data by public and private entities within West Africa. Before adopting the ECOWAS Act, Benin had enacted its national data protection laws without any

influence from the ECOWAS. Nevertheless, even though the country is witnessing a rapid rise in digitisation, Benin has not yet ratified the African Union Convention on Cyber Security and Personal Data Protection. Also known as the Malabo Convention, the Convention is yet to take effect because it requires 15 ratifications to come into force on the continent. In Benin, mobile phones are helping to advance capacities by providing new opportunities for citizens to share information and ideas, and to participate in public life. According to the World Bank, mobile phone penetration reached 91.9 per cent of the population in 2020 in the west African nation.[9] However, if mobile connectivity can accelerate Benin's digital transformation, realising this potential also has some privacy implications for consumers.[10]

	T1_2021	T2_2021	T3_2021	T4_2021	T1_2022
SPACETEL BENIN	4 921 953	5 186 193	5 308 136	5 637 731	5 972 148
MOOV AFRICA BENIN	3 864 349	2 647 950	2 655 488	2 786 565	2 928 956
PARC INTERNET MOBILE	8 786 302	7 834 143	7 963 624	8 424 296	8 901 104
Dont FEMMES	-	35,15%	37,27%	32,97%	32,89%
PENETRATION INTERNET MOBILE	70,25%	62,64%	63,68%	67,36%	68,92%

Source : (Données opérateurs, 2022; Population estimé à 12 915 002 en 2022, INStaD)

Table 1: Evolution of the mobile Internet users data by quarter[11]

Furthermore, this situation fosters a sea change in data collection. It is therefore important for Benin to avoid backlash by protecting the privacy of messages, phone calls, and emails due to new threats. This is tied to the fact that some companies are now interested in making a profit as they mainly focus on what users are searching for and their whereabouts. For many Beninese, cheap mobile handsets are central to

6   See https://www.crystal-news.net/ panique a porto-novo, la police republicaine procede a des executions sommaires dans une ecole https://www.crystal-news.net/panique-a-porto-novo-la-police-republicaine-procede-a-des-executions-sommaires-dans-une-ecole-enquete/ (accessed on December 1, 2022).anique

7   See https://afriquexxi.info/ Au Benin la folle garde a vue de deux journalistes espions https://afriquexxi.info/Au-Benin-la-folle-garde-a-vue-de-deux-journalistes-espions accessed on December 10, 2022).

8   See https://hrwf.eu/ Report on Human Rights and Political Repression in Benin https://hrwf.eu/wp-content/uploads/2022/09/HRWF-Benin-Human-Rights-and-Political-Repression-September-2022.pdf (accessed on December 3, 2022).

9   See https://www.helgilibrary.com/ Mobile Phone Penetration in Benin https://www.helgilibrary.com/indicators/mobile-phone-penetration-as-of-population/benin/ (accessed on December 1, 2022).

10   For instance, the history of mobile telephony is now linked to many application privacy controversies. These controversies are ranging from mobile phone operators downloading the contents of people's
address books to applications selling the user's location data. Furthermore, this situation fosters a sea change in data collection.

11   See https://arcep.bj/ website of the Regulatory Authority for Electronic Communications and Post Office responsible for defining standards and regulations for telecommunications producers, granting licenses and permits to operators, and arbitrating disputes between consumers and operators. " (accessed on December 9, 2022).

their life as they bring together their landline, ATM and email in one device. Among mobile phone owners, taking photos and videos, mobile money, voice, social media and text messaging stand out as the most common mobile activities. Despite this positive point, mobile phone usage in Benin raises concerns regarding the privacy and security of users' data. This issue refers to how well governments can secure public information and maintain the privacy of citizens' personal data and other confidential information. Ensuring the security and privacy of citizen information is vital in maintaining trust, as citizens will not adopt and use e-government websites that pose a security threat to their privacy. In such a context, the need for governments to continuously monitor and improve the security and privacy of their websites is crucial. In 2007, the heads of state and government within the ECOWAS adopted the Supplementary Act A/SA.1/01/07 on the Harmonisation of Policies and the Regulatory Framework for the ICT Sector. This Act is supposed to harmonise the existing regulatory framework and policies on information and communications technology (ICT) within the ECOWAS region. Before adopting the ECOWAS Act, Benin had enacted its national data protection laws without any influence from the ECOWAS region.

DATA GOVERNANCE

In digitalisation, laws must be adapted to protect and safeguard fundamental rights. Given this situation, Benin has adopted the Digital Code. Approved in 2017, the Digital Code of Benin provides a good basis for regulating the digital landscape. Moreover, it creates a legal framework designed to aid the development of a digital economy. The Digital Code provides a comprehensive suite of laws and regulations governing the collection, treatment, transmission, storage, and use of personal data by individuals, the State, local authorities, and companies. These laws have provisions similar to regulations like the European General Data Protection Regulation, for example the right to object to the processing of personal data, the right to rectify personal data, and the right to be forgotten. The elaboration of the Digital Code is of significant importance in Benin for many reasons. Firstly, the emergence

of digital technologies and increased usage of internet-based platforms are rapidly changing how individuals, businesses and governments operate in the country. This has not only contributed to advancements in how data and information are collected, analysed, used and distributed, but also to the importance attributed to data as a valuable resource. Secondly, due to the growing need for countries to safeguard national sovereignty and individuals' human rights over their data, Benin is grappling with developing adequate measures on how data production could be governed. Africa now accounts for 70 per cent of the $1 trillion transacted through mobile money globally. Thus, security and trust are central to the concept of data governance.

Since Benin is experiencing a surge in digital transactions via mobile phones, a structured

data governance agenda enables the country to maximise gains from digital trade, particularly because reported cases of data threats are now on the rise, and include: online tax and benefits fraud, cyber-attacks causing public service disruption, data leaks from servers of government, etc.

Désignations	T2-2021	T3-2021	T4-2021	T1-2022	T2-2022
Nombre de comptes SFM actifs	5 615 631	5 857 053	6 360 525	5 559 271	6 836 690
Nombre de comptes SFM dormants	9 865 405	10 654 852	11 497 165	3 775 975	12 500 463
Part de marché MTN Mobile Money	70,57%	71,12%	72,27%	66,68%	70,77%
Part de marché MOOV Money	29,43%	28,88%	27,73%	32,32%	29,23%
Taux de pénétration SFM	44,90%	46,83%	50,86%	43,82%	52,94%
Taux d'activité	36,27%	35,47%	35,62%	59,55%	35,36%

Source: (Données opérateurs, 2022).

Table 2: Evolution of financial services on mobile devices by quarter.[12]

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

For a few years, innovation in Benin's technological environment has flourished and new technologies have been developed to revolutionise various economic sectors. Regarding visa administration, the country emphasised its policy of innovation. This decision followed the launch of the African Union passport meant to ease travel among member states by allowing visa-free entry or streamlining the visa process. Since 2020, Benin has been able to issue an increasing number of e-visas to nationals of more than 50 countries. Once connected to the portal, the traveller must fill in some personal data such as name and date of birth etc. After this step, the traveller will be asked to choose the type of e-visa with the possibility of getting the visa stamped on arrival in Benin. Among other requirements, the traveller will need to enter the information concerning the trip such as dates, duration, and place of accommodation etc. It is also mandatory to enter the passport's data (number and dates). Finally, the traveller is asked to pay the visa fees online by credit card. Benin's e-visa application platform allows international travellers to apply for single or multiple-entry tourist visas. Single-entry visas are valid for 30 days and multiple-entry visas for 90 days. The response time from the Benin authorities is 48 hours and the e-visa is sent by email.

While the introduction of an electronic visa system is an important achievement, the modernisation of such identification documents raises many issues. For example, the processing of a biometric photo is a deductive framework that can create a supply-led approach to 20 medical conditions. On a global scale, this information attracts a wide range of pharmaceutical companies. It is a public secret that this information is so precious that some companies are willing to pay large sums of money to get them. According to the Beninese government, this decision optimises the fight against organised crime through the prevention, investigation, recording or prosecution of criminal offences, the execution of criminal sentences or security measures. The government had also mentioned that the opinion of the Authority for the Protection of Personal Data was sought before this decision was taken.

Furthermore, the authorities have stated that this innovation will not erode the privacy of the country's citizens. If the surveillance cameras are supposed to be placed on the public highway, in places open to the public, in infrastructure and public buildings, exploitation of digital tools by leaders with authoritarian tendencies threatens to take democracy backwards in Benin. In the long term, using information technology by authoritarian leaders to survey, repress, and manipulate the population may corrupt the foundational principles of democratic societies. Therefore, if the adoption of surveillance products in Benin can help to decrease crime risks, there is also a possibility that these products can serve as a tool for political repression.

Similar concerns have emerged across the continent as many African countries have deployed surveillance devices in recent years. In 2019, Kampala police procured $126 million of closed-camera surveillance technology from telecommunications giant, Huawei. Like Benin, the agreement was made to control the

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12 See https://arcep.bj/ website of the Regulatory Authority for Electronic Communications and Post Office (ARCEP) responsible for defining standards and regulations for telecommunications producers, granting licenses and permits to operators, and arbitrating disputes between consumers and operators. " accessed on December 9th 2022).

city's growing crime problem. Unfortunately, Ugandan civil society and opposition leaders contended that the surveillance cameras, which rely on facial recognition technology, are used to track and target government critics.

In Chad, the government has also deployed some surveillance devices, procured for €8 million, from IGN France International.[13] Initially, IGN France presented the importance of this project as an aid to urban development. In practice, the tools and devices sold by the French company are a great help to the security forces to close the civic space, ban demonstrations and violently repress public protests in Chad. If the digital sector in Benin has developed considerably in recent years from a very low starting point, a well-developed policy framework endorsed by the government, NGOs, and the tech sector must be sustained. This will help prevent a profound impact not just on individuals but also on society, to the point of endangering democratic systems.

In the education sector, the e-Results platform is now operational. It has revolutionised how national examinations and competition results are available to the public. Soon after the platform's launch, more than four million searches were performed in less than six months, with a peak of 710,000 searches during the announcement of the results of the 2020 baccalaureate. After this change in the way the results are announced, Beninese students are also able to get accurate information and career guidance for school. For instance, the apresmonbac.bj platform has been made available for such purpose. Thanks to the ranking methodology integrated into this platform, nearly 20,000 scholarships have been awarded following a completely dematerialised procedure. At the same time, internet penetration rate has increased in recent years[14].

According to a sub-indicator of the UN e-Government Development Index (EGDI), Benin is now the West African leader in providing online public services. Through www.service-public.bj, a public services portal, it is now possible for internet users to access complete information on more than 560 public services. Citizens of Benin can also get access to more than 72 government services delivered online, including ten completely dematerialised e-services. Available 24/7, www.service-public.bj, is a single entry point to all public services. The development of the portal is part of the modernisation of public administration in Benin, led by the Ministry of Digitisation. Inspired by the success of the Estonian e-government model, the Beninese e-service portal's ambition is to reduce face-to-face contact between citizens and officials. The national e-service portal, www.service-public.bj, has been used to deploy governmental interoperability by implementing a catalogue of interoperability solutions. However, it is important to highlight that interoperability among ministries and departments is difficult to achieve. This could make relationships unequal in Beninese society due to the influence of politics.

One of the most widely recognised public values of e-government websites is their accessibility. This refers to making websites accessible to a wide array of possible users regardless of their technical aptitude or possible disabilities, thus ensuring that all users have equal access to information and functionality. E-government websites are, therefore, expected to be inherently accessible as their primary goal is to provide government services and information to the general public without any exceptions. However, the accessibility of e-government websites is quite questionable in Benin. Access to electricity in Benin was reported at 41.41 per cent in 2020, according to the World Bank collection of development indicators, compiled

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13   See Le Media TV, tchad les cartes francaises de la repression https://www.lemediatv.fr/articles/2022/tchad-les-cartes-francaises-de-la-repression-ldIZ1hNeQ4CZnrSmuuNSvg (accessed on November 30, 2022).
14   See Data portal ,Digital Benin 2021 https://datareportal.com/reports/digital-2021-benin , based on the figures there were 3.50 million internet users in January 2021. The number of Internet users in Benin increased by 538 000 (+18%) between 2020 and 2021. (accessed on December 3, 2022).

from officially recognised sources.[15]

This non-access to energy is a major challenge to Benin citizens since the country has failed to capture its huge renewable resources. Nevertheless, providing power to people who are far from the grid and suffer from a lack of energy access in a sustainable manner remains a State prerogative.

Out of regard for other considerations, Benin is very concerned about the factors that hinder the adoption of digital technologies. Among the authorities, there has been continued recognition that African countries such as Benin are confronted with a digital skills shortage. For this reason, the country has launched a national digital academy in partnership with the Smart Africa Digital Academy (SADA). SADA Benin is designed to encompass a range of initiatives such as advanced training in ICT through training of trainer approach, executive training and teachers' skills. As part of the SADA Benin framework, 40 master trainers will be trained in Artificial Intelligence and Cybersecurity. During the second phase, the 40 master trainers will train other local trainers as part of the extension of the project.[16]

Key indicators for Benin (2017)		Africa	World
Fixed-telephone sub. per 100 inhab.	0.5	0.9	13.0
Mobile-cellular sub. per 100 inhab.	78.5	74.4	103.6
Active mobile-broadband sub. per 100 inhab.	12.0	24.8	61.9
3G coverage (% of population)	65.0	62.7	87.9
LTE/WiMAX coverage (% of population)	39.7	28.4	76.3
Individuals using the Internet (%)	14.1	22.1	48.6
Households with a computer (%)	6.2	8.9	47.1
Households with Internet access (%)	7.9	19.4	54.7
International bandwidth per Internet user (kbit/s)	32.5	11.2	76.6
Fixed-broadband sub. per 100 inhab.	0.3	0.6	13.6
Fixed-broadband sub. by speed tiers, % distribution			
-256 kbit/s to 2 Mbit/s	9.4	38.7	4.2
-2 to 10 Mbit/s	3.3	37.2	13.2
-equal to or above 10 Mbit/s	87.4	24.1	82.6

Note: Data in italics are ITU estimates. Source: ITU (as of June 2018).

Table 3: Internet Key indicators in Benin - ITU[17]

REVIEW OF THE UNIVERSAL SERVICE AND ACCESS FUND

At the outset of the introduction of the Universal Service and Access Funds in Benin, the Government and telecom organisations viewed it as innovative approach to addressing the development of internet access infrastructures, and an increasing demand for quality of service. In preparing this report, we contacted the authorities of the Ministry of Digital Economy and Communication but we could not get up to date information on the financing of the Universal Service and Access Funds in Benin.

Universal Service and Access Funds are a funding mechanism to incentivise the expansion of internet services in remote and underserved locations. Financed through mandatory contributions from telecommunications service providers, Universal Service and Access Funds are designed explicitly to address access issues in underserved areas. In general, these areas are mostly poor and rural communities. To promote ICT investment in territories which are not covered, Benin has adopted universal access principles intending to expand connectivity opportunities to underserved communities. This has resulted in installing several Community Digital Points across the country. Community Digital Points have been installed in many localities outside urban areas to improve broadband access. So far, 43 out of 77 municipalities have been equipped with a Community Digital Point. According to the authorities, this impacts more than one million people in non-urban areas, usually poorly covered by electronic communication services.

The idea behind installing these Community Digital Points is to serve as a public access space. This is one of the reasons why these

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15   See World bank data, Access to electricity in Benin, https://data.worldbank.org/indicator/EG.ELC.ACCS.ZS?locations=BJ (accessed on December 1, 2022).

16   See Reg tech africa, Benin Smart Africa Digital Academy (SADA) rolls out its national digital academy, https://regtechafrica.com/benin-smart-africa-digital-academy-sada-rolls-out-its-national-digital-academy-in-benin/ (accessed on January 4, 2023).

17   See ITU statistical reports, Measuring the information society report, https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2018/MISR-2018-Vol-2-E.pdf, (accessed on December 11, 2022).

places are equipped with ten computers each. In collaboration with the town halls, the Community Digital Points are also intended to serve as free public Wi-Fi access points. In general, they are located in youth centres of the concerned communities. If the objective behind these developments is to make the country the ICT leader in West Africa, this model for community access is limited by two key factors. The first one is the lack of inclusion in the initiatives by the community, especially the most marginalised. Meaningful community involvement in the Community Digital Points and consequently to their geographical, economic and physical rights, can make these Digital Points indeed community networks.

The second factor is the lack of a clear human rights-based approach to the access initiative, which means it is not necessarily used to its fullest potential to enable the community's rights. The advantage of a human rights approach is the capacity to emphasise the economic, social and cultural rights of the community. This approach can potentially emphasise the well-being and dignity of rights holders as individuals. It can also be used to advocate for policy reform and to pressure duty-bearers to meet their obligations.

Beyond the above considerations, it is unfortunate that Benin is among the countries that publish few details on their Universal Service and Access Funds activities. If it is assumed that an effort has been made so far, it does not include proactive disclosure of the complete financial specifications of the fund. Another observation is the fact that available information to the public does not always include financial details of the fund itself or specify if funds are spent on projects not related to connectivity issues or in a timely manner. The expenditure is also not adequately disclosed leaving information gaps.

Table 4: Total unspent money from Universal Service and Access Funds (based on the most recent reporting year). [18]

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18   "See Universal Service and Access Funds, https://webfoundation.org/docs/2018/03/Using-USAFs-to-Close-the-Gender-Digital-Divide-in-Africa.pdf', (accessed on November 31, 2022).

Conclusion and Recommendations

Although Benin recorded remarkable progress in digitisation in 2022, the country is still facing major challenges related to network affordability and digital regulations. Based on its digital ambitions, the Government of Benin should create a favourable framework to guarantee digital rights and avoid using laws to restrict freedom of expression online. As the country attempts to become a regional example of progress in the digital sphere, Benin should also rethink policies related to digital services taxation. While on one hand, digital services taxation may sound attractive as it is designed to raise revenues, on the other hand, it can have predominantly negative implications regarding increasing Internet adoption by users. With particular reference to the government's ambitions in the technological sector, there is a need for the Benin authorities to increase transparency on activities related to the Universal Service and Access Funds and avoid digital services taxation. This will help to guarantee access to the internet at all times so that individuals enjoy their human rights.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
The following recommendations are therefore made to the government • Uphold constitutional and international obligations and refrain from digital authoritarianism characterised by aggressive and sophisticated measures that curtail internet freedoms. Benin authorities should show a strong commitment to international standards on digital rights and create the preconditions to enforce, safeguard and grant an active role to courts which interpret these rights. • Take responsibility	The following recommendation is therefore made to the private sector: • To pay particular attention to security and privacy. There is a need to recognise that Beninese consumers increasingly adopt digital technologies, taking responsibility to protect personal data from unauthorised access and disclose any data breaches.	The following recommendations are therefore made to civil society organisations: • To work in a coordinated manner to denounce cases of digital rights violations and bad data governance practices. • • Through research, to evaluate the use and deployment of AI and its attendant impact on healthcare and financial services.

| GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
• by reviewing and amending provisions of the Digital Code that unnecessarily restrict freedom of expression and digital rights, specifically sections that provide for prosecution and imprisonment for online content that is purportedly false. Broadly worded, Article 550 of the Digital Code pertains to harassment through electronic communications and provides up to two years in prison and/or fines of up to ten million CFA francs for various crimes. • Avoid formulating a national health plan based on the Medicare component of the ARCH project. In light of the progress made so far in the pilot phase of the project Assurance pour le Renforcement du Capital Humain (Insurance for Human Capital Strengthening), a policy made from sensitive biometric and health data may lead to a society which is fundamentally unequal owing to the inequality between social classes which also hides a multitude of other inequalities.		

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Botswana

▶ Executive Summary

Although Botswana registered limited progress in digital rights and internet freedoms, significant progress has been made in expanding internet access and promoting the development of information and communications technology (ICT). The government has also established a Universal Access Fund (UAF) to support the deployment of broadband networks and other infrastructure projects in 2022, and has implemented a number of initiatives to increase digital literacy and online skills. There is also a burgeoning digital ID industry which demonstrates the diverse interests underpinning the expansion of digital identification systems. However, concerns still persist in aspects such as the development of ICTs and emerging technologies, digital inequality, internet freedom, data governance, government censorship, media self-censorship, and the proliferation of online hate speech and harassment. This study also reveals that Botswana is one of Africa's leading consumers of digital surveillance technologies. The absence of a strict regulatory framework, capacity building, transparency stakeholder engagement and extensive digital rights education exacerbates public surveillance.

Power imbalances amongst sectors continue to foster inequality and cooperation among stakeholders is inadequate. A strong intersectional foundation is also lacking. To address these issues, it is important for the government to adopt the relevant framework to promote and protect digital rights. Such laws should protect media freedom, promote free speech and guarantee online safety. Additionally, it is crucial for the country to establish a robust data protection framework and to also develop a secure and transparent national digital identity system. Prioritising internet freedom, data governance, and the development of ICTs can enhance public participation and inclusion in the digital economy and enjoyment of the benefits of technologies.

The report highlights concerns about governance, due process, exclusion, privacy, surveillance, and equity in relation to the use of technology in Botswana. It suggests that while the country has made progress in expanding internet access and promoting the development of ICTs, there are still significant concerns about how technology is being governed and used, including power imbalances and lack of cooperation among stakeholders. The report calls for stronger legal and regulatory frameworks to promote and protect digital rights and inclusion in the country.
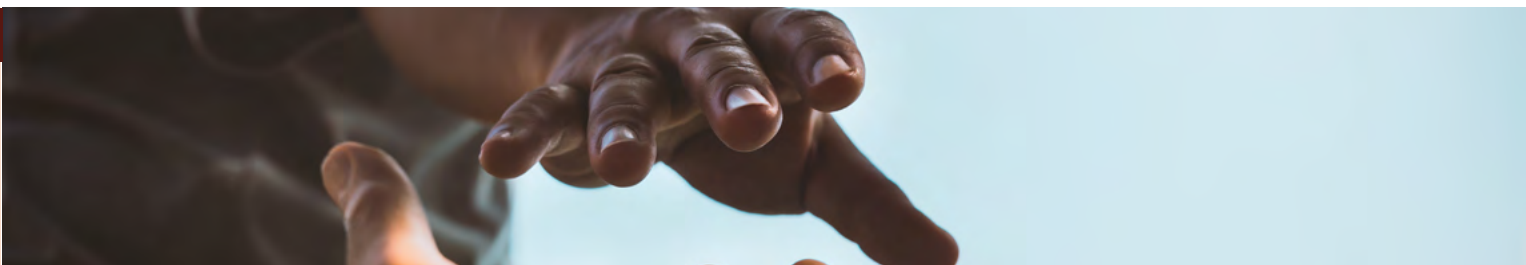
Introduction

The Covid-19 epidemic highlighted the need for Botswana to enhance intersectional approaches to data governance and digital rights advocacy. Interventions such as lockdowns and social distancing used to restrict the spread of the virus complemented information sharing, while allegations of infringement of human rights were exacerbated by digital technologies and deepening inequality. The goal is to continue to forge cross-sectoral collaborations while exploring intersectional alliances between the government, private sector, social justice movements, and digital rights communities in order to address the growing digital rights issues and inequities. It is also pertinent to investigate the various ways in which digital technologies can be used for societal benefit and to promote meaningful enjoyment of human rights.

However, acknowledging and understanding the disruptive effects of digital technologies in Botswana is critical in ensuring the continued protection of the rights upon which societies are built. Citizens are increasingly wondering if and how the government can protect their rights in the digital age and whether existing policies and legal safeguards are fit for purpose. Digital rights and internet freedom are critical issues in Botswana, as they have the potential to shape the country's socio-economic and political development. In recent years, there has been growing concern about the impact of digital technologies on human rights, including the right to privacy, freedom of expression, and access to information online and offline.

Overall, digital rights and internet freedom are complex and multifaceted issues in Botswana, with a range of stakeholders and interests at play. As the country continues to develop and evolve in the digital age, it is important to address the challenges and opportunities presented by digital technologies in a way that protects and promotes human rights and democratic values.

Country Analysis

INTERNET FREEDOM
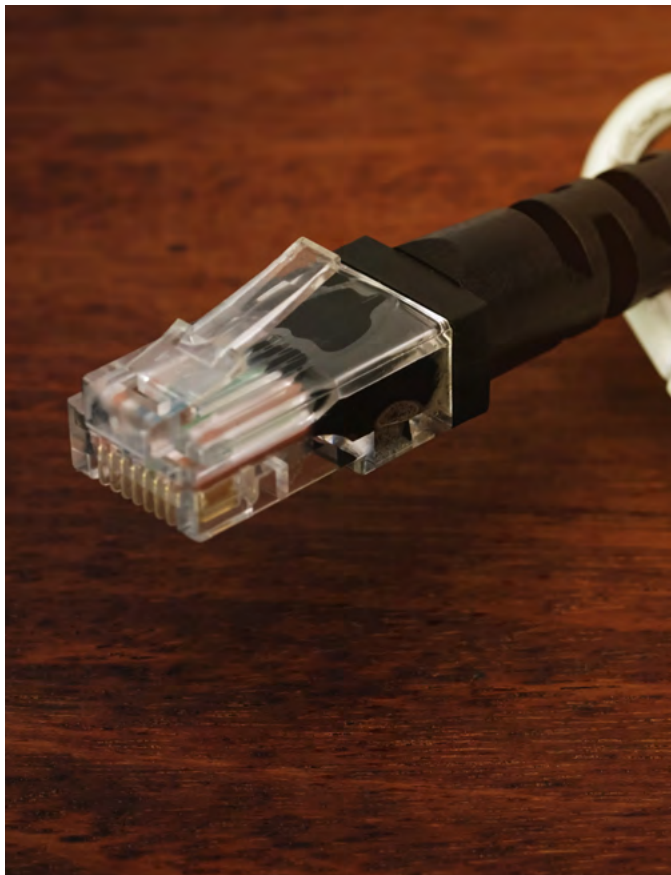
INTERNET ACCESS AND DISRUPTIONS

Botswana has a reasonably high internet penetration rate, with approximately 61 per cent of the population having access to the internet. In 2021, the internet penetration rate was 47 per cent. Overall, the number of registered internet users has been increasing.[1] Residential fixed wireless broadband subscribers increased by 95 per cent, from 27,676 in June 2020 to 54,032 in June 2021. This considerable surge can be attributed to the trend of working from home during the Covid-19 pandemic, as well as increased demand for high-speed internet. Furthermore,

from 3,292 customers in June 2020 to 4,560 subscribers in June 2021, commercial fixed wireless subscriptions increased by 39 per cent.[2] This expansion can be credited in part to the high demand for communication services and remote work transition. However, there are significant disparities in terms of internet access and usage, with urban areas generally having higher levels of connectivity than rural areas.

In Botswana, there are disparities in internet access and usage between urban and rural areas, with urban areas having higher connectivity. Factors include a lack of infrastructure, high costs, and limited access to electricity in rural areas. Additionally, there is a significant gender discrepancy in internet usage with men being more likely to have access to and utilise the internet. This disparity can be attributed to low levels of education, digital illiteracy skills and societal and cultural attitudes towards women's access to technology. People with disabilities and underserved communities also face significant barriers to accessing and using the internet, including lack of accessible infrastructure, digital literacy skills, and affordability of assistive devices.

Despite commodity costs growing, the cost of data and internet consumption is becoming increasingly important, necessitating a price reduction paradigm. The price reductions on mobile broadband by public telecommunications operators, underpinned by increased demand and the need to address affordable connectivity, requires a further review. According to the 2022 Research ICT Africa Mobile Pricing (RAMP) Index, the leading mobile operator, Mascom, by market share charged $5.47 for 1GB in Quarter 3 of 2022.[3]

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1   Statista "Internet penetration rate in Botswana from 2017 to 2022" (2022) https://www.statista.com/statistics/1155039/internet-penetration-rate-botswana/ (accessed on 21 December 2022).
2   Botswana Communications Regulatory Authority (BOCRA) "Broadband Facts and Figures" (2021) https://www.bocra.org.bw/sites/default/files/documents/Broadband-Facts-and-Figures-2021-FINAL-DRAFT-21-Dec-21.pdf (accessed on 25 January 2023)
3   Research ICT Africa "Cheapest price for 1GB basket by country's operator" (2022) https://researchictafrica.net/

This was a further decrease from the cost of $6.03 in the first quarter of 2022. This appears to be backed by data price reductions enforced by the Botswana Communications Regulatory Authority (BOCRA) in 2020 as part of a drive to lower broadband prices to improve service affordability.

In comparison to other network operators, 1GB of data at Orange cost $6.37 and Botswana Telecommunications Corporation cost $6.92 in the first quarter of 2021.[4] During the Covid-19 pandemic, mobile data and service consumption increased substantially, in keeping with global trends toward rising demand for mobile data and services. Botswana's data pricing remains prohibitively high as compared to other African countries. In addition, the 2022 study conducted by Cable.co.uk ranks Botswana 228th out of 233 surveyed countries in terms of mobile data affordability.[5] Botswana is among the countries with the most expensive mobile data globally.

Regarding internet disruptions, the government of Botswana has generally taken a pro-internet freedom stance, with a focus on promoting the benefits of the internet for economic development and social inclusion. In 2022 there were no credible reports of the government blocking or disrupting internet access or censoring online content, nor were there instances of internet censorship including the blocking of websites and social media platforms, and the use of digital technologies for political repression and social control.

REVIEW OF THE UNIVERSAL SERVICE FUND

The Botswana Communications Regulatory Authority (BOCRA or the Authority) is mandated under the Communications Regulatory Authority Act No. 19 of 2012 (CRA

Act) to promote and provide universal access to communication services in Botswana. BOCRA established the Universal Access and Service Fund Trust (UASF or the Fund) in April 2014 through a Notarial Deed of Trust to operationalise this objective. The Fund is maintained administratively by BOCRA as its Secretariat and is governed by an independent Board of Trustees (UASF Board).[6]

The UASF subsidy scheme was started in 2017 with the purpose of increasing mobile broadband access in Botswana's underserved areas. The project focused on updating existing networks and establishing new infrastructure in villages in Kgalagadi, Mabutsane Sub-District, and Ghanzi District. As a result of the project, 68 primary schools and nine secondary schools now have dedicated internet connectivity at 5Mbps. The UASF also intends to continue the project by connecting three schools with 10

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research-ict-africa-ramp-index-2/ (accessed on 21 December 2022)

4   Ibid

5   Existent Ltd "Worldwide mobile data pricing 2022, The cost of 1GB of mobile data in 233 countries" (2022) https://www.cable.co.uk/mobiles/worldwide-data-pricing/#pricing (accessed on 19 December 2022)

6   Botswana Communications Regulatory Authority "Universal Access and Service Fund Manual of Operating Procedures" (2021) https://www.bocra.org.bw/sites/default/files/documents/UASF-OPERATING-MANUAL-2021.pdf (accessed on 03 December 2022).

Mbps dedicated internet and upgrading three further communities in the Mabutsane area to 4G access. To complement this project, the Fund also hired 68 Information Technology (IT) Officers to work in elementary schools that have broadband internet access. Secondary schools, in contrast, have IT officers appointed by the government.[7]

In 2022, the government unveiled its plans to invest $12.7 million to connect 500 villages to the internet. These funds will be utilised to improve connection in rural areas and public schools. As part of the SmartBots programme run by BOCRA, which maintains the UASF, all communities with a population of at least 5,000 will have a 4G signal.[8]

UASF has announced plans for the 2022/23 fiscal year, which aims to expand mobile broadband networks in three districts in Botswana: Kweneng, Northwest and Southern Districts. The initiative will cover a total of 159 villages, with Orange Botswana providing connectivity to 91 primary schools and 23 junior secondary schools in the Kweneng District, with a targeted bandwidth of 10Mbps for primary schools and 20Mbps for junior secondary schools.[9]

In other countries, there have been allegations about the universal service fund (USF) scheme being exploited through corruption, misuse, and mismanagement.[10] While these issues have never been a cause for concern in Botswana, there is a need for strong internal controls and transparency about how the funds are used for public benefit. Overall, information about the USF's effectiveness and success is based on the SmartBots initiative, and there appears to be no major developments in 2022.

FREE SPEECH AND ONLINE SAFETY

Botswana has a relatively good record on freedom of expression and including press freedom, and the government generally respects these rights. The Constitution of Botswana, 1966 (the Constitution) and law provides for freedom of speech and press. Despite constitutional guarantees for freedom of expression, there have been instances of government censorship and media self-censorship.[11] According to some members of

the press, the government has occasionally censored news in State-run media that it deemed unfavourable. In certain cases, government journalists engaged in self-censorship and smear campaigns against dissidents.[12]

7   Notable achievements on the achievements on UASF (Pg 18-19) Botswana Communications Regulatory Authority (BOCRA) "Broadband Facts and Figures" (2021) https://www.bocra.org.bw/sites/default/files/documents/Broadband-Facts-and-Figures-2021-FINAL-DRAFT-21-Dec-21.pdf (accessed on 25 January 2023).
8   SmartBots "Digital Connectivity Standards for Villages in Botswana" (2021) https://smartbots.gov.bw/sites/default/files/2021-10/Digital_Connectivity_Standards_V4_2021.pdf (accessed on 26 December 2022).
9   ibis
10   Universal Service and Access Fund Annual Report https://static.pmg.org.za/USAF_Annual_Report_2015-2016_converted.pdf (accessed on 10 December 2022).
11   Joel Konopo "Botswana: Censorship is not the cure for Covid-19" (2020) https://www.dailymaverick.co.za/article/2020-04-30-botswana-censorship-is-not-the-cure-for-covid-19/ (accessed on 10 December 2022)
12   Joel Konopo "Botswana's Media is in Crisis" (2020) https://mg.co.za/article/2020-01-29-botswanas-media-is-in-crisis/

In 2022, Tshepo Sethibe, a journalist in Botswana, was criminally accused of publishing "alarming" content. The charges originate from a Facebook post on July 8, 2022, by *Moeladilotlhoko News Boiler*, a privately held source with whom Sethibe purportedly works, in which a story about a missing six-year-old child was posted.[13] The issue with this matter is the criminal accusation of a journalist for publishing content considered "alarming" on a Facebook post. The charges raise concerns about freedom of speech and the rights of journalists to report on news without fear of legal retaliation.

ICTs play an important role in Botswana's digital economy. Furthermore, the use of ICTs allows for increased access to information and knowledge, empowering citizens to make informed decisions. However, in order for citizens to fully engage and benefit from the digital economy, digital rights such as freedom of expression, access to information, privacy, and non-discrimination must be safeguarded and promoted. Of the greatest threats to internet freedom is the pervasive presence and impact of online-driven harassment and violence which compromises online safety. Women, and other minoritised genders, are harassed every day without consequences. Online harassment and violence is a significant issue and a threat to internet freedom in Botswana. It affects the safety and well-being of individuals, particularly women and other minoritised genders, who are disproportionately targeted on social media platforms.

This type of harassment and violence often take many forms such as cyberstalking, doxxing, and trolling.[14] It can have severe consequences, including mental and emotional distress, loss of employment or educational opportunities, and even physical harm. Despite this, online harassment and violence often goes unchecked and unpunished, with little being done to hold perpetrators accountable. Botswana's Constitution, Gender Policy Mainstream Council, National Gender Policy[15], and National Gender-Based Violence Strategy[16] all establish the foundation for tackling issues of online violence and harassment against women and other marginalised genders in the country. While the existing regulations in Botswana address non-consensual sharing of intimate images, these regulations, however, are not specific or robust enough to address the numerous forms of online harassment and violence that exist in the country. As a result, there is a lack of accountability, which endangers the values of internet freedom and people's capacity to express themselves freely without fear of retaliation.

Online risks are an increasing cause for concern for children and other vulnerable groups such as older persons and persons with disabilities (PWDs) in Botswana. These groups are at a higher risk of being targeted by online predators, cyberbullies, and scammers, as well as being exposed to inappropriate or harmful content. More awareness initiatives and education on online risks and threats is crucial in ensuring that internet users, particularly children, older persons, and PWDs, understand online protection. Such initiatives can empower users to make informed decisions about their online activities, and to raise awareness of the potential dangers that can be encountered online. Under the Cyber4Dev Program, BOCRA established a Communications Incident Response Team (COMM-CIRT) to coordinate and support the response to computer security incidents in the communication sector.[17] This

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(accessed on 10 December 2022)

13   Committee to Protect Journalists "Botswana journalist Tshepo Sethibe criminally charged over 'alarming publications" (2022) https://cpj.org/2022/07/botswana-journalist-tshepo-sethibe-criminally-charged-over-alarming-publications/ (accessed on 24 January 2023)

14   Pierluigi Paganini "Trolling, Doxing & Cyberstalking: Cybercrime & The Law" (2017) https://securityaffairs.co/56841/laws-and-regulations/trolling-doxing-cyberstalking-cybercrime-law.html (accessed on 25 January 2023)

15   Gender Links "Botswana Strategy 2016 to 2020" (2015) https://genderlinks.org.za/wp-content/uploads/2016/03/BOTSWANA-Strategy2016to2020_ahgrmf_271015.pdf (accessed on 25 January 2023)

16   UN Women "National Gender-Based Violence Strategy 2015-2020" (2015) https://evaw-global-database.unwomen.org/en/countries/africa/botswana/2015/national-gender-based-violence-strategy-2015-2020 (accessed on 25 January 2023)

17   https://www.cirt.org.bw

initiative is critical in managing online risks and threats, particularly for vulnerable groups. Having a dedicated team that monitors and responds to cyber threats can assist to reduce the impact of security incidents on these vulnerable groups and guarantee that their online activities are safe and secure.

MEDIA FREEDOM

The Media Practitioners' Association (MPA) Bill of 2022,[18] gives the government greater control over the media, which can potentially have a negative impact on freedom of the press and freedom of expression in Botswana. The Bill repeals the existing Media Practitioners Act, 2008 (Act No. 29 of 2008), and the Media Council, and replaces it with the Media Practitioners Association. The fact that the Bill sailed through Parliament without debate is also concerning, as it suggests that there may not have been adequate opportunity for public scrutiny and input.

After it sailed through Parliament without debate, on June 21, 2022, the Media Practitioners' Association (MPA) Bill of 2022, was gazetted.[19] While this Act regulates journalists' conduct and establishes a database of media practitioners and organisations, this contentious move appears to have repercussions for press freedom and independence.[20]

That the government owns and operates the Botswana Press Agency (BOPA) and its subsidiary, the *Daily News*, which dominates the print media and two State-owned radio stations, raises concerns about state control of the media and potential for political interference. This does not ensure independence of the media as prescribed in Principle 11 of the ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa, that states should ensure that public media are independent and pluralistic and that private media are free from political, economic and other forms of control.[21]

However, during the period under review, there were reports of intimidation and harassment of journalists in the current administration under President Mokgweetsi Masisi. Tshepo Sethibe and Michelle Teise, journalists from the news site *Moeladilotlhoko News Boiler*, were detained together with three others on January 28, 2022, by the Botswana Police Service (BPS) in Phitshane. Police confiscated their phones and charged them with criminal trespass after they entered two houses while gathering information on the disappearance of a local man, Obakeng Badubi. On April 15, 2022, authorities dismissed the case.[22]

CYBERCRIME AND COMPUTER RELATED CRIMES ACT, 2018

The Cybercrime and Computer Related Crimes Act in Botswana, which was enacted in 2018, provides a legal framework for addressing various forms of cybercrime, including cyber harassment, cyber stalking, offensive electronic communication, distribution of child pornography, revenge porn, and racist and xenophobic material.[23] The Act criminalises these activities and provides for penalties, including fines and imprisonment, for individuals found guilty of committing these crimes.

The Act also establishes the Cybercrime Unit within the Botswana Police Service, which is responsible for investigating and enforcing the

18   Media Practitioners' Association Bill, 2022 https://data.misa.org/en/entity/ot69kr97wud?utm_source=Uwazi&page=7
19   Media Institute of Southern Africa "Analysis of the Botswana Media Practitioners' Association Bill, 2022" (2022) https://misa.org/blog/analysis-of-the-botswana-media-practitioners-association-bill-2022/ (accessed on 01 December 2022)
20   Anton Harber "Botswana Media Practitioner Act is a threat to freedom of the media" (2022) https://www.dailymaverick.co.za/article/2022-09-28-botswana-media-practitioner-act-is-a-threat-to-freedom-of-the-media/ (accessed on 10 December 2022)
21   Declaration of Principles of Freedom of Expression and Access to Information in Africa (the Declaration) https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf (accessed on 03 December 2022)
22   Committee to Protect Journalists " Botswana journalist Tshepo Sethibe criminally charged over 'alarming publications" (2022) https://cpj.org/2022/07/botswana-journalist-tshepo-sethibe-criminally-charged-over-alarming-publications/ (accessed on 21 December 2022)
23   Cybercrime and Computer Related Crimes Act, 2018 https://www.bocra.org.bw/sites/default/files/documents/18%20Act%2029-06-2018%20Cybercrime%20and%20Computer%20Related%20Crimes.pdf

42   LONDA - DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

provisions of the Act.[24] The Unit is empowered to work closely with other law enforcement agencies, including Interpol and the FBI, to combat cybercrime. However, Section 16 is a problematic section of the Act as it uses vague and overly broad terms like "obscene, lewd, lascivious or indecent," to criminalise a broad range of content, and is a potential threat to freedom of expression going against international standards of limiting rights. Additionally, Section 19(2) addresses child pornography, which is an important issue as it ensures child safety in the digital age.

PRIVACY AND SURVEILLANCE

Botswana does not have a general law that governs the use of surveillance systems. Instead, two laws from two separate acts allow for surveillance activities. One provision comes from the Counter-Terrorism Act (Act 24, 2014)[25], and the other from the Intelligence and Security Services Act, 2007 (ISSA).[26] More specifically, the Intelligence and Security Services Act, 2007 (ISSA) under Section 25 states that "the Director General or an officer authorised by the Director General in writing, may apply to a Magistrate's Court or the High Court for an order in writing authorising the Director General or an officer authorised by the Director General in writing, as the case may be, to intercept any communication for the purpose of obtaining such information as may be necessary for the purpose of protecting the national security, or for the purpose of preventing or detecting crime." Offences related to terrorism, and financing terrorism can result in an interception order. An investigating officer from the Botswana Police Service, Botswana Defence Force, or Directorate of Intelligence and Security (DIS) must request an interception order.[27] The clause applies to targeted surveillance when

an act of infraction is being investigated.

There have been reports in the past that the State used the Directorate of Intelligence and

Security (DIS) to monitor the activities of opposition members, government critics, and human rights advocates. In 2021, the Citizen Lab report discussed the Israeli supply of cyber weapons to Botswana.[28] These are being used to spy on citizens. Following this, the Committee to Protect Journalists (CPJ) reported on Botswana police's deployment of Cellebrite's Universal Forensic Extraction Device which reportedly collects data from journalists' phones.[29] This is part of the onslaught that the media and journalism fraternity have to

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24   Tlotlo Mabaso "New Police Lab to help fight cybercrime " (2019) https://guardiansun.co.bw/News/new-police-lab-to-help-fight-cybercrime (accessed on 25 January 2023)

25   Counter-Terrorism Act (Act 24, 2014) https://issafrica.org/ctafrica/uploads/Botswana%20Counter-terrorism%20Act%202014.pdf

26   Intelligence and Security Services Act, 2007 (ISSA)

27   Innocent Selatlhwa "Academic calls for law on communications interception" (2022) https://www.mmegi.bw/news/academic-calls-for-law-on-communications-interception/news (accessed 29 January 2022)

28   Suraya Dadoo "Israel helping African governments to place us all under surveillance" (2020) https://www.timeslive.co.za/ideas/2020-12-18-opinion-israel-helping-african-governments-to-place-us-all-under-surveillance/ (accessed on 09 December 2022).

29   Jonathan Rozen "Botswana police use Israeli Cellebrite tech to search another journalist's phone" (2021) https://cpj.

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contend with. The same security agency (DIS), was accused of contracting an Israeli firm to supply it with spyware that is capable of spying on internet-based communication such as emails, Facebook and Twitter.[30]

The government tabled the Criminal Procedures and Evidence (Controlled Investigations) Bill on February 4, 2022. The fast-tracked Bill added privacy safeguards and control of police monitoring, interceptions, and seizures.[31] A coalition of Botswana press freedom organisations condemned the Bill, arguing that it had the potential to "criminalise journalism and freedom of expression."[32] This Bill may impede online freedom of expression and access to information. Furthermore, it allows for unwarranted surveillance of citizens or criminalisation of journalism and freedom of expression. Within days, the government revised the Bill, creating a judge-led panel to monitor covert law enforcement operations and outlawing unwarranted surveillance. This includes ensuring that any surveillance or interception of communications is done with a warrant or court order, and is done in a transparent and accountable manner. This approach is consistent with the ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa, notably principle 41 on adequate the need for oversight measures in conducting surveillance.

In addition to oversight mechanisms for controlled investigations and undercover operations, it is also important to consider whether the Bill includes sufficient protections for privacy in the digital age. This includes ensuring that any surveillance or interception of communications is done with a warrant or court order, and is done in a transparent and accountable manner. While these issues are important, it should be a key priority that this Bill includes explicit guidelines on the collection, storage, and use of personal data, along with robust mechanisms to ensure accountability and transparency, both of which are clearly lacking. This can involve regular audits, independent oversight, and severe penalties for privacy rights violations.

The level of awareness and advocacy regarding the right to privacy is also an important factor to consider. In Botswana, there is a need for more awareness initiatives and education to ensure that internet users understand the risks and threats to their privacy, as well as applicable effective preventive measures. This is particularly important for children, who are often more vulnerable to online risks and need additional protections for their privacy. Furthermore, ensuring the implementation of Botswana's Data Protection Act[33] and regional standards, such as the African Union Convention on Cyber Security and Personal Data Protection,[34] will help to protect privacy rights.

DATA GOVERNANCE

DATA PROTECTION ACT

The Data Protection Act - Act No. 32 of 2018 (the DPA)[35] was passed by Parliament on August 3, 2018, and went into effect on October 15, 2021. The Data Commissioner has also been appointed. The Act was meant to come into force when the grace period ended on October 15, 2022. However, this grace period was extended for another year. The Data Commissioner acknowledged that the office required more time to enforce the

org/2021/07/botswana-cellebrite-search-journalists-phone/ (accessed on 11 December 2022)

30   Sunday Standard "Kapinga moves to stop "criminal behaviour" of tapping phones" (2016) https://www.sundaystandard. info/kapinga-moves-to-stop-occriminal-behaviouroco-of-tapping-phones/ (accessed on 8 December 2022)

31   Thapelo Ndlovu "Botswana civil society organisations rebuff criminal procedures bill" (2022) https://www.apc.org/en/ news/botswana-civil-society-organisations-rebuff-criminal-procedures-bill (accessed on 25 January 2023)

32   African Press Agency " Botswana media bodies slam proposed surveillance law" (2022) http://apanews.net/en/news/ botswana-journalists-up-in-arms-against-proposed-surveillance-law (accessed on 29 November 2022)

33   Data Protection Act, 2018 https://www.bocra.org.bw/sites/default/files/documents/DataProtectionAct.pdf

34   African Union Convention on Cyber Security 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 on 25 January 2023)

35   Data Protection Act - Act No. 32 of 2018 https://www.bocra.org.bw/sites/default/files/documents/DataProtectionAct.pdf

Act.[36] This extension may be interpreted as an opportunity for many businesses to prepare and guarantee their compliance.

There are notable shortcomings in the Act. For instance, Section 29 of the DPA on data collected from other sources does not explicitly address the "protection for privacy of home
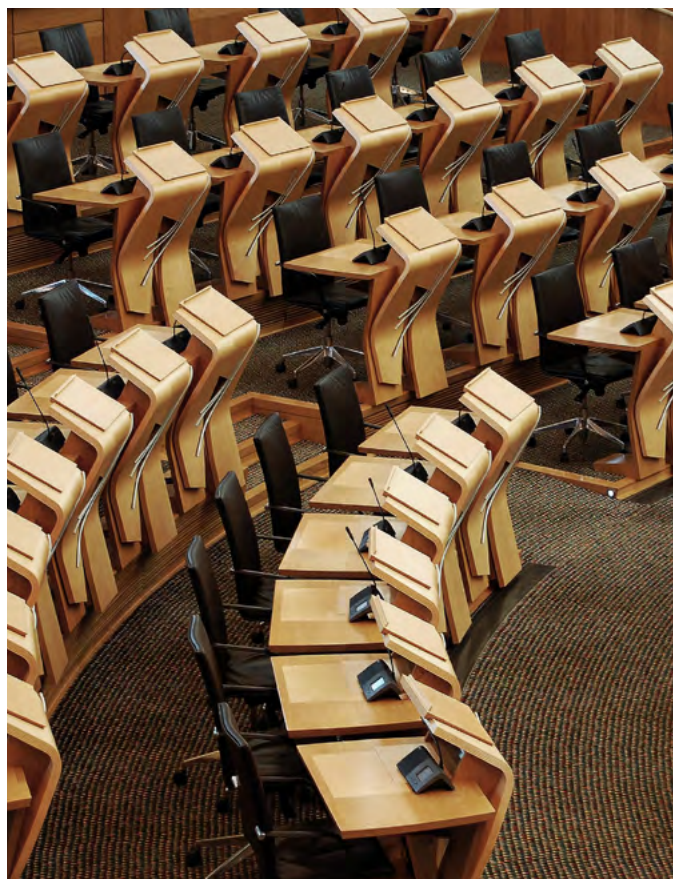
and other property" in the course of a purely personal or household activity as provided in Section 9 of the Bill of Rights. Although the Act outlines guidelines for processing information, there are challenges in implementing these guidelines in a transparent and institutional manner.[37] This makes it difficult to balance the need to protect citizens' personal information with the requirement to use that information for national security and public safety purposes.

This exclusion may imply that personal data collected, processed, or shared in the course of certain activities is not protected to the same extent as data collected, processed, or shared in other contexts. It reduces the Act's protection for people who use technology and the internet for personal and home purposes. Overall, this may fall short of international requirements, such as the EU's General Data Protection Regulation (GDPR),[38] which applies to all personal data processing activities, independent of context.

There are prominent issues flagged within the Act. Section 48(1) makes it illegal to transfer personal information outside of Botswana while Section 48(2) provides for only an authorised nation list, which has been published.[39] There are also additional exclusions that allow for a transfer if a country is not on the list. The concern with this exclusionary approach is that it raises questions about the criteria used to qualify countries for the list, as well as the ramifications for data privacy and the digital economy in terms of cross-border data transfers. One potential solution to the issues flagged within the section on cross-border data transfer would be to adopt a more principle-based approach. This could involve establishing clear and transparent criteria for determining when personal information can be transferred outside of the country, based on factors such as the level of protection for personal data in the receiving country and the rights and freedoms of individuals affected by the transfer. Botswana should consider joining the African Union Convention on Cyber Security and Personal Data Protection, which aims to promote the protection of personal data and the right to privacy in Africa and establish a framework for cross-border data flows. This would allow Botswana to align its data protection laws with those of other African

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36   Andrew Maramwidze "Back to the drawing board … glaring gaps in Botswana's Data Protection Act" (2022) https://itweb.africa/content/LPp6V7rB1Kg7DKQz (accessed on 21 December 2022)

37   Part IV Data Protection Act, 2018

38   Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1 https://op.europa.eu/en/publication-detail/-/publication/3e485e15-11bd-11e6-ba9a-01aa75ed71a1 (hereafter, 'GDPR').

39   See authorised list of countries here: https://www.michalsons.com/wp-content/uploads/2022/10/Botswana-Transfer-of-Personal-Data-Order-2022.pdf

countries and benefit from the collective expertise and experience of the continent.

Considering the relationship between the right to privacy and Section 12(1) of the Constitution of Botswana on protection of freedom of expression "[*Freedom to receive ideas and information without interference...]*" guarantees the right to access information, notwithstanding the Act's limited guidance on the subject on this issue.[40] In order to guarantee the right to access information as outlined in the Constitution, it is necessary to provide clear guidance on the duties and responsibilities of the Data Protection Commissioner. This will ensure that the general public is aware of which body to approach in specific situations and improve their understanding of the process for accessing information. By clarifying the roles and responsibilities of the Commissioner, the public's right to access information will be better protected and exercised. on how the duties and responsibilities of the Data Protection Commissioner should be reconciled.

Botswana is yet to ratify the Malabo Convention. The Malabo Convention has not yet entered into force, and it is still open for ratification by all African Union Member States. The Data Protection Act is the primary statute that oversees personal data protection in Botswana. However, there are additional laws and regulations in the country that protect personal information as well. The Cybercrime and Computer Related Crimes Act was passed in 2018, and criminalises various cybercrimes, including unauthorised access to personal data. It also provides protection for personal information and key information infrastructure.

DIGITAL IDENTITY DOCUMENTS

The Botswana government acknowledges and values national identity management and civil registrations systems as critical for good governance and accountability for long-term socioeconomic development, including the right to a name, citizenship, nationality, voting, and other associated rights. The right to identity and nationality is included in the Universal Declaration of Human Rights and the Convention on the Rights of the Child Resolution 44/25, both of which were adopted on November 20, 1989.[41] The African Union Agenda 2063 strategy includes a specific action plan for African digital identity development.[42] The purpose of this strategy is to create a framework for the development, deployment, and use of digital identity systems in Africa. Through the use of digital identification systems for a variety of purposes, including financial inclusion, e-commerce, and access to government services. This will help facilitate the implementation of the digital identity action plan, which the African Union has already developed through the African Digital Identity Ecosystem (ADIE).

Botswana became the first country in Southern Africa to issue electronic passports in 2020, after extending its procurement in 2021 with a German company called Veridos for ICAO-compliant passports with embedded biometrics.[43] Later in 2022, the Southern African Development Community (SADC) Secretariat reached an agreement with the government of Botswana to start manufacturing biometric passports utilizing its technological equipment and facilities.[44]

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40 The Botswana Data Protection Act establishes the Office of the Data Protection Commissioner, which is responsible for enforcing the Act and ensuring the protection of individuals' personal data. The Commissioner is appointed by the President and is independent in the exercise of their functions. The Commissioner's mandate includes promoting public awareness of data protection, monitoring and enforcing compliance with the Act, and investigating and resolving complaints. It is not clear if the office of the Commissioner has been fully established, however, the act is meant to be enforced by the office of the commissioner and it is important that this office is established and adequately resourced for its mandate to be effectively carried out.

41 United Nations Human Rights Commission (UNHCR) https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (accessed on 11 November 2022)

42 African Union's Agenda 2063 https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf (accessed 25 January 2023)

43 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 on 19 December 2022)

44 Andrew Maramwidze "Botswana pens biometric passport deal with SADC" (2022) https://itweb.africa/content/JBwEr7n3NRAM6Db2 (accessed on 19 December 2022)

The Digital Covid Certificate in Botswana is another example of a digital ID system used to register eligible Covid-19 vaccine beneficiaries. The government increasingly adopted this technology as a way to combat the Covid-19 pandemic and to protect the health and safety of its citizens. In response to the pandemic, the Presidential Covid-19 Task Force mandated every citizen to apply for a Movement Permit during the state of emergency to enable travel between zones. The Movement Permit was issued through an online registration platform.[45] The use of digital surveillance tools and technologies have faced public resistance and lawsuits because they had the potential to exclude or otherwise harm vulnerable people and communities.[46] Furthermore, there have been questions about the long-term impact of these digital surveillance measures on civil liberties, privacy and human rights, as well as the potential for them to be used beyond the Covid-19 pandemic.

While acknowledging efforts by the government to provide healthcare services during the pandemic, it is important to note that reliance on digital technologies meant that pre-existing gaps in digital access and of this platform's utilisation were exacerbated among already disadvantaged and underserved areas and communities. The drive supporting digital IDs is the result of long-standing governmental and monetary interests colliding with the enormous economic benefits driving technological breakthroughs such as biometrics and cloud computing.

Key concerns about Digital IDs include: "function creep" and mandatory enrolment; systemic exclusion; data breaches and privacy threats; increased police and state surveillance power; and the preference for corporate solutions over community-based solutions. Yet a growing body of critical scholarship and public advocacy has drawn attention to these issues, and to date, there have been no

definite allegations of misuse by state actors. What is important to note is the absence of accountability or oversight mechanisms to oversee the functioning of Digital ID systems.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

AI STRATEGIES
Botswana does not have a clear national AI strategy, however there are fragmented AI initiatives embedded in key government policies and strategies. The SmartBots digitisation strategy is a case in point. It is aimed at accelerating digital transformation in the

business and government sectors. One of the key areas of focus is the development of data-driven services and products that use digital technology such as artificial intelligence.[47] This approach provides an economic development

45   See Botswana's COVID 19 Vaccination Self-Registration link: https://fenyacovid.gov.bw/armready/
46   Mpho Mokwape "Presidential Covid-19 Task Team in court over BSafe app " (2020) https://www.mmegi.bw/news/presidential-covid-19-task-team-in-court-over-bsafe-app/news (accessed on 9 December 2022).
47   Douglas Letsholathebe "Industry 4.0 for inclusive development" (2022) https://unctad.org/system/files/non-official-document/ecn162022_industry_s02_botswana_DLetsholatebe_en.pdf (accessed on 20 December 2022).

model aimed at technology improvements associated with the fourth industrial revolution. It is also critical to address the implications for individuals' rights and privacy, along with the possibility of exclusion and inequality in access to these new technologies. Furthermore, bridging the digital divide and ensuring that all communities have equal access to these technologies is important to maximising the full benefits of the fourth industrial revolution. Focusing on the governance, ethics, and cultural aspects of the internet and emerging technologies is beneficial for enabling policy environments and also for ensuring ethical and transparent usage of these new technologies.

The National Planning Commission released the National Development Plan: Vision for 2036 (NDP 11), which intends to develop information and communication technologies (ICTs) by the year 2036.[48] A component of the strategy is to improve ICTs through a national e-Government strategy that places Botswana on a global stage with multilateral organisations like the Information Telecommunications Union (ITU) and World Trade Organization (WTO).

In August 2022, the Botswana Institute for Technology Research and Innovation (BITRI) hosted the national forum on the Fourth Industrial Revolution (4IR). The forum's goal was to provide a platform for the public and private sectors to understand the local, regional, and global perspectives of the 4IR. With respect to the country's progress towards Vision 2036 aspirations in the designated key areas and its readiness for 4IR, it is still uncertain what the country hopes to achieve with its long-term strategy in the AI field.

However, it is possible that some sectors of the economy, notably private companies, are still in the early stages of adopting and using AI technology for business automation. The Botswana government, in contrast, has recognized the potential of 4IR in stimulating the country's economic growth and is developing a strategy for the adoption and integration of these technologies into the

country's economy and society. To ensure that the country fully benefits from emerging technology, the government and private sector must invest in research and development, as well as education and training.

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48   National Planning Commission https://www.vision2036.org.bw/npc

Conclusion and Recommendations

There is a need for the establishment of a network of actors in Botswana to advocate for digital rights and internet freedom and to better understand and identify knowledge gaps in the field. Research is needed to understand the dichotomy between aspects such as national security and internet freedom. It is also important to build a knowledge base driven on practice and lessons learned, including through the aggregation of existing data and the development of new analytical tools to map trends and progress. The following recommendations serve as a guide for enhancing the current status of digital rights in Botswana.

GOVERNMENT	COMMS REGULATORY	CIVIL SOCIETY
The government should: • Develop national AI strategies that implement economic and technological development mirroring democratic values, with input from relevant stakeholders such as industry, academics, and civil society. Such policies should be grounded in democratic values, including transparency, accountability, and the protection of human rights. These policies should address issues such as data privacy, bias and discrimination, and the potential impact of AI on employment and other areas of society. • Create policies and programs that support gender equality and empower women and girls. This can	The Botswana Communications Regulatory Authority should: • Focus on expanding access to affordable and reliable internet connectivity in economically deprived and marginalised communities, while also ensuring the reliability and sustainability of its initiatives to expand broadband network deployment across the country. • Consider collaborating with more private sector companies and local entrepreneurs, to optimise the impact of its activities.	The civil society in Botswana should • Prioritise advocating for media independence, freedom of the press and expression, and privacy rights in the digital age. This can be achieved by the following: • Monitoring the implementation and impact of the Media Practitioners' Association (MPA) Bill of 2022 to ensure that it does not undermine freedom of expression and the press. • Calling for transparency and accountability in the use of surveillance systems and for the protection of privacy rights in the digital age through robust data protection mechanisms.

GOVERNMENT	DATA PROTECTION	ACADEMIA
involve implementing initiatives that boost the participation and representation of women in the digital sector, as well as tackling online gender-based violence and discrimination through digital rights legislation and measures to enhance online safety for children in general. • Adopt and enforce strong laws and policies that protect these rights to improve media freedom, free speech, and online safety. This could include legislation that prohibits the government from censoring or restricting the media, as well as measures to prevent online harassment and hate speech. • Adopt measures to promote a culture of respect for free speech and media freedom by educating the public about the importance of these rights and the role of the media in a democratic society. • Implement robust data protection laws and regulations to enhance data protection and the proper utilisation of digital identities in Botswana. This should encompass legislation that holds companies accountable for	The Data Protection Commissioner should take the following actions: • Collaborate with other regulatory authorities and various sectors to ensure the safety of personal data in various sectors, for example, the Commissioner could collaborate with regulatory authorities such as the Botswana Communications Regulatory Authority (BOCRA) and the Botswana Financial Intelligence Agency (BFIA) to ensure the safety of personal data in their respective industries. • Ratify the African Union Convention on Cyber Security and Personal Data Protection to align with international standards. • Adopt a principle-based approach for trans-border flow of personal data. The Commissioner should consider adopting a principle-based approach for trans-border flow of personal data rather than an exclusionary approach. This could involve establishing clear and transparent criteria	The academia should: • Encourage interdisciplinary collaboration between fields to tackle complex digital rights and internet freedom issues in Botswana. • Conduct research on AI to assist the government in its response to the ethical use of AI and emerging technologies.

GOVERNMENT	DATA PROTECTION	ACADEMIA
securing personal data and clearly outlining their policies for data collection, usage, and sharing. · Consider amending both the Gender and Development Policy of 2015 and the National GBV Strategy and Plan of Action (2016 – 2021) to address concerns of online child safety, digital rights and gender equality towards data protection and digital identity in the country.	for determining when personal information can be transferred outside of the country.	

Central African Republic

▶ Executive Summary

The Central African Republic is one of the least populated countries in Africa, with internet and mobile phone penetration rates among the lowest in the region, 9.8 per cent and 48 per cent respectively as of 2020.The country is party to several international and regional conventions that promote human rights in general as well as the rights to privacy, privacy of correspondence and free access to information; the same provisions are present in national laws.

Officially, the government has never authorised an Internet shutdown, but some other forms of restrictions on the freedom to communicate and inform oneself on the Internet have already taken place, such as blocking the SMS service. The government has yet to ensure free speech and media freedoms, journalists are still threatened, despite the 2020 Law on Communication Freedom.

In terms of development of ICTs and their use in citizen's daily lives, the country is still behind since no public services as of now are delivered using technology. Yet in 2022, the country embarked on an ambitious project of introducing bitcoins to support its economy, but the project did not last as it was declared unconstitutional by the highest court in the country.

It is recommended to the government to leverage digital technologies which can open up new avenues for development in CAR, support poverty reduction, increase economic activity, and expand public service delivery, in a country under constant conflict.

Introduction

The Central African Republic (CAR) is a French-speaking country in the central region of Africa with Bangui as its capital. With a surface area of 622,980 km² and a population estimated by the World Bank at 5.4 million in 2020,[49] it is one of the least populated countries in the world.

Independent for the last 65 years, since December 1958, the country has faced political and security instability for more than two decades despite the remarkable efforts of CAR citizens and the international community. The crisis escalated around 2013 and was marked by the coup d'état orchestrated by Michel Djotodia. President Faustin-Archange Touadera, of the political party Mouvement des Cœurs Unis (MCU), was sworn in on March 30, 2016 for his first mandate as President and was re-elected for a second term contested by the opposition in December 2020, manages a country plagued by threats of rebellion and armed groups that try to overthrow him.[50] The presence of the Russian private security company, Wagner, that he called to help restore stability to the country, a presence decried by local authorities, is one of the signs of the political instability in the country.

CAR is party to several international and regional conventions that promote human rights in general as well as the rights to privacy, privacy of correspondence and free access to information. The most important of these are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, etc.

The national legislation on telecommunications and the internet is not extensive enough. To date, the country has only one law to regulate electronic communications. This is Law 18.002 of January 17, 2018, governing electronic communications in the Central African Republic,[51] which we will refer to in this report as the Electronic Communications Law of 2018.

The electronic communications and internet sector is monitored, with the authority to enforce applicable regulations, by the Autorité de Régulation des Communications Électroniques et de la Poste, or ARCEP Centrafrique. This body was created by Law 17.020 of May 17, 2017 establishing ARCEP.[52] Under the supervision of the Ministry in charge of electronic communications, this body has the authority to be informed of all violations of laws in this area before the seizure of the courts according to Article 102 of the Electronic Communications Law of 2018.

The first section of this report provides a country analysis that first touches on internet freedom issues such as internet access and disruptions, free speech and media freedoms, privacy and surveillance practices, as well as data protection. Further, the country analysis presents the state of CAR's Universal Service Fund.

The second section is about developments in the ICT field, which have occurred in the country in recent years; these include a crypto currency project and efforts to promote digital literacy and skills so as to help with ICT adoption and appropriation in the daily lives of CAR citizens. The report ends with conclusion with recommendations.

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49   Banque Mondiale, République Centrafricaine - Vue d'ensemble, https://www.banquemondiale.org/fr/country/centralafricanrepublic/overview#1 (accessed on December 27, 2022).
50   Banque Mondiale, République Centrafricaine - Vue d'ensemble, https://www.banquemondiale.org/fr/country/centralafricanrepublic/overview#1 (accessed on December 27, 2022).
51   Electronic Communications Act of 2018, https://arcep.cf/images/textes/lois/Loi_18_002_regissant_les_communications_electroniques_en_RCA.pdf (accessed on December 27, 2022).
52   Law 17.020 of May 17, 2017 establishing ARCEP, https://arcep.cf/images/textes/lois/Loi_17_020_portant_creation_ARCEP.PDF (accessed on December 27, 2022).

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

The landscape of new information and communication technologies is a bit unusual. The cell phone and internet sectors are not that developed. According to a Quarter Three 2020 report from the Central African Regulatory Authority for Electronic Communications and the Post Office (not including figures from one operator who did not submit theirs), less than 2.6 million Central African citizens use a cell phone as of end of September 2020, bringing the cell phone penetration rate to 48 per cent, and only about 503,800 have access to the internet, for an estimated internet penetration rate on mobile phone of 9.8 per cent.[53]

The cell phone and internet market are dominated by four main operators that are also internet service providers. These are Telecel (48 per cent of the market), Orange France (37 per cent of the market), Moov (15 per cent of the market) and Azur Nationlink Télécoms (which did not report their figures for this quarter) according to data from the Regulator. The company, Black Millenium, is only involved in the provision of wireless internet, with an average of 0.094 per cent of customers per 1,000 inhabitants according to the same report.

Fibre optic cables are not yet in use in CAR, but the country is part of the Central African Backbone project that was approved in December 2017, signed in January 2018 and planned to complete in March 2023.[54] This project has four components, namely fibre-optic infrastructure; ICT applications and services; institutional support and capacity building; and project management; with the objective to "lead to an increase in tax revenue and a reduction in the cost of economic and social transactions, digital open access for rural areas coupled with regional integration through the establishment of fibre-optic infrastructure that will facilitate access to the neighbouring countries (Cameroon and Congo) and renewal of the social contract through the creation of job opportunities for young people in particular".

According to another report by ARCEP Central Africa on the evolution of indicators of telecom markets by the first quarter of 2020, these telecoms companies cover only 51 per cent of the national territory.[55] Alongside other factors, such as illiteracy (eight out of 10 adults are

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53   ARCEP Centrafrique, L'évolution des Indicateurs des marchés de télécommunications en Centrafrique, https://arcep.cf/images/documents_divers/observatoires/2020/TABLEAU_DE_BORD_MARCHES_TELECOM_RCA_Q3_2020.pdf (accessed on 27 December 2022).

54   Central African Republic -CAB – CAR component: https://projectsportal.afdb.org/dataportal/VProject/show/P-CF-GB0-002 (accessed on 26 December 2022).

55   IFRI, Les réseaux sociaux centrafricains à l'aube des élections : symptôme avancé d'une crise politique à venir, https://www.ifri.org/fr/publications/etudes-de-lifri/reseaux-sociaux-centrafricains-laube-elections-symptome-avance-dune, (accessed on December 27, 2022).

illiterate according to a UNICEF official quoted in a report by the French Institute of International Relations, IFRI) and low purchasing power, this would justify the low penetration rate of mobile telephony and internet.[56]

Officially, the government has never authorised a shutdown of the internet, but some other forms of restrictions on the freedom to communicate and inform oneself on the Internet have already taken place, such as blocking the SMS service,[57] or websites that are too critical of the regime in place. Local civil society suspects that the government is behind some of the internet disruptions that occur during periods of political tension.

FREE SPEECH AND MEDIA FREEDOMS

CAR's National Assembly passed a law on November 30, 2020 which was promulgated on December 21, 2020, the Law on Communication Freedom, which supports the media development in the country. This law replaces the Ordinance of February 22, 2005 dealing with press organs in the country.

"The importance of this law is that it will give the press and those involved in communication much more freedom to work without being worried by immediate legal action, but rather by being managed by administrative and other sanctions that may be given. But at the same time, it gives the press a responsibility; that of avoiding harming others by allegations, lies", says Ange Maxime Kazagui, Minister of Communication and Media who presented the Bill.[58]

According to Reporters Sans Frontières (RSF),[59]

the new law does not allow for independent and quality journalism in practice. But the President of the High Council for Communication (HCC) notes[60] the new provisions that it has, taking into account social media which was not covered in the old law. Another merit of this new law is that it decriminalised press offenses.

There are only two television stations in CAR and radio remains the dominant means to access information, with several dozen stations throughout the country. *Radio Ndeke Luka,* one of the few media outlets to broadcast information that respects facts and sources, like the Network of Journalists for Human Rights (RJDH) and a few associations of bloggers and journalists doing fact-checking, is regularly subjected to pressure.

RSF further argues that despite their state of disrepair in terms of investment and resources, which has lasted for years, the public media remain influential and take orders from the Executive. The High Council for Communication is accused by the profession of carrying out arbitrary sanctions, when these are not taken directly by the government, as was the case in 2021 for two news websites. The *Corbeau News* and *Le Tsunami* were given no warning when the Ministry of Posts and Telecommunications instructed internet operators on February 16, to cut access to their websites "until further notice" on the grounds that they had spread "hate speech" and fake news amid a "security crisis." The ministry mentioned no specific article or post.[61]

Clearly, there is no media freedom since RSF reports that in CAR, the authorities are finding it increasingly difficult to tolerate

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56   IFRI, Les réseaux sociaux centrafricains à l'aube des élections : symptôme avancé d'une crise politique à venir, https://www.ifri.org/fr/publications/etudes-de-lifri/reseaux-sociaux-centrafricains-laube-elections-symptome-avance-dune, (accessed on December 27, 2022).

57   SMS bloqués en Centrafrique : "Une décision digne d'une dictature", available at https://www.france24.com/fr/20140604-centrafrique-sms-bloques-decision-dictature-bangui-revolte, (accessed on December 27, 2022).

58   Centrafrique : une nouvelle loi sur la liberté de la presse : https://www.radiondekeluka.org/actualites/politique/36294-centrafrique-une-nouvelle-loi-sur-la-liberte-de-la-presse.html (accessed on December 20, 2022).

59   Republique Centrafricaine: https://rsf.org/fr/pays/r%C3%A9publique-centrafricaine

60   Le HCC présente la nouvelle loi relative à la liberté de communication en Centrafrique : https://oubanguimedias.com/2021/04/28/le-hcc-presente-la-nouvelle-loi-relative-a-la-liberte-de-communication-en-centrafrique/ (accessed on December 27, 2022).

61   RSF decries arbitrary blocking of two CAR news websites: https://rsf.org/en/rsf-decries-arbitrary-blocking-two-car-news-websites (accessed on December 20, 2022).

criticism; journalists who interview the various protagonists of the conflict are regularly treated as spies or accomplices of the armed groups.

PRIVACY AND SURVEILLANCE

The rights to privacy, access to information as well as the right to inform are protected by the Constitution of the Central African Republic. Important references can be found on Article 16[62] of the Constitution[63] on March 30, 2016. Freedom of the press is recognised and guaranteed. It is exercised under the conditions set by the law according to Article 15 of the same Constitution.

As in most African countries, there are vague provisions in the laws that set limits on the secrecy of correspondence by authorising forms of surveillance in specific cases. In the Central African Republic, these are in the *Electronic Communications Law of 2018 (The Law of 2018)*.

One of the elements likely to facilitate surveillance in this day and age is the mandatory registration of users of telecommunications or electronic communications services. Operators are obliged to identify all their subscribers according to the provisions of Article 61[64] of the Law.

The same law establishes four regimes in the field of electronic communications, including the licensing, authorisation, declaration and free regimes to which all service providers, each according to its sector/case, are subject.

Operators in the telecommunications sector are subject to one of these regimes and in case of misconduct, the Minister, on the proposal of ARCEP may decide to withdraw the license or other type of authorisation as stated in Article 16.1[65] of the *Law of 2018*.

Operators are called upon to respect the secrecy of correspondence as provided for by the *Law of 2018* in its Article 112[66] except in certain cases provided for by law such as for the protection of public safety or for national defence.

Article 113 of the same law takes up, with details, all the lines not to be crossed as for the secrecy of the correspondences. It insists in paragraph 1[67] on the prohibition throughout the Central African territory of interception, listening, transcription and disclosure of

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62   Article 16: The secrecy of correspondence as well as that of electronic postal, telegraphic and telephone communications are inviolable. Restrictions to the above provisions can only be ordered by law.

63   Constitution of March 30, 2016, https://www.constituteproject.org/constitution/Central_African_Republic_2016.pdf?lang=en (accessed on December 20, 2022).

64   Article 61: Operators are obliged to identify all subscribers of their services. The obligation to identify the subscriber extends to the entire distribution circuit of the operator. The methods and criteria for identifying users and customers of electronic communications services are defined by regulation.

65   Article 16.1: Licenses are granted, transferred, modified, renewed, suspended or withdrawn by order of the Minister, on the basis of a reasoned proposal by the Regulatory Authority.

66   Article 112: Operators and their employees are required to respect the secrecy of correspondence by means of electronic communications and the conditions for the protection of the privacy and personal data of users, subject to the obligations relating to the requirements of national defence and public security and the prerogatives of the judicial authority.

67   Article 113.1: The interception, listening, recording, transcription and disclosure of correspondence sent by electronic means, except with the prior authorisation of the Public Prosecutor or an investigating judge, in accordance with national legislation, in the context of a judicial investigation or by an authorised person in the context of an administrative investigation whose purpose is the protection of national defence and public security.

correspondence sent by electronic means. This would only be possible with the prior authorisation of the State Prosecutor or an investigating judge.

The interception of communications, violation of the secrecy of correspondence and surveillance are still prohibited, except for cases provided for in Article 136.2[68] of the *Law of 2018*. These exceptions relate to cases of judicial investigation with the authorisation of the Attorney General of the Republic, administrative investigations with the aim of protecting public security, national defence, the fight against terrorism and cases where the authors of the communications or correspondence give their consent. Since CAR does not have a law on cybersecurity or on the fight against cybercrime, there is still concern that these exceptional cases are vague and ambiguous.

There are no public CCTV cameras in the country. "For a country with issues with electricity, where there are no proper roads, nor traffic lights, how will the government bother to install CCTV cameras in the streets? For what purpose?" commented my source.

DATA PROTECTION

The country has no law or regulations that specifically deals with issues related to biometric databases and data localisation.[69]

The *Law of 2018* insists on the respect of privacy and the protection of customers' personal data, except for the cases provided for by the law in article 112.[70] This law briefly covers the important points such as the collection of data, the processing of data, the duration of their storage and their anonymisation and deletion except for cases provided for by the law. These provisions on anonymity and deletion are introduced by Article 116.[71]

The *Law of 2018* once again imposes on intermediaries of online communications services the protection of personal data of their customers in Article 117[72] referring to Article 116. They are only allowed to process traffic data to market their services or else for the provision of value-added services. This loophole is opened by Article 121.[73]

The duration of the retention of personal data of users of telecommunications services is set by a decree of the Minister according to the type of data. However, for purposes of research, ascertainment and prosecution of criminal offences, certain data may be kept for a maximum period of one year without being erased or made anonymous as provided for in Article 119[74] of the *Law of 2018*.

The law also prohibits the processing of

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68   Article 136. 2 a) The person has obtained the consent, either of the author of the private communication or of the person to whom the author draws it, to take cognisance of the private communication and to reveal its contents. b) The person intercepting a private communication in accordance with an authorisation issued by the Public Prosecutor or by an investigating judge, in accordance with national legislation, in the framework of a judicial investigation or by an authorised person in the framework of an administrative investigation that has as its object the protection of public security, national defence or the prevention of acts of terrorism; c) Staff members of the Regulatory Authority intercepting a private communication with a view to identifying, isolating or preventing the unauthorised use of a frequency or transmission.

69   CIPESA: Privacy Imperiled: Analysis of Surveillance, Encryption and Data Localisation Laws in Africa: http://104.152.168.205/~cipesa/old/?wpfb_dl=492 (accessed on December 26, 2022)

70   Article 112 of the Electronic Telecommunications Act of 2018 calls on Operators and their employees to respect the secrecy of correspondence by electronic means, to protect the privacy and personal data of their users. Except for the requirements required by national defence and public security and the prerogatives of public authority.

71   Article 116: This chapter applies to the processing of personal data in the context of the provision of electronic communications services to the public. It applies in particular to networks that support data collection and identification devices. Operators, in particular those whose activity is to provide access to online public communication services, shall erase or render anonymous any data relating to: traffic, subject to the provisions relating to persons; the need to investigate, establish and prosecute criminal offences; and the need for billing.

72   Article 117: Persons who, as part of a principal or accessory professional activity, offer to the public a connection enabling online communication through a network access, including free of charge, are subject to compliance with the provisions applicable to operators under this article.

73   Article 121: Operators may also process traffic data in order to market their own electronic communications services or to provide value-added services in compliance with the laws and regulations in force.

74   Article 119: For the purposes of the investigation, ascertainment and prosecution of criminal offenses and for the sole purpose of allowing, as necessary, the provision of information to the judicial authority, it may be deferred for a maximum period

data allowing the location of the terminal equipment used by the user of electronic communications services and the duration of the communication, except with the authorisation of the user or for investigative purposes. The user is informed about the nature of the processing, its duration and whether or not it is transmitted to other providers. This is provided for in Article 122[75] of the *Law of 2018*.

The same law grants the user the right to withdraw this consent at any time and free of charge. It goes further in the case of calls for emergency services, which directly constitute the author's consent to the collection and processing of technical information about the communication, the identity of the user and the location of the terminal equipment, but never the content of the communication, as emphasised in paragraph 3[76] of Article 123.

Those responsible for processing and storing personal data are obliged to collaborate with the competent authorities by communicating the data of the users of their services within the framework of the fight against terrorism, public security and national defence as outlined in article 124.1 and 2.[77] These data do not include the content of the communications. It is only clearly defined that the user is informed of the communication of the data when the request is made to the operator.

THE UNIVERSAL SERVICE FUND

The Universal Service Fund (USF) in CAR is established in the Electronic Communications Law of 2018 under Articles 77 to 81. It is defined

as "a minimum set of defined services of specified quality that is accessible to the whole population under affordable tariff conditions throughout the territory" (Article 77), it is formed with contributions from each operator at a rate of "two per cent of the previous year's turnover of each operator" (Article 79).

The law provides that "particular modalities for

the provision of universal service are defined by decree taken in the council of ministers".

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of one (01) year to operations tending to erase or anonymise certain categories of technical data.

75   Article 122: Without prejudice to the provisions of articles 112, 113, 114, 115 and 116 of this Law, and subject to the needs of judicial investigations, data allowing the location of the terminal equipment of the user of electronic communications services may not be used during the communication for purposes other than its routing, nor may it be stored and processed after the completion of the communication, except with the consent of the said user, who shall be duly informed of the categories of data involved, the duration of the processing, the purposes for which it is to be carried out, and whether or not it will be passed on to third party service providers.

76   Article 123.3: In no case may they concern the content of the correspondence exchanged or the information consulted, in any form whatsoever, in the context of these communications.

77   Article 124.1 and 2. In order to prevent acts that may be detrimental to public security, national defence and acts of terrorism, the agents individually designated and duly empowered by the competent authority may, after express authorisation by the Public Prosecutor, demand from the operators and persons concerned the communication of the data stored and processed by them pursuant to the said Article. The data that may be the subject of such a request is limited to technical data relating to the identification of the numbers of a user of voice services or connection to electronic communications services, to the identification of all the numbers or connections of a designated person, to data relating to the location of the terminal equipment used, as well as to technical data relating to the communications of a user of electronic communications services relating to the list of numbers called and calling, and the duration and date of the communications.

Decree No 19 043 defining the terms and conditions for the provision and financing of the FSU of electronic communications was therefore signed by the President on February 20, 2019,[78] announcing the formation of the Electronic Communications Development Committee (under Section 2) but very little information is publicly accessible with regard to the functioning of this Committee as well as to the effectiveness of the USF in CAR.

As in many African countries, one can suspect the funds collected as part of the FSU is used to cover the general budget of the country, rather than supporting the growth of communication and connectivity in underserved regions of the country.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

CRYPTOCURRENCY

On April 28, 2022 President Faustin-Archange Touadéra, to everyone's surprise, announced the vote by Parliament of a law that "governs all transactions" in cryptocurrencies and makes bitcoin a "reference currency" alongside the CFA franc.[79] The hope of the Government, the first in Africa to take that move, was that this new move would help replenish the state's coffers. With that law, all payments in digital currency, including taxes, are therefore authorised in the Central African Republic.

This new law faced different push backs from national institutions as well as regional institutions. The Banking Commission of Central Africa (CBAC) has clarified in a statement that only the CFA franc is the authorised currency for keeping the accounts of the institutions that are subject to it. The CBAC prohibits these institutions and their technical partners "in the context of payment services to exchange or convert, settle or cover in currency or CFA francs transactions relating to cryptocurrencies or having a link with them."

Dubbed the Sango Coin, this project would have allowed foreigners to get citizenship or buy land in CAR using this form of electronic payment. Deutsche Welle reported[80] that for an investment of $60,000 in cryptocurrency that must be locked in for five years, a foreign investor can obtain Central African nationality. With this passport, a foreign investor will be entitled to obtain shares in the Central African mining and forestry sectors at low cost. Another possibility is to have a company domiciled in the Central African Republic for $6,000 or a ten-year lease on a 250 square metre plot of land for $10,000 in Sango Coins.

Civil society groups filed a complaint against this move leading the highest court in the country to declare it "unconstitutional", as

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78   Decree No 19 043 defining the terms and conditions for the provision and financing of the FSU of electronic communications: https://arcep.cf/images/textes/decrets/decret_19_043_FSU.pdf (accessed on December 20, 2022).
79   Bitcoin en Centrafrique, les autorités y croient toujours : https://www.dw.com/fr/centrafrique-bitcoin-cryptomonnaie-faustin-archange-touad%C3%A9ra/a-61794329 (accessed on December 23, 2022).
80   Le fiasco de la cryptomonnaie Sango Coin en Centrafrique : https://www.dw.com/fr/centrafrique-sango-coin-cour-constitutionnelle/a-63007614 (accessed on December 26, 2022).

reported[81] by BBC. The Constitutional Court ruled that nationality had no market value and that residence required a physical stay in the country.

In a country poorly connected to the internet and destabilised by a conflict, such a project was simply ambitious but unattainable.

INCLUSION OF ICTs

Central African Republic is a country that has no record in terms of inclusion or use of technology in people's daily lives, especially regarding state services delivery using ICTs.

For the December 27, 2020 elections cycle, the United Nations Development Program (UNDP) delivered a large shipment of election materials to Bangui, on June 13, including 4,400 tablets that enumerators will use to register voters.[82]

It has been reported[83] that the electoral body in charge of voter's registration faced issues using these tablets, which resulted in delays in the registration process.

There is however a number of private initiatives aimed at supporting citizens to acquire digital literacy skills, such as this project with US funding, the Central African Republic Technology Entrepreneurship Accelerator launched in 2019 with the goal to assist and mentor early-stage company founders and managers in order to increase their potential for building successful and viable businesses, and furthering their overall ICT leadership capacity.[84]

The initiative of a digital library launched by the Ministry of Education, using a tablet loaded with digital content, makes it easy for teachers to access their lessons while teaching. In this video,[85] it is said that 1,000 pedagogical cards have been prepared for primary schools by pedagogical advisors of the National Institute of Research and Pedagogical Animation within the framework of the LONDO project financed by the French Cooperation and UNICEF between 2015 and 2016.

CAR citizens say that the country has a long way to go in terms of technology adoption, especially through initiatives from the state. With a country with little to no electricity, where Internet access is still a luxury, the government can only rely on private and donor funding to support its future projects. "No technology is used at police stations, nor at immigration offices, everything is paper-based so far," concluded one of the responders.

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81   Bitcoin en Centrafrique : la Cour suprême bloque le plan de crypto-pour-la citoyenneté : https://www.bbc.com/afrique/region-62723779 (accessed on December 27, 2022)

82   Centrafrique / Élections 2020 : démarrage de l'enrôlement des électeurs : https://www.aa.com.tr/fr/afrique/centrafrique-elections-2020-d%C3%A9marrage-de-l-enr%C3%B4lement-des-%C3%A9lecteurs-/1885888 (accessed on December 27, 2022).

83   Centrafrique : l'enrôlement des électeurs pourra-t-il se tenir dans les délais ? https://www.rfi.fr/fr/afrique/20200711-centrafrique-ane-enrolement-electeurs-elections-generales (accessed on December 27, 2022).

84   Central African Republic Technology Entrepreneurship Accelerator: https://care.gmu.edu/car-project/ (accessed on December 26, 2022).

85   Bibliothèques numériques en RCA : la technologie au service du système éducatif centrafricain : https://www.youtube.com/watch?v=b3It4ql_8VM (accessed on December 27, 2022).

Conclusion and Recommendations

Digital technology can open up new avenues for development in CAR, support poverty reduction, increase economic activity, and expand public service delivery. In particular, digital transformation starts with improving digital connectivity, given the current gaps in the digital infrastructure network.

CAR is still behind and is therefore not ready to embark in its digital transformation in order to reap all the benefits that come with it.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
• The government should consider private investments as well as leverage the universal service fund to support the deployment of technology infrastructure which could help expand communication and connectivity opportunities across the country; • The government should consider updating its legal framework to reflect the current development across Africa and leverage these laws to support the development of a more open civic space; • The government should consider reviewing its policies and its interaction with the media in order to ensure a more open media landscape where	• The private sector should consider investing in the country, with a focus on the ICT infrastructure in order to support connectivity for the citizens of CAR.	• Civil society groups as well as media groups should continue monitoring the state of internet and press freedoms and stay alert to hold the government accountable whenever they feel their digital rights are threatened;

| GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
journalists and media professionals are free from any threat related to the exercise of their profession.		

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Côte d'Ivoire

▶ Executive Summary

This report is an overview of the state of digital rights in Côte d'Ivoire for the year 2022. Côte d'Ivoire is one of the highest ranked nations in West Africa in terms of digital maturity and advancement. According to the Net Reclassification Index (NRI) and Integrated Discrimination Index (IDI), it is ranked 2nd and 3rd, respectively.[1] The adoption of the 5G service for the year 2023, is a clear confirmation of the Ivorian government's desire to maintain this position. Quantitative and qualitative research has been done to help review several key elements to make advance internet connectivity, thus aspects such as access to the internet, social networks and disruptions, freedom of expression and media, the Ivorian legal framework on freedom of expression and privacy. This research has also made provision for an overall assessment to be drawn on the progress made by the Ivorian government in terms of cybersecurity and the protection of personal data.

This study also demonstrated that the Ivorian legal framework as a whole promotes freedom of expression and the media. However, significant efforts should be made with regard to the socio-political divisions that still weigh heavily in the Ivorian public space. The report concludes with key recommendations for government, civil society actors and citizens to improve the digital space and foster individual freedoms online and offline. This report also urges further promotion of freedom of expression, privacy, internet freedom and access to universal services. An appeal is made to the media and to citizens to show more ethics, tolerance and diligence in order to avoid disseminating unverified information and propagating hate speech.[86]

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86   In https://watra.org/fr/members/cote-divoire/ (accessed on January 19, 2023)
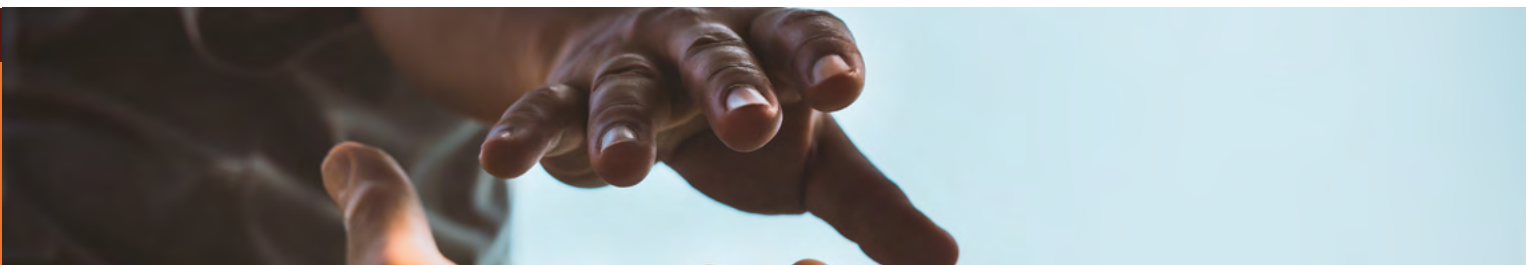
Introduction

Côte d'Ivoire is a West African country located to the north of the Atlantic Ocean, between Ghana and Liberia. It is situated on an area of 322,462 km[2] with its population consisting mainly of young people estimated at to be 28,713,443 (as of 2022)[2]. Over the past five years, Côte d'Ivoire has recorded one of the highest economic growth rates in the world with 7.4 per cent in 2021 Gross Domestic Product (GDP). This growth is driven on the supply side by export agriculture, mining and manufacturing, construction and public works, transport and trade, and on the demand side by investment and consumption[3]. Information and communication technologies (ICT) are also an important aspect of Côte d'Ivoire's development process.

The World Bank has deemed the country's rapid growth of the digital economy as encouraging. *"In 10 years, the number of internet users has increased from nine per cent to 34 per cent of the population. The telecommunications services sector generated a turnover of 1.139 billion CFA francs in 2021, almost amounting to 2 billion CFA francs, which represents three per cent of GDP, approximately 3,000 direct jobs, and more than 100,000 indirect jobs created. The number of SIM cards has doubled to 40 million. All this is a great indication of the rise of digital in Côte d'Ivoire."* [4] ICT has developed rapidly from fixed telephones to cell phones, internet and computer systems have also infiltrated into everyday lives of public and private sectors, as well as the general population.

This adoption of technology is one reason why the Ivorian government is gradually working towards strengthening its legal and institutional framework in this area and also developing telecommunication infrastructure across the country. This promising new technological dynamic also gives rise to a new phenomenon that should be monitored in order to prevent possible disruptions or abuse of the internet. Freedom of expression and information, whether online or offline, embodies inalienable human rights that are the foundation of any democratic society.

These are essential conditions for political and social participation, vital for the media to truly exercise their status as a public body of criticism and counter to the powers that be. Access to high-speed internet also leads to the need to ensure that the normative framework of digital spaces is maintained acutely, not only for organisations but for citizens too. It is indeed important for African States to strengthen the supervision and regulation of freedom of expression. This is also noticeable through the progressive adoption of national and international legal frameworks, in particular the Declaration of Principles on Freedom of Expression in Africa.

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[2] The World Factbook / Côte d'Ivoire, in https://www.cia.gov/the-world-factbook/countries/cote-divoire/ (accessed December 13, 2022).

[3] African Development Bank, "Economic prospects in Côte d'Ivoire", in https://www.afdb.org/fr/pays-afrique-de-louest-cote-divoire/perspectives-economiques-en-cote-divoire (accessed 13 December 2022).

[4] Yohou Djedje Hermann and Picarelli Nathalie, The Digital Sector, Vector of an Emerging Economy (French). Washington, DC: World Bank Group, June 13, 2022, Report available online at http://documents.worldbank.org/curated/en/099355005302211871/P177422081a7ac0b408ec30f8b1dd88ba40

In the third chapter of this document, it is highlighted that: *"no individual shall be subject to arbitrary interference with his freedom of expression. Any restrictions on freedom of expression must be imposed by law, serve a legitimate purpose and be necessary for a democratic society."* [5] However, it is clear that there has been a growing culture of repression in recent years. A strong trend of physical attacks, arbitrary arrests and censorship has also been observed.

With the rapid development of digital technology, the penetration of the internet and the extensive use of social media, many governments have either initiated various amendments to existing laws or adopted new ones to monitor cybersecurity, access to information, or cybercrime. Unfortunately, while implementing these laws, they can also be used to stifle freedom of expression or restrict the actions of citizens in holding the government accountable. In a non-exhaustive manner, this report will address several issues related to freedom of expression in Côte d'Ivoire and propose relevant recommendations with the aim contributing towards the creation of a viable legal framework for the use of the internet and social media, guaranteeing freedom to individuals and the press. Issues to be addressed in this report are as follows: internet access, social networks and disruptions, freedom of expression and freedom of the media, the Ivorian legal framework on freedom of expression and privacy.

Country Analysis

INTERNET ACCESS, SOCIAL MEDIA AND DISRUPTIONS

Côte d'Ivoire has several Internet Service Providers (ISPs). According to Go Africa Online. As of 2022, there were fifteen (15) Internet Service Providers [6], of which the mobile telephone providers, Orange, MTN and Moov remain the leaders. The number of internet subscriptions is 9,981,052 for Orange (42 per cent), 8,912,884 for MTN (37 per cent), and 5,051,266 for Moov (21 per cent) [7]. The country recorded an internet penetration rate of 80.31 per cent in June 2022. That of fixed internet slightly rose from 1.2 per cent in 2021 to 1.25 per cent in 2022[8]. The Internet penetration rate is calculated based on the number of subscribers in relation to the total population. As such, it may not correspond to the actual level of internet access in the country. However, some people in urban areas frequently have inactive SIM cards,

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[6] In https://www.goafricaonline.com/ci/annonce/fournisseurs-acces-internet (consulted on December 12, 2022) (accessed December 18, 2022).

[7] In https://www.artci.ci/index.php/marches-regules/11-observatoire-du-secteurs-des-telecoms/service-internet/75-abonnes-service-internet.html (consulted on December 11, 2022)

5 African Commission on Human and Peoples' Rights (ACHPR), "Declaration of Principles on Freedom of Expression in Africa", April 30, 2019, in http:// www.caidp.ci/uploads/cde12820535ee68056105ea12cf22c93.pdf

thus increasing the number of subscriptions without any real repercussions.

According to the *Digital Report 2022*, *We Are Social* and Hootsuite, the internet penetration rate in Côte d'Ivoire is estimated to be 36.3 per cent. In January 2022, 9.94 million internet users were identified, of which 6.40 million used social media[9]. The number of social media users at the beginning of 2022 was thus equivalent to 23.4 per cent of the total population a slight increase from the 22.1 per cent in 2021. Côte d'Ivoire ranks number nine in ICT across West Africa[10].

According to Ookla, the internet speed rate indicates that the average speed of mobile internet connection via cellular networks is 9.37 Mbps while that of fixed internet connection is 32.39 Mbps. MTN Côte d'Ivoire was the fastest mobile operator with an average download speed of 16.73 Mbps[11]. Data from GSMA Intelligence also shows that there were 37.75 million cellular mobile connections at the start of 2022.

Facebook remains the most-used social media network in 2022 with 5.65 million users[12].

Internet access and use are free in the country, however, the cost is considered prohibitive for all social classes, especially the vulnerable. According to Ange Ponou, "*Côte d'Ivoire is one of the countries with affordable internet in the region ($2.58 for 1 GB), however, it is still slightly expensive as compared to Senegal where the price of a GB costs on average 0.94 dollars*"[13].

Most network issues faced by providers are usually technical or natural[14]. The anticipated deployment of the 5th Generation (5G) on mobile networks is planned for 2023. With this initiative, the Ivorian government hopes to achieve better communication, enabling major advances in the fields of artificial intelligence (AI), energy, media, industry and health sectors[15]. Strategies to improve the competitiveness of the Ivorian economy, strengthen technological innovation and facilitate the transformation of services have been put in place.

FREEDOM OF EXPRESSION IN IVORY COAST

The right of access to information and freedom of expression offline and online are cited in articles 18 and 19 of the Ivorian fundamental law of November 8, 2016. Article 18 states that "*citizens have the right to information and access to public documents, under the conditions provided for by law*". And, article 19 states that "*everyone has the right to express and disseminate his/her ideas freely*"[16]. On this basis, the legal sphere of the press and freedom of expression can be considered free.

the participants from the consultative meeting believe that they have the freedom to express themselves on all information mediums (newspapers, television, radio, website and social media networks) compared to 43.6 per cent. When asked if the Ivorian Constitution guarantees freedom of expression, 74.1 per cent answered in the affirmative while 25.9 per cent did not believe so[19]. In consideration of the views expressed, the legislative system related to the internet and freedom of expression online in Côte d'Ivoire can be considered progressive. Moreover, the government has shown some goodwill in making services accessible and ensuring good support for citizens.

In order to effectively protect and strengthen this right, on December 23, 2013, the country adopted Law No. 2013-867 on the right of access to information of public interest[17]. This law sets out the frameworks in which the citizen or any other entity can have access to information and clearly sets out the information that cannot be communicated under the law provided for this purpose. concerning the provision of information.

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[8] 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 (accessed January 12, 2021)

[9] We Are Social and Hootsuite, Digital Report 2022, in https://datareportal.com/reports/digital-2022-cote-divoire (accessed December 11, 2022)

[10] Mamadou SANOGO, "ICT sector, Ivory Coast 3rd in West Africa" in https://www.7info.ci/secteur-tic-la-cote-divoire-3e-en-afrique-de-louest/ (accessed January 10, 2021)

[11] In https://www.ookla.com/articles/global-index-cities-announcement (accessed on December 12, 2022)

It also specifies the mechanisms of recourse in the event of failures of the public authorities An online public consultation was conducted by the Working Group for the Fight against Disinformation in Côte d'Ivoire (WGFD-CI)[18]. According to the results obtained, 56.4 per cent of In addition to free access to the internet, social media networks do not suffer from any form of restrictions. However, like in other countries, the publication of fake news and its harmful effects tend to call into question the freedom of expression and the authenticity of the information published by the new media. In any case, it's difficult for the so-called traditional media to claim their status as a reliable source of information and to be the ultimate channel for the professional treatment of public information. The disruption caused by the online press greatly threatens traditional media, as Diomandé Karamoko and Jeremy Junior point out: "*The figures are a striking illustration of the free fall experienced by Ivorian newspapers. In the past 10 years, from 2011 to 2021, the turnover of press companies has fallen from six billion CFA francs to less than six billion CFA francs [...].*

With regards to external causes, Bamba Franck[20] notes that there is a rapid development of the internet and its gradual penetration into the various spheres of Ivorian society. A fact that has been accompanied by the advent of social media networks, to which everyone has taken a liking to this day. He remarks with resentment to the new kind of journalism that has emerged due to the internet.[21]

The journalism sector has undergone significant changes with the rapid development of the internet and social media networks. The need for traditional media to reinvent themselves is becoming increasingly unavoidable due to changes in reality. The question of digital maturity in the country remains a challenge for the Ivorian government.

Internet connectivity was not disrupted during the last elections in Côte d'Ivoire, unlike what was seen in other countries where citizens experience prolonged internet disruptions and blackouts. For example, citizens had access to the internet during the 2020 and 2021 election cycles[22]. Hate speech and cases of disinformation leading to physical violence certainly peaked during this period of tension, but the internet connection remained accessible with minimal disruptions[23]. Incidents of violations of freedom of expression online, dropped considerably in the year 2022, which was not an election period.

FREEDOM OF THE MEDIA AND PRESS IN CÔTE D'IVOIRE

Côte d'Ivoire made a monumental leap of 29 places in the Reporters Without Borders (RSF) ranking in 2022. The country moved from 66 place in 2021 to 37 out of 180 countries in 2022.[24] This ranking clearly shows the progress in security and freedom of the press in Côte d'Ivoire. With diversity, the introduction of private television channels and the rapid development of online media, the Ivorian media landscape remains highly politicised and constituted as a stake.

[12] We Are Social and Hootsuite, Digital Report 2022, in https://datareportal.com/reports/digital-2022-cote-divoire (accessed December 11, 2022)

[13] Ange PONOU, "ECOWAS: The cost of internet more affordable in Ghana, Nigeria and Senegal" in https://www.sikafinance.com/marches/cedeao-le-cout-dinternet-plus-affordable-au-ghana –au-nigeria-et-au-senegal_32828#:~:text=La%20C%C3%B4te%20

A LEGAL FRAMEWORK CONSIDERED PROBLEMATIC

Although it does not have an implementing decree, Law No. 2017-867 on the legal regime of the press governs the written press as well as the production of digital information. This law which decriminalises offenses committed through the press also contains articles that restrict freedom of expression. For example, article 92 stipulates that: "*Defamation committed by way of the press or by any other means of communication to the public towards the Courts or the Tribunals, the Armed Forces, the Constituted bodies and the Public Administrations is punished with a fine of 1,000,000 to 5,000,000 francs*"[30].

This article restricts freedom of expression because it reduces the possibility of publishing information on "*courts, tribunals, armed forces, constituted bodies and public administrations*". This prevents journalists from denouncing the abuses observed even if they would respectful exercised their practice. The term "*defamation*" used in the article is not clearly defined.

According to article 93, "*Shall be punished with the penalty provided for in the preceding article of this law, defamation committed through the press or by any other means of communication to the public, against one or more members of the Government, one or several members of the National Assembly, a citizen in charge of a public service or mandate, a judge because of their function or their quality, or a witness because of his deposition*".

exposed to partaking in corruption. Journalist Noel Kouadio Konan is a perfect example of a journalist who was convicted of defamation by a court in Abidjan, the capital of Côte d'Ivoire, under article 89 of the law on the press and was fined three million CFA francs ($4,600) "*for a tweet dated June 29, 2022*"[31][32].

The case relating to a big financial scandal involved former President of the Republic Henri Konan Bédié as well as the NSIA bank. The journalist was allegedly summoned by the Ivorian police, and his crime cited under the Platform for the Fight against Cybercrime as "defamation on social networks". He was ordered to disclose his sources of information, which he refused to do so. "*The commissioner of Daoukro police and the head of the agency asked*

d'Ivoire%20made,in%20average%200%2C94%20dollar (accessed December 14, 2022)

[14] Alex K. PAYNE, "Disturbance on the telephone network: Orange Côte d'Ivoire explains and reassures", in https://www.linfodrome.com/economie/77094-pertubation-sur-le-reseau-telephonique-orange -cote-d-ivoire-explains-and-reassures (consulted on December 10, 2022)

[15] CGECI, "Deployment of 5G in 2023: Côte d'Ivoire adopts a roadmap", in https://cgeci.com/deploiement-de-la-5g-en-2023-la-cote- divoire-gets-a-roadmap/ (accessed December 22, 2022)

[16] Law No. 2016-886 of November 08, 2016 on the Constitution of the Republic of Côte d'Ivoire, in https://senat.ci/recueildocs/Constitution%20de%20Co%CC%82te%20d'Ivoire_Recueil%20des%20textes% 20du%20Se%CC%81nat_24%20mars%202022.pdf (accessed December 18, 2022)

[17] In http://www.caidp.ci/uploads/1039c02cbb4760940c49ff8a1656fb8e.pdf (accessed December 18, 2022)

[18] The Working Group for the Fight against Disinformation (WGFD-CI) is an advocacy project for the improvement of the legal framework for the fight against disinformation in Côte d'Ivoire created with the support of NDI Côte d'Ivoire within the framework of the NED-funded program to fight disinformation in political processes in Côte d'Ivoire. We contributed as a consultant to the implementation of this project. More info at https://gtldci.org/

me to reveal to them my sources of information and their intention. Which I refused. They stayed for two hours insisting that I must reveal my sources to them. It was later that they forced me to go with them to the police station so that I could be interviewed there without any legal assistance", he declared[33]. Reporters Without Borders condemned these methods as the protection of sources is an important pillar of freedom of the press.

Although a new Bill had been adopted to better regulate the practices of online press, the last quarter of 2022 was marked with unprecedented news related to the online press. This article is problematic, as it makes the aforementioned categories of people untouchable before the law. Offenses against the President of the Republic are also maintained with a fine of 3,000,000 to 5,000,000 francs.

According to Reporters Without Borders, since the January 1, 2022, no journalist or media practitioner has been killed or imprisoned. The year 2022 was marked by a significant improvement for journalists as there were no prison sentences handed down by the courts. However, during their practice, journalists face security problems, intimidation and are also

According to article 26 of this Bill, the director

of publication will be "civilly responsible" for these comments. Any breach is liable to a fine of up to 40 million FCFA[34]. This Bill, which generally concerns bloggers, influencers, cyber activists and web-comedians, has raised strong criticism in connection with freedom of expression, especially from bloggers and influencers. In fact, the latter draining a lot of people on their various platforms had not yet been covered by a formal framework concerning their profession.

According to the Minister, it is in no way a matter of deprivation of liberty because "*this text invites compliance with the rules of ethics and professional conduct and the great principle of audio-visual communication which are principles and rules that existed*"[35]. Despite numerous criticisms, the Bill was approved by the majority of deputies. A second reading will take place in the Senate, after which the law will be promulgated by the President of the Republic within 30 days.

THE PROTECTION OF PERSONAL DATA IN CÔTE D'IVOIRE

With the increased usage of the internet, the daily use of smartphones and other Information Communication Technologies (ICT), the Ivorian authorities have taken up important decisions both at the legal and infrastructural levels. At the

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net/2022/01/27/la-presse-ecrite-dans-la-galere-en-cote-divoire/ (accessed 17 December 2022)

[21] Diomandé Karamoko and Jeremy Junior, "The written press in the galley in Ivory Coast" https://www.connectionivoirienne. net/2022/01/27/la-presse-ecrite-dans-la-galere-en- cote-divoire/ (consulted on December 17, 2022)

[22] AEDH et Al., Digital Security in Côte d'Ivoire, December 15, 2021, in https://www.ritimo.org/Fiche-pays-securite-numerique-Cote-d-Ivoire (accessed December 19, 2022)

[23] Constant KONAN, "Report on digital rights and inclusion in Côte d'Ivoire", in https://paradigmhq.org/report/londa-report-2021/ (accessed on December 13, 2022)

[24] In https://rsf.org/fr/pays/c%C3%B4te-divoire (consulted on December 22, 2022)

This polarisation of the media and the press is closely linked to the sensitive political context of the country due to the electoral crisis of 2020 and 2021[25]. According to Reporters Without Borders, media was a great influence due to certain political parties and leaders. RTI[26] remains a State media platform serving the image of the government and the President of the Republic[27]. The print and digital press are regulated by the National Press Authority (ANP)[28], and radio and television by the High Authority for Audio-visual Communication (HACA)[29].

[25] According to the RSF report, the three private television channels are all owned by people close to the political power in place. In https://rsf.org/fr/pays/c%C3%B4te-divoire

[26] Ivorian Television Broadcasting

[27] In https://rsf.org/fr/pays/c%C3%B4te-divoire (consulted on December 22, 2022).

[28] https://anp.ci/

[29] https://www.haca.ci/

[30] In http://www.caidp.ci/uploads/01981c9a7d883c4321811e8725ca4c2c.pdf (accessed December 21, 2022) [31] In https://twitter.com/malmos2006/status/1542070311331532801 (consulted on December 22, 2022 at 03:21 min)

[32] Committee to Protect Journalists (CPJ), "Ivorian journalist Noël Konan imprisoned overnight, fined for a tweet" in https://cpj.org/fr/2022/08/le-journalist-ivoirien-noel -konan-imprisons-from-day-to-the-day-after-sentenced-to-a-fine-for-a-tweet/ (accessed December 22, 2022)

[33] In https://rsf.org/fr/c%C3%B4te-d-ivoire-rsf-d%C3%A9nonce-la-pression-sur-un-journalist-d-investigation-pour-r%C3%A9v%C3%A9ler-ses-sources (consulted on December 16, 2022)

legal framework, three main laws have been disseminated. These are Law No. 2013-546 of July 30, 2013, relating to electronic transactions, Law No. 2013-451 of June 19, 2013, relating to the fight against cybercrime[36] and Law No. 2013-450 of 19 June 2013 on the protection of personal data[37]. About 30 decrees accompany these laws in their application. At the infrastructure level, the Telecommunications/ICT Regulatory Authority of Côte d'Ivoire (ARTCI which is broken down into several monitoring and control entities has also been set up. Among these is the Côte d'Ivoire Computer Emergency Response Team (CI-CERT).

CI-CERT is the national cybersecurity focal point and acts as the primary coordination centre for security incident response and national critical infrastructure protection. At the international level, it collaborates with all the focal points of the CERT ecosystem[38]. The entity in charge of managing and monitoring personal data is the Protection Authority[39]. Established by a law adopted in 2013, which notably provides for the prohibition of the transfer of personal data to foreign States, the Protection Authority is responsible for authorising or not authorising, any new company, the collection, storage and exploitation of users' personal data on Ivorian territory[40]. These bodies, beyond their initial missions, carry out activities to popularise their institutions and raise public awareness[41]. Although the country has several legal instruments, the African Union Convention

of June 27, 2014, also known as the Malabo Convention on Cybersecurity and Personal Data Protection, has not yet been ratified by Côte d'Ivoire is now positioned as a major strategic hub in the West African region in terms of cybersecurity. The obvious interest in digital technology and the broad thematic field of ICT is the result of the large-scale development of the phenomenon of cybercrime which, in the course of the 2000s, greatly tarnished the image of the country outside its borders[42]. With the proliferation of online fraudsters, the country has set out to build a successful cybersecurity ecosystem to deal with the growing number of this new type of advanced threat. With the aim securing its cyberspace, the Ivorian government set up the Platform for the Fight against Cybercrime[43] (PLCC) in 2011 in order to effectively fight against cyberattacks.

According to the government, nearly 5,000 cases were resolved in 2021, compared to 2,408 complaints in 2017 and 150 in 2011. The resolution rate for cybercrimes is 50 per cent[44]. With regards to cybersecurity, Côte d'Ivoire has become, "*a country at the forefront, on a continent where losses due to cybercrimes are estimated at 4.2 billion dollars in 2021, thus according to the Kenyan consulting firm Serianu*"[45]. More still needs to be done, but the State, combined with the overall prospects which are quite promising, will implement positive actions in the Ivorian digital sector.

[19] In https://gtldci.org/consultation-publique/ (accessed December 19, 2022)
[20] Bamba Franck MAMADOU, Director of publication of the daily "Notre Voie", in https://www.connectionivoirienne.the Ivorian government.
[34] RFI, "Ivory Coast: MPs adopt a bill to better regulate online comments" in https://www.rfi.fr/fr/afrique/20221124-c%C3%B4te-d-ivoire- the-d%C3%A9put%C3%A9s-adopt-a-bill-to-better-regulate-online-comments (consulted on December 13, 2022)
[35] "The new press law imposes ethics and professional conduct on all news broadcasters (Minister)", in https://news.abidjan.net/articles/715805/la-nouvelle-loi-sur-la-presse-imposes-ethics-and-deontology-on-all-information-disseminators-minister (consulted on December 18, 2022)
[36] In https://www.artci.ci/images/stories/pdf/lois/loi_2013_451.pdf (accessed on December 20, 2022)
[37] In https://www.artci.ci/images/stories/pdf/lois/loi_2013_450.pdf (accessed on December 15, 2022)
[38] In https://www.cicert.ci/index.php/a-propos/missions (accessed December 21, 2022)
[39] In https://www.autoritedeprotection.ci/mission/ (accessed December 21, 2022)
[40] Quentin VELLUET, "Cybersecurity: how Côte d'Ivoire has become a regional hub", in https://www.jeuneafrique.com/1347215/economie/cybersecurite-comment-la-cote-divoire-est-devenue-un-hub-regional/ (accessed December 21, 2022)
[41] In https://www.artci.ci/index.php/secteurs-regules/protection-des-donnees.html (consulted on December 21, 2022)
[42] Constant KONAN, Cybercrime in Côte d'Ivoire: Between social crises and technological drifts, 2020, European University Editions
[43] Available online via: https://www.unodc.org/documents/organized-crime/cybercrime/Cybercrime-March-2019/Comments/Cote_DIvoire.pdf (accessed December 20, 2022) [44] GOUV-CI, "Fight Against Cybercrime In Ivory Coast: Convincing Results" in https://www.gouv.ci/_actualite-article.php?recordID=13088 (consulted on December 21, 2022)
[45] Quentin VELLUET, "Cybersecurity: how Côte d'Ivoire has become a regional hub", in https://www.jeuneafrique.com/1347215/economie/cybersecurite-comment-la-cote-divoire-est-devenue-un- hub-regional/ (accessed December 21, 2022)

Conclusion and Recommendations

This study reiterates that freedom of expression remains a fundamental principle that drives the political, economic and social dynamics of a country. Citizens must therefore be able to express themselves freely in any medium. Freedom of expression and freedom of the press online and offline are stable achievements in Côte d'Ivoire. The legal framework, as established, guarantees freedom of expression on the internet and social networks, the protection of individuals and institutions against cyberattacks, and the protection of personal data.

Journalists and other critical voices are prosecuted for publishing information deemed to be defamatory or false and therefore incur exorbitant fines. This situation represents an attempt at self-censorship and intimidation of a voice that could be considered potentially critical and fundamental to public and democratic life. Other governments must upscale their actions and take note of the major changes brought about by the irreversible digitisation by the Ivorians.

The following recommendations have been put forward in order to improve access to and use of the Internet, freedom of the press, freedom of expression online and offline:

GOVERNMENT	MEDIA AND JOURNALISTS	TELECOMS
To the Government: • Put in place a public policy for the regulation of digital platforms that guarantees individual freedoms, freedom of the press and freedom of expression on the internet; • Do a massive awareness to alert citizens of digital rights, data protection and other issues related to digital technologies; • Provide financial and institutional support to universities in order to carry out various research projects in the various digital fields (artificial intelligence, robotics, etc.);	*Media and journalists:* • Administrators of online platforms must respect freedom of expression and always adhere to the principle of neutrality in order to offer users optimal conditions of confidentiality, free and transparent access to the network; • Honestly ensure rigorous moderation of content published on discussion forums in order to identify and censor publications calling for hatred, xenophobia or likely to disturb public order; • Ensure compliance with ethics and duty by building the capacity of journalists	*Telecommunications companies and other Internet service providers:* • Intensify efforts to improve internet access service offers and make the cost of mobile broadband internet access affordable in line with the Universal Internet Index.

GOVERNMENT	MEDIA AND JOURNALISTS	CIVIL SOCIETY
· Ratify the Malabo Convention; · Adopt a specific law related to misinformation in Côte d'Ivoire; · Take action to combat online hate speech, invasions of privacy and the physical and moral integrity of citizens before, during and after elections.	and creating bodies for monitoring and regulating online journalistic activities (digital media observatory, monitoring platform, etc.)	*Civil society:* · Continue to play an important role in respecting and protecting fundamental rights and freedoms by protecting individuals from abuse by those in power. (actions of surveillance, analysis, alert, intellectual and political mobilization to provide responses that make it possible to maintain or improve the rights and freedoms in question); · Educate members of virtual groups or forums on the legal provisions repressing the dissemination of false news and hate speech; · Create forums for citizen exchanges on social networks to make users aware of democratic culture

INTERNET USERS

Internet users:

· Use the internet and social media responsibly and avoid publishing false information or information whose background cannot be tracked.
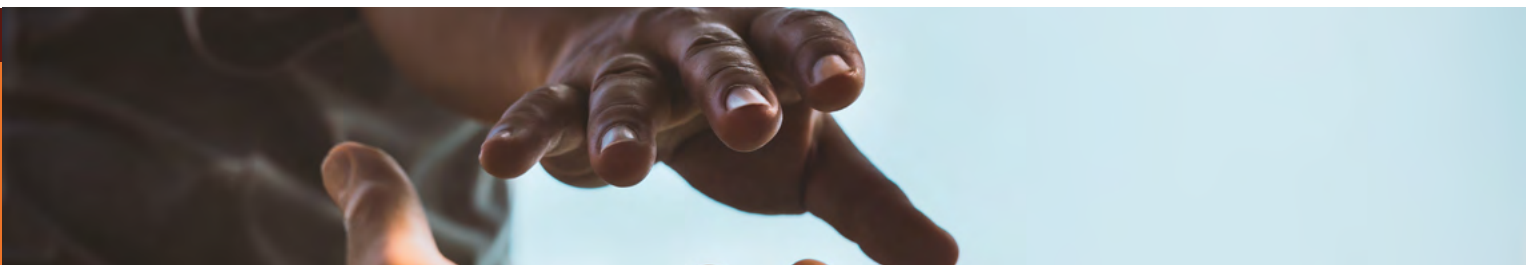
Democratic Republic of Congo (DRC)

> **Executive Summary**

Over the past five years, the country has undergone various reforms in terms of policies relating to new information and communication technologies in order to fill a legal gap that has been in existence in the digital sector for more than 18 years. At a national level, the Congolese government has put in place plans and strategies that will help the country prepare for the fourth industrial revolution, a conviction that Information and Communication Technologies (ICT) will undoubtedly contribute to the performance of the Congolese economy while strengthening sociability, improving knowledge, the efficiency of institutions and the fight against poverty.

Through a qualitative approach including a documentary, political and legal analysis as well as key personal interviews, this report presents an inventory of digital rights in the context of the development of information and communication technologies in the Democratic Republic of Congo, with a focus on the inclusion of ICTs in national plans and strategies. In addition, it analyses certain provisions relating to data governance and freedom of expression.

Based on the research findings, this report concludes by presenting various recommendations to specific stakeholders, namely the government, Parliament, civil society groups and telecommunication companies with the aim of promoting human rights in policies, existing ones linked to digital technologies and those being implemented in the Democratic Republic of Congo.

Introduction

The Democratic Republic of Congo (DRC) is located in Central Africa with an estimated population of nearly 93.8 million as of the first quarter of 2022, and a mobile internet penetration rate of 23.77 per cent. This is according to date in a report published by the Post and Telecommunications Regulatory Authority of Congo (ARPTC), in the second quarter.

In January 2022, the *"Data Reportal"* website, highlighted that there were nearly 16.5 million internet users out of a population of nearly 93.80 million; raising the overall internet penetration rate in the DRC to nearly 17.6 per cent, with a growth of 3.3 million (+25.4%) between 2021 and 2022.[1]

The majority of recent reforms and innovations that the ICT sector has undergone are part of filling the legal gap that was observed in the digital sector[2], which was once governed by framework law No. 013-2002 of October 16, 2002 relating to post and telecommunications. This legal provision was replaced by Law No. 20/17 of November 25, 2020, due to the deficiencies revealed within the previous one with regards to certain issues that were deemed "mandatory" by the legislator in the new law, as well as its inadequacy to current contexts in the digital technology sector.

The December 2018 elections, saw the constitutional court proclaim Félix Antoine Tshisekedi as the winner and successor to Joseph Kabila who had led the country for nearly 18 years. After being appointed, the new president presented a paper named *"National Digital Plan"*[3], leading to several Members of Parliament also presenting various Bills to fill the legal vacuum as well as the digital divide that had been observed when it came to issues such as cybercrime, personal data protection, control of digital activities and services often in the hands of powerful private entities established abroad and beyond the control of most States.

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1   Data Reportal, About Page, https://datareportal.com/about (Accessed January 19, 2023)

Country Analysis

ICT DEVELOPMENT AND EMERGING TECHNOLOGIES IN THE DEMOCRATIC REPUBLIC OF CONGO
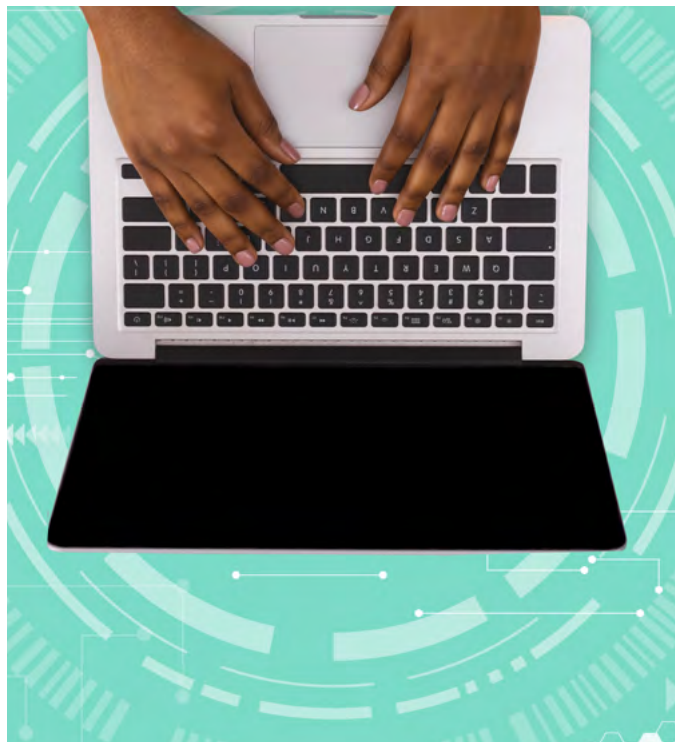
Despite the nation having four mobile telephone operators, namely Africel, Orange, Airtel and Vodacom, the DRC is still facing a major digital divide, with little access to the internet.

The adoption of Law No. 20/017 of November 25, 2020 on telecommunications and information and communication technologies, revoking Framework Law No. 013/2002 of October 16, 2002 on telecommunications in the Republic Democratic Republic of the Congo, took into account and regulated new information and communication technologies; however, this new legal provision failed to fill certain areas, in particular the following:
- protection of personal data,
- devotion of the legal validity of electronic writing and electronic evidence,
- liability of digital service providers, the legal regimes relating to new digital services,
- dedication of electronic commerce in order to strengthen the security of commercial exchanges as well as the protection of consumers,
- setting up specialised public services on digital issues

It is with this in mind that the Congolese government has invested in a process aimed at implementing the Digital Code with the aim of seeking a point of balance, while also enhancing the principles of freedom in cyberspace, in particular freedom of expression, information, assembly and opinion. Moreover, to undertake the protection of privacy, trade security, economic growth, social progress and the strengthening of governance. The Digital Code also had the mission of promoting innovation and national entrepreneurship in digital technology.

On December 6, 2022, the National Assembly passed the bill on the digital code in the DRC, as tool to be implemented for the success of the Digital Transformation Program of the Democratic Republic of Congo. "*This desired new legislative framework, once adopted by Parliament and promulgated by the Head of State, will give rise to implementing measures through regulations,*" added the Minister of Digital.

Freedom of expression, information and association, as a fundamental right, is

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[2] Zoom-Eco, National Digital Plan, https://zoom-eco.net/a-la-une/rdc-enfin-le-plan-national-du-numerique-valide/ (Consulted on December 28, 2022)

[3] Zoom-eco, DRC: the Head of State launches validation work on the National Digital Plan!, https://zoom-eco.net/a-la-une/rdc-le-chef-de-letat- launches-the-validation-work-of-the-national-digital-plan/ (Consulted on December 28, 2022)

[4] Ministry of Digital – DRC, Universality of the Internet, what approach for the DRC, https://numerique.gouv.cd/actualites/universalite-de-l%27internet-quelle-approach-pour-la-rdc-pdi12c (Accessed on December 29, 2022)

[5] Ministry of Digital Affairs, National Assembly considers admissible the bill on the Digital Code, https://numerique.gouv.cd/actualites/assemblee-nationale-juge-recevable-le-projet-de-loi-portant-code-du -numerique-1svfuk (Accessed December 29, 2022)

guaranteed by the Constitution of the Democratic Republic of Congo, the supreme law in its articles 23, 24 and 25.[6]

Article 23: *"Everyone has the right to freedom of expression. This right implies the freedom to express one's opinions or convictions, in particular by speech, writing and image, subject to respect for 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: *"The freedom of peaceful and unarmed assembly is guaranteed subject to respect for the law, public order and good morals."*

FREEDOM OF THE INTERNET

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, protection of users' rights but also of market structure. In this digital age, the protection of human rights and freedom of expression remains a fundamental issue across the African continent[7]. As stated 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 par excellence, the foundation of any democracy.

This freedom remains the first of the rights that any aspirant or authoritarian system suppresses in order to establish or maintain its power, through the systematically organised persecution of populations, intimidation, arbitrary arrests, targeted killings, massacres and the establishment of an environment of general insecurity.[8]

In 2021, Reporters Without Borders, an international organisation that campaigns for freedom of information, drew up an "alarming" report on attacks on press freedom in the Democratic Republic of Congo, ranking the country 149 out of 180 countries and territories worldwide[9]. In 2022, this improved with the country's ranking moving up to 125 position, mainly noting the very ambitious reform program adopted at a national media conference in January 2022, and which could pave the way for a new era for journalists in the DRC, hitherto exposed to a hostile and precarious environment under the influence of politicians.[10]

As the elections scheduled for 2023 approach, Reporters Without Borders has been able to observe that the Congolese media landscape is marked by the strong presence of politicians who own or launch media platforms to make them instruments of influence and push their personal agendas.

Since May 6, 2021, the provinces of North Kivu and Ituri are still under a special regime called "state of blockage". Article 85 of the Constitution highlights the need to deal with the worsening violence committed against civilians in these regions.[11] With the rise

6 Leganet.cd, Constitution of the Democratic Republic of Congo / Official Journal Special Issue February 5, 2011, https://www.cour-constitutionnelle.cd/wp-content/uploads/2021/02/Constitution-de-la-RDC.pdf (Consulted on December 29, 2022)
7 Achpr.org, 362 Resolution on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/Res.362(LIX)2016, 04 November 2016, https://www.achpr.org/fr_sessions/ resolutions?id=374 (Accessed December 29, 2022)
8 Civicus.org, The Need for the Revaluation of Freedom of Expression in the DRC", 2018, https://www.civicus.org/index.php/re-imagining-democracy/stories-from-the-frontlines/3391-the-necessity-of-the-revaluation-of-freedom-of-expression-in-the-democratic-republic-of-congo (Consulted on December 29, 2022)
9 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
10 Reporters Without Borders, Democratic Republic of Congo – 2022, https://rsf.org/en/country/democratic-republic-congo (Accessed December 29, 2022)
11 France24.com, President declares "state of siege" in two provinces affected by violence, May 1, 2021, https://www.france24.com/fr/afrique/20210501-rd-congo-le-pr%C3%A9sident-proclaims-l-%C3%A9tat-de-si%C3%A8ge-dans-deux-provinces-touch%C3%A9es-par-la-violence (Consulted on December 30, 2022)

of the civil authorities being replaced with military authorities in these areas, several actors working in the promotion of human rights have expressed their fear that the state of siege is going to open a gap for violations of human rights, restricting freedom of expression, information and association.[12]

On September 27, 2022, Amnesty International pleaded with the authorities to stop using the extension of the state of siege as a pretext to repress demonstrations *"since the establishment of the state of siege in May 2021, it is particularly dangerous to hold the authorities accountable in the two provinces concerned,"*[13] said Muleya Mwananyanda, Regional Director for Eastern and Southern Africa at Amnesty International.

According to the Minister of Communication and Media, on November 8, 2022, journalist Sonia Rolley, DRC correspondent for the British news agency Reuters, was expelled from Congolese territory for reasons of "illegal stay"[14]. Organisations such as Journaliste en Danger (JED) and Reporters San Frontières (RSF) denounced this claim, which they indicated as a violation of freedom of the press and also online expression. These organisation alluded that the local authorities no longer their violation of free and independent press.[15] [16]

DATA GOVERNANCE

The issue of strict data governance is a recent development in the digital policies in DRC; however, the government has shown strong will through various initiatives that have been carried out by the digital ministry. The law relating to new information and communication technologies has put measures relating to various mechanisms relating to the manipulation of individual data, especially when it comes to accessing technological services, in accordance with Chapter 2, which highlights the protection of personal data in Law N. 20/017 of November 25, 2020.

During the 62nd meeting of the Council of Ministers on July 15, 2022, the government adopted the draft decree on the management of national Data Centres (Data Centres) which should facilitate interconnection and interoperability between application solutions of the various ministries and public services concerned[17]. According to the Minister of Digital, the bearer of this draft decree, the idea

[12] Bbc.com, State of siege in the DRC: what results in Ituri and North Kivu with a 12th extension?, November 20, 2021, https://www.bbc.com/afrique/59352140 (Consulted on December 30, 2022)
https://congoprofond.net/rdc-le-depute-auguy-kalonji-saisit-ilunga-ilunkamba- for-the-removal-of-the-ram-tax/ (Consulted on December 31, 2022)
[13] Amnesty International, DRC. Authorities must stop using prolonged state of siege as an excuse to suppress protests, September 27, 2022, https://www.amnesty.org/en/latest/news/2022/09/drc-stop -using-prolonged-state-of-siege-as-excuse-to-crush-protests/ (Accessed December 30, 2022)
[14] 24sur24.cd, Expulsion of Sonia Rolley: "The journalist was in an illegal residence situation" (Patrick Muyaya), November 10, 2022, https://24sur24.cd/expulsion-de-sonia-rolley-la-journalist-etait -in-situation-de-sejour-irregular-patrick-muyaya/ (Consulted on December 30, 2022)
[15] Wikipedia, M23 Rebellion, https://fr.wikipedia.org/wiki/R%C3%A9bellion_du_M23 (Accessed December 30, 2022)
[16] Reporter Sans Frontier (RSF), DRC: RSF and JED denounce the brutal expulsion of a journalist from the foreign press, 09 November 2022, https://rsf.org/fr/rdc-rsf-et-jed-d% C3%A9 announce-the-brutal-expulsion-of-a-press-journalist-%C3%A9trang%C3%A8re (Consulted on December 30, 2022)
[17] Actualite.cd, DRC: the Government adopts the draft decree on the management of national data centers, July 17, 2022, https://actualite.cd/2022/07/17/rdc-le-gouvernement-adopte-le-projet -of-decree-on-management-of-data-centers (Consulted on December 31, 2022)
[18] Ministry of Digital (numerique.gouv.cd), The Congolese Government adopts the draft decree on the management of national Data Centers, July 17, 2022, https://numerique.gouv.cd/actualites/le-gouvernement-congolais-adopte -the-draft-decree-on-management-of-data-center-nationaux-yzdc3r (Consulted on December 31, 2022)

was to first give the Congolese government the means of allowing it to ensure its digital sovereignty through the Ministry of Digital, which will then facilitate interconnection and interoperability during the implementation process[18]. income of telecom operators[20]. This measure was made effective on September 30, 2022 following the adoption by the government, of the draft decree on the creation, organisation and operation of a public establishment, placed under the supervision of the Minister of Posts, Telecommunications, New Technologies of Information and Communication (PTNTIC), in charge of the promotion of telecommunications and information and communication technologies in rural and peri-urban areas[21].

In March 2022, the Congolese government removed tax on mobile devices called "RAM", which was introduced in September 2020 during the Covid-19 pandemic. In a statement by Collectif24 criticising the tax and labelling it "illegal", the organisation went on to say *"this tax has been described as threatening to digital inclusion as it could contribute to the reduction of mobile phone users in the country, thus reinforce the digital divide.[22] [23]"*

Bringing forth the violation of the universal principle which was enshrined in article 4 of chapter 2, paragraph 30 of the former framework law of October 16, 2002, relating to telecommunications

THE UNIVERSAL SERVICE FUND

The Democratic Republic of Congo's issue of funds for universal service is framed in Law No. 20/017 of November 25, 2020 relating to telecommunications and information and communication technologies in its articles 101 and 102 of chapter 8, section 2[19].

These articles state:

Article 101: *"Basic infrastructure is in the public domain of the State. They are highways or backbone networks that bring information and communication technology services or products to locals."*

Article 102: *"For the purpose of ensuring universal service, the State sets the conditions for tax relief to encourage or obtain the practice of the lowest prices in these areas".*

In a Council of Ministers chaired by the Head of State on September 9, 2022 the President of the Republic instructed the Prime Minister to effectively operate the universal service fund within a reasonable time, as the fund is financed by the three per cent levies of gross in the Democratic Republic of Congo, the national deputy Auguy Kalonji had seized the Prime Minister asking him to cancel the tax on mobile devices[24].

Despite the few advances made by the government to promote digital inclusion in the country, the digital ministry notes a remarkable delay in the field due to the overwhelming 77.29 million people (82.4 per cent of the Congolese population) who are not yet connected. Connection advancements have been concentrated in mainly major sites such as Kinshasa, Lubumbashi, Goma, Kisangani and Matadi[25].

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[19] Primature.cd, Loi-N°20-017-du-25-novembre-relative-aux-Télécom_08-12-020.pdf, https://www.primature.cd/public/wp-content/uploads/2022/ 04/Loi-N%C2%B020-017-du-25-novembre-relative-aux-Te%CC%81le%CC%81com_08-12-020.pdf (Consulted on December 30, 2022)

[20] Agenceecofin.com, DR Congo: the President of the Republic instructs the operationalization of the universal service fund, https://www.agenceecofin.com/telecom/1409-101140-rd-congo-le-president-de-la- republique-instruct-l-operationnalisation-du-fonds-de-service-universel (Consulted on December 30, 2022)

[21] Politico.cd, DRC: the government creates an establishment for the promotion of Telecoms and ICTs in rural and peri-urban areas, October 01, 2022, https://www.politico.cd/encontinu/2022/10/01/rdc- the-government-creates-an-establishment-for-the-promotion-of-telecoms-and-ict-in-rural-and-periurban-milieus.html/116888/ (Accessed December 30, 2022)

[22] Global Voices, New tax on mobile devices threatens digital inclusion in the Democratic Republic of Congo, 30 December 2020, https://globalvoices.org/2020/12/30/new-tax-on-mobile-devices-threatens-digital- inclusion-in-the-democratic-republic-of-congo/ (Accessed December 31, 2022)

[23] Actualite.cd, DRC: for Collectif 24, the establishment of the RAM service is a violation of freedom of expression and the right of access to information, Friday, November 6, 2020, https://actualite.cd/ 2020/11/06/rdc-pour-le-collectif-24-the-establishment-of-the-ram-service-is-a-violation-of-freedom (Consulted on December 31, 2022)

[24] Congoprofond.net, DRC: MP Auguy Kalonji seizes Ilunga Ilunkamba for the abolition of the RAM tax, December 24, 2020,

[25] Ministry of Numerique (Numerique.cd), Universality of the Internet, what approach for the DRC, May 31, 2022, https://numerique.gouv.cd/ actualites/universalite-de-l%27internet-quelle-approach-pour -la-rdc-pdi12c (Consulted on December 31, 2022)

Conclusion and Recommendations

In support of the Congolese government's desire to make digital inclusion a lever for social integration through various initiatives carried out by the government and Members of Parliament, this report makes some recommendations with regard to the different stakeholders in terms of new technologies of information and communication in the DRC, vis-à-vis the following issues:
- The development of ICT and emerging technologies
- Freedom on the internet
- Data governance
- Funds for universal service

GOVERNMENT	PARLIAMENT	CIVIL SOCIETY
To the government: • Set the conditions and procedures for the collection, recording, processing, storage and transmission of personal data, via an order of the Minister of Telecommunications and ICT, proposed by the regulatory authority; as provided for by Law No. 20/017 of November 25, 2020 relating to telecommunications and information and communication technologies. • Accelerate the various remaining steps in order to move on to the promulgation of the Congolese digital code. • Ensure that the various initiatives fill the legal void in the sector in light of new information	*To the Parliament:* • Pursue and complete legislative and structural reforms in the press and communication sector, by not only obtaining the adoption and promulgation of the law on access to information in the DRC, but also by initiating the revision of law n° 96-002 of June 22, 1996, fixing the methods of the exercise of the freedom of the press, thus considering decriminalising offenses of the press.	*To civil society organizations:* • Increase activities to raise awareness as well as consolidate joint actions in multi-stakeholder meetings such as forums relating to internet governance to improve or develop different consultation frameworks for the benefit of the digital ecosystem in the Democratic Republic of Congo.

GOVERNMENT	TELECOMS	CIVIL SOCIETY
and communication technologies, engage the various stakeholders in a consultative framework so as to avoid policies and regulations violating human rights,	*To telecommunications companies:* • Comply with the law and international standards to protect private communications and personal data of their users, and also not to consent illegal requests by government institutions regarding personal data of u	

Ethiopia

▶ Executive Summary

While access to the internet and internet freedom helped individuals to exercise their human rights online, government's authoritarian practices such as internet shutdown and digital surveillance continue to shackle citizens' rights in the digital ecosystem in Ethiopia, despite such practices drawing fire from civil societies and the international community.

Crucially, 2022 highlighted the need to enact a comprehensive data protection law in Ethiopia. The Ethiopian government has released an exposure draft on Data Protection Proclamation that seeks to regulate the processing of personal data and protection of fundamental rights, and in particular individual's right to privacy, with regard to automatic processing of personal data, as well as aims to establish an independent Data Protection Commission (DPC) in the country.

Overall, given the ever-increasing dependence on internet connectivity, this report notes that the Ethiopian government should desist from its practice of internet shutdown, and provide robust national strategies and policies that promote and protect digital rights in the country.
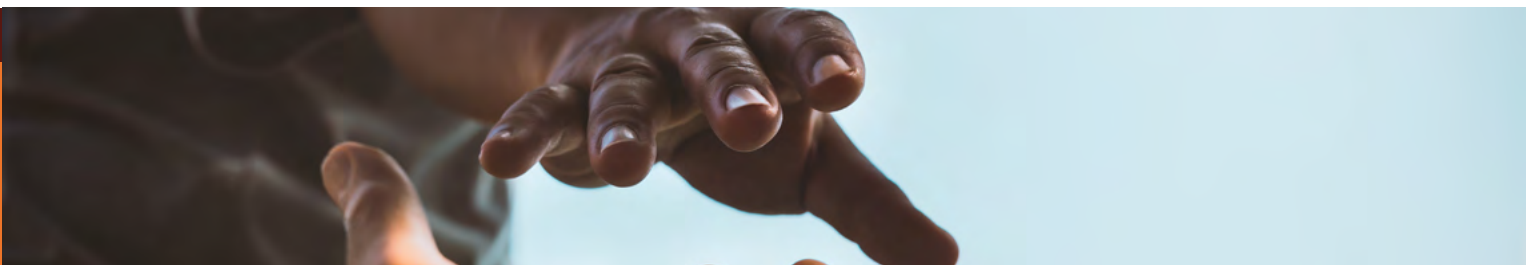
Introduction

The Ethiopian digital rights landscape showed some progress and some regression in 2022. On the one hand, the government launched various programs to promote and protect digital rights, as well as successfully hosted the 17th United Nations Internet Governance Forum (IGF) — which can be seen as a moment of reflection and reinforcement of the developments in the digital sector.[1] On the other hand, digital authoritarianism in the form of State surveillance and internet shutdown continues to impede the positive dividends of the internet and digital technologies in the country.[2]

The number of internet users in Ethiopia remains low compared to global connectivity rates.[3] That said, in the past few years Ethiopia has experienced steady growth in internet penetration, from 0.02 per cent in 2000 to 23.5 per cent in 2022, according to the International Telecommunications Union (ITU), which estimates that 23.4 million people are using the internet.[4] Even more so, internet accessibility has shown a significant increase in Ethiopia from 19 million users in 2017 to 30 million in 2022, as the Prime Minister of Ethiopia highlighted in his keynote address at IGF.[5] Nevertheless, Ethiopia should strive to address the digital divide as millions are not connected to the internet in the country.

This report is structured into six sections, including this introduction. The second section explores the notion of internet freedom and its relation with access to the internet, freedom of expression and privacy and surveillance. The digital ID programme and its concerns in Ethiopia are discussed under section three. Section four reviews the implementation of the Universal Service Fund in Ethiopia. Section five briefly examines the policies and programmes on ICT and emerging technologies in Ethiopia. Section six concludes and makes recommendations.

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1   M Teshome, 'Ethiopia successfully hosts the 17th Internet Governance Forum,' (Capital, December 4, 2022) < https://www.capitalethiopia.com/2022/12/04/ethiopia-successfully-hosts-the-17th-internet-governance-forum/> (accessed on 29 December 2022).

2   YE Ayalew, 'From Digital Authoritarianism to Platforms' Leviathan Power: Freedom of Expression in the Digital Age under Siege in Africa' (2021) 15(2) Mizan Law Review 455.

3   See H Abraha 'Examining approaches to internet regulation in Ethiopia' (2017) 26 *Information & Communications Technology Law* 293-311.

4   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 December 29, 2022).

5   Remarks at the Opening of the 17th Internet Governance Forum (IGF), Prime Minister Abiy Ahmed (November 29, 2022) <https://www.youtube.com/watch?v=UTvGV0bAxvI&t=1240s&ab_channel=ECA_OfficialVideoChannel> (accessed on December 29, 2022).

Country Analysis

INTERNET FREEDOM

Internet freedom is a catchphrase denoting human rights in the digital age or broadly referring to digital human rights, particularly access to the internet. Yet, the claim of internet freedom (including access to the internet) as a separate human right remains unsettled.[6] There are contending debates about whether a case for internet access is a human right. For example, there is a view that supports the notion of internet access as a human right since it has become a vital communication medium that individuals can use to exercise their right to freedom of expression.[7] Conversely, others argue that internet access is not a human right since technology is an enabler of rights, not a right itself.[8]

However, internet freedom is a metaphoric term used to convey various rights in the digital age, such as the right to freedom of expression and communication, privacy, peaceful assembly, and access to the internet.[9] Yet, while the concept of internet freedom is wide-ranging, this report only considers three rights, namely internet access, free speech and privacy.

INTERNET ACCESS AND DISRUPTIONS

Access to the internet is speedily increasing across Ethiopia.[10] Millions are getting online and engaging in a wide range of uses of social media and other digital platforms for varying purposes — including political matters, self-expression, socio-economic development, trade and e-commerce.[11]

While there is an expanding pace of internet accessibility in Ethiopia, internet freedom has been subject to different measures by State or non-State actors resulting in muzzling freedom of expression on the internet and breaching privacy. For instance, the Ethiopian government has turned to internet shutdowns as a tool of political hegemony and for political

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6   S Tully'A Human Right to Access the Internet? Problems and Prospects' (2014) 14 *Human Rights Law Review*, 175–195, 180.

7   Special Rapporteur on Freedom of Expression and Access to Information in Africa, Commissioner Lawrence M. Mute, *Inter-Session Activity Report,* presented to the 65th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia (21 October to 10 November 2019) para 34; See also the UN the Human Rights Council's affirmation that rights must be protected online. Human Rights Council, The Promotion, Protection and Enjoyment of Human Rights on the Internet', A/HRC/20/L.13, July 5, 2012.

8   V Cerf 'Internet Access Is Not a Human Right', *New York Times* (January 4, 2012) https://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html (accessed on December 29, 2022); *Amnesty International Togo and et al v. Republic of Togo,* ECOWAS Community Court of Justice, JUD No. ECW/CCJ/JUD/09/20 (June 25, 2020) para 38.

9   Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, 17 April 2013, UN Doc. A/HRC/23/40, para 2.

10   See CARD and Data4Change Story, The Digital Divide < https://www.cardeth.org/digital-divide/ > (accessed on December 29, 2022).

11   Ayalew (n2)

control.[12]

In Ethiopia, the main justification that the government provides for the repeated use of internet shutdown is the security situation of the country. Ironically, experience shows that internet shutdown did not help prevent violence from happening in the past two years.[13] The conflict that erupted in the Tigray region between Federal Forces and Tigray People Liberation Front — which later spilled over to neighbouring Afar and Amhara regions — has caused the disruption of internet and telecommunication services, as well as had a lingering effect on political and social conversations in the country, including the digital space. Later on, the coverage of the blackout has extended to two regions as the conflict is getting worse. Part of Amhara and Afar Region, areas that are under the control of Tigray People Liberation Front, have had a communication blackout for more than two years. Although the internet has been restored after the peace deal made in Pretoria on November 3, 2022, there has since November 4th 2020 been an internet blackout in Tigray and parts of Afar and Amhara regions.[14]
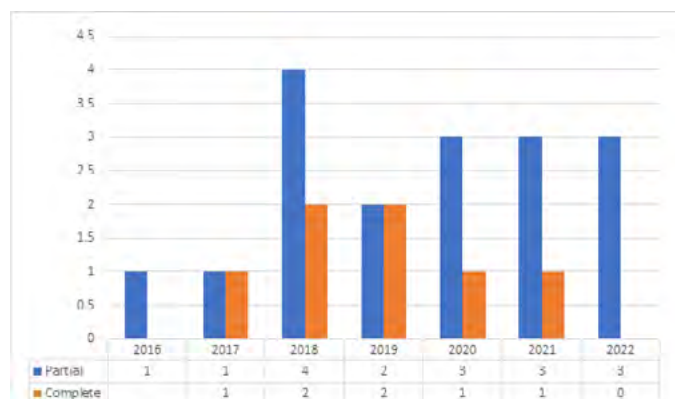

Figure 1: Trends of Internet shutdown in Ethiopia (2016-2022).

Although there is a repeated litany from digital rights activists and academia, as well as pushback from civil society, the issue of internet shutdown has not got enough attention among the broader public in Ethiopia.[15] Successive governments have implemented internet shutdown as a tool to muzzle freedom of expression in Ethiopia.[16] Consequently, internet shutdown has become the hallmark of the Ethiopian government.

In addition to its human rights implications, internet shutdowns continue to affect the growing start-up businesses thereby hindering their contribution to the emerging digital economy in Ethiopia.[17] The practice of shutdown violates the government's much-touted digital policy documents, including Digital Ethiopia 2025 and the 10 Years Development Plan — A Pathway to Prosperity (2020–2030).

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12   F Erixon and H Lee-Makiyama, 'Digital Authoritarianism: Human Rights, Geopolitics and Commerce', *The European* Centre *for International Political Economy (ECIPE),* ECIPE Occasional Paper • No. 5/2011 (2011) 1 http://ecipe.org/wp-content/uploads/2014/12/digital-authoritarianism-human-rights-geopolitics-and-commerce.pdf (accessed on December 29, 2022).
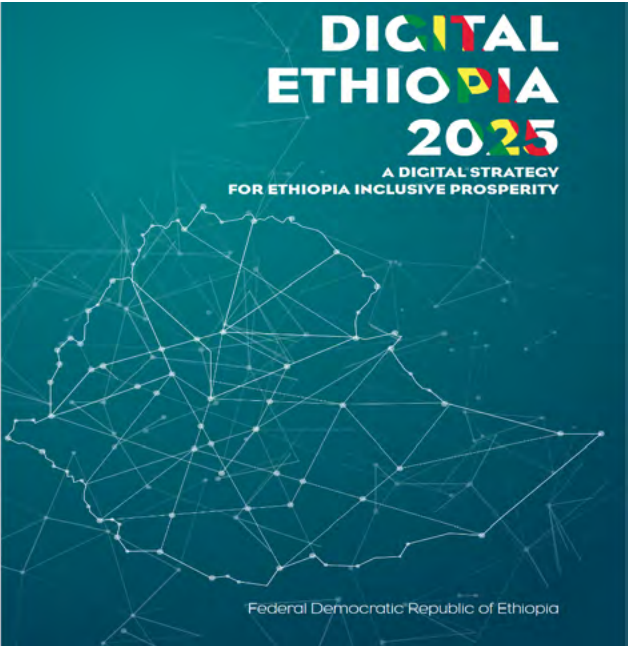
13   CARD (n10)

14   Associated Press, 'Electricity, telecoms return to parts of Ethiopia's Tigray' (December 8, 2022) < https://apnews.com/article/technology-africa-business-kenya-ethiopia-fccde80683cd3fee0fe3ed8fd21e2740> (accessed on December 29, 2022).

15   Access Now, #KeepItOn: The Ethiopian government must end internet shutdowns to quell protests (2 July 2020) < https://www.accessnow.org/keepiton-ethiopian-government-must-end-arbitrary-internet-shutdowns/ > (accessed on 29 December 2022). See also Human Rights Watch, Ethiopia: Communications Shutdown Takes Heavy Toll (March 9, 2020) < https://www.hrw.org/news/2020/03/09/ethiopia-communications-shutdown-takes-heavy-toll> (accessed on December 29, 2022).

16   YE Ayalew 'The Internet shutdown muzzle(s) freedom of expression in Ethiopia: competing narratives' (2019) 28 *Information & Communications Technology Law* 208-22.

17   CARD, 'Business Trampled: Demystifying the impact of Internet shutdown on Start-up businesses in Ethiopia' research report October 4, 2022 < https://www.cardeth.org/business-trampled-demystifying-the-impact-of-internet-shutdown-on-start-up-businesses-in-ethiopia/>(accessed on December 29, 2022).

	Section 5.1: Connectivity is a foundational element of digital transformation and can drive socio-economic development. Robust connectivity enables citizens and businesses to participate in the digital economy by having access to affordable and high-quality internet, through which they can engage in information sharing and online transactions. Improved connectivity also brings socio-economic development in multiple ways. A **10 per cent increase in internet penetration for example, can improve a country's GDP by 0.9 to 1.5 per cent.**
Image 1: Digital Ethiopia 2025.	

While the strategy seems a noble plan, it nonetheless became a lofty ambition of the government as there were frequent internet shutdowns in the country.

	• Chapter 6.4 of the 10 Years Development Plan in Ethiopia seeks to build a strong digital economy; enhance institutions' use of public services through online systems by improving internet connectivity and use; introduce a standardised national system of addresses; develop computational technologies and national databases; and enhance the use of • electronic means for accessing public services. • • By 2030, the Plan specifically aims to: • Increase access to mobile and internet services from 37.2 per cent and 18.6 per cent, respectively, to 100 per cent; • Provide support to 3,000 selected tech start-ups with high economic and social impacts and, of these, promote the most promising 2,100; • Raise the share of private sector jobs in the areas of technology and digitalisation from 50 per cent to 80 per cent.
Image 2: 10 Years Development Plan – A Pathway to Prosperity.	

FREE SPEECH AND MEDIA FREEDOMS

Free speech and media freedoms are important entitlements to exercising digital rights and participating in a democracy. To this end, the Ethiopian Constitution recognises free speech and media freedom in similar terms as under the Universal Declaration of Human Rights (UDHR)[18] and the International Covenant on Civil and Political Rights (ICCPR).[19] It guarantees the freedom to seek, receive and impart information through any medium, including the Internet.[20] 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 Proclamation[21] stresses the need for upholding freedom of expression for the mass media houses. However, this law has been amended by a newly enacted law called Media Proclamation in 2021.[22] The Ethiopian government was prompted to legislate Media Proclamation in order to have an up-to-date law that could help withstand the ever-increasing roles of private actors in the digital space.[23] In terms of scope, the Media Proclamation applies to mainstream media (print and broadcasters) and online media, excluding social media.[24]

Accordingly, to be regarded as an online media, the Media Law requires that: (1) It must be disseminated via the internet; (2) It must be offered by an organisation engaged in the collection, production, processing and dissemination of news or programs; (3) It may use various means and modes of dissemination, including online images, virtual audio or video and websites, as well as a combination of these means; and (4) The media service provider must comply with the editorial responsibility and code of conduct.[25]

Nevertheless, enforcing and realising freedom of speech for both journalists and the press remains far from over in Ethiopia. This is mainly at least for two reasons: one, the inclusion of hefty fines for civil defamation, and second, there is a claim that media houses and journalists are still being subjected to repression and brutal crackdown in the wake of the war in northern Ethiopia. Additionally, unregulated hate speech and disinformation on social media, and the unbridled leviathan power of platforms has brought another threat to the promotion and protection of freedom of expression in the digital age in Ethiopia.[26]

PRIVACY AND SURVEILLANCE

The right to privacy is a constitutionally guaranteed right in Ethiopia. However, although 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. In 2022, the Ethiopian government released a revised draft proclamation on data protection.[27] Notably, the draft Proclamation aims to build an effective digital economy which defines the rights and duties of stakeholders, governs related issues and introduces a system which ensures a strong culture of personal data protection.[28]

Moreover, the draft Proclamation defines the rights and duties of data controllers and processors, governs data transfers and

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18   Universal Declaration of Human Rights (UDHR) adopted 10 December 1948, UNGA Res 217 A(III) article 19.

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

20   Ibid.

21   Freedom of the Mass Media and Access to Information Proclamation No. 590/2008 (December 4, 2008), Article 4.

22   Media Proclamation No.1238/2021, 27th Year No.22, Federal Negarit Gazette, April 5, 2021 Addis Ababa.

23   Ibid, preamble para I.

24   Ibid, article 2(1).

25   Ibid, article 2(4).

26   Z Zelalem and P Guest, 'Why Facebook keeps failing in Ethiopia' (Rest of World, November 1, 2021) < https://restofworld.org/2021/why-facebook-keeps-failing-in-ethiopia/> (accessed on December 28. 2022).

27   Proclamation To Provide for Personal Data Protection (Draft 2021) preamble para 3.

28   Preamble (n27) para 4.

introduces a system that ensures a strong culture of personal data protection. Most of the provisions of the draft proclamation such as data subjects' rights (the right to access data, the right to be informed, the right to object, rectification and the right to be forgotten) and principles of data processing are drawn from the European Union General Data Protection Regulation. As a result, the long arm of the GDPR commonly referred to as the "Brussels Effect" is visible in its operative provisions.

Ethiopia is yet to establish an independent DPA. Thus, in order to enhance individuals' and groups' control over their data, the forthcoming Proclamation amongst other things needs to facilitate and create a strong and independent DPA as suggested by civil societies.[29] Particularly, the Data Protection Commission must be free from the influence of three actors. These are: private actors, government and international organisations.[30]

When it comes to surveillance, while the legal reform helped revise warrantless surveillance under the anti-terrorism law, it is impinged by problematic national security laws and practices by the authorities in practice that wholly disregards applicable human rights protections.[31] Additionally, authorities monitor and grope on opposition party leaders' and influential social media users' accounts, thereby intruding on their right to privacy on the internet.

DATA GOVERNANCE
Ethiopia is gearing up to fully roll out digital identification (ID) to its citizens. Indeed, the Ethiopian government launched a pilot programme on digital ID in 2021. Digital ID is regulated by the forthcoming Digital Identification Proclamation. The draft Ethiopian Digital Identification Proclamation aims to create a comprehensive national identification system, which among other things, ensures that the resident's right to be identified, enhances the ability to exercise other rights, promotes trust between service providers and consumers, and creates a nationwide enabling environment to ensure transparency, accountability, and efficiency.[32]

The Bill defines digital ID as 'a Foundational

Identification with a Unique Number that is issued to a resident that is registered on the Digital Identification System.'[33] Thus, the registrant (any person) needs to provide demographic and biometric data in a central database that helps them get a unique number.[34] Importantly, individuals must provide personal information including: a) First Name, Father's Name, and Grandfather's Name, or when the three names are not available or applicable, the Institution may collect other arrangements

29   See The Center for the Advancement of Rights and Democracy (CARD, *Data Protection Policy Brief for Ethiopia* (October 11, 2022) <https://www.cardeth.org/data-protection-policy-brief-for-ethiopia/> (accessed on December 29, 2022.

30   H Hijmans, *The European Union as Guardian of Internet Privacy* (Springer, 2016) 360.

31   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 December 29, 2022); Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020, Federal Negarit Gazette, 26th Year No. 20 Addis Ababa March 25, 2020, article 39.

32   Ethiopian Digital Identification Proclamation (Draft 2022), preamble para I.

33   Ibid, article 2(3).

34   Ibid, article 7(1).

of legal names; b) Date of birth: day, month, and year; c) Gender; d) Domicile Address; and additional personal data (including, nationality, phone number, email address and postal address).[35] Yet, this doesn't include sensitive personal data.[36] This means sensitive data such as racial/ethnic origins, genetic data, sexual life or religious beliefs won't be asked in the registration process.

Thus far, the government has already rolled out more than 1.4 million digital IDs in the country.[37] However, there is a growing concern towards the rolling out of digital ID by the Ethiopian National ID Office as the practice flouts the data protection and privacy rights of millions of Ethiopians. Given that the country is ruled by an ethnic form of federal system that places strong emphasis on ethnicity to hold political offices, the digital ID system could be misused by authorities unless backed by a proper data protection impact assessment (DPIA)[38] and an adequate data protection law. Rolling out of digital ID without observing these conditions is like putting the cart before the horse.

More worryingly, while personal data will be collected in accordance with the data minimisation principle as provided under the draft Digital ID Proclamation, it is not clear whether this law follows or cross-refers to the strict data processing rules and principles under the forthcoming Data Protection Proclamation.[39]

REVIEW OF THE UNIVERSAL SERVICE FUND

The Universal Service Fund (USF) was established by the Communications Service Proclamation in 2019. The USF aims to bridge the digital divide by supporting universal access to the internet and telecommunications services for rural, remote, underserved, and low-income communities in the country.[40]

The Proclamation defines Universal Access as the availability to all users, regardless of their geographic location, of Communications Services of the quality specified by the Communications Authority and at suitable prices.[41] Thus, the Proclamation mandated the Communications Authority to develop annual objectives for Universal Access Services in Ethiopia.[42]

The Ethiopian Communications Authority (ECA) is charged with developing the objectives and goals for Universal Access, i.e., particularly making the service accessible to users in rural and remote areas of Ethiopia and is mandated to manage and administer the Fund. The amounts and sources of income to be made available to the Fund and its manner of administration is to be determined by the Universal Access Fund Regulation to be issued by the Council of Ministers.[43] The Fund is primarily to be financed by mandatory annual contributions from all licensed operators that will provide services in the various Communications and Information market segments. The Fund will also have provisions for complementary financing from other sources.

To date, the ECA has prepared a five-year plan called Universal Access and Service Framework, to inform the public and all stakeholders about the key aspects, considerations and principles that it will uphold in promoting Universal Access and administering the Fund.[44] The Ethiopian government established a policy in favour of market liberalisation and competition in 2018. As a result, the first private telecom license was awarded in May 2021 to Safaricom which will be competing with the incumbent governmental telecom company, Ethio

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35   Ibid, article 7(2) and (3).
36   Ibid, article 7(3) and 2(18).
37   National ID Office, ID for Ethiopia <https://id.gov.et/en/ > (accessed on December 29, 2022).
38   Draft Data Protection Proclamation (n27) article 58.
39   Ibid, article 18(3).
40   Communications Service Proclamation No 1148/2019, 25th Year No.82 Addis Ababa August 12, 2019, article 49.
41   Ibid, article 2(20).
42   Ibid, article 49(1).
43   Ibid, article 49(3).
44   Ethiopian Communications Authority, *Universal Access and Service Fund Framework* (December 2020).

telecom.[45]

Technically, Universal Access/Service Funds are typically established through a levy from licensed telecom operators.[46] In this regard, the ECA Framework provides that all licensees offering communications system infrastructure and/or services on a commercial basis must pay a universal access levy set at the authorised 1.5 per cent of gross revenue.[47]

As indicated in the ECA's five-year plan, the type of services to be made available will include, at a minimum, voice, text and data, including broadband access to the Internet at a speed and facility that is universal for users located in urban and rural areas, and accessible to persons with disabilities who will be progressively facilitated for better access in the universal access strategy.[48] Finally, the detailed targets of the universal service fund, including quality of services and rolling out obligations, are outlined in the Framework at length.[49]

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

Ethiopia has adopted various policies to develop ICT in the country. Among these, the 2017 National Information and Communication Technology Policy and Strategy is the prime policy document that helps us understand how the country is implementing measures that foster ICTs.[50] Given that ICT is a key driver and facilitator for transforming Ethiopia's predominantly subsistence-agriculture economy into a knowledge-based economy and information society, it is high time for the government to implement these policy

aspirations.

Similarly, other digital policy documents, including Digital Ethiopia 2025 and the 10 Year Development Plan – A Pathway to Prosperity (2020-2030) have incorporated strategic commitments that acknowledge the role of

ICTs in transforming the country.

Over the years, artificial intelligence (AI) has grown in Ethiopia despite the sector not being supported by enabling legal and policy instruments.[51] 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.[52] In 2019, Ethiopia established a centre dedicated to artificial

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45   Reuters, 'Consortium led by Safaricom wins Ethiopian operating licence' (May 7, 2021) <https://www.reuters.com/world/africa/ethiopias-ethio-telecom-launch-mobile-money-service-2021-05-07/> (accessed on December 30, 2022).

46   D Thakur, & L Potter, 'Universal Service and Access Funds: An Untapped Resource to Close the Gender Digital Divide' (Washington DC: Web Foundation 2018) 6.

47   ECA Framework (n45) article 5.2.

48   ECA Framework (n45) article 2.

49   ECA Framework (n45) articles 3.3.2 and 4.2.

50   The National Information and Communication Technology Policy and Strategy (Federal Democratic Republic of Ethiopia, Addis Ababa September, 2017)

51   A Chekol, The Thriving AI Landscape in Ethiopia: Its Implications for Human Rights, Social Justice and Development (Global Information Society Watch, 2019) 128.

52   T 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 on December 30, 2022).

intelligence development called Ethiopian Artificial Intelligence Center (EAIC) through a regulation.[53]

While Ethiopia is yet to enact a comprehensive AI policy and strategy, the regulation is meant to confer the Centre with some powers and duties to foster research and development in the fields of AI in Ethiopia. Later on, it was renamed as Ethiopian Artificial Intelligence Institute on 6 October 2021. The Institute reports to the Prime Minister.[54] Thus, the Institute continues to undertake the powers and functions of the Centre.

Ethiopia inaugurated a Science Museum dedicated to exhibiting state-of-the-art and technological advances in the country in 2022. The museum displays local solutions in healthcare, finance, cybersecurity, Geographic Information Systems (GIS), service industries, data analytics, manufacturing, and robotics. The museum was inaugurated during the Pan-African Conference on Artificial Intelligence 2022 and applauded as progress towards envisioning the future of technology in Africa's digital transformation.[55]

53   Artificial Intelligence Centre Establishment Council of Ministers Regulation No 463/2020.
54   Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/2021, article 79(10).
55   UN Economic Commission for Africa, 'Ethiopia inaugurates state-of-the-art Science Museum' (October 4, 2022) < https://www.uneca.org/stories/ethiopia-inaugurates-state-of-the-art-science-museum> accessed December 30, 2022.

Conclusion and Recommendations

Although Ethiopia has shown some progress by adopting progressive laws and policies that aim to advance digital rights in the country, digital authoritarianism, for example internet shutdowns, continues to tarnish the country's progress towards digital transformation. Compared to the previous year, Internet shutdowns continued in 2022 although not as frequent as in 2021. Therefore, the following recommendations are made:

GOVERNMENT	CIVIL SOCIETY	PRIVATE SECTOR
To Ethiopian Parliament · Some of the blind spots of the Media law such as hefty fines for civil defamation and vague terms such as 'illegal matter" under article 85(1) should be repealed. *To Ethiopian Council of Ministers and law enforcement bodies* · The government should establish a freestanding and independent DPA by expressly granting the body with the institutional capability through budgeting, staffing, implied powers and jurisdictional competency, as well as guarantees against the interferences of private actors, data controllers and market players. · The Cabinet should review the national ICT policy periodically so that it addresses new emerging technologies including AI, big data,	*Civil society organisations and human rights defenders* · To enforce digital rights, Ethiopian civil society organisations and human rights defenders should sue to seek legal redress against the actions of government and non-state actors through strategic litigation cases before domestic, regional and international courts.	*Social media companies* · Finally, while the authoritarian actions of the Ethiopian government restrict digital rights, social media companies are grappling to regulate illegal content on their platforms which equally limits the enjoyment of digital rights. As such, social media platforms must do better by making enough investment for content moderation in Ethiopia.

| GOVERNMENT	CIVIL SOCIETY	PRIVATE SECTOR
Internet of Things (IoT) and cloud computing; · The Cabinet should enact a regulation that defines and determines the specific commitments of telecom companies in relation to universal service funds in the country. · As the practice of internet shutdown is rife in Ethiopia, the government should refrain from shutting down telecommunications and internet services so that citizens have internet access and businesses thrive and contribute positively to the national economy.		

Ghana
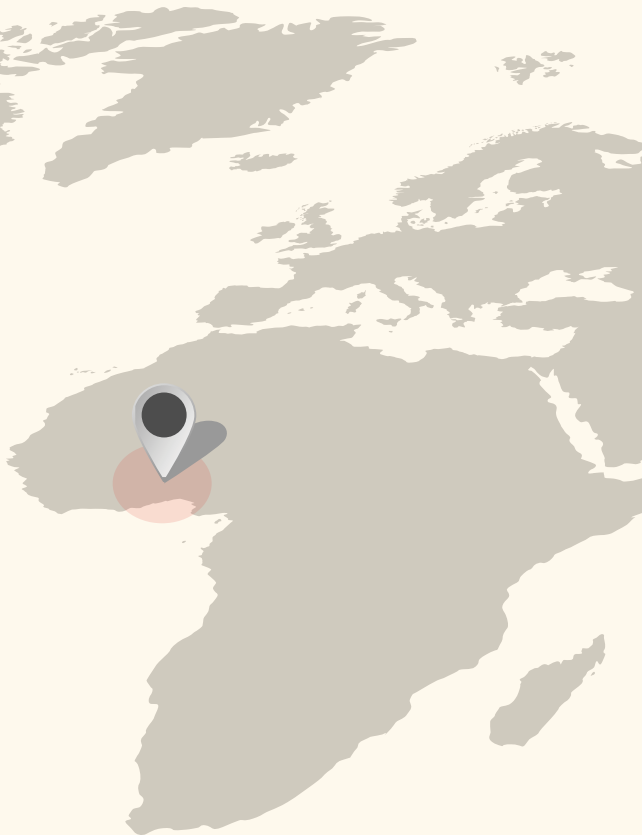
▶ Executive Summary

Ghana's digital space continues to grow significantly. Steady infrastructure improvements have resulted in improved internet access and quality. More than half of the population has access to the internet. However, there's growing concerning that press freedom in the country is deteriorating and the gender gap still prevails. Despite the Ghanaian government's efforts to demonstrate its commitment to working in the telecom sector and attaining the goal of digital transformation, some of its activities have led to more issues and unease among the populace. Several issues have been identified with the existing data governance framework. There have been privacy concerns surrounding the Ghana Card, which is now the primary method of identification for all citizens. Some citizens are anxious that the government will be tracking their activities. In addition, the enactment of the e-levy bill caused panicked withdrawals of cash by mobile money account holders. Users adjusted their money transfer practices as a result of the reform, returning more frequently to conventional, pre-Digital Financial Service methods like cash. Rising criminality and aggressive behaviour, especially in the informal economy, have become a great concern following the move to cash.

More focused approaches should be adopted to guarantee gender parity in digital rights. To ease the tension among the populace who fear their activities online are being tracked, more digital security awareness and education need to be provided. The existing data governance regulations need to be thoroughly reviewed, and any identified challenges addressed, to ensure the effectiveness of the data governance regulations. The legal framework should be aligned with international human rights standards and implementing institutions, including the Judiciary, should be allowed to operate independently. Also, more critical analyses of digital ID's impacts in the global south, as well as the actors involved in designing and implementing them, should be conducted.
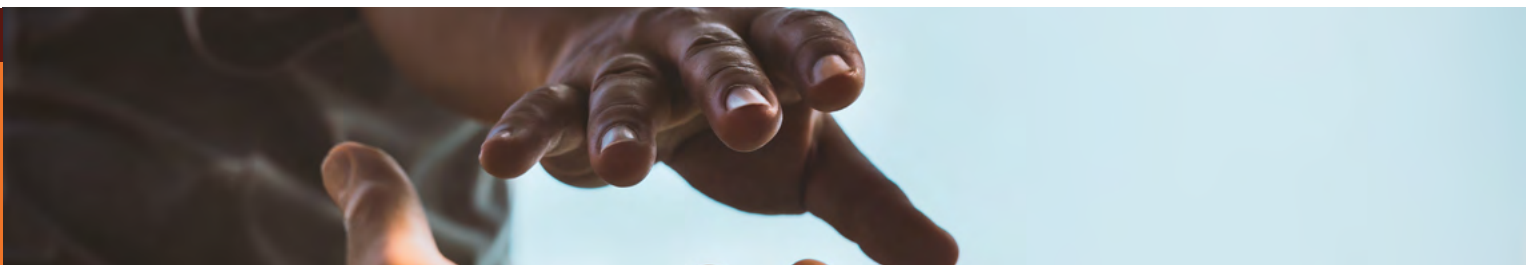
Introduction

Formerly known as the Gold Coast, Ghana was the first sub-Saharan nation to gain independence from colonial rule in 1957. As the second-most populous and second-largest economy in West Africa, the country has a significant influence in the socio-political and economic affairs of the region. Since 1992, there have been no coups, making it one of the most stable democracies in Africa. The country has successfully held eight general elections.[1] Formerly ranked among the top three in Africa when it comes to freedom of speech and press freedom, it is of concern how press freedom in the country is deteriorating.

The Covid-19 pandemic, the subsequent March 2020 shutdown, and a dramatic decrease in commodity exports negatively impacted Ghana's strong development (7 per cent per year in 2017–19). Growth recovered to 5.4 per cent in 2021 after dropping to 0.5 per cent in 2020. Ghana's economy grew by 3.3 per cent, year-on-year (y-o-y), in the first quarter of 2022, down from 3.6 per cent over the same period in 2021. Non-oil growth slowed down significantly (from 5.3 to 3.7 per cent). The authorities began discussions with the IMF on a possible program in July 2022. Ghana's inflation rate rose to 31.7 per cent y-o-y (an 18-year high) in July 2022. The impact of soaring global commodity prices (Ghana imports 40 per cent of its fertilisers from Russia) has been compounded by the depreciation of the cedi.[2] In its fight to regain economic stability, the government of Ghana has rolled out a debt restructuring programme.[3]

The Government and civil society organisations continue to work to advance digital rights and inclusion in Ghana, ensuring best practices are adopted into policy and legislation. This report analyses the state of digital rights and inclusion in Ghana by investigating the country's internet freedom status, data governance policies and legislation, Universal Service Fund usage, and developments in ICT and emerging technologies.

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1   Ghana Investment Promotion Centre 'Ghana's ICT and Fintech Sector Report. GIPC' (2022) https://gipc. gov.gh/wp-content/uploads/2022/12/Ghanas-ICT-and-Fintech-Sector-Report.pdf (accessed on 17 December 2022).

2   World Bank 'Ghana Overview: Development news, research, data' (2022) https://www.worldbank.org/en/ country/ghana/overview (accessed on 17 December 2022).

3   Bloomberg 'Ghana to Swap Local Debt for New Bonds in Restructuring Deal' (2022) https://www. bloomberg.com/news/articles/2022-12-04/ghana-to-exchange-local-debt-for-new-bonds-in-restructuring- deal?leadSource=uverify%20wall (accessed on 17 December 2022)

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

The World Bank approved US$200 million in 2022 to contribute to the Ghanaian government's drive toward digitisation and to expand internet availability throughout the nation. This initiative will encourage digital inclusion and close the digital divide in the country.[4]

The 2004 adoption of the ICT Policy for Accelerated Development (ICT4AD)[5] was a major step forward in Ghana's internet access.[6] More than 840 kilometres of fibber–optic cable have been laid in Accra, Tema, and Kumasi — three cities that together house more than half of Ghana's population — as part of Google's CSquared project.[7] As a result of steady infrastructure improvements, internet access and quality in Ghana have improved. According to DataReportal's *"Digital in 2022"* report, the country's internet penetration rate has increased from 50 per cent to 53 per cent as of January 2022.[8] This indicates a 3 per cent increase in the space of one year. Internet users in Ghana have access to speeds of 22.23 Mbps for downloads and 12.66 Mbps for uploads on average, as indicated by data from Broadband Checker.[9] Recent data indicates that Ghana has made significant progress towards closing the gender gap in internet access, with a 5.8 per cent gender gap in internet access.[10] However, several factors still hinder women from using and/or staying connected. Some of the significant challenges making it difficult for many women to access and use the internet include unreliable internet service, an increase in the cost of data due to inflation and increase in taxes,[11] lack of digital skills, and online safety and security challenges.[12] Internet disruptions are rare in Ghana. However, some locals' access to the internet has been hampered by load–shedding – planned outages.[13]

In rural areas, internet infrastructure is typically lacking. The Ghana Investment Fund for Electronic Communications, which receives funding from authorised service providers, aims to close the internet connectivity gap

4   Ghana Investment Promotion Centre 'Ghana's ICT and Fintech Sector Report. GIPC' (2022) https://gipc.gov.gh/wp-content/uploads/2022/12/Ghanas-ICT-and-Fintech-Sector-Report.pdf (accessed on 17 December 2022).

5   NITA 'xxxX' (2003) https://nita.gov.gh/theevooc/2017/12/Ghana-ICT4AD-Policy.pdf (accessed on 17 December 2022).

6   DW 'Despite Ghana's commitment to Internet expansion, problems persist' (2018) https://akademie.dw.com/en/despite-ghanas-commitment-to-internet-expansion-problems-persist/a-46508524 (accessed on 17 December 2022).

7   Freedom House 'Ghana: Freedom on the Net 2021 Country Report' (n.d.) https://freedomhouse.org/country/ghana/freedom-net/2021 (accessed on 9 December 2022).

8   DataReportal 'Digital 2022: Ghana' (2022) https://datareportal.com/reports/digital-2022-ghana (accessed on 14 December 2022).

9   Broadband Speed Checker 'ISPs in Ghana' (2022) https://www.broadbandspeedchecker.co.uk/isp-directory/Ghana.html (accessed on 14 December 2022).

10   World Wide Web Foundation 'Women's Rights Online' (2020) http://webfoundation.org/docs/2020/10/Womens-Rights-Online-Report-1.pdf (accessed 19 December 2022).

11   Yen.com "MTN Ghana Announces Plans To Increase Internet Data Costs From Monday, November 14' (2022) https://yen.com.gh/business-economy/economy/221838-mtn-announces-increase-internet-data-prices-monday-november-14/ (accessed 14 December 2022).

12   Media Foundation For West Africa 'Advocacy paper - women's rights online in Ghana' (2021) https://www.mfwa.org/publication/advocacy-paper-womens-rights-online-in-ghana/ (accessed on 19 December 2022).

13   Graphic Online 'ECG releases 8-day 'dumsor' timetable for Accra' (2021) https://www.graphic.com.gh/news/general-news/ecg-releases-dumsor-timetable-for-may-2021.html (accessed 14 December 2022).

between urban and rural areas.[14] For people with disabilities, mobile internet can have a life-changing impact by enabling them to meet a range of life needs independently. However,

despite the benefits, persons with disabilities are less likely to own a mobile phone, to know about the internet and to have access to the internet. According to a report by the Global System for Mobile Association (GSMA), only 16 per cent of persons with disabilities use mobile internet compared to 61 per cent of non-disabled users.[15]

In 2020, MTN was designated a Significant Market Player by the National Communications Authority (NCA) because its market share exceeded the legal limit while that of its competitors lagged far behind. This was a

measure put in place to allow rivals to better compete with the operator. In July 2008, Vodafone acquired the majority stake in the state-owned Ghana Telecom while the government maintained a 30 per cent stake. After AirtelTigo's parent businesses left the market in April 2021, the government purchased full ownership of the telco, which had 5.1 million subscribers at the time.[16] In the long run, this acquisition might improve the government's capacity to manage information flow and access.[17]

Parliament approved a new tax on electronic transactions, which took effect on May 1, 2012. The enabling Bill, popularly referred to as "e-levy," introduces a 1.5 per cent tax on electronic money transfers.[18] The objective of the Bill is to improve tax revenues by tapping into fast-growing digital financial services (DFS). However, once the tax came into force, users panicked and began systematically withdrawing cash from their mobile money accounts. Others have adjusted their money-transfer practices as a result of the reform, returning more frequently to conventional, pre-DFS methods like cash. Rising criminality and aggressive behaviour, especially in the informal economy, have become a great concern following the move to cash.

The introduction of the e-levy has also caused a decline in the use of mobile-money services by consumers and sellers alike. Mobile-money agents have significantly suffered from this decline. And it has also raised the overall cost of living, as a significant number of users continue to rely on mobile money for their daily purchases and to pay for essential services such as health and education.[19]

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14   Myjoyonline.com 'GIFEC Provides Underserved Communities with Mobile Telephony Network as it Invests $200m' (2022) https://www.myjoyonline.com/gifec-provides-underserved-communities-with-mobile-telephony-network-as-it-invests-200m/ (accessed 14 December 2022)

15   GSMA 'Closing the Mobile Disability Gap in Ghana'(2022) https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2022/04/Closing-the-mobile-disability-gap-in-Ghana.pdf (accessed 14 December 2022).

16   Graphic Online 'Ghana govt signs agreement with AirtelTigo for transfer of ownership' (2021) https://www.graphic.com.gh/business/business-news/ghana-govt-signs-agreement-with-airteltigo-for-transfer-of-ownership.html (accessed on 9 December 2022).

17   Freedom House 'Ghana: Freedom on the Net 2021 Country Report' (n.d.) https://freedomhouse.org/country/ghana/freedom-net/2021 (accessed on 9 December 2022).

18   BBC 'Ghana's e-levy adds 1.5% tax to electronic payments' (2022) https://www.bbc.com/news/world-africa-61248366 (accessed on 17 December 2022).

19   International Centre for Tax and Development 'Ghana's new e-levy: the sour, sweet and switches so far – ICTD' (n.d.)

Through its projects and initiatives, the government has made an effort to demonstrate its dedication to working in the telecom industry and achieving the objective of digital transformation. However, some of the government's actions create additional problems and panic among the citizens.

FREE SPEECH AND MEDIA FREEDOMS

It is of great concern that press freedom in Ghana is deteriorating. The Media Foundation for West Africa's (MFWA) regional quarterly *Freedom of Expression* (FOE) report noted that Ghana became the most repressive country in West Africa during the first quarter of 2022 by recording 11 violations.[20] It outpaced Guinea Bissau and Nigeria, where five violations each

were recorded. In a recent speech by Virginia E. Palmer at the 2022 West Africa Media Excellence Awards hosted in October 2022, she said, "In 2022, Ghana dropped 30 places in the World Press Freedom Index to number 60. That's a large drop and a concerning one for a country that is considered a beacon of hope in the region."[21] It has been widely reported that some Ghanaian internet users refrain from expressing their ideas online for fear of being assaulted by trolls or followers of influential political leaders.[22] Some reporters are apprehensive of their digital footprints as a result of abuses perpetrated against them by security personnel, political opponents, and members of the public. Many prefer to maintain anonymity on the internet to avoid physical confrontations offline or online.[23] Also, there is a lack of trust in the judicial system. Several attacks on journalists have gone uninvestigated or unpunished, including attacks on traditional media platforms, online journalists, bloggers, and other digital content providers who do not identify as journalists or bloggers.[24] Twelve High Court judges and 22 judges from lesser courts were involved in a bribery scandal in October 2015, which led to a general decline in public confidence in the Judiciary.[25] Furthermore, some proposed legislation could lead to an infringement on the freedom of expression of citizens online. For example, according to a proposed Bill, Promotion of Proper Human Sexual Rights and Ghanaian Family Values, introduced in 2021, website and ISP owners would be held accountable for hosting any content relating to or promoting LGBT+ rights unless they could demonstrate that they took reasonable precautions to stop users from uploading this

https://www.ictd.ac/blog/ghana-e-levy-sour-sweet-switches/ (accessed on 17 December 2022).

20   MFWA 'West Africa Freedom of Expression Monitor' (2022) https://www.mfwa.org/wp-content/uploads/2022/06/FoE-Monitor-Jan-March-2022-final_Updated-1.pdf (accessed on 17 December 2022).

21   U.S. Embassy in Ghana '2022 West Africa Media Excellence Awards - Remarks by Ambassador Virginia Palmer' (2022). https://gh.usembassy.gov/2022-west-africa-media-excellence-awards-remarks-by-ambassador-virginia-palmer/ (accessed on 14 December 2022).

22   Pulse Ghana 'Angry Kumericans attack and curse Twene Jonas for 'insulting' Asantehene (VIDEO)' (2021) https://www.pulse.com.gh/entertainment/celebrities/angry-kumericans-attack-and-curse-twene-jonas-for-allegedly-insulting-asantehene/4fyvw5c (accessed on 10 December 2022).

23   Freedom House 'Ghana: Freedom on the Net 2021 Country Report' (2021) https://freedomhouse.org/country/ghana/freedom-net/2021 (accessed on 9 December 2022).

24   MyJoyOnline.com 'Ahmed Suale murder: We're not happy with ongoing investigations - Family' (2021) https://www.myjoyonline.com/ahmed-suale-murder-were-not-happy-with-ongoing-investigations-family/ (accessed 14 December 2022).

25   BBC 'Ghana suspends High Court judges after Anas Aremeyaw Anas' film' (2015) https://www.bbc.com/news/world-africa-34452768 (accessed on 10 December 2022).

content.[26] This law makes it possible to restrict content online that promotes or is connected to the rights of the LGBT community.

In addition, there are regulations that give the government power to filter and restrict content. Section 94 of the Electronic Transactions Act states that service providers are required to remove illegal content once notified. There are no provisions in the Act for user notice or channels for appeal. It is, however, possible to hold intermediaries accountable for "wrongful" material removals under section 94. Also, blocking and filtering may potentially be legally permissible under Section 99 of the Electronic Transactions Act, which grants the president broad control over service providers during a state of emergency.[27] The CyberSecurity Act 2020 also gives the CyberSecurity Authority broad authority to block or filter online content on receipt of a court order.[28] In 2021, there was an incident in which the Judiciary requested some online content to be removed.[29] This case was politicised, lacked transparency, and was disproportionate.[30] Lawyers for the Judicial Service wrote to media outlets in February 2021 to ask them to take down content that the Supreme Court judges found insulting. In the letter, it was said that if the media outlets didn't cooperate, the lawyers would "take necessary action."[31] The Ghana Journalists Association (GJA) and the Media Foundation for West Africa (MFWA) opposed the order.[32] Chief Justice Kwasi Anin-Yeboah made amicable remarks on the situation in March 2021, admitting the press's right to criticise the Judiciary.[33]

PRIVACY AND SURVEILLANCE

In 2008, the Electronic Transactions Act (Act 772) (ECA) was passed to regulate electronic communications and associated transactions and serve related purposes.[34] Section 100 of the Act allows the president to request telecommunications service providers to intercept communications or provide user information in aid of law enforcement or

national security. According to the African Freedom of Expression Exchange, "This is

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26   Human Rights Watch 'Ghana: Submission to the Universal Periodic Review' (2022) https://www.hrw.org/news/2022/07/14/ghana-submission-universal-periodic-review (accessed 14 December 2022).

27   Research ICT Africa 'Act 772 Electronic Transactions Act, 2008' (2008) https://www.researchictafrica.net/countries/ghana/Electronic_Transactions_Act_no_772:2008.pdf. (accessed on 10 December 2022).

28   CSDS Africa 'Cybersecurity Act, 2020 1 Act 1038' (2020) https://csdsafrica.org/wp-content/uploads/2021/08/Cybersecurity-Act-2020-Act-1038.pdf (accessed on 10 December 2022).

29   Modernghana.com 'Election Petition: Judicial Service order Media Houses to delete "vengeful, incendiary, hateful and spiteful" comments against Justice' (2021) https://www.modernghana.com/news/1064447/election-petition-judicial-service-order-media.html (accessed 17 January 2023).

30   Freedom House 'Ghana: Freedom on the Net 2022 Country Report' (2022) https://freedomhouse.org/country/ghana/freedom-net/2022#footnote6_ftzq3f7 (accessed on 14 December 2022).

31   Modernghana.com 'Election Petition: Judicial Service order Media Houses to delete "vengeful, incendiary, hateful and spiteful" comments against Justice' (2021) https://www.modernghana.com/news/1064447/election-petition-judicial-service-order-media.html (accessed 17 January 2023).

32   Myjoyonline.com 'Judicial Service threats are assault on media freedom – GJA' (2021) https://www.myjoyonline.com/judicial-service-threats-are-assault-on-media-freedom-gja/ (accessed 17 January 2023)

33   Myjoyonline.com 'Criticise us as violently as you can but don't insult us – Chief Justice to media' (2021) https://www.myjoyonline.com/criticise-us-as-violently-as-you-can-but-dont-insult-us-chief-justice-to-media/ (accessed 17 January 2023).

34   Research ICT Africa 'Act 772 Electronic Transactions Act, 2008' (2008) https://www.researchictafrica.net/countries/ghana/Electronic_Transactions_Act_no_772:2008.pdf (accessed on 10 December 2022).

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problematic as it could be abused to target the activities of dissidents. To fully protect individual liberties, every act of interference in private communications and disclosure of personal data must be authorized by the court."[35] Section 99 of the ECA gives the president broad powers over Internet Service Providers during a state of emergency, thereby providing the legal authority to the state to restrict internet connectivity and may also provide legal authority for blocking and filtering content.[36] The African Commission on Human and Peoples' Rights Declaration notes that, "States shall ensure that any law authorising targeted communication surveillance provides adequate safeguards for the right to privacy, including: 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."[37] So, Section 100 of the Electronic Transactions Act needs to be amended to provide for adequate safeguards for the right to privacy.

DATA GOVERNANCE
EXISTING REGULATIONS
In Ghana, the law that regulates the processing of personal data including its collection and protection is the Ghana's Data Protection Act, 2012. To fully understand how data is collected, stored, shared, and processed, the data protection law must be read in conjunction with the regulations that govern

communication and the infrastructure that houses the data, which include the Electronic Transactions Act, 2008 and the Cybercrime Act, 2020. The Data Protection Act is the primary legislation governing privacy and data protection in Ghana.[38] It uses a risk-based approach to data protection, which seems ineffective for Ghana due to several issues. The risk-based approach to data protection has also been put into practice internationally, most notably and visibly in the European 2018 General Data Protection Regulation (GDPR).

The 2020 study conducted by Caleb Tetteh Meyer at Tilburg University identified legal and socio-political problematic issues of Ghana's Data Protection Act.[39] Some of the issues identified by the study include how the risk-based approach is incompatible with data protection in Ghana; how it favours the dominant party (data controllers, government)

35   ITWeb Africa 'Ghana's mixed track record with social media regulation' (2021) https://itweb.africa/content/lwrKx73Kao87mg1o (accessed on 8 December 2022).
36   Vodafone 'Vodafone Law Enforcement Disclosure Report - Updated' (2015) https://www.vodafone.com/content/dam/vodcom/sustainability/pdfs/law_enforcement_disclosure_report_2015_update.pdf (accessed on 9 December 2022).
37   African Commission on Human and People's Rights 'Declaration of Principles on Freedom of Expression and Access to Information in Africa' (2019) https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf (accessed 1 February 2023).
38   Data Protection Commission 'The Data Protection Act 2012' (2012) https://www.dataprotection.org.gh/data-protection/data-protection-acts-2012 (accessed on 10 December 2022).
39   Tilburg University 'A Socio-Legal Analysis of Ghana's Data Protection Act [Master Thesis Law and Technology LLM Tilburg Law School]' (2020) http://arno.uvt.nl/show.cgi?fid=152387 (accessed on 10 December 2022).

and entrenches a capitalist mode of political economy; and the lack of specification of the nationality of data controllers in the Act which makes it difficult to know what rights and obligations Ghanaian citizens have when their personal data is processed outside Ghana. Considering the identified issues, the study concluded that the risk-based approach is an ill-suited approach to data protection legislation in Ghana. Section 60 of the Act allows the government to access the personal data of individuals even without a warrant or judicial approval in the interest of protecting national security. A report published by the African Freedom of Expression Exchange mentioned that this provision can be abused by the government, which alone determines what constitutes a threat to national security.[40]

In 2020, the Cybersecurity Act was passed. It establishes the Cyber Security Authority, which regulates cybersecurity activities, promotes the development of cybersecurity, and provides for related matters.[41] This regulation broadens the government's legal authority to conduct surveillance, compel service providers to provide data, and control encryption service providers, alongside positive changes to cybersecurity coordination for surveillance. Section 36 mandates the Cyber Security Authority to register critical information infrastructure. The Cyber Security Authority's Directive for the Protection of Critical Information Infrastructure (CII) came into effect on October 1, 2021.[42] Under this directive, owners of critical information infrastructure are subject to 15 minimum technical and organisational requirements. These requirements include the need to implement

appropriate physical security measures for the physical protection of CII systems and their associated dependent assets and systems, establish and maintain a risk register that lists and profiles the various information and cyber risks affecting the designated CII, and ensure that the source codes of critical systems are kept in escrow.

Most of the issues identified under the data protection framework relate to the legal powers granted by the law to the government and data controllers. Some of the legal powers could be abused or used to violate the rights of data subjects or citizens.

SAFETY AND PRIVACY CONCERNS RELATED TO DIGITAL IDS

The Ghana Card, which includes biometric information, is the primary method of identification for all citizens. More than 15 million Ghanaians had signed up for the Ghana Card as of October 2021, according to the National Identification Authority (NIA), accounting for 84.3 per cent of the country's population of people aged 15 and above.[43] The card will also be linked to SIM cards, bank accounts, passports, birth registry, death registry, and the Driver and Vehicle Licensing Authority. As of October 2022, 28,959,006 SIM cards have been linked to the Ghana cards, representing 62 per cent of sim cards issued nationally between October 1, 2021, and October 4, 2022.[44] According to the NIA website as stated in the Africa Report.com, every citizen's inability to establish their identity in the future could make life difficult for them in Ghana since the government's policy seeks to formalise the economy.[45]

40   ITWeb Africa 'Ghana's mixed track record with social media regulation' (2021) https://itweb.africa/content/lwrKx73Kao87mg1o (accessed on 8 December 2022)
41   CSDS Africa 'Cybersecurity Act, 2020 1 Act 1038' (2020) https://csdsafrica.org/wp-content/uploads/2021/08/Cybersecurity-Act-2020-Act-1038.pdf (accessed on 10 December 2022).
42   CSA.gov.gh 'Minister for Communications launches a Directive for the protection of Critical Information Infrastructure' (n.d) https://www.csa.gov.gh/directive.php (accessed on 9 December 2022).
43   The Africa Report.com 'Ghana: Card registration problems persist as citizens fear lack of access to services' (2022) https://www.theafricareport.com/173142/ghana-card-registration-problems-persist-as-citizens-fear-lack-of-access-to-services/ (accessed on 10 December 2022).
44   Africanews 'Ghana to block all unregistered sim cards after October' (2022) https://www.africanews.com/2022/10/18/ghana-to-block-all-unregistered-sim-cards-after-october// (accessed on 10 December 2022).
45   The Africa Report.com 'Ghana: Card registration problems persist as citizens fear lack of access to services' (2022) https://www.theafricareport.com/173142/ghana-card-registration-problems-persist-as-citizens-fear-lack-of-access-to-services/ (accessed on 10 December 2022).

Although the intention of the card is to enhance Ghana's infrastructure and collect personal data that can be used by the State for security and other purposes, there have been privacy concerns about the security of the data collected surrounding the card, and some citizens are anxious that the government will be tracking their activities.[46] According to the NIA's privacy policy, it is stated that the NIA shares customer information and other personally identifiable information only with government entities authorised by it. And in this policy, the NIA also assures customers that it will maintain security standards and procedures designed to protect Customer Information and other Personally Identifiable Information. It also said it will continue to test and update its technology to improve its ability to protect Customer Information and other Personally Identifiable Information. To ease the growing anxiety and concerns of the citizens, the NIA needs to find ways to educate the citizens on how their information will be secured.

REVIEW OF THE UNIVERSAL SERVICE FUND

The Universal Service and Access Fund in Ghana is referred to as the Ghana Investment Fund for Electronic Communication (GIFEC). Some of the projects being funded include the Rural Connectivity Programme, Cyberlabs Programme, and the ICT Capacity Building and Skills Development Programme.[47] No financial or project expenditure reports were found on the fund's website. GIFEC has sponsored the Digital for Inclusion program in Ghana, which offers, among other things, mobile financial services through an online payment system.

Women form 60 per cent of the platform's local agents who offer services.[48]

Previously, GIFEC also supported the MS Geek competition under the Ministry of Communication in 2019 and 2020.[49] It was

discontinued after the 2020 edition.[50] It was mainly aimed at encouraging more girls, aged 13 to 21 to venture into the fields of Science, Technology, Engineering, and Mathematics (STEM). Prizes of cash and equipment were awarded for the most innovative technological solutions that sought to address some of Ghana's challenges. Winners also received training and mentorship to further develop their innovations.[51]

A few projects funded by GIFEC target expanding women's access to and use of the

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46   The Africa Report.com 'Ghana: Card registration problems persist as citizens fear lack of access to services' (2022) https://www.theafricareport.com/173142/ghana-card-registration-problems-persist-as-citizens-fear-lack-of-access-to-services/ (accessed on 10 December 2022).

47   Gifec 'Projects – Gifec.'(n.d) https://gifec.gov.gh/project/ (accessed on 15 December 2022).

48   World Wide Web Foundation 'Universal Service and Access Funds' (2018) https://webfoundation.org/docs/2018/03/Using-USAFs-to-Close-the-Gender-Digital-Divide-in-Africa.pdf (accessed 14 December 2022).

49   Business World Ghana 'Communications Ministry launches ICT programme for girls' (2019) http://www.businessworldghana.com/communications-ministry-launches-ict-programme-for-girls/ (accessed 14 December 2022).

50   Opportunities For Africans 'MS. GEEK Ghana 2020 Competition for young Ghanaians' (2020) https://www.opportunitiesforafricans.com/ms-geek-ghana-2020-competition/ (accessed 14 December 2022).

51   MyJoyOnline.com 'Ms. Geek Ghana Competition launched in Accra' (2019) https://www.myjoyonline.com/ms-geek-ghana-competition-launched-in-accra/ (accessed 14 December 2022).

internet but more can be done. Although the internet access gender gap has reduced, there still remains gender gaps in access to ICT education and tools for young girls and access to high-level opportunities and jobs for women in this sector.[52] In the 2021 Global Gender Gap Index, Ghana ranked 117th out of 156 countries and 23rd in sub-Saharan Africa on its progress toward gender equality.[53] Ghana is performing worse than most other nations in this area.[54] About 50 per cent of the GIFEC funds should be invested in projects targeting vulnerable, marginalised groups and women's quality internet access, and use.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

AI STRATEGIES
Public conversations about the adoption of AI in Ghana are low. However, by partnering with Google to establish the first Google AI lab in Africa, Ghana began legitimising the use of AI in several sectors.[55] To ensure that the country meets the growing needs of technological advancement, AI regulations will be promulgated. In January 2022, during the Data Protection Week celebrations in Accra, the Deputy Minister for Communications and Digitalisation, Ama Pomaah Boateng, indicated that Ghana was soon going to have its own regulation to guide the use of artificial intelligence for stakeholders.[56] The Future Society (TFS) is supporting Ghana and other African countries to develop national AI Strategies. In May 2022, TFS and partners hosted stakeholder consultation workshops in Tunis and Accra to support the development of Tunisia and Ghana's National AI Strategies.[57]

AI has the potential to aggravate existing societal inequities while also accelerating positive developments in the socio-economic and political sphere. AI is also enhancing the industrial and technological sectors. Therefore, there is a need to establish regulatory frameworks to provide guidance for the use of AI while mitigating risks.

INCLUSION OF ICTS IN GHANA'S NATIONAL ACTION PLANS OR STRATEGIES
The ICT Policy for Accelerated Development (ICT4AD), the blueprint for digital transformation adopted in 2004, greatly improved internet access in Ghana. ICT in education reform has been initiated to improve teacher development and tertiary education through technology-based training, to promote children's desire and competence to use ICTs and to equip pre-tertiary learners with ICT capabilities.[58]

52   MyJoyOnline.com 'Dr Prince Hamid Armah: Bridging the digital divide in Ghana, encouraging girls and women in ICT' (2022) https://www.myjoyonline.com/dr-prince-hamid-armah-bridging-the-digital-divide-in-ghana-encouraging-girls-and-women-in-ict/ (accessed 19 December 2022).
53   Afrobarometer 'AD573: Amid persistent gender inequalities, Ghanaians call for government action to bridge the gaps' (2022) https://www.afrobarometer.org/publication/ad573-amid-persistent-gender-inequalities-ghanaians-call-for-government-action-to-bridge-the-gaps/ (accessed 19 December 2022).
54   Afrobarometer 'AD573: Amid persistent gender inequalities, Ghanaians call for government action to bridge the gaps' (2022) https://www.afrobarometer.org/publication/ad573-amid-persistent-gender-inequalities-ghanaians-call-for-government-action-to-bridge-the-gaps/ (accessed 19 December 2022).
55   Open AIR '7 Ways that African States are Legitimizing Artificial Intelligence' (2020) https://openair.africa/7-ways-that-african-states-are-legitimizing-artificial-intelligence/ (accessed 15 December 15 2022)
56   MyJoyOnline.com 'Ghana to develop regulation on artificial intelligence' (2022) https://www.myjoyonline.com/ghana-to-develop-regulation-on-artificial-intelligence/ (accessed 15 December 2022).
57   The Future Society 'National AI Strategies for Inclusive & Sustainable Development' (2022) https://thefuturesociety.org/2022/04/30/policies-ai-sustainable-development/ (accessed on 15 December 2022).
58   Ministry of Education Ghana 'ICT In Education Reform' (n.d.) https://moe.gov.gh/index.php/ict-in-education-reform-2/ (accessed on 17 December 2022).

Conclusion and Recommendations

Even though Ghana is making significant strides in the digital space by improving internet access and infrastructure, introducing policy interventions that increase digital access for persons with disabilities is key. This is largely due to a number of factors, including unreliable internet service, high cost of data, and challenges with online safety and security.

Also, the government's efforts to demonstrate its commitment in the telecom sector and attain the goal of digital transformation, have, in some instances, created more problems and unease among the populace. These activities include the acquisition of some telecom companies, the enactment of the e-levy, and the implementation of the Ghana Card.

Recommendations

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
The government should: • conduct a proper analysis of the project's or action's impact, and the necessary basic infrastructure needs to be put in place first, before undertaking any project or action. • ensure the effective implementation of the data protection legislation. It is commendable that the government of Ghana has enacted some data governance regulations. • allow civil remedies or counter speech, instead of employing criminal penalties to regulate what may, in some cases, be unpleasant speech. • refrain from harassing the media in the conduct of their work. • educate the public	The private sector should: • collaborate with the government to increase broadband access. The media should: • fact check information to avoid misinformation and disinformation. • collaborate with the government to educate the public about digital security practices. • collaborate with the National Identification Authority to create educational materials on TV or media outlets or training to educate the citizens on how their Ghana Card data will be secured.	The civil society should: • conduct more critical analyses of digital ID's impacts in the global south, as well as the actors involved in designing and implementing them.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
about digital security practices. • reduce cost of data and make it affordable for all. Parliament should: • review the existing laws and amend the identified problems in this report.		

Kenya

▶ **Executive Summary**

This report looks at the state of connectivity and digital rights in Kenya in 2022. It divides these issues into several segments and begins assessing internet freedoms in the country. Under internet freedoms, the report gives an enumeration of internet access and disruptions; free speech and media freedoms; privacy and surveillance; SIM card registration; and disinformation and hate speech in Kenya in 2022. The report goes further to look at digital governance where the digital ID system in Kenya, *Huduma Namba*, is largely discussed. In terms of connectivity, the report analyses the Universal Service Fund and provides facts on how the Communications Authority of Kenya (CAK) is using the funds to bridge the digital divide in the country. The report finally looks at developments of ICTs in the country and concludes by providing recommendations on how to avert harms on digital rights and promote digital inclusion in the country.

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

The rate of internet penetration in Kenya has significantly increased. According to the *DataReportal Digital 2022* report, internet penetration in the country stood at 42 per cent as at February 2022.[1] The quarterly report from the Communications Authority of Kenya (CAK), which is the country's ICT Regulator, indicates that mobile (SIM card) subscription, data/internet subscription, and broadband subscription increased significantly during the coverage period where mobile (SIM cards) subscription rose to 65.5 million from 64.7 million from the previous quarter.[2] Data/Internet subscriptions rose to 48.3 million from 47.6 million from the previous financial quarter (Q4 April-June 2022).[3] Mobile broadband subscriptions of 3G and 4G networks also saw a significant increase during the coverage period where it stood at 30.9 million.[4] The annual report from CAK also indicates that internet subscriptions for the financial year 2020-2021 rose to 46.7 million.[5]

These statistics indicate that the country is making progress towards internet penetration. However, the exact number of internet users in the country is unknown.[6] There are no statistics on the number of people currently using the internet. Reports from CAK on internet users contain figures which do not reflect the correct position in the country. The figures in the reports tend to be flawed/inaccurate and the methodology adopted in arriving at the figures has been questioned a number of times.[7]

In 2019, the Authority reported that there were

1 DATAREPORTAL 'Digital 2022: Kenya' (2022) https://datareportal.com/reports/digital-2022-kenya#:~:text=Data%20show%20that%20Kenya's%20population,percent%20lived%20in%20rural%20areas (accessed on December 15, 2022)
2 Communications Authority of Kenya "Sector Statistics Report Q1 2022-2023" (Q1 July-Sept 2022) https://www.ca.go.ke/wp-content/uploads/2022/11/Sector-Statistics-Report-Q1-2022-2023.pdf (accessed on December 16, 2022).
3 Communications Authority of Kenya "Sector Statistics Report Q1 2022-2023" (Q1 July-Sept 2022) ix https://www.ca.go.ke/wp-content/uploads/2022/11/Sector-Statistics-Report-Q1-2022-2023.pdf (accessed on December 16, 2022).
4 Communications Authority of Kenya, Sector Statistics Report Q1 2022-2023 (Q1 July-Sept 2022) ix https://www.ca.go.ke/wp-content/uploads/2022/11/Sector-Statistics-Report-Q1-2022-2023.pdf (accessed on 16/12/2022).
5 Communications Authority of Kenya "Annual Report 2021" (2021) 26 https://www.ca.go.ke/wp-content/uploads/2023/01/Annual-Report-for-Financial-Year-2020-2021.pdf (accessed on January 18, 2023).
6 How Many Internet Users Are In Kenya? https://www.businessdailyafrica.com/bd/corporate/technology/how-many-internet-users-are-in-kenya--2184930
7 Business Daily 'How Many Internet Users Are In Kenya?' (2018) https://www.businessdailyafrica.com/bd/corporate/technology/how-many-internet-users-are-in-kenya--2184930 (accessed on 17/12/2022).
UNESCO "Assessing Internet Development in Kenya: Using UNESCO's Internet Universality ROAM-X Indicators" (2020) 86 https://unesdoc.unesco.org/ark:/48223/pf0000374684 (accessed on December 17, 2022).

97 per cent internet users in Kenya.[8] In 2017 it also reported that internet penetration in the country had reached 112 per cent.[9] This, when analysed, means that the country had 51.1 million internet users[10] which is unrealistic given that the country's population at the time was 45 million.[11] The Authority is said to have arrived at these figures by "counting one internet user for every mobile data subscription"[12] instead of counting individual internet users. This method is bound to produce incorrect and distorted figures because individuals can have "multiple devices with multiple SIM cards".[13]

The only government report that has accurate figures on this is the 2019 Kenya National Bureau of Statistics (KNBS) census report.[14] This report indicates that out of a population of 43,739,906 (aged three and above), only 9,869,962 were using the internet. Meaning that only 22.6 per cent of Kenyans were using the internet in 2019.[15]

Other than the 2019 national census report there is no government report providing credible information on internet use in the country. The only reports that provide this information are from organisations such as the ITU and the GSMA. The ITU Global Connectivity report of 2022 shows that the percentage of internet use in Kenya in 2020 ranged between 20 per cent and 40 per cent.[16] The ITU DataHub portal on the other hand shows that only 30 per cent of individuals were using the internet in 2020.[17] The *After Access Survey 2018* by Research ICT Africa shows that the percentage of internet use in 2018 was 27 per cent.[18] These figures correlate with the statistics in Kenya's 2019 census report.

The lack of information on the state of internet connectivity in the country leaves a gap in terms of evidence-based facts that the government can rely on in formulating policies and strategies on internet connection. It leaves the government without information that can be used in formulating practical strategies around connectivity.[19] The government needs to have actual and reliable figures.

8   UNESCO "Assessing Internet Development in Kenya: Using UNESCO's Internet Universality ROAM-X Indicators" (2020) 86
https://unesdoc.unesco.org/ark:/48223/pf0000374684 (accessed on December 17, 2022).
9   Business Daily 'How Many Internet Users Are In Kenya?' (2018)
https://www.businessdailyafrica.com/bd/corporate/technology/how-many-internet-users-are-in-kenya--2184930 (accessed on December 17, 2022).
10   Business Daily 'How Many Internet Users Are In Kenya?' (2018)
https://www.businessdailyafrica.com/bd/corporate/technology/how-many-internet-users-are-in-kenya--2184930 (accessed on December 17, 2022).
11   Business Daily 'How Many Internet Users Are In Kenya?' (2018)
https://www.businessdailyafrica.com/bd/corporate/technology/how-many-internet-users-are-in-kenya--2184930 (accessed on December 17, 2022).
12   Business Daily 'How Many Internet Users Are In Kenya?' (2018)
https://www.businessdailyafrica.com/bd/corporate/technology/how-many-internet-users-are-in-kenya--2184930 (accessed on December 17, 2022).
13   UNESCO "Assessing Internet Development in Kenya: Using UNESCO's Internet Universality ROAM-X Indicators" (2020) 86
https://unesdoc.unesco.org/ark:/48223/pf0000374684 (accessed on December 17, 2022).
14   KNBS "2019 Kenya Population and Housing Census Volume IV: Distribution of Population by Socio-Economic Characteristics" (2020) 432
https://www.knbs.or.ke/download/2019-kenya-population-and-housing-census-volume-iv-distribution-of-population-by-socio-economic-characteristics/ (accessed on December 16, 2022).
15   KNBS "2019 Kenya Population and Housing Census Volume IV: Distribution of Population by Socio-Economic Characteristics" (2020) 432
https://www.knbs.or.ke/download/2019-kenya-population-and-housing-census-volume-iv-distribution-of-population-by-socio-economic-characteristics/ (accessed on December 16, 2022).
16   ITU "Global Connectivity Report 2022" (2022) 24
https://www.itu.int/hub/publication/d-ind-global-01-2022/ (accessed on 17/12/2022).
17   ITU 'DataHub'
https://datahub.itu.int/ (accessed on December 17, 2022).
18   After Access Survey 'The Inside Internet Story of Africa, Asia, and Latin America' (2018)
https://afteraccess.net/wp-content/uploads/After-Access-Website-layout-r1.pdf (accessed on December 18, 202).
19   After Access Survey 'The Inside Internet Story of Africa, Asia, and Latin America' (2018)
https://afteraccess.net/wp-content/uploads/After-Access-Website-layout-r1.pdf (accessed on December 18, 2022).

1.1.1. DISRUPTIONS

The country did not experience any shutdown during the coverage period and during the general elections. Countries in Africa are known to be notorious for shutting down the internet during such critical periods. The Minister of ICT assured Kenyans that social media platforms would not be shut down ahead of the general elections. This came after the National Cohesion and Integration Commission (NCIC), which is the ethics body in the country, threatened to suspend Facebook for failing to deal with hate speech on its platform. The threat was informed by a Global Witness report that showed that Facebook had failed to take

down content that contained hate speech on its platform.[20]

1.2. FREE SPEECH AND MEDIA FREEDOMS

The legal framework on hate speech and disinformation in the country poses a threat to free speech and media freedoms. The application of the laws has been found to be limiting the freedom of expression on numerous occasions. The law that establishes the offence of hate speech – The National Cohesion and Integration Act of 2008 (NCIC Act)[21], gives it a broad definition which leaves room for misapplication and misinterpretation by the government. The law indicates that hate speech includes the use of threatening, abusive, or insulting words or behaviour.[22]

This definition in itself is vague and has given the government room to suppress free speech. Based on this law, the Commission established under it, The National Cohesion and Integration Commission (NCIC), outlawed a number of words that were actively being used by politicians during the campaign period on grounds that they constituted hate speech and had the potential of causing ethnic violence.[23] The words in question included *kihii* (uncircumcised)*, madoadoa (*spots), *kama noma noma* (no matter what), *hatupangwingwi* (can't tell me nothing), *chunga kura* (guard the vote)*"* among others.[24]

Hatupangwingwi for example was a slogan used by the then Presidential Candidate William Samoei Ruto and his political party Kenya Kwanza Coalition "as a show of defiance and to urge their supporters to reject alleged schemes by powerful figures to impose leaders". [25]

20   Global Witness 'Facebook Unable to Detect Hate Speech Weeks Away from the Tight Kenyan Election' (2022) https://www.globalwitness.org/en/campaigns/digital-threats/hate-speech-kenyan-election/ (accessed on 20/12/2022).
21   National Cohesion and Integration Act, 2008 (No.12 of 2008).
22   Section 13, National Cohesion and Integration Act 2008.
23   Nation 'NCIC Outlaws 'Outlaws Sipangwingwi' In War on Hate Speech' (2022) https://nation.africa/kenya/news/ncic-blacklists-sipangwingwi-in-war-on-hate-speech-3775900 (accessed on December 18, 2022).
24   Citizen Digital 'Hatupangwingwi, Mende, Chunga Kura Among Words Declared As Hate Speech By NCIC' (2022) https://www.citizen.digital/news/ncic-launches-lexicon-of-terms-considered-hate-speech-n296054 (accessed on January 18, 2023).
Pulse Live 'NCIC Outlaws 21 Words Ahead of 2022 General Election' (2022) https://www.pulselive.co.ke/news/ncic-releases-list-of-words-it-has-banned-ahead-of-the-elections/x0z2f53 (accessed on December 22, 2022).
25   Nation 'NCIC Outlaws 'Outlaws Sipangwingwi' In War on Hate Speech' (2022) https://nation.africa/kenya/news/ncic-blacklists-sipangwingwi-in-war-on-hate-speech-3775900 (accessed on December 22, 2022).

The NCIC indicated that the words had the potential of fuelling ethnic violence and causing political tension during the elections.[26] The words when assessed had no such effect and their active ban had the potential of limiting free speech.

During the same year (July 2022), the NCIC based on an investigation conducted by the Global Witness revealing Facebook's failure to take down political advertisements that constituted hate speech ahead of the elections, threatened to suspend Facebook in an effort to deal with hate speech on the platform.[27] [28]

The Ministry of Information Communication Technologies (ICT) however clarified that Facebook and other social media platforms would not be blocked during the elections.[29]

In May 2022, Twitter suspended 22 accounts belonging to activists that actively campaigned against the massive increase in food prices in the country.[30] The campaign #NjaaRevolution which had been started at a time when inflation had badly hit the country, and the cost of living had become unbearable, raised significant issues on the governance of the country.[31] It was unclear why Twitter deactivated these accounts and what the motive was.

1.3. PRIVACY AND SURVEILLANCE

The Data Protection law in Kenya was enacted in 2019[32] with the main objective of protecting personal data and equipping data subjects with rights towards their data.[33] The law applies to both automated and non-automated processing of personal data.[34] The Data Protection Commissioner established under the law was appointed in 2020. To give effect to the provisions of the Data Protection Act and the mandate of the Data Protection Commissioner, the data protection Regulations were enacted in 2022.

The Regulations include the Data Protection (General) Regulations 2021[35], the Data Protection (Compliance and Enforcement) Regulations, 2021[36], and the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021[37]. The enactment of these laws has ushered in the regulatory framework of privacy and data protection in Kenya and has seen a revision of laws and a move by organisations taking measures such as registration as data controllers and data processors to comply. The Central Bank of Kenya Act[38], for example, was revised to "require digital lending apps to be registered with the ODPC, failing which, they would be denied the necessary licence for their business from the Central Bank".[39]

However, despite the move by organisations registering as data controllers and data

26   Nation 'NCIC Outlaws 'Outlaws Sipangwingwi' In War on Hate Speech' (2022) https://nation.africa/kenya/news/ncic-blacklists-sipangwingwi-in-war-on-hate-speech-3775900 (accessed on 22/12/2022).
27   Global Witness 'Facebook Unable to Detect Hate Speech Weeks Away from the Tight Kenyan Election' (2022) https://www.globalwitness.org/en/campaigns/digital-threats/hate-speech-kenyan-election/ (accessed on 20/12/2022).
28   Global Witness 'Facebook Unable to Detect Hate Speech Weeks Away from the Tight Kenyan Election' (2022) https://www.globalwitness.org/en/campaigns/digital-threats/hate-speech-kenyan-election/ (accessed on 20/12/2022).
29   Twitter https://twitter.com/i/web/status/1553271302005334016 (accessed on 20/12/2022).
30   Article 19 'Kenya: Twitter Must Stop Silencing Human Rights Defenders' (2022) https://www.article19.org/resources/kenya-twitter-stop-silencing-activist-voices/ (accessed on 20/12/2022). Twitter https://twitter.com/Maskani254/status/1530136075276107776 (accessed on December 20, 2022).
31   Article 19 'Kenya: Twitter Must Stop Silencing Human Rights Defenders' (2022) https://www.article19.org/resources/kenya-twitter-stop-silencing-activist-voices/ (accessed on December 20, 2022).
32   Data Protection Act, 2019 (Act No.24 of 2019).
33   Data Protection Act, 2019 (Act No.24 of 2019).
34   Section 4, Data Protection Act, 2019.
35   The Data Protection (General) Regulations, 2021.
36   The Data Protection (Compliance and Enforcement) Regulations, 2021.
37   The Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021.
38   The Central Bank of Kenya Act, 1966 (Chapter 491 of the Laws of Kenya).
39   Mondaq 'Kenya: Data Protection Registration Law Comes into Force on July 14, 2022' (2022) https://www.mondaq.com/data-protection/1216300/data-protection-registration-law-comes-into-force-on-14-july-2022 (accessed on December 21, 2022).

processors, it has been observed that some of them do not take any measures towards compliance with the Data Protection Act past registration.[40] Some actions by organisations (including government bodies) during the coverage period have been found to be in blatant disregard to the provisions of the Data Protection Act. In May 2022, Kenya Revenue Authority (KRA) announced that it was planning to adopt a software that would enable it to harvest data from the digital devices of taxpayers in an effort to curb tax fraud.[41] This together with the amendment to the *Huduma Namba* Bill that aims at granting KRA sensitive taxpayers data in the National Integrated Identity Management System (NIIMS) database is a clear contravention to citizens' privacy and data protection rights.

During the recently concluded elections, *KICTANet,* an ICT think tank in Nairobi, observed data protection practices by the Independent Electoral and Boundaries Commission (IEBC) which is the body mandated by the Constitution to oversee elections in the country. Among the things noted by *KICTANet* towards this end was development of an Election Guidance Note meant to guide data controllers and processors in handling voters data.[42] The think tank also noted the failure of the Commission to publish its alleged Data Protection Impact Assessment and privacy policy.[43]

In early 2022, Safaricom, which is the leading telco in Kenya, was sued in a class action lawsuit where it was found to have breached the privacy rights of its subscribers. In the suit, two of the telcos employees leaked the data of millions of subscribers and circulated it to unwanted parties contrary to the Data Protection Act.[44]

1.4. SIM CARD REGISTRATION

Earlier in February 2022, leading telecom operators in Kenya, Safaricom, Airtel and Telecom[45], called on subscribers to re-register their lines. This was in line with the order from CAK which indicated that it was undertaking the exercise to combat crime and clean up subscribers' data.[46] The CAK threatened subscribers who would not have registered their lines by the set deadline that their lines would be switched off and that they would be fined Ksh.300,000 or jailed for six months.[47]

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40   KICTANet 'Data Protection, Three Years Later - The Good, The Bad, and The Ugly' (2022) https://www.kictanet.or.ke/data-protection-three-years-later-the-good-the-bad-and-the-ugly/ (accessed on December 21, 2022).

41   QUARTZ 'Kenyans Are Protesting Plans by Tax Authority to Snoop on Their Online Chats' (2022) https://qz.com/africa/2164861/kenyas-tax-authority-to-snoop-on-online-chats-to-combat-fraud (accessed on December 17, 2022).
Nation 'KRA In Plan To Snoop on Your WhatsApp Chats' (2022) https://nation.africa/kenya/business/kra-in-plan-to-snoop-on-your-whatsapp-chats-3811392 (accessed on December 17, 2022).

42   KICTANet 'Safeguarding Personal Data During Kenya's 2022 General Elections' (2022) https://www.kictanet.or.ke/safeguarding-personal-data-during-kenyas-2022-general-election/ (accessed on December 22, 2022).

43   KICTANet 'Safeguarding Personal Data During Kenya's 2022 General Elections' (2022) https://www.kictanet.or.ke/safeguarding-personal-data-during-kenyas-2022-general-election/ (accessed on December 21, 2022).

44   https://web.archive.org/web/20210207124248/https://twitter.com/KinyanBoy/status/1358395467462279175 (accessed on 22/12/2022).
Access Now 'Data Protection in Kenya: How Is This Right Protected?' (2021) 8
https://www.accessnow.org/cms/assets/uploads/2021/10/Data-Protection-in-Kenya.pdf (accessed on December 23, 2022).

45   Airtel SIM Registration
https://www.airtelkenya.com/customer-registration (accessed on December 23, 2022).
Safaricom SIM Registration
https://www.youtube.com/watch?v=_EdJ3BJ8V3I (accessed on December 23, 2022).
Telkom SIM Registration
https://twitter.com/TelkomKenya/status/1509875650483556358?s=20&t=YJeyGd_1z7D49H4i-zIGzA (accessed on December 23, 2022).

46   The Star 'CA To Switch Off Unregistered SIM Cards By April 15' (2022) https://www.the-star.co.ke/business/kenya/2022-03-07-ca-to-switch-off-unregistered-sim-cards-by-april-15/ (accessed on December 23, 2022).

47   The Star 'CA To Switch Off Unregistered SIM Cards By April 15' (2022)

It is important to note that, registration of SIM subscribers is a legal requirement provided for under the Kenya Information and Communications (Registration of SIM cards) Regulations, 2015[48]. The law provides that telecom operators should register their existing and new subscribers[49] and provides a list of information that should be collected from subscribers during the registration exercise.[50] These include: "full names, identity card/passport number, date of birth, gender, physical address, postal address, an original and copy of the national identity card/passport, an original and a copy of the birth certificate in respect to minors…"[51]

During the registration exercise, telecom operators such as Safaricom and Airtel were, however, on record collecting biometric data such as people's photographs and signatures.[52] The telcos indicated that this was being collected for "additional security".[53] The collection of biometric data such as photographs was not in line with the Regulations and was a contravention of people's constitutional right to privacy. This was brought to the CAK's attention and it issued a statement rectifying the information that should be collected from subscribers.[54]

Following this, leading telco Safaricom revised its terms and indicated that subscribers would no longer be required to provide their photos during the registration exercise; however,

Airtel continued to collect photographs.[55] This exercise was flawed and illegal in its entirety. It was a contravention of the Data Protection Act, 2019 which was enacted with the main objective of protecting personal data.

The Act provides for principles which should govern such activities. These include principles of lawfulness, fairness, and transparency.[56] First, it was not clear why people were being asked to re-register their lines.[57] There was a vacuum of information on what informed the re-registration exercise thus subscribers were

https://www.the-star.co.ke/business/kenya/2022-03-07-ca-to-switch-off-unregistered-sim-cards-by-april-15/ (accessed on 23/12/2022).

48 Kenya Information and Communications (Registration of SIM Cards) Regulation 2015.

49 Section 3, Kenya Information and Communications (Registration of SIM Cards) Regulation 2015

50 Section 5, Kenya Information and Communications (Registration of SIM Cards) Regulation 2015

51 Section 5, Kenya Information and Communications (Registration of SIM Cards) Regulation 2015

52 Airtel SIM Registration
https://www.airtelkenya.com/customer-registration (accessed on December 23, 2022).
Safaricom SIM Registration
https://www.youtube.com/watch?v=_EdJ3BJ8V3I (accessed on December 23, 2022).

53 Airtel SIM Registration
https://www.airtelkenya.com/customer-registration (accessed on December 23, 2022).
Safaricom SIM Registration
https://www.youtube.com/watch?v=_EdJ3BJ8V3I (accessed on December 23, 2022).

54 Twitter https://twitter.com/CA_Kenya/status/1513139749380308992/photo/3 (accessed on December 23, 2022).

55 Access Now 'Why Kenyans Should Say No To Biometrics For SIM Card Registry' (2022)
https://www.accessnow.org/kenya-sim-card-biometrics/ (accessed on December 23, 2022).

56 Section 25, Data Protection Act 2019.

57 M.Laibuta 'Why SIM Card Re Registration Is A Flawed Process' (2022)
https://www.laibuta.com/data-protection/why-sim-card-re-registration-is-a-flawed-process/ (accessed on December 23, 20222).

reluctant to re-register their lines.[58] There was also apprehension given that this was an electioneering period and there were all manner of narratives on why the government was collecting data.[59]

In line with the principle of fairness, the CAK should have explained in detail to subscribers why the exercise was being conducted and why their data was being collected.[60] Secondly, the Authority's move of threatening to switch off lines that were not re-registered was a contravention of their data protection rights as the registration involved the collection of data that was not in line with the law and subscribers were not given room to object to this.[61]

Following this, Safaricom has not deleted subscribers' photographs.[62] The telco has been called out by civil society organisations but no action has been taken by them.[63] The collection of sensitive data is governed by the Data Protection Act which provides grounds for its processing. The move by telecommunication operators makes subscribers susceptible "in cases of data breach and identity theft".[64]

1.5. DISINFORMATION

Disinformation has been rife on social media platforms in Kenya. Various actors including politicians, political parties, and their supporters have resorted to use it to push political agendas and influence public opinion.[65] Politicians and political parties mostly rely on paid individuals known as influencers who push their agenda to the public with the intent of swaying opinions.[66] The influencers contacted for this purpose study the public, profile them and target them with information likely to sway them towards a certain decision.[67]

In 2021, the former President of Kenya Uhuru Kenyatta, was implicated in the *Pandora Papers*, a publication by the international consortium of investigative journalists that exposed offshore wealth of global leaders.[68] According to a report published by Mozilla, the government leveraged Twitter to change the narrative and to change the perception of

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M.Laibuta 'Why SIM Card Re Registration Is A Flawed Process' (2022) https://www.laibuta.com/data-protection/why-sim-card-re-registration-is-a-flawed-process/ (accessed on December 23, 20222).

M.Laibuta 'Why SIM Card Re Registration Is A Flawed Process' (2022) https://www.laibuta.com/data-protection/why-sim-card-re-registration-is-a-flawed-process/ (accessed on December 23, 2022).

M.Laibuta 'Why SIM Card Re Registration Is A Flawed Process' (2022) https://www.laibuta.com/data-protection/why-sim-card-re-registration-is-a-flawed-process/ (accessed on December 23, 2022).
Business Daily 'Address Personal Data Concerns Dragging SIM Card Registration' (2022) https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/address-personal-data-concerns-dragging-sim-card-registration-3980920 (accessed on December 24, 2022).

M.Laibuta 'Why SIM Card Re Registration Is A Flawed Process' (2022) https://www.laibuta.com/data-protection/why-sim-card-re-registration-is-a-flawed-process/ (accessed on December 24, 2022).

Access Now 'Stop SIM Data Siphoning: Safaricom Must Protect Privacy In Kenya' (2022) https://www.accessnow.org/safaricom-privacy-kenya/ (accessed on December 24, 2022).

Access Now 'Stop SIM Data Siphoning: Safaricom Must Protect Privacy In Kenya' (2022) https://www.accessnow.org/safaricom-privacy-kenya/ (accessed on December 24, 2022).

Access Now 'Why Kenyans Should Say No To Biometrics For SIM Card Registry' (2022) https://www.accessnow.org/kenya-sim-card-biometrics/ (accessed on December 24, 2022).

CIPESA "Disinformation in Kenya's Political Sphere: Actors, Pathways, and Effects" (2022) 11 https://www.theguardian.com/technology/2020/jan/13/what-are-deepfakes-and-how-can-you-spot-them (accessed on December 24, 2022).

CIPESA "Disinformation in Kenya's Political Sphere: Actors, Pathways, and Effects" (2022) 11 https://www.theguardian.com/technology/2020/jan/13/what-are-deepfakes-and-how-can-you-spot-them (accessed on December 21, 2022).

CIPESA "Disinformation in Kenya's Political Sphere: Actors, Pathways, and Effects" (2022) 11 https://www.theguardian.com/technology/2020/jan/13/what-are-deepfakes-and-how-can-you-spot-them (accessed on December 21, 2022).

ICIJ 'Offshore Havens and Hidden Riches of World Leaders and Billionaires Exposed in Unprecedented Leak' (2021) https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/ (accessed on 24/12/2022).

LONDA - DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

Kenyans towards the then President.[69]

In 2022, Mozilla unearthed how Tik Tok was used to spread political disinformation ahead of the elections .[70] Also in the same year, Mozilla reported how an organisation based in Spain, CitizenGo, spread disinformation on reproductive health in Kenya.[71] This happened at a time when the country was having important debates on legislation governing surrogacy and reproductive health.[72]

Recently, during the Constitutional Review Process (the Building Bridges Initiative), influencers were paid to sway the public opinion on Twitter in favour of the Constitutional amendment and attack civil society, activists, and the Judiciary (judges) who were against it.[73]

During the 2022 elections, there was the rampant circulation of fake news. On the eve of the elections, for example, a fake pamphlet alleged to be from the Kenya Wildlife Services (KWS) was in circulation on social media platforms warning residents in a given area about wild animals on the loose.[74] The area in question was known to be the 'political hotbed'

of one of the presidential candidates and the pamphlet was intended to create fear among residents and to suppress voter turnout in that particular area. Supporters of political parties and influencers were also seen circulating information about winning candidates which was untrue.[75] There were also claims that the country's electoral body, the Independent Electoral and Boundaries Commission (IEBC), had erroneously added votes in favour of one of the presidential candidates, Raila Odinga.[76]

During the vote tallying process by the IEBC, videos emerged online of presidential candidate Raila Odinga conceding defeat to his opponent William Ruto. The video was checked by the Agence France-Presse (AFP) Fact Check[77], an independent third-party fact checker, and turned out to be untrue.[78] The video had been altered and was in fact a 2013 video showing Raila Odinga conceding defeat to Uhuru Kenyatta.[79]

The spread of disinformation on social media platforms such as Twitter is made possible through the trending algorithm where many Twitter accounts tweet on the same subject

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69   Mozilla "How To Manipulate Twitter And Influence People: Propaganda And The Pandora Papers in Kenya" (2021) 5 https://assets.mofoprod.net/network/documents/Pandora_Disinfo_Report_2__hcc.pdf (accessed on December 24, 2022).

70   O.Madung "From Dance App To Political Mercenry: How Disinformation on Tik Tok Gaslights Political Tensions In Kenya" (2022)
https://foundation.mozilla.org/en/blog/new-research-disinformation-on-tiktok-gaslights-political-tensions-ahead-of-kenyas-2022-elections/ (accessed on December 24, 2022).

71   O.Madung "Exporting Disinformation: How Foreign Groups Peddle Influence In Kenya Through Twitter" (2021)
https://foundation.mozilla.org/en/campaigns/exporting-disinformation-how-foreign-groups-peddle-influence-in-kenya-through-twitter/ (accessed on December 24, 2022).

72   O.Madung "Exporting Disinformation: How Foreign Groups Peddle Influence In Kenya Through Twitter" (2021)
https://foundation.mozilla.org/en/campaigns/exporting-disinformation-how-foreign-groups-peddle-influence-in-kenya-through-twitter/ (accessed on December 24, 2022).

73   O.Madung "Exporting Disinformation: How Foreign Groups Peddle Influence In Kenya Through Twitter" (2021)
https://foundation.mozilla.org/en/campaigns/exporting-disinformation-how-foreign-groups-peddle-influence-in-kenya-through-twitter/ (accessed on December 24, 2022).

74   Article 19 'Kenya: Tackling Misinformation is Critical for Electoral Integrity' (2022)
https://www.article19.org/resources/kenya-tackling-misinformation-critical-electoral-integrity/ (accessed on December 23, 2022).

75   Article 19 'Kenya: Tackling Misinformation is Critical for Electoral Integrity' (2022)
https://www.article19.org/resources/kenya-tackling-misinformation-critical-electoral-integrity/ (accessed on December 23, 2022).

76   Twitter https://twitter.com/i/events/1537125015426019328?t=oZIjsshEFWUlOl2jLaHuBQ&s=08 (accessed on December 10, 2022).

77   Agence France-Presse (AFP) Fact Check
https://factcheck.afp.com/

78   Twitter https://twitter.com/i/events/1537125015426019328?t=oZIjsshEFWUlOl2jLaHuBQ&s=08 (accessed on December 10, 2022).

79   Twitter https://twitter.com/i/events/1537125015426019328?t=oZIjsshEFWUlOl2jLaHuBQ&s=08 (accessed on December 10, 2022).

using specific hashtags that give them amplification on the platform.[80] It poses a significant risk to a fragile democracy like Kenya which witnessed post-election violence in 2007 propagated by ethnic hatred in the online and physical realm. It also fuels ethnic tension which borders heavily with politics in the country and tightens the government's grip on disinformation which as a result leads to the enactment of laws that undermine rights such as freedom of expression. It denies people access to credible information needed in making informed decisions and populates online platforms with lies which as a result acts to the detriment of online users who lack the capacity to discern whether the information is true or false.

DATA GOVERNANCE

Kenya has been keen on introducing a digital ID system which citizens can use to access government services. This has mainly been through the *Huduma Namba* system which was first introduced by the government in 2019. The system includes the National Integrated Identity Management System (NIIMS) database on which it is built.[81] The NIIMS database contains citizens' personal data including biometric data such as facial images and fingerprints. The database will "be a primary source for both foundational and functional data, from which every other database with personal data of residents in Kenya, such as databases of voters, taxes, and social services will be built".[82]

Citizens will require *Huduma Namba* to access government services including acquiring

passports, land titles, and SIM card registration. The *Huduma Namba* Bill, that introduces the *Huduma Namba* system, has been strongly opposed by civil society organisations in Kenya and the citizens at large on grounds that it puts the privacy and data protection rights of citizens at risk due to the intensity of data processed by the system, and also the fact that its requirement as a prerequisite for access to government services stands to exclude millions of Kenyans who lack the necessary ID documents to be registered into the system.

The government introduced major amendments to the Bill in 2021 which make *Huduma Namba* crucial in key government departments. The amendments in question include; replacing the national identity card (ID) with the *Huduma Namba* card as an identification document, placing a fine of Ksh10,000 to those who fail to register for *Huduma Namba*, granting the Kenya Revenue Authority (KRA) access to the NIIMS database (people's biometric data) for purposes of combating tax fraud and increasing its tax base, and requiring the Independent Electoral and Boundaries Commission (IEBC) to use *Huduma Namba* in "drawing up the national register".[83]

These amendments make *Huduma Namba* central in key government areas and grant the government department access to people's sensitive information. The amendments in the Bill were supposed to come up for Third Reading in Parliament in July 2022 but the special sitting was cancelled by the Speaker of the National Assembly on grounds that the government printer had failed to publish a gazette notice on the proceedings.[84]

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80   O.Madung "Inside The Shadowy World of Disinformation For Hire In Kenya" (2021) 6 https://assets.mofoprod.net/network/documents/Report_Inside_the_shadowy_world_of_disinformation_for_hire_in_Kenya_5._hcc.pdf (accessed on December 23, 2022).

81   Huduma Namba https://www.hudumanamba.go.ke/

82   BIOMETRICUPDATE.COM 'Kenya Pushes On With Huduma Namba As Compulsory Digital ID Amidst Controversy' (2022) https://www.biometricupdate.com/202201/kenya-pushes-on-with-huduma-namba-as-compulsory-digital-id-amid-controversy (accessed on 26/12/2022).

83   BIOMETRICUPDATE.COM 'Kenya Parliament Schedules, Cancels Debate On Huduma Namba Digital ID' (2022) https://www.biometricupdate.com/202207/kenya-parliament-schedules-cancels-debate-on-huduma-namba-digital-id (accessed on December 26, 2022).

84   BIOMETRICUPDATE.COM 'Kenya Parliament Schedules, Cancels Debate On Huduma Namba Digital ID' (2022) https://www.biometricupdate.com/202207/kenya-parliament-schedules-cancels-debate-on-huduma-namba-digital-id (accessed on December 26, 2022).

In October 2021, the issuance of the *Huduma Namba* card by the government was halted by the Judiciary which found the exercise illegal and in contravention of the Data Protection Act.[85] The Judiciary ordered the government to conduct a Data Protection Impact Assessment (DPIA) in line with the Data Protection Act of Kenya 2019.[86]

REVIEW OF THE UNIVERSAL SERVICE FUND

The Universal Service Fund was established by the Kenya Communications (Amendment) Act, 2009.[87] The fund is administered by the CAK with oversight of the Universal Service Advisory Council.[88] The Fund has been established with the main aim of bridging the digital divide in the country through building capacity, enabling access to ICTs and promoting innovation in ICTs.[89]

In 2016, CAK undertook an ICT Access Gap study that identified connectivity and access gaps in the country and designed USF projects that would address these gaps.[90] The study discovered 348 sub-locations that lacked telecommunication services in the country and designed projects and allocated portions of the USF.[91] One of the projects designed under the study was the Education Broadband Connectivity Project which was designed to provide high speed internet connectivity to public secondary schools, and the "mobile network project" which was designed to provide mobile communications in parts of the country that lacked such.[92]

The country has been keen on implementing these projects over the years. The projects are being implemented in phases. The first phase saw the CAK provide internet connectivity to 884 public secondary schools in 47 counties, and mobile connectivity to 78 sub-locations in 15 counties.[93] The second phase is currently being implemented by the Authority on the

85   BIOMETRICUPDATE.COM 'Kenya Parliament Schedules, Cancels Debate On Huduma Namba Digital ID' (2022) https://www.biometricupdate.com/202207/kenya-parliament-schedules-cancels-debate-on-huduma-namba-digital-id (accessed on December 26, 2022).
86   BIOMETRICUPDATE.COM 'Kenya Pushes On With Huduma Namba As Compulsory Digital ID Amidst Controversy' (2022) https://www.biometricupdate.com/202201/kenya-pushes-on-with-huduma-namba-as-compulsory-digital-id-amid-controversy (accessed on December 26, 2022).
87   Kenya Information and Communications Act, 2011 (Chapter 411A).
88   Section 102 A, Kenya Information Communications Act, 2011.
89   Section 84J (2), Kenya Information Communications Act, 2011.
90   Communications Authority of Kenya "ICT Access Gaps Study" (2016) v https://www.ca.go.ke/wp-content/uploads/2018/02/ICT-Access-Gaps-Report-April-2016-.pdf (Accessed on December 20, 2022)
91   Communications Authority of Kenya "Opportunities and Challenges of Using the Universal Service Fund" https://www.itu.int/en/ITU-D/Conferences/WTDC/WTDC17/RPM-AFR/Documents/presentations/USF_Challenges_and_Opportunities_Kenyan_Experience.pdf (Accessed on December 20, 2022)
92   Phase II Of Universal Service Fund Launched In West Pokot (2022) https://sokodirectory.com/2022/04/phase-ii-of-universal-service-fund-launched-in-west-pokot/ (Accessed on December 20, 2022)
93   Phase II Of Universal Service Fund Launched In West Pokot (2022) https://sokodirectory.com/2022/04/phase-ii-of-universal-service-fund-launched-in-west-pokot/ (Accessed on December 20, 2022).

mobile network project where it is keenly looking into connecting "101 unserved and underserved sub-locations" across the country.[94] Out of the 101 sub-locations, 20 have so far had 20 sites deployed with 15 being active.[95] The launch of the second phase of the USF projects went live in April 2022.[96]

The Authority also announced in 2021 its plan to spend Ksh.5 billion for the purpose of implementing the 3rd, 4th, and 5th phases of the USF projects to provide voice and data services to "unserved and underserved" populations "for five years from the financial year 2022/23".[97] In utilising the Funds, the Authority drafted the USF 2022-2026 Strategic Plan, which is still a draft, to steer the achievement of the USF goals.[98] The Strategy which looks into the implementation of the USF for the subsequent five years, lays out plans which include "the rollout of infrastructure and services to close the remaining gaps…; Digital Skills and Content to enhance ICT impact; and Institutional Capacity to enhance administration and management of USF to effectively and efficiently execute projects envisaged in the Strategic Plan".[99]

DEVELOPMENTS IN ICTS AND EMERGING TECHNOLOGIES

In April 2022, the Ministry of ICT launched the 2022-2032 Kenya Digital Masterplan.[100] The ten-year Masterplan aims at leveraging ICTs to boost the country's digital economy and putting it at a competitive advantage globally.[101] It has been developed with an integral focus

in four key pillars – Digital Infrastructure and Digital Government Service; Product and Data Management; Digital Skills; and Digital Innovation, Enterprise, and Digital Business.[102] The Master Plan identifies several flagship

94   Phase II Of Universal Service Fund Launched In West Pokot (2022) https://sokodirectory.com/2022/04/phase-ii-of-universal-service-fund-launched-in-west-pokot/ (Accessed on 2 December 20, 2022).
95   Techweez 'CA's Phase 2 of the Universal Service Fund Goes Live in West Pokot' (2022) https://techweez.com/2022/04/14/ufs-phase-2-launched-ca/ (Accessed on December 20, 2022).
96   Techweez 'CA's Phase 2 of the Universal Service Fund Goes Live in West Pokot' (2022) https://techweez.com/2022/04/14/ufs-phase-2-launched-ca/ (Accessed on December 20, 2022).
97   Kenya News Agency 'CA To Provide Digital Connectivity To Underserved Areas' (2023) https://www.kenyanews.go.ke/ca-to-provide-digital-connectivity-to-underserved-areas/ (Accessed on December 20, 2022).
98   Draft USF Strategic Plan 2022-2026 https://www.ca.go.ke/wp-content/uploads/2022/04/Draft-USF-Strategic-Plan-2022-2026-.pdf (Accessed on December 18, 2022).
99   Draft USF Strategic Plan 2022-2026 (2022) https://www.ca.go.ke/wp-content/uploads/2022/04/Draft-USF-Strategic-Plan-2022-2026-.pdf (Accessed on December 18, 2022
100   The Kenya National Digital Master Plan 2022-2032 https://cms.icta.go.ke/sites/default/files/2022-04/Kenya%20Digital%20Masterplan%202022-2032%20Online%20Version.pdf (Accessed on December 29, 2022).
101   The Kenya National Digital Master Plan 2022-2032 https://cms.icta.go.ke/sites/default/files/2022-04/Kenya%20Digital%20Masterplan%202022-2032%20Online%20Version.pdf (Accessed on December 29, 2022).
102   The Kenya National Digital Master Plan 2022-2032 https://cms.icta.go.ke/sites/default/files/2022-04/Kenya%20Digital%20Masterplan%202022-2032%20Online%20Version.pdf (Accessed on December 29, 2022).

projects aligned with positioning the country as a "regional ICT Hub".[103] These projects include: "installation of 100,000km of high-speed fibre-optic infrastructure, establishment of 25,000 internet hotspots, establishment of cloud services, regional ICT Hubs," among others.[104]

In the Financial Year 2022-2023, the government allocated $132 million to ICTs in the national budget.[105] The allocation is to be disseminated towards the last mile connectivity network, KONZA technopolis development, digital literacy programs in the country, maintenance of NOFBI cable, and provision of connectivity for the Government's Big Four agenda among others.[106]

The government developed the National Broadband Strategy 2018-2023 which is aimed at increasing internet connectivity in the country and ensuring that every Kenyan realises the benefits brought about by internet connectivity.[107] To this end, the Strategy is divided in seven thematic areas which include infrastructure and connectivity, capacity building, regulation, privacy and security, and investment. [108]

Newly elected President, William Ruto, also has

an admirable vision for digital transformation in Kenya. The President's manifesto has plans for ICTs that, if implemented diligently, could digitally transform Kenya and put it at a competitive edge globally. The president's plan includes laying 100,000kms of internet fibre during his five-year term, establishing Kenya as a software development hub where $400 million will be allocated for development of digital software for exportation, digitisation of government services, and implementation of the digital Master Plan 2022-2032.[109]

Safaricom, Kenya's leading telco, launched the 5G network in the country in October 2022.[110] In preparation for the launch, the telco commenced trials for the 5G network in March 2021 where it turned on the network in areas that were equipped and ready for the 5G network.[111] 5G stands to be beneficial as it provides internet connectivity that is "fast and reliable".[112]

103   The Kenya National Digital Master Plan 2022-2032
https://cms.icta.go.ke/sites/default/files/2022-04/Kenya%20Digital%20Masterplan%202022-2032%20Online%20Version.pdf (Accessed on December 29, 2022).
104   The Kenya National Digital Master Plan 2022-2032
https://cms.icta.go.ke/sites/default/files/2022-04/Kenya%20Digital%20Masterplan%202022-2032%20Online%20Version.pdf (Accessed on December 29, 2022).
105   International Trade Administration 'Kenya- Country Commercial Guide'
https://www.trade.gov/country-commercial-guides/kenya-information-communications-and-technology-ict (Accessed on 21/12/2022).
106   The National Treasury And Planning 'The Budget Summary For The Fiscal Year 2022/23 The Supporting Information' (2022) 25 http://www.parliament.go.ke/sites/default/files/2022-04/The%20Budget%20Summary%20for%20the%20Fiscal%20Year%202022-2023.pdf (Accessed on 21/12/2022).
107   Communications Authority of Kenya 'National Broadband Strategy 2018-2023' 9
https://www.ca.go.ke/wp-content/uploads/2020/08/National-Broadband-Strategy-2018-2023.pdf (Accessed on 21/12/2022).
108   Communications Authority of Kenya 'National Broadband Strategy 2018-2023' 9
https://www.ca.go.ke/wp-content/uploads/2020/08/National-Broadband-Strategy-2018-2023.pdf (Accessed on 21/12/2022).

109   All Africa 'Kenya: The ICT Sector Will Reap Highly From Ruto's Plan To Advance the Kenyan Digital Space' (2022) https://allafrica.com/stories/202209200003.html (22/12/2022).
110   Standard Media 'Safaricom Launches 5G, Changes Tack As Costly Phones Hinder Uptake' (2022) https://www.standardmedia.co.ke/business/article/2001459107/safaricom-launches-5g-changes-tack-as-costly-phones-hinder-uptake (Accessed on December 22, 2022).
111   Safaricom 'Safaricom Switches on 5G Across Kenya'
https://www.safaricom.co.ke/media-center-landing/press-releases/safaricom-switches-on-5g-across-kenya (Accessed on December 22, 2022).
112   The Kenyan WallStreet 'Safaricom Becomes First Telco to Roll Out 5G Network in Kenya' (2022) https://kenyanwallstreet.com/safaricom-rolls-out-5g-network-in-kenya/#:~:text=Currently%2C%20Safaricom%20has%2035%20active,the%20country%20by%20March%202023 (accessed on December 22, 2022).

Conclusion and Recommendations

Based on the above analysis, the following recommendations can be made in Kenya for enhancing access to internet connectivity and protection of digital rights:

RECOMMENDATIONS

The country's ICT regulator (CAK) should work on providing accurate data/statistics on internet use and access in the country. In doing this, the Regulator should drop the methodology applied in enumerating the number of internet users in the country, and the statistics provided by telcos on internet use. The Regulator should consider other methods such as conducting national surveys[113] which tend to give an accurate representation on internet use in the country. This will ensure that policies formulated on internet use are based on "evidence-based" facts.[114]

- CAK should work with other players such as civil society organisations and the private sector in the enumeration exercise, given their active involvement on connectivity issues and knowledge on internet use in the country. This will ensure that relevant expertise and experience is included in the enumeration exercise, and accurate data on internet use is obtained.
- The government should amend the NCIC Act and redefine hate speech. It should give it a definition that is clear, precise, and unambiguous in line with the rights and freedoms provided in the Constitution of Kenya, 2010, such as freedom of expression, and also in line with its obligations under international human rights laws.
- The Office of the Data Protection Commissioner (ODPC) should work to ensure that organisations both private and public comply with the provisions of the Data Protection Act. It should keep a close watch on the activities being undertaken by organisations that impact the data protection rights of citizens. In this case, it should draw the attention of the organisations to their obligations under the Data Protection Act as Data Controllers and Data Processors and conduct investigations on breach where necessary. Where organisations have been found to be in breach, the ODPC should issue fines to ensure compliance with the Data Protection Act.
- Private organisations and also government institutions should develop data protection policies that guide them, train personnel on handling of personal data, conduct Data Protection Impact Assessments, and regularly audit their data protection practices.[115]
- The government should be proactive and should work to ensure that its institutions

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113   M.Nyambura 'The State of ICT in Kenya' (2019) 23 https://researchictafrica.net/wp/wp-content/uploads/2019/06/After-Access_The-state-of-ICT-in-Kenya.pdf (accessed on December 30, 2022)

114   M.Nyambura 'The State of ICT in Kenya' (2019) 23 https://researchictafrica.net/wp/wp-content/uploads/2019/06/After-Access_The-state-of-ICT-in-Kenya.pdf (accessed on December 30, 2022)

115   KICTANet 'Data Protection, Three Years Later - The Good, Band and the Ugly' (2022) https://www.kictanet.or.ke/data-protection-three-years-later-the-good-the-bad-and-the-ugly/ (Accessed on December 18, 2022).

RECOMMENDATIONS

provide citizens with relevant information. This will close the information gap that enables disinformation to thrive and will ensure that citizens are fed with accurate information. It will also give citizens a reference point in cases of disinformation and deny disinformation actors from spreading fake news.

- The government should also be careful when applying disinformation laws and prosecuting individuals under the laws. In this case they should consider 'intent' and 'harm'. This helps in gauging whether an individual had an intention to misinform the public and the impact the information had on the public. It also helps in preventing unlawful prosecution. In cases of public order or national security, the government should ensure that "there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and expression".[116]

- The government should also consider international and national standards on disinformation when prosecuting disinformation cases. In this case careful examination and reasonableness should be considered when applying the exemptions provided for freedom of expression. The government should gauge whether the information amounted to "propaganda for war, incitement to violence, hate speech or advocacy for hatred".[117] In cases of elections, individuals behind disinformation should be prosecuted and jailed due to the magnitude the disinformation has on voters and the entire democratic process.

- The laws on disinformation should be properly applied and the government should ensure that their application aligns with the international standards and human rights law.

- The government in collaboration with tech platforms should train online users on how to differentiate false from factual information in online platforms.

- Social media platforms should increase effort in the reduction of bots and fake accounts in their platforms.

- The *Huduma Namba* Bill should be amended to ensure that the system is inclusive of marginalised groups in the country.

- Social media platforms should invest in tools that effectively curb disinformation, change their business practices and eliminate the financial benefits of individuals who gain from disinformation, and work on accountability in the platforms.

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116   Principle 22(5) 'The African Commission on Human and People's Rights'
https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf
117   Section 33 (2), Constitution of Kenya, 2010
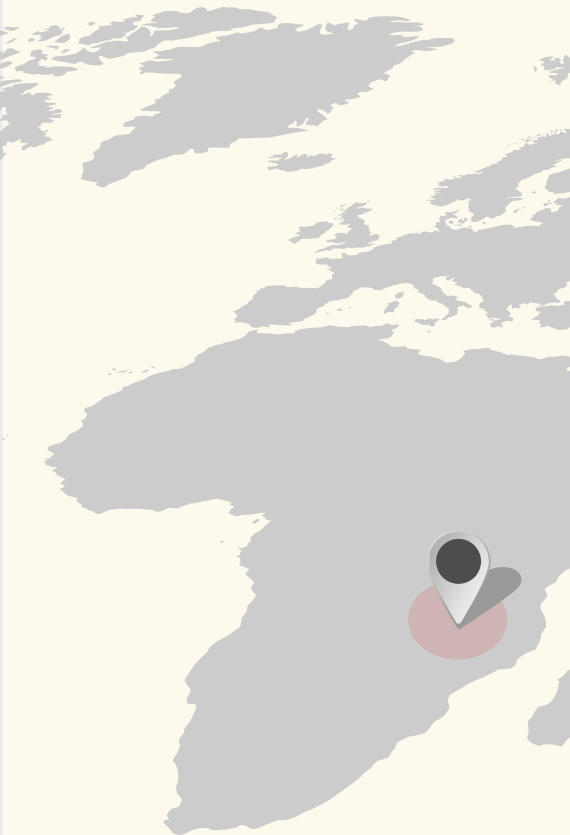
Malawi

▶ **Executive Summary**

This report discusses a 'mixed bag' of Malawi's state of digital rights and inclusion in 2022. Commendably, Malawi registered significant milestones in the ICT and digital space including the establishment of the country's first ever National Data Centre; licensing of two new mobile companies; lowering of the cost for internet data; and launching of the Universal Service Fund Strategic Plan. The government decriminalised sedition through amendment of sections 50 and 51 of the Penal Code (protected flags, emblems and names), an indelible step in safeguarding and guaranteeing the freedom of expression and media freedoms.

At the same time, 2022 presented a difficult climate for the respect of human rights as the State intensified criminalisation of online speech, arresting several individuals; and stifling media freedoms marked by massive closure of media houses. Further, the enactment of the Data Protection Bill into law remained a pipedream as the government took no significant steps. The digital divide also remained wide with a majority of the citizens, particularly the historically marginalised groups such as the poor, the rural, women and persons with disability, having no access to internet and mobile services.

Pursuant to the gaps, opportunities and recent developments in the ICT sector in Malawi, this report makes actionable recommendations to the government, civil society, media, and development partners. Among others, the report calls on the government to remove barriers to internet and mobile services access; refrain from criminalisation of freedom of expression and guarantee media freedoms; repeal criminal defamation laws in the Penal Code, and step up investigation of digital rights violations. Similarly, civil society is implored to invest in digital literacy programs for rural masses; establish protection mechanisms for victims of digital rights violations; support capacity strengthening of law enforcement agencies in digital rights; and strengthen digital rights coalitions and networks to bolster civil society agency in digital rights advocacy. Equally, development partners, including donors, in Malawi are urged to increase support to civil society and government initiatives on digital rights, freedom of expression and access to information, and intentionally leverage the diplomatic avenues to engage government authorities on key human rights concerns.
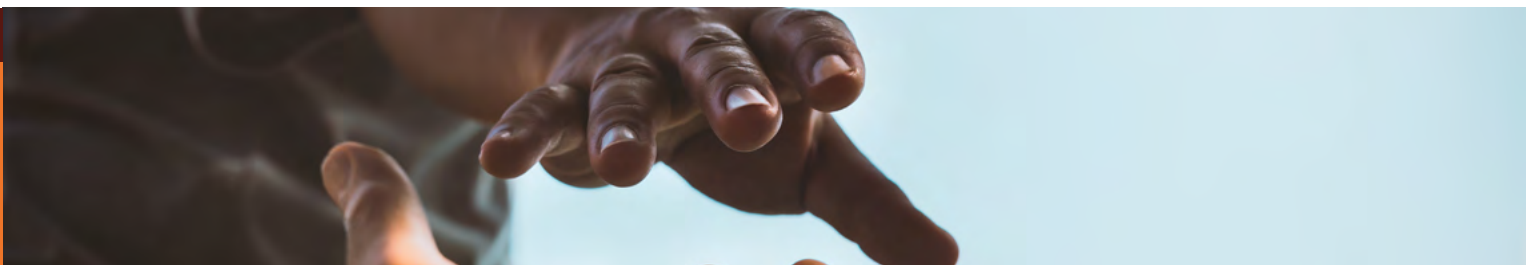
Introduction

With a population of 17.5 million people, Malawi is located in Southern Africa, sharing its borders with Mozambique, Zambia and Tanzania. It ranks 174/189 on the 2019 Human Development Index, with poverty stubbornly reigning high, trapping 51.7 per cent of the population below the poverty line and 25 per cent in extreme poverty.[1]

Inequality also ravages high with a Gini Coefficient of 0.6.[2] The country's development is heavily donor- and credit-dependent with public debt stock standing around MK6.38 trillion (about US$6.5 billion), as at September 2022. Affected by poor infrastructure, only 12.7 per cent of the country's population has electricity, and internet penetration is only 14.6 per cent. According to the World Bank, poverty in Malawi is driven by low productivity in the agriculture sector, limited opportunities in non-farm activities, volatile economic growth, rapid population growth, limited coverage of safety net programs and targeting challenges, among others, posing a threat to the socio-economic development of the country.[3] In a region that is growing fast, unless there is significant intervention, Malawi is in danger of being left behind.

In a bid to reverse its development misfortune, in January 2021, the Government launched the Malawi 2063 (MW2063) plan, a long-term national development vision that aims to transform Malawi into a wealthy and self-reliant industrialised upper middle-income country by the year 2063. MW2063 recognises technological innovation as a central feature in propelling the country's economic revolution.

Crucially, Malawi has a relatively strong international normative framework for human rights in relation to freedom of expression (FoE) and access to information (ATI). It has ratified various international human rights instruments in relation to FoE and ATI. These instruments include the African Charter on Human and Peoples Rights; Universal Declaration on Human Rights (UNDHR); 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. However, Malawi has neither signed nor ratified the African Union Convention on Cyber Security and Personal Data Protection.[4]

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1   International Monitory Fund 'Country Report No. 17/184' (2017) file:///C:/Users/User/Downloads/cr17184.pdf (accessed on December 17, 2022).
2   National Planning Commission 'Malawi 2063'.
3   Sosten Gwengwe, Minister of Finance speaking at the National Youth Conference on State of Governance and Youth Development in Lilongwe on September 21, 2022.
4   African Union, African Union Convention on Cyber Security and Personal Data Protection, Status List, https://au.int/

Country Analysis

INTERNET ACCESS AND DISRUPTIONS

The 32nd Session of the United Nations Human Rights Council (2016) affirmed that the same rights enjoyed offline must also be protected online. Similarly, Principle 37(2) of the ACHPR Declaration is authoritative that "States shall recognise that universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights". Thus, access to the internet must be universal and affordable for all citizens.

Domestically, the Malawi Communications Regulatory Authority (MACRA) is mandated to ensure that: "...so far as it is practicable, every citizen in Malawi should have access to sufficient, reliable and affordable communication services".[5] The government is thus under legal obligation to provide telecommunication services including internet to all citizens including the historically marginalised groups such as the rural-based, the poor, women and persons with disability.

In response to the public outcry on prohibitive cost of internet, Malawi's two dominant mobile internet providers, TNM and Airtel Malawi, introduced more affordable internet packages called *Pamtsetse* and *Mofaya* respectively on promotion basis. Paradoxically, however, in August 2022, TNM introduced a 20-per cent tariff hike on the average effective rate for both voice and data services.[6] TNM attributed the tariff hike to a government-induced 25 per cent devaluation of the Malawi kwacha (MWK) and inflationary pressures. As of December 2022, a monthly 10 GB data bundle cost 15,500 kwacha ($15) with both Airtel Malawi[7] and TNM in addition to a 17.5 per cent value-added tax (VAT) on mobile phones and services, a 16.5 per cent VAT on internet services, and an additional 10 per cent excise duty on mobile phone text messages and internet data transfers. Consequently, this has exacerbated the prohibitive cost of internet, further deepening the digital divide for a country with already one of the lowest internet penetration and worst earning income, with minimum wage pegged around $50. Worse still, despite MACRA's announcement in November 2020 to introduce regulations removing expiration dates for internet bundles, as of December

sites/default/files/treaties/29560-sl-AFRICAN%20UNION%20CONVENTION%20ON%20CYBER%20SECURITY%20AND%20PERSONAL%20DATA%20PROTECTION.pdf (accessed December 10, 2022).

5   Section 4(1) of Communications Act, 1998.

6   *Comms Update, "Currency devaluation, inflation force TNM to hike tariffs by 20%" (17 August 2022)* https://www.commsupdate.com/articles/2022/08/17/currency-devaluation-inflation-force-tnm-to-hike-tariffs-by-20/ (accessed December 27, 2022)

7   Airtel Malawi Bundle Purchase (airtel.mw)

2022, no such regulation was in force.[8]

Despite some gains, the digital divide remained perennial as the penetration and utilization of ICTs remained significantly low.[9] Only 14.6 per cent of the population had access to internet, 9.3 per cent of whom are in rural areas as compared to 40.7 per cent of urban areas.[10]

Digital illiteracy also remained high according to a recent survey by the country regulator Malawi Telecommunications Regulatory Authority (MACRA), showing that 46 per cent of Malawians indicated they don't use the internet because they don't know what it is, and 2.4 per cent expressed that they don't use it because it is too expensive.[11] Further, while radio broadcasting is almost universal in Malawi with a coverage of above 95 per cent, after the digital transition, television coverage is only 55 per cent, leaving most parts of the country without coverage, especially in the Northern region.[12]

There is also violent digital exclusion along gender lines. According to the National Statistical Survey, 15.4 per cent men use the internet in Malawi, as compared to 12.4 per cent women.[13]

Malawi's low investment in ICT has serious economic implications. 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".[14] Power challenges adversely affect the delivery of ICT services and the economy at large.

Critically, there were no connectivity disruptions in the year. The last known restriction was reported in May 2019 during the country's tripartite elections, shortly after polling stations had closed. However, 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 blocking of social media platforms. 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.

FREE SPEECH AND MEDIA FREEDOMS

Malawi's internet freedom in 2022 dropped

from position 57 in 2021 to 66 out of 100 countries on Freedom on the Net ranking (by

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8   M Malakata, "Malawi fast-tracks regulation to halt expiry dates on data bundles" (November 19, 2020) https://itweb.africa/content/mYZRX79alA87OgA8 (accessed on December 21, 2022).
9   Freedom House 'Freedom on the Net 2021' (2021)
10   National Statistics Office (2020) 'National Survey on Access and Use of Information and Communication Technologies by Households and Individuals in Malawi 2019'.
11   As above
12   MACRA, Universal Service Fund Strategic Plan 2022 – 2027 (2022)
13   National Statistics Office, "National Survey on Access and use of Information and Communications Technologies by Households and Individuals in Malawi 2029" March 1, 2021 , http://www.nsomalawi.mw/images/stories/data_on_line/economics/ICT/ICT%2...
14   World Bank 'Malawi Economic Monitor: Investing in Digital Transformation' (December 23, 2022.

Freedom House's), as the State sustained crackdown against journalists and citizens critical of the government for their online content.[15]

In April 2022, Police detained Gregory Gondwe, the chief executive officer of an online investigative platform, *Platform for Investigative Journalism* (PIJ), following a series of critical stories exposing corruption in the government. Police tried to force Gondwe to reveal his sources on one of the government corruption stories. During the raid, police also seized PIJ's equipment including a computer and Gondwe's phone, before the PIJ's website was hacked a few days later.[16] Following public pressure, including from diplomats, Gondwe was released without any charge, and later, the Attorney General apologised for the unlawful arrest.[17] The State's action was clearly a violation of both the national and international law. Section 50 (1) of the ATI Act of 2016 guarantees the protection of whistle-blowers. Similarly, Principle 20 of the African Commission's Declaration on Access to Information and Freedom of Expression (ACHPR Declaration)[18] authoritatively provides that journalists and other media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except where disclosure has been ordered by a court after a full and fair public hearing; and further calls on States to take measures to prevent attacks on journalists and other media practitioners, including, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, threats and unlawful surveillance undertaken by State and non-State actors.

In January 2022, police arrested Joshua Chisa Mbele for sharing a list of government officials allegedly implicated in a corruption scandal linked to a business tycoon Zunneth Sattar on his Facebook account. He later deleted the post claiming that he had fallen for misinformation.[19] His arrest followed a complaint by the Army General of the Malawi Defence Force (MDF) who was among the listed individuals in Mbele's Facebook post. He was charged with criminal libel under the Penal Code and publication of offensive communication under the Electronic Transactions and Cyber Security Act. The matter is still in court as at December 2022.

Again, in September 2022, Mbele was summoned by a Supreme Court Judge for making comments on Facebook that allegedly referred to female judges as ugly. He appeared before the Supreme Court justice for cautioning.[20] This could be seen as a form of intimidation and a threat to freedom of expression. Principle 23(3) of the Declaration is also instructive that States shall not prohibit speech that merely lacks civility or which offends or disturbs.

In March 2022, a 39-year-old man, Joseph Matthews, was arrested in Lilongwe City for posting on Facebook an allegation that a Member of Parliament diverted maize meant for his constituency.[21] He was charged with cyberstalking under the Electronic Transactions and Cyber Security Act. Police later dropped the charges against Mathews on the instructions of the accused Member of Parliament.

In January 2022, police issued a warrant of arrest against a political activist, Bon Kalindo,

15   Freedom House 2022 https://freedomhouse.org/country/malawi/freedom-net/2022
16   L Masina 'Malawi Police Accused of Hacking Website of Investigative Media Group' (April 17, 2022) https://www.voanews.com/a/malawi-police-accused-of-hacking-website-of-i... (accessed on December 9, 2022)
17   L Masina 'Malawi Government Apologizes Over Police Detention of Journalist' (April 7, 2022) https://www.voanews.com/a/malawi-government-apologies-over-police-detention-of-journalist/6519449.html (accessed on December 15, 2022).
18   African Commission on Human and People's Rights (ACHPR) Declaration on Freedom of Expression and Access to Information (the Declaration) https://www.achpr.org/legalinstruments/detail?id=69 (accessed on December 20, 2022).
19   Malawi 24 'Malawi Police arrest social media activist' https://malawi24.com/2022/01/11/malawi-police-arrest-social-media-activist/ (accessed on December 9, 2022).
20   The Daily Times (September 8, 2022) https://web.facebook.com/118423691576650/posts/times360newsthe-supreme-court-of-appeal-sitting-in-blantyre-has-adjourned-to-thu/5411743648911268/?_rdc=1&_rdr (accessed December 9, 2022).
21   Nyasa Times 'Facebook Post lands man in trouble' https://www.nyasatimes.com/facebook-post-lands-man-in-trouble/ (accessed on December 9, 2022).

for allegedly insulting President Lazarus Chakwera. The warrant was later withdrawn after public outcry.

Previously, police had arrested various journalists and individuals for their content online. On April 6, 2021, a freelance journalist, Watipaso Mzungu was summoned to national police headquarters in Lilongwe over an online story he published on *Nyasa Times* which was deemed critical of the president.[22] 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.[23] 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.[24]

In June 2021, the senior magistrate court in the capital city Lilongwe convicted and sentenced Ignatius Kamwanje to a K200,000 ($270) fine or 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.[25] Kamwanje was convicted for the offence of "spamming" under Section 91 of the Electronic Transactions and Cyber Security Act of 2016.[26]

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 police custody under questionable circumstances.[27] 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 ($64) or in default serve a one-month jail term.

Media freedoms were under siege in the year as the regulator, Malawi's Communications Regulatory Authority shut down about 20 radio stations and three TV stations due to delayed payment of annual licence fees. Several other media houses were facing similar threats. By the end of the year, up to 30 broadcasting outlets are expected to close as a result of that decision.

According to Media Institute for Southern Africa (MISA), Malawi Chapter, on August 24, 2022, "Over 250 full-time and part-time media practitioners and support staff have lost jobs at the stations whose licences have been revoked; *Rainbow Television* (70), *Ufulu FM* (34), *Joy Radio* (40), *Capital Radio* (45) and others coming from *Sapitwa FM*, *Galaxy* and *Angaliba*".[28] This is disastrous for an emerging media ecosystem and a country facing serious unemployment crisis. MISA attributed the no-compliance largely to the economic crisis facing the country in view of the Covid-19 pandemic which did not spare the media.

Crucially, the annual fees, costing the equivalent of US$5,000, were prohibitively exorbitant for most media operators particularly community radios. According to MISA, these annual fees were 10 times more expensive than costs for the high-end hotels and admission to private hospitals. MISA argued that "The revocation of licenses is too drastic and can be construed as a systematic violation of freedom of expression

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22   S Chitete 'Police chief justifies journalists' questioning' https://www.mwnation.com/police-chief-justifies journalists-questioning/ *(*accessed on December 9, 2022).
23   R Kondowe 'Journalist Arrested Over Fake News' https://malawi24.com/2021/02/27/journalist-arrested-over-fake-news/ (accessed on December 11, 2022).
24   Freedom House 'Freedom on the Net 2021' (2021).
25   C Chinoko 'Court convicts Facebook user over malicious post' Court convicts Facebook user over malicious post - The Nation Online (mwnation.com) (accessed on December 11, 2022).
26   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".
27   *The Malavi Post 'Be warned! Malawi Court fines woman over fake viral voice note'* https://www.maravipost.com/be-warned-malawi-court-fines-woman-over-fake-viral-voice-note/ (accessed on January 14, 2022).
28   MISA Malawi's Press Statement 'Shrinking of broadcasting space in Malawi threatens democracy, essential rights' (August 24, 2022).

in the country".[29]

In some cases, which could be deemed politically motivated, some media operators were still shut down despite paying the annual fees after revocation of their licences. The now defunct *Rainbow Television*, a critical outlet on governance, managed to pay its fees a few days after the notice's due date, and their attempts to negotiate with the regulatory body to avoid closure proved futile. At the time of closure, various government departments owed the TV station huge sums in advertisements on Covid-19 health measures, consequently affecting their revenue.[30]

This pattern of crackdown on online dissent and climate of intimidation may prompt a degree of self-censorship, especially among media practitioners and social media users.[31] Section 36 of the Malawi Constitution guarantees freedom of the press. In addition, Principle 20(1) of the 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.[32]

MISINFORMATION AND HATE SPEECH

Laudably, on November 21, 2022, Malawi Parliament repealed the sedition laws in the Penal Code.[33] The amendment of sections 50, 51, 52 and 53 of the Penal Code of Malawi which provide for seditious intention, seditious offences, forfeiture and prohibition of publication and legal proceedings on sedition decriminalises sedition and other related offences. 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'.

All successive governments in Malawi have used sedition charges to restrict freedoms of expression and opinion; and silence critical voices. The amendment is a huge victory for human rights and media freedom campaigners as it bolsters the enjoyment of freedom of expression. According to MISA Malawi, "The amendment is a significant step towards protection and realisation of fundamental rights provided for in the Malawi Constitution... the move will open up the civic space and ensure unhindered participation of every Malawian in the democratic discourse." [34]

However, Malawi did not make any progress in repealing criminal libel 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. In addition, Section 60 of the penal code prohibits "publication of false news likely to cause breach of peace". Such provisions on defamation and 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."[35] 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.[36]

29   C Pensulo 'Closure of TV and radio stations in Malawi threatens recent gains in press freedom' (November 9, 2022) https://ijnet.org/en/story/closure-tv-and-radio-stations-malawi-threatens-recent-gains-press-freedom (accessed on December 12, 2022).
30   As above.
31   The Malawi Post 'Be warned! Malawi Court fines woman over fake viral voice note' (May 10, 2021) https://www.maravipost.com/be-warned-malawi-court-fines-woman-over-fake-viral-voice-note/ (accessed on December 12, 2022).
32   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 December 12, 2022).
33   MISA Malawi 'Members of Parliament in Malawi remove sedition as criminal offence'   https://malawi.misa.org/2022/11/22/members-of-parliament-in-malawi-remove-sedition-as-criminal-offence/ (accessed on December 15, 2022).
34   As above.
35   African Commission Declaration of Principles on Freedom of Expression and Access to Information in Africa.
36   *Lohé Issa Konaté vs The Republic of Burkina Faso* 004/2013 https://www.african-court.org/en/images/Cases/Judgment/Judgment%20Appl.004-2013%20Lohe%20Issa%20Konate%20v%20Burkina%20Faso%20-English.pdf (accessed

Misinformation remained a huge challenge, affecting critical services including the polio vaccination program which aims to vaccinate 2.9 million children nationwide. According to World Health Organisation, at some point, polio vaccination refusal was at 50 per cent, with families fearing that the polio vaccine was a drinkable vaccine against Covid-19. Ms Mercy Uledi, a trained polio vaccinator succinctly shares her experience: "I found families refusing to get their children vaccinated against polio for several reasons, and the main one was the confusion driven by the Covid-19 pandemic and the misinformation around it."[37]

There were also a lot of fake articles and documents circulating on social media which are misinformation or hate speech. Information pollution was widely shared via social media platforms including WhatsApp audio and Facebook posts, affecting the citizens' capacity to make informed decisions.

There were also isolated cases of hate speech. In April 2022, police in Lilongwe City arrested a 51-year-old man, Dauka Manondo, over alleged cyber harassment. Manondo posted a photo of Minister of Labour Hon Vera Kamtukule, in a WhatsApp group, along with insulting words suggesting she was exchanging sex with appointing authorities for political favours.[38]

PRIVACY AND SURVEILLANCE

Section 21 of the Malawi Constitution guarantees the right to privacy. In the reporting period, various stakeholders bemoaned State surveillance in social media platforms leading to arrests of individuals over content. In November 2022, police arrested a 39-year-old nurse, Chidawawa Mainje, for insulting President Lazarus Chakwera during a WhatsApp debate on governance. He was charged with cyber harassment under section 86 of the

Electronic Transactions and Cyber Security Act 2016, which attracts up to five years in prison and a fine of $2,500.

Human rights and media groups expressed concern over intensified State surveillance and the use of cyber security laws noting that politicians used the measure to silence dissenting views. In a joint statement, the groups observed the chilling effect of State surveillance and a climate of intimidation on freedom of expression and active citizen participation in critical governance issues affecting Malawi, arguing that it may prompt a degree of self-censorship, especially among

media practitioners and social media users. "WhatsApp is a private social media platform protected by encryption for a reason, to safeguard the privacy of communications,"[39] they observed. Moreover, Principle 38(1) of the ACHPR Declaration clearly prohibits State's

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December 15, 2022).

37   World Health Organisation 'Malawi fights misinformation around the current polio vaccination in the midst of COVID-19 and cholera emergencies' (30 March 2022) https://www.afro.who.int/photo-story/malawi-fights-misinformation-around-current-polio-vaccination-midst-covid-19-and (accessed on December 15, 2022).

38   Z Nanguwo (April 28, 2022) https://web.facebook.com/zbsnews/photos/a.913387262040571/5242538582458729/?paipv=0&eav=AfZO3bHf2Qv9aeLO7LgwSd7ZNaiy1lJJacAKYrqlK1pxga9RREW9epEtoTPTeZzucJQ&_rdc=1&_rdr (accessed on December 15, 2022).

39   A Joint statement of CSOs on Concerns over rising incidents of Police surveillance, interception of private conversations, and crackdown on freedoms of expression and the Press in Malawi (May 2, 2022).

interference with the right of individuals to seek, receive and impart information through any means of communication and digital technologies, through measures such as the removal, blocking or filtering of content, unless such interference is justifiable and compatible with international human rights law and standards.

DATA GOVERNANCE

DATA PROTECTION

Despite developing the Data Protection Bill in 2021, Malawi does not have the data protection law. There was no significant movement on the Bill as it was still with the Ministry of Justice. If passed into law, the legislation will protect the right to privacy of the individual in line with Malawi's obligations under international human rights law.[40] Stakeholders have however already raised concerns over the Bill. According to the Collaboration on International ICT Policy for East and Southern Africa (CIPESA), while the Bill contains various positives including core principles on the 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 the Malawi Communications Regulatory Authority (MACRA) as prescribed under Section 4 of the Communications Act, 2016[41], may significantly undermine and limit the financial, decisional and institutional independence of the DPO.[42]

In 2022, the Government proactively took steps to develop the regulations for the pending Data Protection Act, a move cautioned by civil society arguing that the regulations should have waited for the enactment of the Bill, as a standard practice.[43]

In July 2022, the Government of Malawi launched the first ever National Data Centre in the commercial city of Blantyre. "We have launched the country's first ever National Data Centre, a digital infrastructure that raises our stakes in delivering data-driven, seamless and timely services to you fellow citizens," said Malawian President, Lazarus Chakwera.[44] Government has stated that the integrated infrastructure will allow interoperability between government systems, third party and private systems. Interlinkages with the private sector will be enhanced. According to Huawei Southern Africa Region President, Leo Chen: "Malawi places ICT as an enabler for economic

growth as highlighted in the Malawi 2063 (MW2063), that the country shall have robust ICT infrastructure with cross country coverage of reliable and affordable services fostering

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40   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 (accessed on December 15, 2022).

41   Communications Act, 2016 of the Republic of Malawi https://macra.mw/wp-content/uploads/2021/04/COMMUNICATIONS-ACT-2016.pdf (accessed on December 15, 2022).

42   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 (accessed on December 15, 2022).

43   Proceedings of the multi-stakeholder meeting on Data Protection Bill organised by Youth and Society in Lilongwe, Malawi on November 15, 2022.

44   DCD 'Malawi launches national data centre' (July 28, 2022) https://www.datacenterdynamics.com/en/news/malawi-launches-national-data-center/ (accessed on December 24, 2022).

technological adoption and digital access."[45]

Vincent Kumwenda, a Technology Engineer, lauded the Data Centre arguing it will lead to improved delivery of digital services to citizens because the current setup is that data hosting and management is very fragmented with some Ministries, Departments and Agencies having own servers while some are hosting in foreign cloud servers. He argues that "The lack of a proper data hosting facility and the limited capacity of the Government Wide Area Network has led to multiple issues such as servers burning due to inappropriate cooling, systems not being accessible for longer periods and challenges with harmonized data sharing across departments. There have also been instances where government websites have been compromised because of how and where they are hosted."[46] Kumwenda also argues that the Data Centre will ensure that important and critical systems that the government is implementing like IFMIS, the Malawi Traffic Information System (MalTIS), the digitalised Affordable Input Program (AIP) and the National ID will have a proper home where all the data will be stored and managed. The new Huawei-built facility will host all government-wide systems. However, in the absence of data protection law, there no guarantee of the safety of the data.
Digital IDs

The National Registration Bureau (NRB) continued to roll out the National ID Program. The National ID remained central in accessing essential services including banking, telecommunication and social protection programs. In addition, mandatory registration of SIM cards as prescribed by the Communications Act, 2016 was also in full force. Use of unregistered SIM cards is punishable under Section 93(3) of the Communications Act with a fine of five million kwacha ($6,400) and five years' imprisonment.

While mandatory SIM card registration is viewed as a critical mechanism of tackling cybercrime including monetary extortions and online child abuses; it also undermines citizens' ability to communicate anonymously via mobile phones, and perpetuates digital exclusion as individuals without official IDs are unable to register.[47] Further, in the absence of data protection law, the mass personal data collection has increased the possibility of State surveillance.[48]

REVIEW OF THE UNIVERSAL SERVICE FUND (USF)

Section 157 of the Communications Act of 2016, establishes the Universal Service Fund (USF) mandated to promote Universal Access and Services in under-served areas across Malawi. USF is hosted by MACRA and supports the regulator's mandate of ensuring that as far as it is practicable, dependable, and affordable communications services are provided throughout the Republic of Malawi and are sufficient to meet the demand for such services.[49] Specifically, USF seeks to provide resources for the provision of communications services comprising telecommunications, broadcasting, and postal services.

The Communications Act under Section 155 sets service priorities of USF which include access to the public fixed-line and mobile telephone network; access to the Internet; public payphone; directory services; free emergency services; access to essential postal services and basic financial services; access to broadcasting services; and any other services that the MACRA may determine, subject to the prior written approval of the Minister. MACRA is mandated to identify the rural or underserved communities in Malawi and then define, plan and coordinate the implementation of Universal service programs through identified

45   As above.
46   Interview with Vincent Kumwenda, a Technology Engineer, December 1, 2022.
47   C Handforth & M Wilson "Digital Identity Country Report: Malawi" (2019) https://www.macra.org.mw/?page_id=9582 (accessed on 24 December 2022).
48   J Kainja 'Are Malawians Sleepwalking into a Surveillance State?' (August 12, 2019) https://mwnation.com/are-malawians-sleep-walking-into-a-surveillance-st (accessed on December 24, 2022).
49   See Section 4(1) of Communications Act, 1998.

Plan outlines the mandate, strategic focus, and priorities to be pursued over the next five years to achieve the fund's objectives. Critically, the strategic plan envisions "Digital inclusion for all and its mission is "to facilitate provision and access of ICT services to bridge the digital divide."[50]

Some of the key outcomes of the strategy include ensuring communication services are made available, accessible, and affordable to the citizenry of Malawi; creating an environment that edifies fostering development and innovation using digital platforms; improving stakeholder engagement and management; improving institutional capacity; improving stakeholder engagement and management; strengthening financial management; and strengthening the supply chain management process.

operators.

In section 162 of the Communications Act, MACRA is required to develop rules to guide the functioning of the USF. Further, Section 159 mandates the Authority to appoint a committee to oversee the implementation of USF activities. In 2019, MACRA developed the USF Rules whose scope includes the design and implementation of universal access and service in Malawi. USF is financed through levies collected from licensees in the communications sector, among others. As at December 2022, USF had around $5 million, accumulated since 2017. However, the entire management of USF has been shrouded in secrecy, with very limited transparency by MACRA.

In a bid to bolster the efficiency of USF, in May 2022, MACRA launched a five-year USF Strategic Plan (2022-2027). The Plan seeks to support the regulator's legal mandate to establish and manage the USF. The Strategic

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

In addition to the launch of the National Data Centre (see Data Governance section above), Malawi registered some other notable developments in the digital sector. In October 2022, MACRA officially licenced Malcel, a new telecommunication company, to provide mobile services throughout the country. This is also hoped to break the 20-year duo-monopoly of the telecommunication sector dominated by Airtel Malawi and Telekom Networks Malawi (TNM), and bring competition. As at March 2022, Airtel Malawi had a market share of 55.4 per cent, ahead of TNM which had 44.6 per cent.[51] The new operator will install mobile phone towers, and provide mobile, ICT and broadband services beginning October 2023. The plan is to invest $280 million in the next five years, targeting 1,300 sites in both urban and rural areas.[52] According to the Minister of Information and Digitisation, "...this will induce

50 MACRA, USF Strategic Plan - 2022-2027 https://macra.mw/news/macra-launches-universal-service-fund-usf-strategic-plan-2022-2027/ (accessed on December 24, 2022).
51 Coms Update 'Malcel officially awarded mobile licence, plans to launch within twelve months' (26 October 2022) https://www.commsupdate.com/articles/2022/10/26/malcel-officially-awarded-mobile-licence-plans-to-launch-within-twelve-months/ (accessed on December 24, 2022).
52 Total Telecom 'Newcomer Malcel Set To Break Mobile Duopoly In Malawi' (26 October 2022) https://totaltele.com/newcomer-malcel-set-to-break-mobile-duopoly-in-malawi/ (accessed on December 24, 2022).

competition in the telecommunications industry which will level the playing field and yield effective communication services for the ICT consumer".[53]

In a related development, in October 2022, MACRA also awarded an operating licence to SpaceX's low Earth orbit (LEO), a satellite subsidiary to Starlink to operate high speed, low latency satellite broadband services. This is hoped to boost access by majority of the rural population considering that Starlink's low-orbit satellites are designed to offer high speed, low latency broadband internet in remote and rural locations across the globe.[54] When rolled out, Malawi will be one of the first African nations to give the LEO satellite service the green light. Other countries include Nigeria and Mozambique.

There were no notable Artificial Intelligence (AI) developments during the reporting period. There were no known efforts by the government to have legislation and national strategy on AI. ACHPR Resolution 473 calls on State Parties to develop 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.

GENDER AND ICT

The 2022 Global Gender Gap Index ranks Malawi on position 132 out of 146 countries, a significant drop from position 115 in 2021.[55] The gender divide in ICT access and usage remained persistent. According to the World Bank, 44.9 per cent of men own mobile phones as compared to 37.7 per cent of women. [56] In terms of usage, 68 per cent of men use a mobile phone, compared to just 56.2 per cent of women. Similarly, internet use also remains

higher among men at 15.4 per cent relative to 12.4 per cent among women. Thus, it is critical for the government to implement interventions to increase ICT access and use among women.

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53   Coms Update 'Newcomer Malcel Set to Break *Mobile Duopoly in Malawi*' (October 26, 2022) Https://Www.Commsupdate.Com/Articles/2022/10/26/Malcel-Officially-Awarded-Mobile-Licence-Plans-To-Launch-Within-Twelve-Months/ (accessed on December 24, 2022).
54   ComsUpdate 'MACRA licenses Starlink to provide satellite broadband in Malawi' (October 25, 2022) https://www.commsupdate.com/articles/2022/10/25/macra-licenses-starlink-to-provide-satellite-broadband-in-malawi/ (accessed on December 24, 2022).
55   World Economic Forum 'Global Gender Gap Index' (July 2022) https://www3.weforum.org/docs/WEF_GGGR_2022.pdf (accessed on December 27, 2022).
56   World Bank 'Malawi Economic Monitor: Investing in Digital Transformation' (June 23, 2021)

Conclusion and Recommendations

This report has demonstrated that the state of digital rights and inclusion in 2022 for Malawi was a huge mixed bag. On one hand, the State intensified criminalisation of freedom of expression online – arresting journalist and citizens' critical of government; stifled media freedoms through massive closure of media houses; and failed to enact the Data Protection Bill into law. Digital divide remained wide as access to Internet and mobile services by majority citizens particularly the historically marginalised groups such as the poor, the rural, women and persons with disability remained a major deficit. On the other hand, Malawi registered significant milestones in the ICT and digital space.

The establishment of the National Data Centre; licensing of two new mobile companies; lowering of Internet data cost; and launching of the USF Strategic Plan by MACRA should be commended as notable steps taken by the Government of Malawi and digital actors towards Government's obligations of providing universal ICT services to its citizens. Crucially, the Government decriminalised sedition from the Penal through amendment of section 50 and 51 of the penal code (protected flags, emblems and names), a critical towards guaranteeing freedom of expression.

Pursuant to the existing gaps, opportunities and recent developments in the ICT sector, the following recommendations are made:

| GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
To the Government	*To mobile network operators*	To the Civil Society
• Intensify implementation of the Malawi Digital Economy Strategy to ensure accelerated universal access to Internet and mobile services. • 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, particularly the	• Collaborate with non-state actors in advocating for conducive policy and legislative environment for digital rights and ICT actors. • Proactively partner with the government in bridging the digital divide including joint investment in ICT infrastructure targeting rural communities and provision of affordable data tariffs and mobile services.	• Challenge criminalisation of freedom of expression by the State through litigation and law reform advocacy. • Step up advocacy on enactment of the Data Protection Bill into law. • Intensify advocacy for Malawi's ratification of the African Union Convention on Cyber Security and Personal Data Protection. • Monitor the implementation of Malawi's five-year Digital Economy Strategy (2021-2026. • Invest in digital literacy

GOVERNMENT	MEDIA & DONORS	CIVIL SOCIETY
historically marginalised groups including rural populations, the poor, women and persons with disability. · Refrain from criminalisation of freedom of expression and guarantee media freedoms. · Refrain from all forms of surveillance in citizens' private social media conversations. · Repeal criminal defamation laws in the Penal Code, and amend sections 24(1) provisions (e) and (f) of the Electronic Transactions and CyberSecurity Act of 2016. · Ratify the African Union Convention on Cyber Security and Personal Data Protection. · Expedite enactment of the Data Protection Bill into law to provide for protection of personal data. · 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. · Malawi Human Rights Commission to step-up investigations of digital rights violations in accordance with its Constitutional human rights mandate.	To the Media · Ensure compliance with regulatory laws and policies to pre-empt State encroachment of media space. · Uphold professional ethics in reporting to avoid misinformation and disinformation. · Bolster advocacy in defending freedom of expression, media freedoms and access to information To the donor and development community · Support civil society and government initiatives on digital rights, freedom of expression and access to information. · Intentionally leverage the diplomatic avenues to engage Malawi Government authorities on public concerns regarding freedom of expression and digital rights violations	programs for the rural masses. · Establish protection mechanisms for victims of digital rights violations. · Support capacity strengthening of law enforcement agencies in digital rights. · Strengthen digital rights coalitions and networks to bolster civil society agency in digital rights advocacy.

Namibia
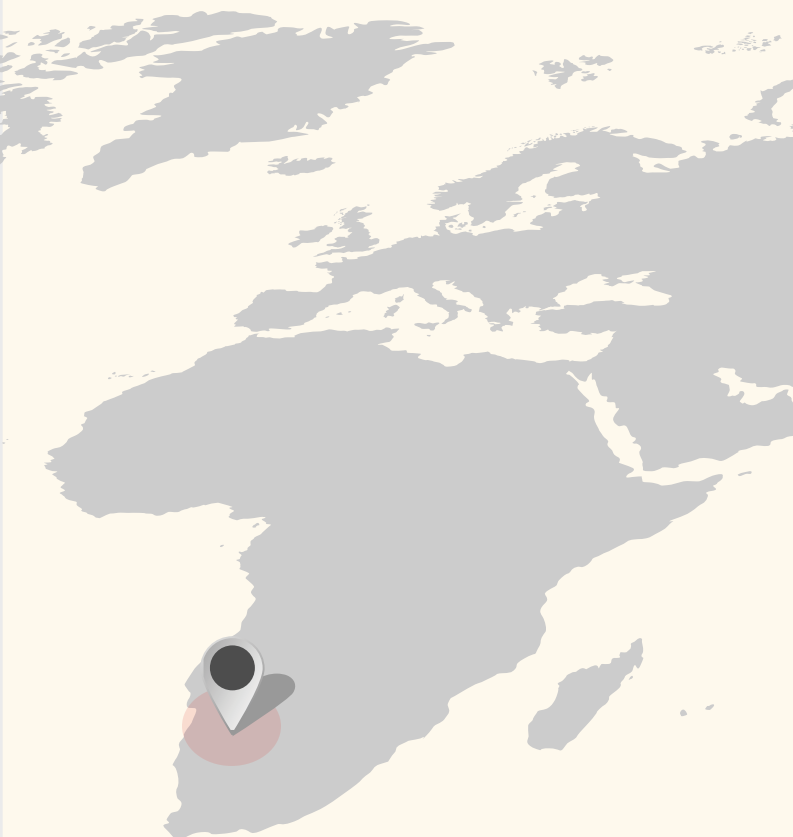
Executive Summary

With a small pool of regulatory bodies engaging on digital rights issues, and a relatively small civil society presence, Namibia has limited capacity to champion digital rights causes with speed. However, the digital rights landscape appears to be gaining some traction with the recent introduction of a Data Protection Bill. Of concern, the introduction of mandatory SIM card registration has been met with widespread apprehension from a surveillance perspective. On a more positive note, the country has largely upheld media freedom, enabled consistent and reliable access to the internet for those who are online, and is seemingly starting to grapple with AI regulation.
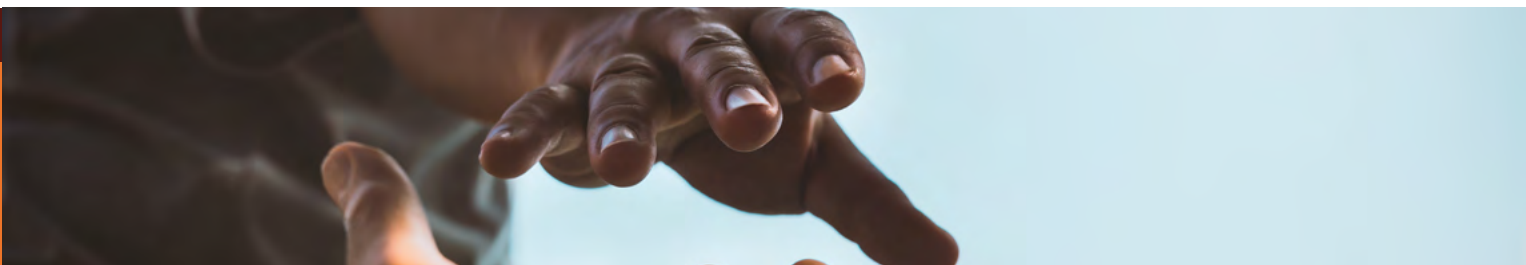
Introduction

Various actors have long called for the strengthening of digital rights protection in Namibia. As a constitutional democracy, Namibia carries the obligation to promote various rights and freedoms, including rights that find application in the digital world such as freedom of speech and expression, freedom of the press and other media, and the right to privacy.[1] At the start of 2022, internet penetration rate in Namibia was reportedly 51.0 per cent,[2] which exceeds the Sub-Saharan average of 30 per cent.[3] Moreover, with respect to the gender digital divide, Namibia has one of the fastest-growing rates of regular internet use by women in the Southern African Development Community (SADC).[4] Thus, it is clear that questions around digital rights impact a considerable portion of the population.

In terms of its regional commitments, in 2019 Namibia ratified the African Union Convention on Cyber Security and Personal Data Protection, commonly referred to as the Malabo Convention.[5] Namibia has also ratified a host of other key regional and international instruments which safeguard and advance human rights which can be applied to the digital world, for example, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and People's Rights (African Charter).

Although it has taken considerable time, the development of a Data Protection Bill is one of the most notable developments on the digital rights front in 2022. Of concern has been the introduction of mandatory SIM card registration.[6] When assessing the milestones and challenges in Namibia's governance during the period under review, the state of media freedom, surveillance, and the universal service fund (USF) should be taken into consideration. These themes, along with others, are detailed below.

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1   Articles 13 and 21 of the Constitution of Namibia https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf (accessed on 7 December 2022).
2   Data Reportal 'Digital 2022: Namibia' (2022) https://datareportal.com/reports/digital-2022-namibia#:~:text=Namibia's%20internet%20penetration%20rate%20stood,percent)%20between%202021%20and%202022 (accessed on 7 December 2022).
3   Internet Society, 'The Internet Society pledges to expand internet access in Africa' (2022) https://www.internetsociety.org/news/press-releases/2022/the-internet-society-pledges-to-expand-internet-access-in-africa/ (accessed on 20 January 2023).
4   Centre for Human Rights 'The Digital Rights Landscape in Southern Africa' (2022) https://www.chr.up.ac.za/images/researchunits/dgdr/documents/reports/Digital_Rights_Landscape_in_SADC_Report.pdf (accessed on 14 December 2022).
5   African Union Status List: Convention on Cyber Security and Personal Data Protection (2020) https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection (accessed on 7 December 2022).
6   Links 'New surveillance regulations lurk threateningly in Namibia' (2022) https://www.apc.org/en/news/new-surveillance-regulations-lurk-threateningly-namibia#:~:text=The%20regulations%20and%20conditions%20mean,continuous%20bulk%20or%20mass%20 surveillance (accessed on 7 December 2022).

Country Analysis

INTERNET FREEDOM

Internet access and disruptions
One of the ways in which meaningful access can be assessed is through cost. The cost of mobile data in Namibia remains disproportionately high. The Communication Regulatory Authority of Namibia (CRAN) has attributed this to a lack of competition in the market.[7] Similar to other parts of the southern Africa region, there has been little momentum for the implementation of 5G technology. In June 2022, mobile network operator Mobile Telecommunications Company (MTC) was in the midst of negotiations with the government to end a moratorium on the deployment of 5G networks.[8] Another tenet of meaningful access is consistency and reliability.[9] In recent years, internet disruptions have become increasingly prevalent across the continent[10] and it may be argued that such disruptions can be categorised under two buckets. The first bucket is internet disruptions as a result of unstable digital infrastructure; and the second is internet disruptions that are deliberately caused by the government, with the support of telecommunications regulators and Internet Service Providers (ISPs), for political purposes. With respect to the first bucket, Namibia can be lauded for its consistent electricity supply. NamPower, the State-owned power utility has committed to making Namibia energy self-sufficient through new domestic generation capacity.[11] With respect to the second bucket, there have been no reported internet shutdowns in 2022, politically-motivated or otherwise.

Digital inclusion has not been fully realised in Namibia. As pointed out earlier, only half of Namibia's population has access to the internet. Although there are concerted efforts towards closing the gender digital divide, transformation with respect to other manifestations of the digital divide is needed. For example, the urban-rural gap with respect to mobile network coverage in urban versus rural areas is clear. Research shows that about 80 per cent of rural areas enjoy coverage in comparison with 95 per cent in urban areas.[12] The statistics on personal or household access to a computer or laptop in 2022 were low. Only 40 per cent of people had access to a household computer or laptop, with 26 per cent owning one and 15 per cent relying on a device which is collectively owned by the household.[13]

Meaningful access to the internet should include vulnerable groups such as persons with disabilities (PWDs). A study considering information and communication technology (ICT) barriers for PWDs in Namibia in 2011 found that factors such as education level, work status, age, and place of residence could impact a disabled individual's access.[14] Over a

7   Heita 'Lack of competition makes data expensive in Namibia - CRAN' (2022) https://www.eaglefm.com.na/news/lack-of-competition-makes-data-expensive-in-namibia-cran/   (accessed on 8 December 2022)
8   Malakata, 'Namibia keeps mum on 5G rollout strategy' (2022) https://itweb.africa/content/KA3WwMdzYKpvrydZ (accessed on 8 December 2022).
9   Media Monitoring Africa lists consistency in service provision as a key consideration in achieving universal (and free) access to information online. Media Monitoring Africa 'Universal Access to the Internet and Free Public Access in South Africa // A seven-point implementation plan' (2019) https://internetaccess.africa/wp-content/uploads/2019/10/UA-Report.pdf (accessed on 7 December 2022).
10   CIPESA 'Litigating Internet Disruptions in Africa: Lessons from Sudan' (2022) https://cipesa.org/2022/03/litigating-internet-disruptions-in-africa-lessons-from-sudan/ (accessed on 7 December 2022).
11   International Trade Administration 'Namibia – Country Commercial Guide' (2022) https://www.trade.gov/country-commercial-guides/namibia-energy (accessed on 8 December 2022).
12   E Smit 'Internet access still a luxury in Namibia'(2022) https://www.erongo.com.na/technology-ero/internet-access-still-a-luxury-in-namibia2022-12-22 (accessed on 20 January 2023).
13   L Malephane 'Digital divide: who in Africa is connected and who is not' (2022) https://www.afrobarometer.org/wp-content/uploads/2022/12/AD582-PAP18-Digital-divide-Who-in-Africa-is-connected-and-who-is-not-Afrobarometer-Pan-Africa-Profile-13dec22.pdf (accessed on 20 January 2023).
14   N Indongo, 'ICT Barriers for People with Disabilities in Namibia: Evidence from the 2011 Namibia Population and

decade later, research reflecting the present-day position is scarce. It is also unclear what measures the Ministry of ICT (MICT) has taken to address this. In its National Broadband Policy (2018 - 2022), MITC discusses the digital divide by assessing only four structural variables: income levels, education level, age, and ethnicity.[15]

FREE SPEECH AND ONLINE SAFETY

Freedom of speech enjoys constitutional protection in Namibia. The Legal Assistance Centre (LAC) previously explained that freedom of speech extends to unfavourable speech and that this allows for important issues to be freely discussed and debated by all Namibians.[16] Further, in the landmark case of *Kausea v Minister of Home Affairs and Others*,[17] the Supreme Court explained that the limitation on free speech must be both reasonable and necessary so as to avoid unnecessarily depriving individuals of the enjoyment of their rights.[18] The 2022 Freedom House Rankings scored Namibia an impressive 77 out of 100 for observing political and civil rights.[19] There are, however, two issues related to free speech which are worth mentioning.

The first is that hate speech is still not regarded as an offence in Namibia. In 2021, there were calls for the Office of the Ombudsman to investigate alleged homophobic rhetoric by the South West Africa People's Organisation (SWAPO) Party Youth Leave (SPYL) which reportedly incited violence.[20] In August 2022, SWAPO leaders came under fire as the Landless People's Movement (LPM) listed SWAPO members that it believes should be charged

with hate speech.[21] The LMP, which described itself as an alternative political party fighting for social justice and equality, advised that it

would be handing over the list of names to the African Union (AU) and the United Nations (UN) in the hope that these bodies would impose sanctions on the impugned politicians. It is therefore apparent that harmful speech both by public figures and private individuals is a matter of concern in the country and there is limited domestic recourse to complainants.

From a racial standpoint, given Namibia's painful history with apartheid, it is regrettable that questions around hate speech and the legal implications thereof have not been clarified.

Housing Census' Review of Disability Journal: An International Journal (Volume 1, Issue 1) https://core.ac.uk/download/pdf/211326083.pdf (accessed on 20 January 2023).

15   Ministry of Information and Communication Technology, 'National Broadband Policy for the Republic of Namibia (2018 - 2022)' https://www.npc.gov.na/wp-content/uploads/2022/06/NamibiaBroadband-Policy-2018.pdf (accessed on 20 January 2023).

16   Legal Assistance Centre 'Know your Constitution!' (2018) http://www.lac.org.na/projects/sjp/Pdf/knowyourconstitution-eng.pdf (accessed on 8 December 2022).

17   *Kausea v Minister of Home Affairs and Others* 1995 NR 175 (SC) (1995) https://namiblii.org/na/judgment/supreme-court/1995/3 (accessed on 9 December 2022).

18   *Id* at page 23 .

19   Freedom House 'Freedom in the World 2022: Namibia' (2022) https://freedomhouse.org/country/namibia/freedom-world/2022 (accessed on 7 December 2022).

20   The Namibian 'Hate speech not defined as an offence - Ombudsman' (2021) https://www.namibian.com.na/212309/archive-read/Hate-speech-not-defined-as-an-offence-%E2%80%93-ombudsman (accessed on 9 December 2022).

21   Windhoek Observer 'LMP lists SWAPO leaders 'guilty' of hate speech' (2022) https://www.observer24.com.na/lpm-lists-swapo-leaders-guilty-of-hate-speech/ (accessed on 14 December 2022).

While the country has legislation in the form of the Racial Discrimination Prohibition Act of 1991.[22] to deal with racial discrimination, in particular, the legal position on other forms of harms has not been codified, particularly the ones that occur in the online context.

With all the benefits that digital technologies bring, including socio-economic development and growth, they can also facilitate violence.[23] Namibia, like other parts of the region, is experiencing a growing trend of online harms and more specifically, those targeting women.[24] However, lack of precise data poses a challenge in assessing the extent of the issue. Unfortunately, there is presently no national policy that deals specifically with online gender-based violence, and reviews of existing policies have been delayed reportedly due to the difficulty of holding consultations during the Covid-19 pandemic.[25] In 2022, seemingly no reasons have been provided for the continued delay on this subject. To a certain degree, provisions of the Communications Act of 2009[26] and the Cybercrime Bill of 2019 seeks to address online violence. The latter has, in recent times, been critiqued for adopting a flawed position on child sexual exploitation, the non-consensual sharing of intimate images (NCII), and voyeurism.[27]

In what may be regarded as a moment for advocacy for online violence against women, in December 2021, Namibia's First Lady Monica Geingos, spoke openly about her experiences with misogyny online.[28] The first lady referred to the gendered insults she has faced largely due to the age gap between herself and President Geingob, and her political stances. Research indicates that online violence is more likely to impact other disenfranchised groups such as members of the LGBTQI+ community and persons with disabilities.[29] According to Njuguna and Brown, social media posts by media houses regarding the LGBTQI+ community are more likely to receive more engagement which is, to a significant degree, misogynistic.[30] The experience such as that shared by the first lady, combined with existing research, is perhaps indicative of the reality that individuals across different ages and classes can be subjected to technology-enabled abuse, and that the issue deserves a greater degree of attention.

Disrupting Harm reports that nine per cent of children on the internet between the ages of 12 to 17 have experienced clear examples of online sexual exploitation and abuse (OCSEA).[31] The same report notes that fast tracking the enactment of the Cybercrime Bill and the Combating Sexual Exploitation Bill could assist with this. A further measure which may combat this is for the government to allocate sufficient funding to agencies such as the National Child Online Safety Taskforce. Given that children's rights, including the right to privacy are firmly protected in the Constitution, online harms which specifically affect children must be

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22   Accessible here: https://adsdatabase.ohchr.org/IssueLibrary/NAMIBIA_Racial%20Discrimination%20Prohibition%20Act.pdf.

23   AUDA-NEPAD 'Leveraging smart technologies to tackle gender-based violence in Africa' (2022) https://www.nepad.org/blog/leveraging-smart-technologies-tackle-gender-based-violence-africa#:~:text=Africa%20remains%20one%20of%20the,female%20genital%20mutilation%5B11%5D (accessed on 9 December 2022).

24   Internet Society Namibia Chapter and CIPESA 'Online violence against women and girls in Namibia – a country situational analysis' (2021) https://isocnamibia.org/wp-content/uploads/2022/05/Ovaw-Digital.pdf   (accessed on 7 December 2022).

25   Centre for Human Rights 'Understanding Online Gender-based Violence in Southern Africa' (2022) https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/FINAL_v_Understanding_oGBV_in_Southern_Africa.pdf (accessed on 7 December 2022).

26   Accessible here: http://www.lac.org.na/laws/annoSTAT/Communications%20Act%208%20of%202009.pdf.

27   IPPR 'Familiar Flaws – Unpacking Namibia's draft Cybercrime Bill' (2022) https://ippr.org.na/publication/unpacking-namibias-cybercrime-bill/ (accessed on 9 December 2022).

28   Mail & Guardian 'Namibia's first lady Monica Geingos fights social media trolls', (2021) https://mg.co.za/africa/2021-12-12-namibias-first-lady-monica-geingos-fights-social-media-trolls/ (accessed on 6 December 2022).

29   *Id.*

30   Above n 28.

31   Disrupting Harm 'Protecting children in Namibia from online sexual exploitation and abuse: the way forward' (2022) https://www.end-violence.org/sites/default/files/paragraphs/download/DH_Namibia_advocacy_FINAL.PDF (accessed on 26 January 2023).

addressed.

Another eminent issue with free speech is that the government has recently introduced mandatory SIM card registration which has enabled surveillance. This is explored below.

MEDIA FREEDOM

Even in a healthy democracy, concerns over journalistic safety are warranted given the complex and sensitive stories which journalists

may cover. According to *Reporters without Borders*, Namibia is one of Africa's highest-ranked countries with respect to media freedom. In 2022 the country received a score that placed it position 18 out of 180 countries.[32] One of the positive features of media freedom in Namibia is diversity in the media landscape – the most widely-read newspaper, *The Namibian*, is independently owned. President Geingob has previously declared that during his time in office, no journalist in Namibia would be arrested or detained for carrying out their duties.[33] Although there have been no journalist arrests in the period under review, multiple journalists were harmed by police during a protest in Windhoek in May 2022 where police officers fired rubber bullets to disperse the crowd.[34] One journalist, Elifas Bonifatius, fractured his ankle and was hospitalised from the incident. The Namibia Media Professionals Union (NAMPU) condemned the attack and called for accountability. Despite NAMPU's calls, it is unclear what action, if any, was taken to address the incident. From an online safety perspective, there were no reports of attacks on journalists in digital spaces in 2022.

PRIVACY AND SURVEILLANCE

In June 2022, CRAN launched a campaign for the mandatory registration of all SIM cards in Namibia.[35] All mobile users are to register by January 1, 2023 under Part Six of the Communications Act that deals with the interception of communications. Namibian civil society protested as this not only raises questions about censorship,[36] but also raises questions about compliance with the foundational principles of data protection.[37] In order to register, the following personal information will be required from customers: their full name, residential address, and Namibia identity/passport or driving license number (together with a copy of the applicable identity document). From a retention standpoint, CRAN requires mobile service providers to coordinate

32   Reporters Without Borders 'Namibia' (2022) https://rsf.org/en/country/namibia (accessed on 6 December 2022).

33   EagleFM 'No journalist will be arrested, detained - Geingob' (2021) https://www.eaglefm.com.na/news/no-journalist-will-be-arrested-detained-geiongob/ (accessed on 8 December 2022).

34   International Federation of Journalists 'Namibia: Journalist shot by police during protest' (2022) https://www.ifj.org/media-centre/news/detail/category/africa/article/namibia-journalist-shot-by-police-during-protest.html (accessed on 8 December 2022).

35   BioMetricUpdate.Com 'Lesotho, Namibia join trend of SIM card registration with biometrics' (2022) https://www.biometricupdate.com/202207/lesotho-namibia-join-trend-of-sim-card-registration-with-biometrics (accessed on 7 December 2022).

36   Heita 'Journalist sources could face threats amidst mandatory SIM card registration' https://www.eaglefm.com.na/news/journalist-sources-could-face-threats-amidst-mandatory-sim-card-registration/ (2022) (accessed on 7 December 2022).

37   Above n 7.

all registrations and store customers' data for up to five years.[38] The LAC, in a comprehensive policy brief, finds that based on comparative law, Namibia's telecommunications data retention scheme could potentially constitute an unconstitutional infringement on the right to privacy.[39] Concerns around this registration are justified given the Namibian government's previous behaviour on surveillance.[40] In 2016, the Universal Periodic Review (UPR) urged Namibia to exercise greater transparency on the operations of interception centres.[41] Nothing came of the UPR's calls.

Outside of the private sector warning consumers about digital fraud, specifically in the financial sector, there is little publicly-accessible information on notable privacy concerns during 2022.

DATA GOVERNANCE

DATA PROTECTION BILL
Namibia's history in developing data protection legislation has been complicated, with vastly different iterations of the Data Protection Bill having been shared with the public. The framework, as it currently stands, has some significant gaps. The Ministry of Information and Communication Technology (MITC) recently closed its call for public comments on the Bill, and only time will reveal whether the gaps are rectified. Whilst CSOs have urged the government to fast-track the promulgation of the Bill,[42] it is critical that the substantive issues are adequately addressed and aligned with best practices.

Some of the more notable issues with the Bill

are:

Extensive exceptions
The Bill currently lists a wide array of exceptions to the processing of personal data under section 43(1). While some of the exceptions are, on the face of it, reasonable, others are vague and could be subject to abuse. For example, two of the exceptions are processing done for the "important economic and financial interests of the State" and information which is processed for "other essential objectives of

general public interest". Without specificity on what constitutes "economic and financial interest of the State" and considering that "other essential objectives" may be regarded as a catch-all exception, there is broad scope

38   Connecting Africa 'Namibian mobile users urged to register SIMS' (2022) https://www.connectingafrica.com/author.asp?section_id=761&doc_id=778860 (accessed on 9 December 2022).
39   Legal Assistance Centre 'Communications Act 8 of 2009: Is the collection and retention of data on telecommunications users constitutional?' (2021) http://www.lac.org.na/projects/grap/Pdf/constitutionality_of_telecommunications_data_retention_schemes.pdf (accessed on 7 December 2022).
40   In 2016, Privacy International reported that the United Nations called on the Namibian government to reform its surveillance practices. This was due to the fact that interception centres operated outside of a legal framework. Furthermore, there was no clarity on the reach of legal interception.See Privacy International 'UN calls on Namibia, New Zealand, Rwanda, South Africa, Sweden to reform surveillance. Will the Governments act?' (2016) https://medium.com/privacy-international/un-calls-on-namibia-new-zealand-rwanda-south-africa-and-sweden-to-reform-surveillance-14aea8008b29 (accessed on 20 January 2023).
41   Mare 'Communication Surveillance in Namibia: An exploratory study' (2019) https://www.mediaanddemocracy.com/uploads/1/6/5/7/16577624/namibia_report_3rd_pages.pdf (accessed on 14 December 2022).
42   Press statement by ACTION (2022) https://action-namibia.org/https-action-namibia-org-wp-content-uploads-2022-11-action-data-protection-submission-pdf/ (accessed on 8 December 2022).

for these exceptions to be relied on by actors with ulterior motives. Surprisingly, the Bill does not create an exception for information that is processed for journalistic, literary, or artistic purposes. In failing to do so, this may be seen, to some degree, as stifling the media and those in the arts from performing in their respective industries.

Limited rights are conferred on data subjects

Although the Bill requires data subject notification, for the quality of information to be maintained, and where possible, collection directly from the data subject, no one provision succinctly outlines data subject rights. The aforementioned rights are fragmented in Part 3 of the Bill which render this portion of the Bill difficult to read.

Unclear alignment between the Supervisory Authority and the Information Commissioner as established in the Access to Information Law

Given the correlation between the right to privacy and the right of access to information, the Bill should provide some guidance on the harmonisation between the mandates and functions of the Supervisory Authority and the Information Commissioner. This will ensure that members of the public understand which body to approach under different circumstances.

At the time of writing, MITC had started regional consultations on the Bill.[43] As part of the consultations, the Deputy Director in the Ministry highlighted the role of different players in safeguarding the right to privacy. While this Bill goes through the process of becoming law, the protection of personal information is regulated by the Constitution and the international law which Namibia has ratified.

Digital Identity Documents

The deployment of digital or biometric identity documents (IDs) across the continent is not a new phenomenon – it is reported that approximately 50 African countries have begun to issue e-passports.[44] As an enabler of more effective health-data management, the move towards digital IDs was expedited by the Covid-19 pandemic.[45] This may be associated with restrictions impeding persons from engaging less with physical documents. Further, the use of digital IDs were useful in the deployment and management of vaccination programs.[46] In Namibia, digital IDs which may also be used as travel documents to neighbouring countries were launched in February 2021.[47] The Minister of Home Affairs explained that digital IDs are the most secure and are compatible with the specifications of the International Civil Aviation Organisation (ICAO). In February 2022, the governments of Namibia and Botswana opted to abolish the use of passports for travel between the two countries.[48] The agreement enables travellers to use their ID cards.

REVIEW OF THE UNIVERSAL SERVICE FUND

The Communications Act 2009 establishes a Universal Service Fund (USF) which is overseen by CRAN under Emilia Ngikembua as the current Chief Executive Officer. The establishment of the USF has not been

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43   Namibia News Digest 'MITC commences with regional consultations on Data Protection Bill' (2022) https://www.ifj.org/media-centre/news/detail/category/africa/article/namibia-journalist-shot-by-police-during-protest.html (accessed on 7 December 2022).

44   Africa Renewal 'African countries embracing biometrics, digital IDs' https://www.un.org/africarenewal/magazine/february-2021/african-countries-embracing-biometrics-digital-ids (2021) (accessed on 9 December 2022).

45   M Eichholtzer and J Marksell 'Digital ID Systems as an Enabler of Effective Covid-19 Vaccination' (2021) https://documents.worldbank.org/en/publication/documents-reports/documentdetail/347681639416116412/digital-id-systems-as-an-enabler-of-effective-covid-19-vaccination (accessed on 20 January 2023).

46   J Marskell et al. 'Digital IDs can help vaccination deployment, but should never be a barrier to access' (2021) https://blogs.worldbank.org/digital-development/digital-id-systems-can-help-vaccination-deployment-should-never-be-barrier (accessed on 26 January 2023).

47   The Sun 'New ID can double as travel document' (2021) https://www.namibiansun.com/news/new-id-can-double-as-travel-document2021-11-19 (accessed on 9 December 2022).

48   IOL 'Namibia and Botswana to abolish the use of passports between the two countries' (2022) https://www.iol.co.za/news/africa/namibia-and-botswana-to-abolish-the-use-of-passports-between-the-two-countries-62486da0-3f17-4a6d-b907-968d2594ea71 (accessed on 9 December 2022).

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

AI STRATEGIES

Namibia has not yet developed an AI strategy but is seemingly starting to contemplate its position on leveraging AI and developing an appropriate normative framework. Despite not having an AI strategy, Namibia is becoming responsive to the nuances of an AI framework. The country partnered with the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and the Southern African Development Community (SADC) to host AI consultations, particularly in response to the Fourth Industrial Revolution (41R).[51] In this way, the country could be seen to be building strategic partnerships and moving closer towards understanding and leveraging AI across multiple sectors. In September 2022, UNESCO hosted its sub-regional forum on AI in Windhoek. The theme of the forum was "Towards a sustainable development-oriented and ethical use of Artificial Intelligence".[52] During the forum, stakeholders in attendance adopted the UNESCO: Windhoek Statement on Artificial Intelligence in Southern Africa.[53] At the heart of the statement is a set of recommendations on, amongst others, AI and data governance, capacity-building and awareness-raising, investment and infrastructure, education, gender, and environmental concerns, and disaster risk reduction.

seamless which is evidenced by the Supreme Court's 2018 ruling that the collection of a levy was unconstitutional.[49] The regulations attached to the Communications Act attempt to cure some of the challenges with the USF. In September 2022, the Ministry of Education and MITC advised Parliament of the pressing need to provide free Wi-Fi services in public spaces and in particular, schools.[50] In order to do so, funding and electricity would be required. On the question of funding, the suggestion made was forming public-private partnerships and operationalising the USF. On the whole, information regarding the operationalisation and effectiveness of the USF is difficult to come not readily available.

49   Paradigm Initiative 'Londa – Digital Rights and Inclusion Africa Report 2020' (2021) https://paradigmhq.org/report/londa-digital-rights-and-inclusion-in-africa-report-2020-3/ (accessed on 6 December 2022).

50   The Namibian 'Free Wi-Fi needs electricity, parliament told' (2022) https://www.namibian.com.na/6223871/archive-read/Free-Wi-Fi-needs-electricity-parliament-told (accessed on 2 February 2023).

51   Open AIR '7 ways that African States are legitimising Artificial Intelligence'(2020) https://openair.africa/7-ways-that-african-states-are-legitimizing-artificial-intelligence/ (accessed on 9 December 2022).

52   See UNESCO announcements page 'UNESCO Southern Africa sub-Regional Forum on Artificial Intelligence: "Towards a sustainable development-oriented and ethical use of Artificial Intelligence", 7-9 September 2022' (2022) https://iite.unesco.org/announcements/unesco-southern-africa-sub-regional-forum-on-artificial-intelligence-towards-a-sustainable-development-oriented-and-ethical-use-of-artificial-intelligence-windhoek-namibia-7-9-september-2022/ (accessed on 9 December 2022).

53   UNESCO 'Windhoek Statement on Artificial Intelligence in Southern Africa' (2022) https://unesdoc.unesco.org/ark:/48223/pf0000383197 (accessed on 9 December 2022).

Conclusion and Recommendations

Digital inclusion can enable a host of other rights. For this reason, concerted efforts toward clear and appropriate digital rights governance must remain a priority in 2023 and beyond. The following recommendations will hopefully drive Namibia towards not only doing the minimum to meet its obligations but to become a regional front-runner in upholding fundamental rights in digital spaces and enabling its citizens to fully benefit from the joys of the internet.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
Government should therefore consider the following: · Provide urgent responses to the well-publicised privacy concerns as a result of mandatory SIM card registrations and enforce shorter data retention periods. · Amend the Data Protection Bill in line with best practices while also prioritising its promulgation. · Develop and provide periodic updates to members of the public on a comprehensive Hate Speech Bill. As the Bill is formulated, public participatory processes are a must. · Proactively provide information on the USF and CRAN for public assessment. With support from AI experts in academia, the private sector, and civil society, craft a comprehensive national AI strategy to be implemented in the medium term.	ICT companies in the private sector should consider the following: · As a matter of best practice, ensure internal policies and practice to align with the UN's Guiding Principles on Business and Human Rights.[54] · Ensure that practices around content moderation and surveillance do not stifle diverse political views and perspectives.	Civil society and academia should consider the following recommendations: · Coordinate efforts to advocate for promulgation of the Data Protection Bill. · Collect data on the impact and severity of online harms in Namibia and lobby the government for reform of existing laws and policies to address these issues. Wide-spread awareness-raising campaigns on emerging issues of this nature may also be useful to empower members of the public. · It is also useful to collaborate with the government to promote the adoption of an ethical framework.

54   United Nations 'Principles on Business and Human Rights' (2011) https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed on 14 December 2022).

► Executive Summary

This report presents findings on Nigeria's broadband growth and expansion in 2022. It also details plans by the government to extend the rollout of its 5G mobile network in the country. Although individuals within the country regained access to the microblogging platform, Twitter, it took about a year for a notable pronouncement from regional courts, while local courts continue to be met with delays. Nigeria has also commendably begun the process of weaving together a policy to advance artificial intelligence in the country and made its sixth attempt at passing a data protection bill. Overall, this country report provides an overview of the advancements in Nigeria's digital rights landscape.
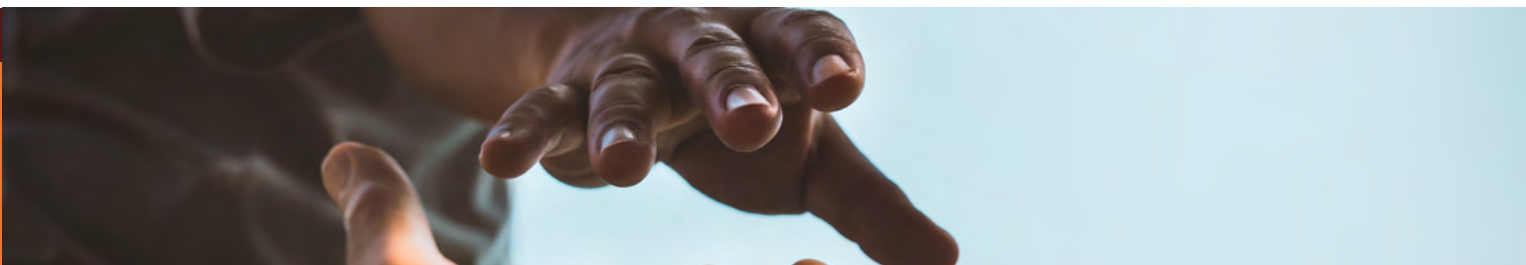
Nigeria

Introduction

Nigeria is one of the largest economies in Africa, with around 202 million people and one of the largest youth populations in the world.[1] Nigeria gained its independence from Great Britain on October 1960[2]. Since then, it went between military and democratic rule till 1999 and has maintained democratic rule since.[3] Nigeria has always valued its democracy as it always fought hard through different civil rights groups for it during different military rules.[4] Each Nigerian constitution since the country's independence has always had human rights highlighted in it and remains so for the present constitution which dates back to 1999.[5] Despite the recognition of these rights, Nigeria still goes through various human rights violations[6]. The Nigerian human rights ecosystem is still evolving to view Digital Rights as human rights which should be preserved both online and offline.

1   World Bank, *The World Bank in Nigeria - Overview*. https://www.worldbank.org/en/country/nigeria/overview , (accessed on 18 December 2022)
2   Nigerian Finder, How Did Nigeria Gain Independence In 1960, https://nigerianfinder.com/how-did-nigeria-gain-independence-in-1960/, (accessed on December 17, 2022).
3   IJOMAH, B.I.C. "Nigeria's Transition From Military To Civilian Rule: An Overview." Journal of Political & Military Sociology 28, no. 2 (2000): 293–310. http://www.jstor.org/stable/45292816. (accessed on December 18, 2022)
4   ChatHam House, Democracy In Nigeria
 https://www.chathamhouse.org/2022/06/democracy-nigeria (accessed on December 25, 2022)
5   Adu, A. M Ibitoye, M. O Adewumi, A. D. Fundamental Human Rights And The Nigerian State In Historical Perspectiveinternational Journal Of Advanced Research In Issn: 2278-6236 Management And Social Sciences Impact Factor: 7.065 Vol. 9 | No. 7 | July 2020 www.Garph.Co. Uk Ijarmss | 47, (accessed on December 20, 2022)
6   Amnesty International, Everything You Need To know About Human Rights In Nigeria.   https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/, (accessed on December 26, 2022)

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

The internet has been one of the most important cornerstones of creativity around the world, improving lives and creating opportunities.[7] Nigeria accounts for 29 per cent of internet usage on the continent and 82 per cent of all telecommunications services subscribers. As a result, the nation is Africa's most significant market for information and communications technology (ICT).[8]

In 2020, Nigeria's president signed the country's second broadband Plan where he noted that "the need for ubiquitous broadband access cannot be overemphasised".[9] The second Nigeria National Broadband Plan (2020-2025) was launched with a target of achieving 70 per cent penetration by 2025. At that time, the penetration level stood at 39.85 per cent as there were 76 million fast-speed internet connections.[10]

However, according to the Nigerian Communications Commission, broadband penetration increased from 40.88 per cent in December 2021 to 45.55 per cent in October 2022.[11] Additionally, from a total of 143,564,481 customers in December 2021 to 152,710,160 subscribers in October 2022, there was a six per cent rise in the number of active subscribers for data (internet) services on each of the licensed service providers using the different technologies, i.e. GSM and CDMA.

To reach its 70 per cent target, Nigeria will need to boost broadband penetration by 25 per cent over the next three years at the current rate.[12]

In February 2022, the two telecommunications companies who won the bid of the 3.5 GHz spectrum auction to launch the 5G network in Nigeria, MTN Nigeria and Mafab Communications Limited, made their full payment of $273.6 million each. While Mafab halted roll-out after receiving NCC's approval for a five-month rollout extension that expired on December 31, 2022, MTN continued to

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7   Nex data center(2015) the importance of the internet in life: Now and Tomorrow https://www.nexdatacenter.com/the-importance-of-internet-in-life-now-and-tomorrow/ (accessed on December 26, 2022).

8   The Borjen Project, The Implementation Of 5g In Nigeria, September 19, 2022
 https://borgenproject.org/5g-in-nigeria/ , (accessed on December 25, 2022).

9   Nigerian National Broadband Plan 2020-2025
https://www.ncc.gov.ng/documents/880-nigerian-national-broadband-plan-2020-2025/file, (accessed on December 25, 2022).

10   Samson Akintaro, Nigeria's broadband plan yields 5.24% penetration increase in two years, https://nairametrics.com/2022/11/09/nigerias-broadband-plan-yields-5-24-penetration-increase-in-2-years/, (accessed on December 26, 2022).

11   Nigerian Communications Commission, Industry Statistics, https://www.ncc.gov.ng/statistics-reports/industry-overview#view-graphs-tables-6, (accessed on December 27, 2022).

12   This Day, NCC to Auction Two Additional 5G Licences for $547.2m, https://www.thisdaylive.com/index.php/2022/10/23/ncc-to-auction-two-additional-5g-licences-for-547-2m/, (accessed on December 28, 2022).

expand its network.[13] Nigeria plans to auction two further lots of 100MHz – Lot A (3400-3500MHz) and Lot C (3600-3700MHz) specifically – in the 3.5GHz spectrum for the Fifth-Generation (5G) network for two additional operators, one year after its initial auction.

This is done in a bid to further deepen broadband penetration and encourage fair competition in the rollout of 5G services in Nigeria. Although the roll out comes as a welcomed development, it is being simultaneously hampered by low inland penetration of fibre, network security, lack of clarity around spectrum regulations, concerns on commercial viability, deployment deadlines, poor civil infrastructure, low purchasing power of 5G-enabled smartphones, cost of data, poor electricity supply, and a sluggish investment climate, among other issues that plague Nigeria at the moment.[14]

FREE SPEECH AND MEDIA FREEDOMS

The right to freedom of expression is contained in chapter 4 of the Constitution of Nigeria and other International Human Rights instruments to which Nigeria is a party such as the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights (ICCPR). The exercise of this right is essential for guaranteeing human rights, democracy, and the rule of law. The media plays an important role in enabling that freedom, and digital technology has further democratised the public sphere.

In recent years, the Nigerian government has blocked online content and social media platforms. In June 2021, the government ordered Twitter to be blocked on most major networks. Days earlier, the platform had deleted a post from President Buhari's account and suspended it for 12 hours.[15] Following that, the government directed media groups to stop using Twitter and threatened to bring legal action against Nigerians who accessed the service via circumvention techniques. Twitter became accessible again in January 2022.[16] The ban was lifted, according to government officials, after Twitter complied with a number of requirements, including opening an office in the country, appointing a designated country representative to deal with Nigerian authorities, and paying taxes. The company, however, has not officially acknowledged complying with these requirements.[17]

Although different cases were initiated in court on the social media ban, there is still no traction from the local courts. However, on July 14, 2022 the Economic Community of West African States (ECOWAS) court decided on the matter, setting precedence and contributing to jurisprudence on this in Africa. The ECOWAS court ruled the decision by the Federal Republic of Nigeria on to suspend the use of the microblogging application Twitter in the country, as "unlawful and inconsistent with the country's international obligations".[18] It therefore ordered Nigeria to ensure the unlawful suspension would not reoccur and to take the necessary steps to amend its laws to be in conformity with the rights and freedoms enshrined in the African Charter established the African Commission on Human and Peoples' Rights and International Covenant on Civil and Political Rights. There has not been a similar reoccurrence since, but agitations exist in anticipation of the country's general elections

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13   ibid

14   The Guardian, Lessons, opportunities as Nigeria undertakes another 5G auction, December 25, 2022 https://guardian.ng/technology/lessons-opportunities-as-nigeria-undertakes-another-5g-auction/, (accessed on December 28, 2022).

15   Wion, Twitter suspends Nigerian president's account for 12 hours, https://www.wionews.com/world/twitter-suspends-nigerian-presidents-account-for-12-hours-389291, (accessed on December 29, 2022).

16   BBC News Pidgin, Twitter ban in Nigeria: President Buhari lift ban on Twitter afta seven months, https://www.bbc.com/pidgin/59969898 , (accessed on December 28, 2022)

17   Access Now, "Blocking access to Twitter in Nigeria is a flagrant violation of fundamental rights," January 13, 2022, https://www.accessnow.org/nigeria-blocks-twitter-keepiton/#:~:text=Bloc, (accessed on December 28, 2022)

18   Community Court of Justice, Ecowas Court Orders Nigeria To Guarantee Not To Repeat Unlawful Ban On Twitter, http://www.courtecowas.org/2022/07/16/ecowas-court-orders-nigeria-to-guarantee-not-to-repeat-of-the-unlawful-ban-on-twitter/, (accessed on December 29, 2022).

in 2023, as the trend in Africa has been internet shutdowns during election periods, a trend that will prove to be very costly to the country.[19]

OTHER REGULATORY ATTEMPTS

On June 13, 2022, the National Information Technology Development Agency (NITDA) issued a draft code of Practice for Interactive Computer Service Platforms/Internet Intermediaries (the "code").[20]

The code's goals include defining the best practices that Platforms must follow, securing Nigeria's digital ecosystem for Nigerians and foreigners, and defining countermeasures to harms like misinformation and disinformation that can be caused online.

The code is to apply to all interactive Computer Service Platforms/Internet Intermediaries and their agents in Nigeria and some of the affected platforms worthy of note are Twitter, Meta and Google. A few of the main asks of the code is: Mandatory Incorporation Of Large Service Platforms, Provision Of Information Pursuant To Court Order, Takedown Of Unlawful Or Prohibited Content), Complaint Channel creation, and Mandatory Filing Of Annual Compliance Report, among others. The code was met with distrust by different stakeholders as it was viewed as another attempt by the government "to regulate social media and quash freedom of expression"[21]

The provisions of the code also have the potential for abuse, for instance, in mandating the takedown of content within 24 hours of receiving notice from an authorised Government Agency of the presence of unlawful content. Unlawful content is defined under the code to mean any content that violates an existing law in Nigeria. The issue is that the Agency is not required to explain how or why the content is illegal, and the online platform is not given the opportunity or time to confirm the legality of the content, especially in cases when it is not clear whether the content is actually illegal. This section establishes a general duty to observe in addition to a lot of ambiguity that can be readily abused by an oppressive government because the code does not specify incorrect information or public disorder.

There was a call by various stakeholders for the code to be reviewed[22] as it is seen as a possible reincarnation[23] of the "hate speech bill" and "social media bill".

PRIVACY AND SURVEILLANCE

Nigeria's 1999 Constitution, which acknowledges privacy and free expression as basic rights, is where Nigerians' right to privacy originates. The privacy of citizens, their residences, correspondence, phone conversations, and telegraphic communications is guaranteed and protected, according to Section 37. In Nigeria, the gathering and storing of personal data permeates every aspect of life, raising significant concerns regarding the country's privacy laws in light of the dangers associated with both publicly and privately handled data.

19   Yomi Kazeem, An election internet shutdown would cost Nigeria $134 million a day, Yahoo Finance, https://finance.yahoo.com/news/election-internet-shutdown-cost-nigeria-142407821.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAKAgjWGQlybWcijaMk0zl7M47Fs15hQx3BB30qLW5jIKPdJPf-1SQneIdcc4FOADF9DR8-iOUOtqhMvh_SmV7KMP8TQht55xs_LsszUyzVrkDxcXy014ZlyLl12Gl5xF9pvO5oE5RSex4ZmrhQjqKmyWS2CflK4qnCXws8oHqauT , (accessed on December 27, 2022)
20   Code Of Practice For Interactive Computer Service Platforms/ Internet Intermediaries, https://nitda.gov.ng/wp-content/uploads/2022/06/Code-of-Practice.pdf, (accessed on December 26, 2022)
21   Davidson Oturu and Agboola Dosunmo, NITDA Code of Practice – potential impact on online platforms and social media, https://businessday.ng/news/legal-business/article/nitda-code-of-practice-potential-impact-on-online-platforms-and-social-media/, (accessed on December 28, 2022)
22   The Cave, Paradigm Initiative calls for review of NITDA's code of practice for online platforms, https://www.thecable.ng/paradigm-initiative-calls-for-stakeholders-to-review-new-code-of-practice-for-online-platforms, (accessed on December 30, 2022)
23   Gabriel Eze, What Digital Platforms and Intermediaries Should Know about NITDA's Code of Practice for Nigeria's Digital Space, https://infusionlawyers.com/nitda-code-of-practice-for-digital-platforms/, (accessed on December 21, 2022)

Nigeria collects a lot of biometric data; the state collects this data for banking, digital identity, licenses and more. In the private sector, data is collected through applications such as money lending applications, banking applications and others. Numerous privacy concerns are connected to the use of biometric data systems, including fraud and social sorting, as well as identity theft made possible by unauthorised parties hacking biometric databases and causing data breaches.[24] The

rights of individuals to privacy, security, and data protection are seriously affected by this. One may no longer have control over biometric data once it has been compromised, as it poses problems with mass surveillance and

tracking.[25]

The 2022 total defence sector budget was 2.7 trillion Naira budget with 83.8 billion toward defence and security equipment. The police had a budget of 1.1 billion naira for its intelligence equipment and the navy had a budget of 1.27 billion for its surveillance equipment.[26] Nigeria's security budget which often includes surveillance has increased by 12 trillion[27] over the past seven years and yet there were a number data and cyber security breaches over the year in review. It was reported that small and medium-scale enterprises faced an 89 per cent increase in cyber-attacks compared to the year 2021[28]. There were also other notable breaches such as one where the data of 75,000 citizens were exposed online[29].

In spite of these notable breaches and the existence of the Nigerian data protection regulation enacted in 2019 there have not been up to 10 fines issued. However, according to the most recent Nigeria Data Protection Regulation (NDPR) Performance report[30] for 2020-2021 from NITDA, released in 2022, 1,350 calls were received from Nigerians reporting data breaches. In 2021, 105 compliance and enforcement notices were issued lower than 230 notices issued in 2020. Compliance issues resolved rose from 790 in 2020 to 2080 in 2021. A total of 17 data breaches were investigated and 15 million naira fines issued in total. These numbers unfortunately do not reflect the number of privacy issues experienced. Stakeholders have expressed the expectation that investigations and sanctions significantly increase with the establishment

24 Samuel C. Uzoigwe (Esq.), Biometric Technology In Nigeria: Examining Data Privacy Concerns, March 21, 2022. https://aanoip.org/biometric-technology-in-nigeria-examining-data-privacy-concerns/
25 ibid
26 Budgit, Federal Government of Nigeria approved budget 2022,https://budgit.org/fg-budget-dashboard/, Accessed January 28, 2023
27 Abdul Seye, Budget: Despite extra N12 trillion in seven years, security remains elusive, as education, health suffer, Daily post , https://dailypost.ng/2021/10/15/budget-despite-extra-n12-trillion-in-7-years-security-remains-elusive-as-education-health-suffer/, Accessed January 23, 2023
28 Adeyemi Adepetun, Cyber attack on Nigerian SMEs up by 89 per cent in 2022, The Guardian, https://guardian.ng/business-services/cyber-attack-on-nigerian-smes-up-by-89-per-cent-in-2022/, Accessed January 16, 2023
29 Peoples gazette, Nigerian agency data breach exposes 75,000 personal details of citizens online, https://gazettengr.com/nigerian-agency-data-breach-exposes-75000-personal-details-of-citizens-online/?tztc=1, Accessed January 16, 2023
30 Nigeria Data Protection Regulation Performance Report 2020-2021, National Information Technology Development Agency (NITDA) https://ndpb.gov.ng/Files/hhNITDA_Compiled%20NDPR%20Draft%202020-2021_0701.pdf, Accessed January 16, 2023

of the Nigeria Data Protection Bureau.[31]

DATA GOVERNANCE

DATA PROTECTION AUTHORITY AND REGIME

Although the Nigerian state has been collecting biometric data for almost two decades, the data protection framework was segmented into different sectors until 2019.[32] The Nigeria Data Protection Regulation 2019[33] was the first step toward a practical data protection framework in the country but the instrument was inadequate[34] for many reasons including its limited scope of enforcement and punitive measures. It was no wonder then that the relevant stakeholders continued to clamour for a better instrument – an act of Parliament – to govern data governance in the country. However, ahead of the instrument, Nigeria's president commissioned the National Data Protection Bureau (NDPB) in February 2022[35] and on October 4th 2022 the NDPB eventually released a draft Data Protection Bill, 2022.

The Bill came as a welcome development as it outlines principles and lawful bases for the processing of personal information. The Bill admittedly improves on the already existing Nigeria Data Protection Regulation (NDPR) in areas where it expressly states the principles of fairness, transparency, and accountability. It also covers the conducting of Data Protection Impact Assessments (DPIAs), the appointment of a data protection officer (DPO), and data subject rights, including the right to object, withdraw consent, and data portability, and right not to be subject to a decision based

solely on automated processing of personal data.[36] It further seeks to legitimise the NDPB as an independent and effective regulatory commission to superintend over data protection and privacy issues and supervise data controllers and data processors within the private and public sectors. Similarly, legitimate interest is recognised as a lawful basis.[37]

This Bill will be Nigeria's 6th attempt at passing a data protection law and amplifies certain

gaps, some of which are potential issues of independence. Under the African Union Convention on Cybersecurity and Personal Data Protection, the Economic Community of West African States Supplementary Act of Personal

31   Adeyemi Owoade, NITDA chased a thousand, NDPB will chase ten thousand, https://www.linkedin.com/pulse/nitda-chased-thousand-ndpb-chase-ten-adeyemi-o-owoade?trk=portfolio_article_card_title, Accessed January 16, 2023

32   Jumoke Lambo, Chisom okolie, Data Protection Laws and Regulations Nigeria 2022, July 8, 2022 https://iclg.com/practice-areas/data-protection-laws-and-regulations/nigeria, (accessed on December 29, 2022).

33   Nigeria Data Protection Regulation 2019 https://ndpb.gov.ng/Files/NigeriaDataProtectionRegulation.pdf, (accessed on 21 December 2022)

34   Olumide Babalola, The Inadequacies Of Nigeria Data Protection Regulation 2019 : Review https://olumidebabalolalp.com/nigeria-data-protection-regulation-2019/, (accessed on December 28, 2022)

35   Maryam Abdullahi, Buhari approves creation of data protection bureau, appoints Olatunji as CEO, the cable , February 4, 2022, https://www.thecable.ng/buhari-approves-creation-of-data-protection-bureau-appoints-olatunji-as-ceo, (accessed on December 29, 2022)

36   Data Guidance, Nigeria: NDPB releases draft Data Protection Bill, October 2022, https://www.dataguidance.com/news/nigeria-ndpb-releases-draft-data-protection-bill (accessed on December 29, 2022)

37   Ridwan Oloyede, The new data protection bill in Nigeria, October 2022, https://www.linkedin.com/pulse/new-data-protection-bill-nigeria-ridwan-oloyede-?trk=pulse-article, (accessed on December 28, 2022)

Data Protection, the Declaration of Principles on Freedom of Expression and Access to Information in Africa, and Convention 108 of the Council of Europe, one of the measures of independence is not being tied down by the executive arm of the government. This is not the case with the NDPB, as the bill confers a lot of power on the Minister of Communications and Digital Economy, giving him certain supervisory powers that potentially undermine the independence of the agency.

DIGITAL IDS

Governments the world over have taken steps to roll out digital identity systems to promote effective governance and economic development. Nigeria is no exception, with its National Identity Management Commission (NIMC), established by the NIMC Act No. 23 of 2007, having the mandate to establish, own, operate, maintain and manage the National Identity Database in Nigeria. Through the database, persons covered by the Act are registered and assigned a Unique National Identification Number (NIN) and eventually issued General Multi-Purpose Cards (GMPC).[38]

The use of digital identity systems can bring about several privacy concerns and affect the privacy rights of individuals in various ways.

The government further mandated SIM registration and linkage to the national identity system and threatened disconnection of SIM cards that were not linked. This measure was met with some resistance as individuals are concerned with the country's lack of efficient data protection practices, which leaves the data collected open to abuse. Failure to put privacy-

preserving measures early on will exacerbate the risk as the national database grows.

Another concern has been the multiple identity databases maintained by government agencies which often lack effective oversight and accountability mechanisms. This unfettered access by State authorities raises more concerns about surveillance. The president has been noted to have authorised some law enforcement agencies to access identity databases through mere Executive pronouncement when the surveillance should only be hinged on existing law.[39]

In spite of these issues, the Director General of the National Identity Management Commission, Eng. Aliyu Aziz, says the Commission has so far captured 89 million persons in the ongoing nationwide National Identity Number (NIN) enrolment.[40] It is reported that N36.76m has been allocated for the renewal of the maintenance support agreement for the National Identity Management System infrastructure in the 2023 proposed budget.[41]

REVIEW OF THE UNIVERSAL SERVICE FUND

The Nigerian Communications Act (2003) conferred on the President of the Federal Republic of Nigeria the power to constitute an 11-member Universal Service Provision Board to, among other functions, provide broad policy directions for the management of the Universal Service Provision Fund (USPF). The USPF was established by the Federal Government of Nigeria to facilitate the achievement of national policy goals for universal access and universal

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38   National Identity Management Commission (NIMC), About Us, https://nimc.gov.ng/about-us/, (accessed on December 29, 2022).

39   Tech Hive advisory, The Right to Privacy in the Digital Age, https://www.ohchr.org/sites/default/files/documents/issues/digitalage/reportprivindigage2022/submissions/2022-09-06/CFI-RTP-Tech-Hive-Advisory.pdf, (accessed on December 29, 2022)

40   Emmanuel Elebeke, NIN enrollment: We 've captured 89m people – NIMC DG, Vanguard, September 2022, https://www.vanguardngr.com/2022/09/nin-enrollment-we-ve-captured-89m-people-nimc-dg/, (accessed on December 29, 2022)

41   Sami Tunji, NIMC gets presidential approval to replace weak infrastructure October 2022, Punch, https://punchng.com/nimc-gets-presidential-approval-to-replace-weak-infrastructure/, (accessed on December 29, 2022)

service to information and communication technologies (ICTs) in rural, un-served and under-served areas in Nigeria.

The Universal Service Provision Fund (USPF) Secretariat resides in the Nigerian Communications Commission (NCC), the NCC itself is an agency of Federal Ministry Of Communications And Digital Economy as such the implementation of the fund is not free of government influence. The Fund is being managed to facilitate the widest possible access to affordable telecommunications services for greater social equity and inclusion for the people of Nigeria.[42] Some of its projects over the years include Accelerated Mobile Phone Expansion (BTS), Rural Broadband Initiative (RUBI), School Knowledge Centres (SKC), Community Resource Centres (CRC), among others.

The Universal Service Provision Fund published annual reports in 2011, 2012 and 2018[43]. These reports highlighted the structure of the USPF, its vision, research and projects undertaken in those years as well as limitations and challenges faced. The 2018 report further covered a project goal timeline from 2018 till 2022. However, 2018 was the last published report of the USPF with little to no information about its activities since then. With the reports that have been published, there is need for added detail as there's a notable lack of specificity with regards to projects and the Poor Information on tenders and Procurement.[44] It also raises concern around the lack of sustainability of its projects, The USPF has not been transparent in its dealings despite a 2019 Senate report noting it has a total recurrent expenditure of 1.9 billion Naira.[45]

The Universal Service Provision Fund, under its 2022 budget, has been noted to invite qualified, competent and reputable contractors and service providers to bid for Goods, Works, Installation of ICT & Assistive Tech to Institutions and Schools Catering for Challenged Groups and Supply of Computers and Accessories. Overall, the fund has had an uneventful few years including 2022.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

Nearly 80 per cent of exports in Nigeria are accounted for by oil, making the sector one of the biggest contributors to Nigeria's economy. Yet, Nigeria's oil output was at its lowest since 1990 in August 2022.[46] This is where technology comes in as between 2021 and 2022 ICT has floored the oil sector in boosting the GDP of

Nigeria. According to the National Bureau of

42   The Universal Service Provision Fund (USPF), /www.uspf.gov.ng (accessed on December 28, 2022)
43   The Universal Service Provision Fund (USPF),https://www.uspf.gov.ng/media-centre/downloads, (accessed on December 28, 2022)
44   Budgit,Universal Service Provision Fund Operational And Fund Management Desk Analysis, https://yourbudgit.com/wp-content/uploads/2017/11/USPF-REPORT.pdf, (accessed on January18, 2023)
45   The Senate, Federal republic of Nigeria, Report Of The Committee On. Communications On The Universal. Service Provision Fund (USPF) Budget 2019 (accessed on January 18, 2023) https://placng.org/i/wp-content/uploads/2019/12/Report-of-the-Senate-Committee-on-Communications-on-the-Universal-Service-Provision-Fund-Budget-Proposal-for-the-Year-Ending-31st-December-2019.pdf (accessed on January 18, 2023)
46   Omowumi Iledare, Nigeria is producing less and less oil. Here's why (September 2022) https://theconversation.com/nigeria-is-producing-less-and-less-oil-heres-why-191199 (accessed on January 18, 2023)
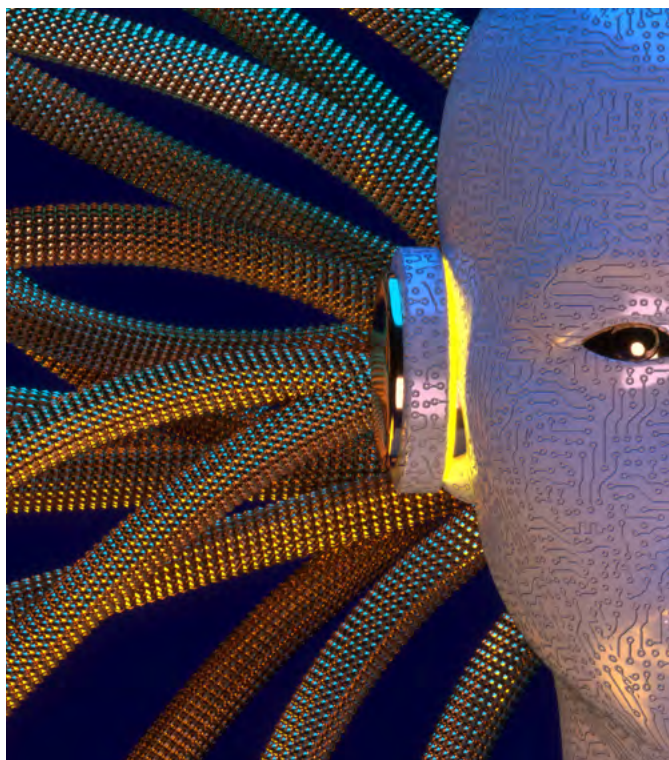
Statistics (NBS), the oil sector contributed only 6.63 per cent in Q1 2022 and 6.33 per cent to the total real GDP in Q2 2022, while ICT, especially telecommunications companies, contributed 18.44 per cent to Nigeria's GDP in the second quarter of 2022. The sector saw a 6.55 per cent growth rate from Q1 2022 and pushed the non-oil sector to contribute 93.67 per cent to the nation's GDP in Q2 2022. In Q2 2021 and Q1 2022, the non-oil sector led by ICT also contributed 92.58 per cent and 93.37 per cent, respectively.[47] All highlighting the notable boom in the sector in Nigeria in 2022[48].

Regardless of these strides, the technology sector is yet to reach its full potential as Fintech and other technology based start-ups could be contributing more to the country. This could be achieved with an enabling environment hence the establishment of the Nigerian Start-up Bill 2021.[49] This Bill was passed into law in October 2022 with the aim of covering these gaps. Some of the objectives of the Nigeria Startup Act is to bridge the engagement gap between start-ups and regulators and ensure that harmful regulations that hinder their growth are shut down. Among other things, the Bill also seeks to encourage the establishment, development and operation of startups in the country via incentives like establishment of cluster hubs, tax breaks, government loans, and credit guarantee schemes.[50] The Act is still young and we are yet to see it implemented.

AI STRATEGIES

Artificial Intelligence (AI) based technologies are becoming increasingly integrated into the modern lives of many Nigerians, and there is a need to consider the ways in which such technologies impact the fundamental rights of Nigerians. From the initial design to the sale of tools and services that utilise AI to Nigerians (where applicable) and then its ultimate end use, there are several ways that the use of AI may advance or undermine human rights protections in Nigeria.[51]

The Minister of Communications and Digital Economy, recently directed the National Information Technology Development Agency (NITDA) to develop a National Artificial Intelligence Policy (NAIP).[52] The road toward creating an effective AI strategy in a country is often a complex one, where steps such as a needs assessment in the country to identify

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47   National bureau of statistics,Nigerian Gross Domestic Product Report (Q2 2022), https://nigerianstat.gov.ng/elibrary/read/1241219
48   Marketforces Africa, Digital Economy Booms as ICT Contributes 18.44% to Nigeria's GDP, August 2022 https://dmarketforces.com/digital-economy-booms-as-ict-contributes-18-44-to-nigerias-gdp/ (accessed on January 18, 2023)
49   A Bill For An Act To Provide For The Creation And Development Of An Enabling Environment for Technology-Enabled startups in Nigeria and For related Matters. Executive Bill, Enacted by the National Assembly of the Federal Republic of Nigeria 2021, HB1886, https://placbillstrack.org/upload/HB1886.pdf, (accessed on January 23, 2023)
50   Timi Odueso, The Nigeria Startup Bill has been approved, Tech Cabal, https://techcabal.com/2022/10/19/the-nigeria-startup-bill-has-been-approved/, (accessed on January 23, 2023).
51   Jake Okechukwu Effoduh, Towards A Rights-Respecting Artificial Intelligence Policy for Nigeria, Paradigm Initiative, November 2021, https://paradigmhq.org/wp-content/uploads/2021/11/Towards-A-Rights-Respecting-Artificial-Intelligence-Policy-for-Nigeria.pdf , (accessed on December 27, 2022)
52   Hadiza Umar, NITDA Directed to Develop National Artificial Intelligence Policy, PR Nigeria, August 11, 2022, https://prnigeria.com/2022/08/11/nitda-directed-develop/ , (accessed on December 27, 2022)

who the stakeholders are, who the users and enablers are, and get future projections for AI in the country is a necessity. A press statement signed by the NITDA spokesperson, Hadiza Umar, stated that the development of the NAIP is envisaged to "maximise the benefits, mitigate possible risks, and address some of the complexities attributed to using AI in the daily activities of Nigerians." It further stated that "The policy is expected to benefit the country, the people, and institutionalise the National Centre for AI and Robotics (NCAIR)."[53]

Attempts to establish an AI policy are laudable and one of the most progressive in Africa at this time but there needs to be various considerations before establishing the policy and the steps toward developing the strategy to be taken by NCAIR were not made public. Various experts have highlighted important steps to take on for a world class strategy which include creation of a national task force similar to what the government of Malta did, which was to appoint a national task-force aimed at creating the "Malta.ai strategy". The members of the taskforce came from different walks of life and brought to the table a right mix of experience and enthusiasm.[54]

An effective AI policy requires an understanding of how AI and other related technology developments can be used to achieve national goals and help solve a host of local problems. This will need extensive consultation and contributions from stakeholders in different sectors.

Data is also heavily involved in directing AI making it necessary for there to be an established data governance regime for a successful implementation. Finally, the policy has to be human rights-centric.

INCLUSION OF ICTS IN NATIONAL ACTION PLANS OR STRATEGIES.

Nigeria has considered ICTs in its policy frameworks since it presented a National Information Technology Policy in 2001. ICTs have found a more common place in Nigeria since the establishment of NITDA and the Ministry of Communications and Digital Economy (previously referred to as the Ministry of Communications Technology). There have since been notable policies such as Nigeria Digital Agriculture Strategy[55], National Policy on Information And Communication Technologies (ICT) in Education.[56] However, the lack of implementation leaves the policies redundant.

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53   Johnstone Kpilaakaa, How to contribute to NITDA's National Artificial Intelligence Policy, https://www.benjamindada.com/nitda-national-artificial-intelligence-policy. (accessed on December 25, 2022)

54   Digwatch, Malta establishes task force to develop national AI strategy, https://dig.watch/updates/malta-establishes-task-force-develop-national-ai-strategy, (accessed January 28, 2023)

55   Nigeria Digital Agriculture Strategy (2020-2030) https://nitda.gov.ng/wp-content/uploads/2020/11/Digital-Agriculture-Strategy-NDAS-In-Review_Clean.pdf(accessed on December 30, 2022)

56   National Policy On Information And Communication Technologies (ICT) In Education, 2019 https://education.gov.ng/wp-content/uploads/2019/08/NATIONAL-POLICY-ON-ICT-IN-EDUCATION-2019.pdf, (accessed on December 30, 2022)

Conclusion and Recommendations

Overall, Nigeria made strides in its attempts at better infrastructure and legal instruments. The country also saw less violations in 2022 compared to previous years. However, there have been certain recurrent gaps in the country's landscape such as near attempts at passing a Data Protection law and a Digital Rights and Freedom law, attempts through legislation to quash free expression and arbitrary biometric data collection with the potential for abuse.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
• The government must ensure connectivity gets to the rural areas and the underserved in accordance with the Nigerian broadband plan. This can be achieved through the use of the Universal Service Provision Fund. • The government must further ensure that in its expansion of connectivity, said connectivity must be meaningful, affordable and accessible to all. • The government must take active steps toward creating an enabling environment for ICTs and emerging technologies in the country by increasing access to tech based education and scholarships. Awareness around the privileges in the Start Up Act must also be created such as tax reliefs. • The government must respect and implement treaties and resolutions made by regional bodies and courts in line with its international human	• Private sector actors must entrench digital security and data protection best practices in their processes. • Private companies that handle data must appoint data protection officers and set up complaint units while keeping up with global best practices • Where artificial intelligence technologies are being adopted by private actors they must also ensure respect for human rights	• Civil society actors must continue to hold governments accountable through their activism • Civil society actors should further carry along the underserved in their activism sharing accessible information. This can be done by taking advocacy messages outside capital cities and translating them into local languages • Civil society actors should continue to advocate for passing of beneficial digital rights bills while monitoring the legal landscape for violations. • Civil society actors must continue to address violations of digital rights through litigation in order to address violations and create case law promoting digital rights.

| GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
rights obligations. • The government, in establishing the new Data Protection Authority and Data Protection law, must ensure its independence from the Executive. The mass registration of digital identities is still ongoing, while a proper data governance framework is yet to be passed into law. The Nigerian government should expedite these efforts in order to adhere to international standards and gain public trust. • The government must make the use of the Universal Service Provision Fund, its projects and procurements public and transparent with accessible quarterly or annual reports. • In establishing an AI policy in Nigeria, the government must enact a policy that protects human rights and to do that, it must conduct a needs assessment, stakeholder mapping and robust consultative processes with stakeholders in the sector to shape the policy. • The government must integrate ICT into various sector policies and establish an effective implementation plan for each.		

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Rwanda

Rwanda prides itself amongst Africa's hubs. The country has received global recognition for its expansive mobile network and 4G network coverage, as well as for its local smartphone manufacturing. The number of internet users in the country has steadily increased by +24 per cent between 2020 and 2021.

Despite these developments, Rwanda has a conflicting relationship with the internet and technology more broadly. This becomes particularly obvious when looking at the current policy approaches that the Rwandan government has implemented. Civil society and human rights organisations have specifically challenged the patterns of technological and social governance: Mass surveillance and use of spyware against political opponents, online censorship and the blocking of social media content are particularly worrying. This report presents the state of digital rights in Rwanda in 2022. It reveals the success and achievements that the country has made so far and highlights how the government has used the post-pandemic breakout context to consolidate its powers to monitor critical journalists and bloggers and censoring online content that strays out of the official State narrative.
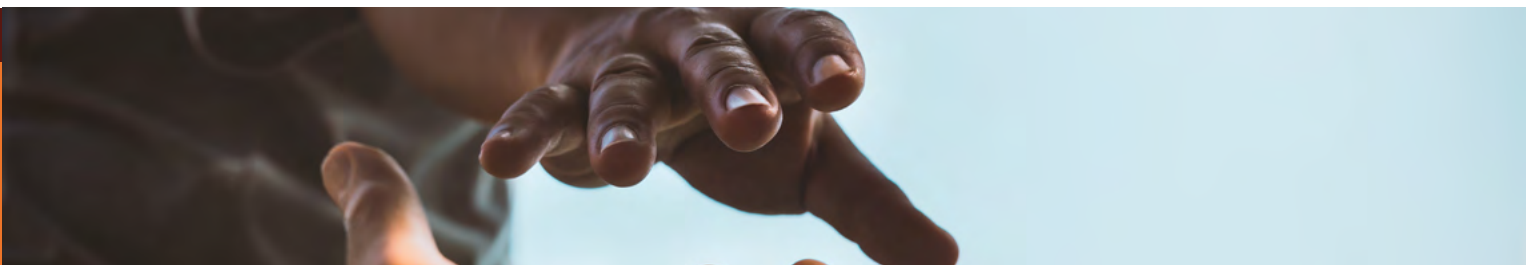
Introduction

Rwanda is a landlocked East African country that borders Democratic Republic of Congo, Tanzania, Uganda, and Burundi. Rwanda is a relatively small but densely populated country with a population of about 13 million and an estimated GDP of $ 10.33 billion as at 2021.[1] The official data from the recent national census[2] shows that Rwanda's population increased by +2,5 per cent between 2021[3] and 2022, with 50.8 per cent being female, and 49.2 per cent male[4]. About 17.8 per cent of Rwanda's population lives in urban areas.

In 1994 Rwanda experienced one of the most devastating conflicts in history known as the "Genocide against the Tutsi". Following the conflict, the country and its infrastructure, civil service, and societal structures were all destroyed. It required starting over and overcoming the most deep-seated of ethnic hatred and vested interests that had erupted into a genocide.

Rwanda performs well under broad indicators of international competitiveness, and continues to enjoy political stability and general security, with low levels of corruption in the public service. Across the state security services, Rwanda ranked 52 globally according to the 2017 Transparency International Corruption perception Index.[5] Rwanda is also among the ten fastest African growing economies, a result of the liberal market and fiscal policies implemented by President Paul Kagame's administration coupled with very generous foreign aid for development.

1   Https://www.Worldbank.org/en/country/Rwanda/overview#1.   (accessed on December 10, 2022)
2   UNFPA Rwanda: "Because everyone counts: Rwanda to conducts its 5th Population and Housing census available at Https://www.rwanda.unfpa.org/en/news/because-everyone-counts-rwanda-conduct-its-5th-population-and-housing-census (accessed on December 10, 2022)
3   NISR: Fifth Population and Housing Census 2022 available at https://www.statistics.gov.rw/datasource/population-and-housing-census, accessed on January 28, 2023
4   *Idem.*
5   Https://www.transparency.org/en/countries/rwanda \. (accessed on December 10,2022)

Country Analysis

ACCESS TO INTERNET AND DIGITAL INFRASTRUCTURE

Rwanda prides itself among Africa's technology hubs and digital development. It has been characterised by a substantial public investment push in areas such as digital infrastructure and digital public service delivery. This has helped the country to achieve some of the highest 3G and 4G network coverage rates on the continent,[6] with fibre optic cables now running alongside main roads, bringing virtually all Rwandans within range of mobile broadband.

Rwanda has also pushed for the local manufacturing of smartphone handsets with the recent launch of Mara phone Group.[7] The different legal and regulatory reforms implemented by the Rwandan government such as the expansion of government e-service offerings have helped Rwanda to emerge as a top African performer in both global "e-government" and the World Bank "doing Business" rankings report.

Further, in the decade through 2018, Information and Communication Technology was the fastest-growing service sub-sector and currently, representing about 1.4 per cent of Rwanda's gross domestic product.[8] This dynamism was mainly driven by mobile phone penetration and it is estimated that 81 per cent of the Rwandan population has access to a mobile device[9].

From 2008 to 2018, mobile phone subscribers[10] numbered 9.7 million and the official figures put internet penetration at 58.3 per cent. However, the actual use is estimated to be lower.[11] The Rwandan telecommunication market is occupied by four major players Airtel Rwanda, MTN Rwanda, Liquid Telecom and Broadband Systems Corporation. They offer fixed or landline telephone services, mobile telephone (mainly voice calling data and SMS) and internet data services. The market is regulated by the Rwanda Utilities Regulatory Authority (RURA) which is the State agency responsible for oversight countrywide.

Rwanda's bold strategies in creating infrastructure for technology have proven

fruitful and opened new possibilities. For instance, the use of drones by Zipline (an American robotics company) for delivery of

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6   Rwanda Economic Update: Regional Integration in Post Covid-19era available at https://www.worldbank.org/en/news/pressrelease/2022/02/rwanda-economic-update-regional-integration-in-posy-covid-era.   (accessed on December 12,2022)
7   https//www.edition.cnn.com/2019/10/08/africa/rwanda-smartphone-factory/index.html. (accessed on December, 12, 2022)
8   **Rwanda Economic Update: regional Integration in Post-Covid era. (accessed on December 12, 2022)** *Op Cit*;
9   Rwanda Ministry of ICT and Innovation available at https://www.minict.gov.rw/ict-for-development accessed on December 16, 2022
10   *Id.*
11   *Ibid.*

medical supplies such as drugs and blood products to rural and remote health facilities across the country improves the efficiency of the Rwandan health supply chains. Today this model pioneered by Rwanda is being replicated elsewhere across the African continent.[12]

Despite all these achievements, Rwanda still has low human development, and the country ranks 160 out of 189 on the Human Development Index (HDI Ranking).[13]

COMPLIANCE WITH REGIONAL AND INTERNATIONAL LEGAL FRAMEWORKS

Rwanda has signed and ratified several international and regional treaties incorporated into Rwandan law with a bearing on digital rights, such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACPHR). In 2019 Rwanda signed and ratified the Malabo Convention through Presidential Order[14] No. 104/01 of September 18, 2019 and the enactment of law No. 058/2021 relating to the protection of personal data and privacy in October 2021 was intended to incorporate the Malabo Convention into Rwandan law. With the passing of this Law[15]Rwanda has become the third country in East Africa, after Uganda and Kenya, to enact comprehensive legislation on data protection and privacy. More importantly, the law placed a positive obligation on the State to set up adequate safeguards for the right to privacy, including where justifiable targeted surveillance has been undertaken in crime prevention and the investigation and enforcement of laws.

INTERNET FREEDOM
FREE SPEECH AND MEDIA FREEDOMS IN 2022

The Constitution of Rwanda as revised in 2015[16] Article 38 provides for freedom of expression, including for members of the press and other media "in conditions prescribed by the law." However, the practice is quite different as the government interferes with or poses restrictions on individuals and media outlets. Journalists or political commentators who expressed views deemed critical of government policies, especially on sensitive topics are often threatened, harassed or arrested.[17] Most Rwandan journalists often engage in self-censorship to avoid potential troubles or retaliatory responses from the state because of their publications or work.

It's important to note that YouTube has today become the most preferred platform for free speech in the country where most of Rwandan bloggers and commentators publish videos on sensitive issues and national matters[18].

Despite the different legal reforms initiated by the government such as creation of the Rwanda Media Commission with an established self-regulatory body designed to maintain a high level of professional and ethical standards free from government interference. The climate of fear and self-censorship remains pervasive amongst the majority of journalists working in the country.

From the violations reported in the Londa 2021 report on the state of digital rights and inclusion in Africa report,[19] the atmosphere for

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12   How Ghana leveraged its nationwide drone network to distribute PPE available at https://wwwflyzipline.com (accessed on December 10, 2022)

13   Https://hdr.undp.org/sites/all/theme/hdr_themes/hdr_theme/country-notes/RWA.pdf. (accessed on December 10, 2022)

14   Https://gazettes.africa/archive/rw/2019/rw-governrgent-gazette-dated-2019-09-26-no-special.pdf. (accessed on December 12, 2022)

15   Https://www.minict.gov.rw/fileadmin/user-(accessed on 10/12/2022)upload/minict_user_upload_/Documents/Press_Release/211021_Press_Release_Rwanda_s_New_Data_Protection_Law_English. (accessed on december 11, 2022)

16   The Constitution of the Republic of Rwanda of 2003 as revised in 2015 available at Https://www.constitutionproject.org/constitution/Rwanda-2015.pdf?lang=en (accessed on December 12, 2022)

17   Https://www.afrikareporter.com/rwandan-journalist-arrested-over-tax-evasion-story/. (accessed on December 12, 2022)

18   Https://www.aljazeera.com/news/2022/10/5/rwandan-court-frees-reporters-accused-of-spreading-false-news. (accessed on December 9, 2022)

19   Paradigm Initiative 'Londa' https://paradigmhq.org/wp-content/uploads/2022/06/Londa-Rwanda-Report-2021-lr.pdf (accessed on January 28, 2023).

a conducive climate for freedom of expression remains tense as the government restricts the types of online content that users can access, particularly content that strays from the official narrative. Rwanda and Uganda which appear in 2019, RURA blocked several Uganda news sites such as the *New Vision*, *the Daily Monitor*, *The Nile Post*, *Chimp Reports*, and the *Independent* are still inaccessible in country[20]. Above all, the sense of self-censorship, the fear of stepping over an invisible line and being punished by the authorities is so entrenched in the spirit of many Rwandan journalists and remains a major obstacle to access to information in Rwanda.[21]

PRIVACY AND SURVEILLANCE

The Constitution reaffirms respect for privacy as article 23 of the Constitution states that every person has the right to privacy, which includes the right not to have information relating to their family unnecessarily acquired or revealed. Before the law's enactment, there was no legislation in Rwanda to give effect to the right to privacy enshrined in article 23 of the Constitution. On October 13, 2021, the Cabinet enacted Rwanda's first data protection legislation, Law No. 058/2021 of October 13, 2021 relating to protecting personal data and privacy. Additionally, the law is modelled after the General Data Protection Regulation (GDPR) and may be jeopardised during the processing of personal data by both public and private bodies. The law applies to both manual and electronic processing of personal data. It also applies to data handlers and processors residing inside or outside of the republic of Rwanda.

While the Constitution and the laws provide for the right to privacy, the practice is quite different as the government interferes with or poses restrictions to this right. There have been allegations of snooping and phone tapping of political leaders and activists affiliated with the opposition by the national intelligence security services (NISS). The NISS also conducts surveillance on some international and domestic NGOs, through infiltrated agents to gather information about their operations, influence leadership decisions or create internal decisions[22]. In addition to using informants to infiltrate civil society, the authorities have reportedly been using electronic surveillance to keep a watchful eye on citizens.

EXISTENCE AND FUNCTIONING OF DATA PROTECTION SUPERVISORY AUTHORITY

Article 27 of law no 058/2021 relating to the protection of personal data and privacy provides for a supervisory authority with the power:

to monitor compliance and sanction data protection law violations,
to create further regulations for implementation
to receive complaints and claims relating to the processing of personal data of citizens
to authorise processing operations that involve a high risk to rights and freedoms of individuals. However, the law doesn't make elaborate provisions about the organisation and the operational structure of the supervisory authority. Nevertheless, in October 2021, the Ministry of Information Communication and Innovation announced[23] and designated the National Cyber Security Authority (NCSA) as the supervisory authority in charge of the enforcement of the law. More recently, on March 31st, 2022 the Government of Rwanda through the NCSA[24] officially launched the data protection supervisory office, a welcome implementation move towards effective personal data governance.

It is uncertain whether the data protection supervisory authority will execute its mission

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20   Freedom House: Rwanda, Freedom on the net 2021, available at https://www.freedomhouse.org/country/rwanda/freedom-net/2021 (accessed on December 12, 2022)
21   Caryl, C et All:Let there be speech, Reforming the media in Rwanda, available at Https://www.lif.blob.core.windows.net/lif/docs/default-source/publications/rwanda_transitions_web.pdf (accessed on December 12, 2022)
22   Https://www.state.gov/reports/2021/-country-reports-on-human-rights-practices/rwanda/.
23   MICT Press Release : "Rwanda Passes new law Protecting personal data", October 21,2021 available at https://www.minict.gov.rw/index.php?elD=dumpFile&t-f=30553&token=d44bb5a417c65872b4b0ece892e5d8ba34c8c91 (accessed on 12 December,2022)
24   Https://www.cyber.gov.rw/about/

independently and without yielding to external pressure as the law does not specify who will head the institution, and how the staff members of the data protection supervisory authority will be appointed. However, in the absence of public policy or guidance regulating the modalities of the appointment of the head of data protection supervisory authority and his tenure of office with respect to the independence of this institution, therefore it is unclear how this will work in practice.So far there has been no data protection case litigation or petition initiated under the provisions of article 23 of the constitution protecting privacy before domestic jurisdictions in Rwanda, However, it is important to mention a series of ongoing litigation cases pending before the High Court of the United Kingdom and their future impacts on the Rwandan data protection law.

REVIEW OF THE UNIVERSAL SERVICE FUND

The Rwandan government has created a competitive ICT sector, and a key strategy document driving high-speed communications in the country, the 2013 national broadband policy.[25] The policy aimed to transform Rwanda into an information society driven by universal access to high-speed, reliable, affordable and secure broadband infrastructure and services by 2024[26].

The Rwandan telecommunications market is occupied by four major players Airtel Rwanda, Liquid telecom, MTN Rwanda, and Broadband Systems Corporation; they offer fixed or landline telephone, mobile telephone (mainly mobile calling and SMS), and Internet data. The market is regulated by the Rwanda Utilities Regulatory Authority(RURA), which is the state agency responsible for oversight countrywide. The universal access fund was established

through a presidential order[27] and since then it is used to finance infrastructure deployment for schools and rural areas. The Rwanda universal access fund is funded by an annual contribution by the telecommunications operators of 2% of their revenues, more especially from the revenues of the interconnection fee levied from all the licensed operators. These revenues have been used to provide funding for schools

to connect to fiber optic cable and deployment of VSAT satellite terminals in rural areas where other connectivity options are non-existent.

The Rwanda universal access fund is moderately active as internet adoption in rural areas remains low. Internet penetration stands at only 26,3%[28], while 85%[29] of the population is using mobile phones, only 15% have access to smartphones, hindering digital penetration and access. Additionally, digital

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25   MINICT: National Broadband Policy available at https://www.minict.gov.rw/fileadmin/user_upload/minict_user_upload/documents/policies/national_Broadband_policy.pdf (accessed on 18 December, 2022)

26   Rwanda ICT Sector strategic plan available at https://www.minict.gov.rw/fileadmin/user_upload/minict_user_upload/Documents/Policies/ICT_SECTOR_PLAN_18-24_.pdf accessed on 28/01/2023

27   Presidential Order no 05/01/ of 15/03/2004 determining the functioning of the universal access fund and public operator's contributions available at https://www.rura.rw/fileadmin/documents/docs/pl05.pdf (accessed on 29 December, 2022)

28   Digital Report2022: Rwanda available at https://www.datareportal.com/reports/digital_20222_rwanda#

29   Rwanda Economic Update: Accelerating Digital Transformation; January 2020 available at https://openknowledge.worldbank.org/handle/10986/33247 accessed on 12/12/2022

literacy remains extremely low at only 10%[30] challenging the ability to source a skilled local workforce.Among the achievements made by the Universal access fund is the Ms Geek Africa Program[31], a regional flagship competition run by *"Girls in ICT Rwanda"*, which aims to encourage girls to participate in the fields of Science, Technology, Engineering and Mathematics whose program is funded by the Rwandan Ministry of Innovation and ICT.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

the digitization journey which the government of Rwanda embarks on such as the modernization of the administration in an effort to improve service delivery and efficiency, has completely changed the way Rwandans interact with state's institutions to get online services and this has sustainably contributed to the efficiency gains between government, the public and the private sector. Amongst the notable achievements made in order to bridge digital divide is the launched of *"Irembo platform[32]"* a centralized portal which serves as a one stop shop for a number of government basic services.

Currently, Rwanda is aggressively introducing ICT devices in schools, where according to the latest figures of the ministry of Innovation and ICT 84%[33] of schools countrywide have computers installed and utilized , 52,9%[34] secondary schools are connected to the national broadband.

in 2019 in a national effort to increase internet penetration countrywide, the government of rwanda partnered[35] with the International Telecommunications Union (ITU) and UNICEF in order to strengthening school's connection,

especially those based in rural areas and at the same time providing community hotspots with free connectivity near the school 's premises,

ARTIFICIAL INTELLIGENCE (AI) NATIONAL STRATEGY

Although Rwanda has established itself as an ICT frontrunner in Africa. Nonetheless, the country has not yet developed a comprehensive policy on Artificial Intelligence. It was only in 2020 the Ministry of innovation and ICT embarked on a journey to develop the country's national AI policy. The Ministry of Innovation and ICT together with key stakeholders has defined six priority areas for an effective AI policy in Rwanda which is currently through the validation process. The Rwanda national Artificial Intelligence policy framework and implementation plan as it is denominated is focused on the ethical use of artificial intelligence to promote social and economic development[36]. The national AI policy framework has identified priority sectors where AI adoption has a potential impact on the country such as agriculture, the education system, financial services, healthcare, energy and transportation.[37] In addition, the policy advocates for the creation of open public sector data to reduce entry barriers.

Nonetheless, Rwanda has been moving ahead with the use of AI in the public domain in the sectors of public health, transport, and immigration. For instance, since 2016 Zipline drones have been operating in Rwanda delivering blood and medicines to remote health centres across the country. More recently in 2019, Rwanda's general directorate for immigration and emigration introduced the E-gates to FastTrack immigration formalities at the major entry points of the country. The E-gates were

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30   [1]Op Cit Digital Report2022: Rwanda available at https://www.datareportal.com/reports/digital_20222_rwanda#

31   https://www.girlsinict.rw/msgeekafrica

32   https://irembo.gov.rw/home/citizen/all_services

33   Rwanda ICT Sector Profile available at https://www.minict.gov.rw/index.php?eID=dumpFile&t=f&f=24795&token=f83c03984d1529b594aef978bc26bbbf11e6c976 (accessed on 12/12/2022)

34   Rwanda ICT Sector Profile , Op cit

35   https://www.itu.int/hub/2022/06/giga-rwanda-connecting-schools-transforming-education/

36   How Rwanda AI Policy helps to shape the evolving AI ecosystem available at https://www.digicenter.rw (accessed on 17/12/2022)

37   *Ibid*.

deployed at the Kigali International Airport. Rwanda's Artificial Intelligence ecosystem is growing as it aspires to position itself as Africa's AI lab. However, this dynamic creates the need to define ethical standards for the use of Artificial intelligence, while mitigating the risks and ethical concerns that the technology entails. Unfortunately, during the course of developing the country's national policy, there was no adequate public consultation, as only the key stakeholders were consulted, and the general public were kept out of the process.

Besides that, the future of AI in Rwanda looks very promising as the country has succeeded in attracting world-class universities such as the Carnegie-Mellon University –Africa and the African Institute of Mathematical Studies which have their campuses based in Kigali, and at the same time attracting a substantive number of regional and global talents positioning the country as the number one destination for Information Technology and Artificial Intelligence education. additionally, the country has recently launched the Centre of the Fourth industrial revolution and rapid innovations (C4IR)[38]

The Centre will focus on data governance, artificial intelligence and machine learning by spearheading government efforts through the shape of new policies and strategies in technology governance that enable agile implementation and to foster inclusive innovation in the country.

It is important to note this project resulted from the partnership between the government of Rwanda through the ministry of innovation and ICT and the world economic forum[39].

GENDER AND ACCESS TO ICT

As the country is steadily moving towards its vision of becoming an information and knowledge-based economy and the East African ICT hub, several initiatives have been put in place to create awareness for the needs of gender in the ICT ecosystem in Rwanda. Gender equality is enshrined in the constitution and includes establishing a specialised gender monitoring organ.[40] Although Rwanda has strong foundations to make digital access affordable for all, a gendered division of labour and power relations in the Rwandan society seems to contribute to a lingering gender imbalance in internet access and its usage. There is a gender disparity among people in the ICT, males represent a large proportion compared to females. Despite the fluctuation, the proportion of males employed in the ICT sector has been consistently higher than that of females.[41]

The major barrier to Internet access is the cost which is still very high for many in sub-Saharan Africa. Rwanda is not an exception as one gigabyte of mobile internet costs 1100 Rwandan francs 1100 (around US$1.10)[42]in a country where the median net hourly wage is 450 Rwandan francs. Rwandan women have no easy access to digital technologies. To access the internet, someone needs a computer or a smartphone. However, these are still very expensive devices. Computer ownership is very low in general and more so for women, only 2% of the Rwandan population use computers on a daily basis and only 1,8% of women make use of computers daily.[43] The ownership of mobile phones among men in Rwanda (60.4%) is almost double that of women (37.2%) with a gender gap of about 62%, the largest among the 10 African countries surveyed. [44]. However, it is important to mention that several initiatives have been put in place to create awareness and

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38   Ingabire, P:How can Rwanda can leverage the fourth Industrial Revolution to strengthen post-covid-19 resilience available at https://www.weforum.org/agenda/2022/03/rwanda-leveraging-the-fourth-industrial-revolution-to-strenghten-post-covid-resilience/ (accessed on 14/12/2022)

39   https://www.c4ir.rw

40   Article139 of the constitution of the Republic of the Republic of Rwanda of 2003 as revised in 2015

41   RDB.rw/wp-content/uploads/2022/05/ICT-snapshot.pdf

42   Price for mobile data in Rwanda as of 2022 available at https:statista.com/statitstics/1272762/price-for-mobile-data-in-rwanda/

43   Ibid.

44   Datafirst: an online microdata library"Africa-RIA ICT access survey2017-2018, **Op Cit**

fill the gender gap in the ICT sector including the following:

Girls in ICT Rwanda: this is a forum of women working in the field of ICTs whose main goal[45] is to improve the current statistics regarding women in the ICT sector as well as to alter the stereotype held by many young girls that ICT's is a man's job.

Camp tech Kobwa: A newly founded program[46], with the main purpose to provide young women with unhindered access to computers to develop skills and creativity. The camp encourages young women to become active citizens by building their self-esteem and confidence, and by empowering them to start computer and media clubs with their ICT teachers upon returning to school.

Smart girl: smart girl seeks to increase the awareness, knowledge and confidence of girls in rural areas with little exposure to [47].

45   Rwanda Women in Technology , availa ble at https://www.girlsinict.rw (accessed on 20/12/2022)
46   https://www.egr.msu.edu/techkobwa/home
47   Nsengimana, JP : Co-creating a smart Rwanda, Smart Africa and Smart World available at https://www.blogs.worldbank.org/digital-development/co-creating-smart-rwanda-africa-and-smart-world

Conclusion and Recommendations

Despite the liberal and progressive digital policies, there is room for development and reforms. Social media networks and digital communications channels have become critical sites for political and social activity with a need for an open environment for digital rights to thrive. This assessment necessitates the following recommendations.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
• The Rwandan government has the duty to facilitate a conducive environment for the free flow of information in the country, by upholding the independence of the Media regulatory authority as well as by restraining its interference into the work of the Rwanda Media High Council • there is a critical need of repealing some articles of the penal code specifically the provisions of articles Articles 156, 157, 194, 218 and 251 of the penal code as well as reviewing the past convictions of journalists and bloggers that have been convicted on vague charges such as "inciting public disorder or spreading rumours to cause unrest among the population ", "disposing of or degrading evidence or information relating to genocide" and "publication of	• Internet Service Providers and Telecommunications companies should be transparent and need to publish the quantity of the state security services surveillance requests and types of devices and tools being used in monitoring citizens to advance transparency and public confidence • There is a need for ISPs and Telco's to tackle the key issue of gender digital divide through a more conscious corporate social responsibility policy aimed at increasing broadband access for marginalised groups.. • The private sector should demonstrate their commitment to universal access to the internet by promoting initiatives aimed at the creation of internet facilities to expand connectivity countrywide.	CIVIL SOCIETY • The Rwandan Civil society organisations must coordinate their actions to create awareness and the monitoring of the violations of human rights both online and offline in the country. • There is a need to streamline the flow of information between the different community grassroots organisations and NGOs to build effective domestic human rights monitoring mechanisms, building capacity for the detection, investigation and policy advocacy against Human rights violations. • Holding the Rwandan state accountable through regular meetings and consultations regarding Legal loopholes and policy shortcomings regarding the promotion of Human

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
rumours" · To promote greater access to the internet, the government should boost allocations for the ICT sector in order to expand access to the Internet particularly in rural areas. · There is a need for wide and open public consultation especially regarding the adoption and the implementation of the Rwanda national AI strategy in order to allow all the different stakeholders to share their views and concerns, more importantly to ensure public transparency and accountability of all the policy and decision makers as far as the implementation of the AI national strategy is concerned.		Rights and the respect of the rule of law in the country

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Senegal
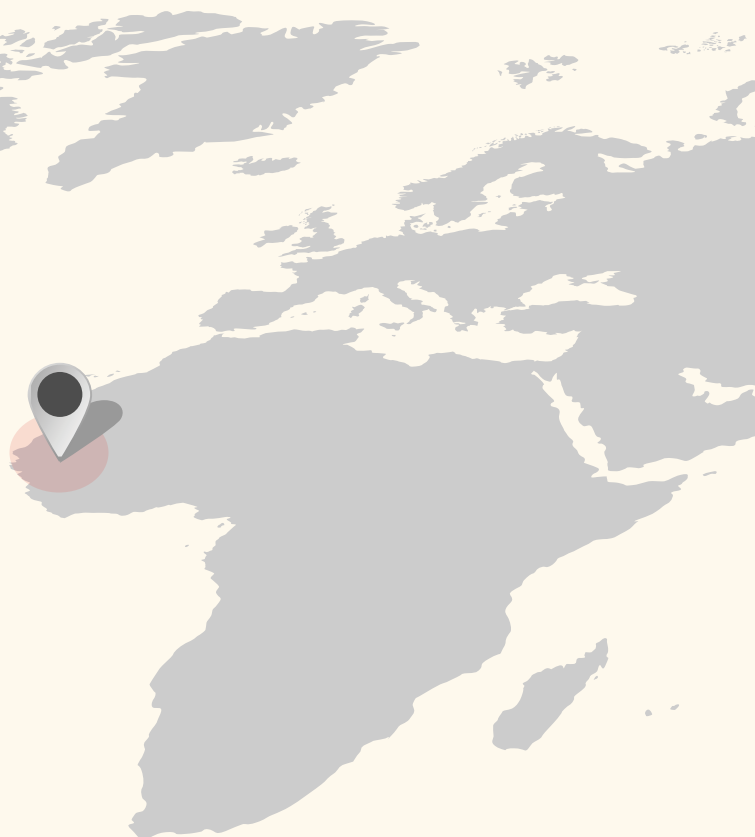
Executive Summary

This report comes at a time when Senegal has put in place a national data centre to promote digital rights, in accordance with the country's *2025 Digital Strategy*. The establishment of this data centre constitutes a digital revolution that is aimed at breaking down administrative procedures, hosting and migration of administrative data. The main objective of this report is to build capacities for stakeholders (State, private sector and civil society).

Further, this report aims to provide an overview of digital rights. Moreover, it looks at the issues around access to internet, data governance, review of the Universal Service Fund and the evolution of Senegal's ICT and emerging technologies for 2022. At the end of the report, recommendations to strengthen and promote human rights in the digital age, have been put forward to industry players.
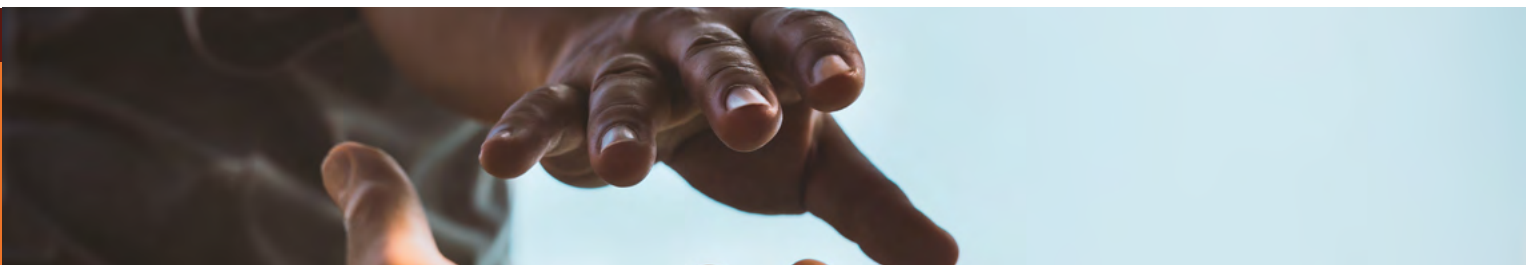
Introduction

Since Senegal officially connected to the internet in 1996[1], its connectivity has continued to improve over the years, with the progressive enlargement of the bandwidth link, one of the largest in West Africa.

On December 14, 2016, the President of the Republic of Senegal signed two decrees which constitute major decisions for the creation of an ecosystem for developing the digital economy in Senegal: Decree No. 2016-1987 relating the terms and conditions for granting the infrastructure operator authorisation and Decree No. 2016-1988 relating to the sharing of telecommunications infrastructure[2]. Mobile network sharing can play a role in access to information and communication technologies, improve the quality of life and help the country achieve the Goals of the World Summit on societal information.

Senegal is actively developing widespread use of information and communication technologies through its various national initiatives as described in its *"Digital Senegal 2025[3]"* strategy, backed by the development framework of the Emerging Senegal Plan (PSE), adopted in 2012[4]. It is a long-term vision made up of prerequisites and priorities articulated around the slogan *"digital for all and for all users in 2025 in Senegal with a dynamic and innovative private sector in a high-performance ecosystem"*.

These initiatives have led to a transformation of Senegal into a digital and inclusive society.

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[1]   Although the country was officially connected to the Internet in March 1996, the first online Web server historically appeared in November 1995 at the SYFED-REFER Center in Dakar, see History of the Internet in Senegal from 1989-2004 by Olivier Sagna, Christophe Brun and Stephen Huter, p.8, available at: https://nsrc.org/sites/default/files/archives/case-studies/SenegalBook_French_Final.pdf

[2]   Study on the sharing of telecommunications and ICT infrastructures in Senegal, Groupe Défis § Strategies/Titane Conseil, Final report May 2019, https://www.adie.sn/sites/default/files/lois/SN-Rapport%20final_Partage%20of%20infrastructure%20and%20outsourcing_v080719.pdf

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

Senegal has adopted a new Code on electronic communications[5], which is law 2018-28 of December 12. Its objective is to *"promote the development and modernisation of electronic communication networks and services in Senegal through the creation of an effective, flexible and transparent legal framework"*[6].

In 2018, three new internet providers were introduced in the Senegalese market, namely, ARC Telecom, WAW Telecom and Africa Access, joining already existing players such as the company Sonatel, Free (licensed under SENTEL and later renamed Tigo) and Expresso Senegal. The Senegalese State aims to make the internet more accessible and competitive for its people by opening up the market to other players. The initiative of opening up the market to new players has allowed the nation to have access to high-speed and competitive internet.

In addition to whatever may be said of State policies, the high costs of internet connectivity greatly contribute to difficulties in accessing services provided by ICT. Also, the quality of the network remains defective in certain areas of the country. The internet was disconnected on March 5, 2021, during demonstrations to protest the arrest of Ousmane Sonko, President of the opposition political party – Patriots of Senegal for Work, Ethics and Fraternity (Pastef-Patriotes)[7]. Netblock[8], an internet observatory specialising in monitoring disruptions and cuts, announced that social networks and messaging applications were restricted in Teranga (Senegal).

These internet disruptions are a violation of the digital rights of internet users and a violation of Article 8 of the Constitution of Senegal which *"guarantees all citizens the fundamental individual freedoms, including the freedoms of opinion, expression, press, association, assembly, movement and demonstration"*[9]. Moreover, it is a violation of international law which was adopted by consensus resolution, by the United Nations Human Rights Council and the United Nations General Assembly, a law which condemns internet shutdowns and similar restrictions on freedom of expression online[10].

Another supporting resolution is by the African Commission on Human and Peoples' Rights (ACHPR) adopted in 2016[11] on the right to freedom of information and expression for the Internet in Africa. This resolution expresses concern about *"African states interrupting or limiting access to telecommunications services such as the internet, social media and messaging services, a practice that is increasingly common during elections."*

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3   In 2016, Senegal launched its "Digital Senegal 2025" strategy.

4   PSE aims to stimulate sustained and inclusive economic growth and make Senegal an emerging economy by 2035.

5   https://www.sec.gouv.sn/publications/lois-et-reglements/code-des-communications-electroniques .

6   Article 5 of the Electronic Communications Code.

7   A map of network disruptions in West Africa in 2021, https://www.mfwa.org/fr/issues-in-focus/une-cartographie-des-perturbations-de-reseau-en-afrique-de -louest-en-2021/ , (accessed December 12, 2022)

8   Political Tensions in Senegal: Internet Disruptions and Shutdowns Reported, https://afriqueitnews.com/tech-media/tensions-politiques-senegal-perturbations-coupures-internet-signalees/ (accessed December 12, 2022).

9   Constitution of January 7, 2001 (JORS, n° 5963 of January 22, 2001).

10   United Nations Human Rights Council in its resolution A/HRC/RES/32/13, July 1, 2016 https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=57e916644 (accessed December 12, 2022).

11   362 Resolution on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/Res.362(LIX) 2016, https://www.achpr.org/en_sessions/resolutions?id=374 .

FREEDOM OF EXPRESSION AND MEDIA FREEDOMS

Freedom of the press is a constitutional freedom in Senegal, a fundamental freedom that is pivotal, as its existence is one of the essential guarantees of respect for other rights, other freedoms and national sovereignty. Freedom of expression is a *sine qua non* of democracy (an essential part). Freedom of expression is guaranteed by the Declaration of Principles on Freedom of Expression in Africa adopted at the 32nd Ordinary Session, October 17-23,

2002 by the African Commission on Human and Peoples' Rights.[12] Article 10 of the 2001 Constitution of Senegal strongly enshrines freedom of expression.

Article 5 of Law No. 2008-10 of January 25, 2008, also supports that and speaks on the orientation law on the Information Society[13] and Law No. 2011-01 of January 27, 2011, on the Code of Telecommunications[14].

The 2017 Press Code aims to promote the exercise of freedom of the press and to guarantee the freedoms of expression, opinion and communication while respecting the dignity of humans, the privacy of citizens and human rights as a whole. The new Code on electronic communications, in support of article 5 of law 2018-28 of December 12 aims to: "*promote the development and modernization of networks and electronic communications services in Senegal by creating a legal framework which is efficient, flexible and transparent*".

With a strong legal framework that facilitates access to information, freedom of expression and press, there is a decline in democracy. For example, in March 2021, the National Audio-visual Regulatory Council suspended *Walf TV* and *Sen TV* for 72 hours on the grounds that these two television channels had broadcasted live footage of demonstrations; the council considered that by acting this way, they further engaged in an "apology for violence" and an "irresponsible coverage of the situation"[15].

The arrest and constant detention of journalists sparked a wave of criticism of press freedom. The 20th edition of the World Press Freedom Index, compiled by Reporters Without Borders (RWB)[16], reveals that Senegal is on position 73, a decline of 24 places from last year's ranking.

PRIVACY AND SURVEILLANCE

Senegal adopted its first law on the protection of personal data and its implementing decree in 2008[17][18]. The purpose of this law is to protect the privacy of individuals' information and communication technologies; to fight against invasions of privacy likely to be caused by the collection, processing, transmission, storage and mass surveillance. The rationalisation[19] of personal data, the profusion of intrusive techniques (geolocation, cyber-surveillance, etc), the use of social networks and digitisation

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12   https://www.article19.org/data/files/pdfs/igo-documents/declaration-of-principles-ua-french.pdf .

13   JORS, n°6406 of May 3, 2008, p. 419 et seq.

14   JORS, no. 6576 of March 14, 2011, p. 273 et seq.

15   Annual report 2021: Serious threats to freedoms in Senegal, March 29, 2022, https://www.amnesty.sn/rapport-annuel-2021-de-lourdes-menaces-sur-les-libertes-au-senegal/ , (accessed December 10, 2022).

of the Union on June 27, 2014 in Malabo, Equatorial Guinea; an additional Act A/SA.1/01/10 of medicine, expose the privacy of people to new risks. Through a Bill dating from 2019, the State deems it necessary to overhaul the personal data protection system.

In reality, this project is innovative in the sense that it provides a framework for new areas such as the cloud, artificial intelligence, biometrics, big data, geolocation and the development of specific regimes for the processing of medical data. In terms of cooperation and for better protection of privacy, Senegal has adhered to Convention No. 108 of January 28, 1981 of the Council of Europe for the protection of individuals with regard to the automatic processing of data and of a personal nature[20]. Senegal has also ratified the African Union (AU) Convention on Cybersecurity and the Protection of Personal Data which was adopted at the 23rd Ordinary Session of the Assembly relating to the protection of personal data noted in the ECOWAS (Economic Community of West African States) region, Abuja February 16, 2010.

DATA GOVERNANCE

The importance of the digital economy and strategic thinking in the 21st century is now at the heart of many companies' activities, hence there is need to manage this data well, to ensure its accuracy and integrity through good governance. Senegal is the first ECOWAS country to launch the biometric identity card, as of Law No. 2016-09 of March 14, 2016, establishing an ECOWAS biometric identity card and its implementation decree[21].

The launch of the National Digital Identity (NDI)[22] project by the Ministry of Digital Economy and Telecommunications is part of the "*Digital Senegal 2025*" Strategy, a Digital Governance Support Project (PAGNUM) constituting good data policy governance. The National Digital Identity is based on the national sovereignty of digital data, advanced technologies such as artificial intelligence or connected objects.

2022, https://lequotidien.sn/classement-liberte-de-la-presse-le-senegal-fousonnant-est-a-la -73rd-place/ .

[17]   Law n° 2008-12 of January 25, 2008, on the protection of personal data (JORS, n°6406, of May 3, 2008, p.434).

[18]   Decree No. 2008-721 of June 30, 2008 implementing Law No. 2008-12 of January 25, 2008 on the protection of personal data, OJ No. 6443 of Saturday December 20, 2008.

[19]   Legacy or monetization or commercialization involves generating revenue from personal data held by a company.

[20]   https://rm.coe.int/1680078b39 and multi-sectoral data recovery policy favourable to innovation, digital trust, protection of fundamental rights and economic development."[24]

[21]   Decree No. 2016-1536 of September 29, 2016 implementing Law No. 2016-09 of March 14, 2016 establishing an ECOWAS biometric identity card: https://www.icnl.org/wp-content/uploads/Senegal_biometric.pdf

[22]   National Digital Identity – Senegal towards a phase of "transformation of its services", https://www.socialnetlink.org/2022/06/25/identite-numerique-nationale-le-senegal-vers-une-phase-de -transformation-de-ses-services/ , (consulted on December 14, 2022)

[23]   Incursion into the Diamniadio Data Centre: an infrastructure of 10 billion FCFA built on more than 1 ha ... more than 15,000 jobs in perspective, http://www.osiris.sn/Incursion-au-Data-center- de.html

UNIVERSAL SERVICE FUND REVIEW

At the institutional level, data governance is assessed through the creation of a new national company, Sénégal Numérique SA (SENUM SA), authorised by Law No. 2021-39 of 13-12-2021 which attributes significantly to data governance. It is a company that also allows the deployment of infrastructures, hosting and technological innovation. It works in collaboration with various players including operators, internet service providers and content creators. The *Digital Senegal Strategy* aims to make the country a driving force in the sub-region in terms of digitalisation and good governance.

The Diamniadio Data Centre, inaugurated on June 22, 2021, is presented as a *"digital sovereignty tool",* which will make it possible to store data from the administration and that of the private sector[23]. Senegalese President Macky Sall instructed the government and State structures to host all State data and platforms through this standard infrastructure and proceed with the rapid migration of data hosted abroad or elsewhere, getting rid of anything that doesn't comply with international standards.

The Direction Générale du Chiffre et de la Sécurité Systèmes d'Information (DCSSI) plays a very important role in data governance. It has stemmed from Decree No. 2021-35 of 14-01-2021 on the creation and organisation of the DCSSI, a National Cybersecurity Authority that strengthens the protection of the secrecy of internal and external state information. The Senegalese government is in the process of putting together a national data governance strategy. According to Yankhoba Diatara, former minister of the digital economy and telecoms, the objective of this initiative is to *"lay down the principles of governance and lay the foundations for a harmonised multi-actor* As part of its public service mission, the Senegal introduced the concept of universal

access/ service through Law No. 2001-15 on the Telecommunications Code. With a dynamic and evolving approach, the universal service takes into account the evolution of information and communication technologies, markets, the needs and usage by consumers[25]. Access to

universal service is defined by Article 4 of the Electronic Communications Code[26] as a: *"minimum set of good quality electronic communications and ICT services which, regardless of geographical location, is accessible to the entire population in affordable pricing."*

In addition, the ECOWAS supplementary Act No. A/SA/6/01/07 of 19/01/2007 defines Universal Access/Service as *"access to a minimum set of services, in the territory of ECOWAS Member States to the entire population, regardless of their geographical location and at affordable tariff conditions".*

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16   RSF – Press freedom ranking: Senegal falls 24 places, 4 May

24   https://ciberobs.com/2022/03/16/le-senegal-concocte-sa-strategie-nationale-de-gouvernance-de-la-donnee-et-de-lintelligence-artificielle/

25   Universal Telecommunications Service Development Fund, http://www.adl.sn/acteur/fdsut

26   Law 2018-28 of December 12, 2018.

The Universal Telecommunications Service Development Fund (UTSDF) is established by Decree No. 2007-593 of May 10, 2007, setting the terms and conditions for the development of the universal telecommunications service as well as the rules for the organisation and operation of the universal telecommunications service development fund[27] which aims to avail to all, a minimum service consisting of telephone service of specified quality at an affordable price, as well as the routing of emergency calls and the service of the national territory respecting the principles of equality, continuity, universality and adaptability.

According to Thiongane[28], the UTSDF aims to fight against the digital divide within the country and to which more than 7 billion FCFA has been mobilised by the fund to support projects and programs relating to universal service, including:
- Access to digital technology in the fields of education and higher education;
- Population access to Digital Terrestrial Television (DTT) for an approximate amount of 3 billion FCFA with the purchase of 120,000 decoders for disadvantaged households;
- The establishment of solar stations in thirty (30) villages to recharge smartphones,
- Universal access with the universal access pilot project, P2AU, launched on November 03, 2020, including all telecommunications players in Senegal, the general objective of which is to identify viable coverage models that can be replicated in order to reach the entire territory and reach 2.6 million Senegalese by 2024[29].

Therefore, in Senegal, the universal service fund is designed by the State as a means of drastically reducing the digital divide and contributing effectively to the digital development of the country.

EVOLUTION OF ICT AND EMERGING TECHNOLOGIES

In relation to emerging technologies such as AI and robotics, the ACHPR (African Commission on Human and Peoples' Rights) adopted Resolution 473 [30] on the need to develop a study on human and peoples' rights and artificial intelligence (AI), robotics and other new and emerging technologies in Africa. In this resolution, the ACHPR affirms that *"new and emerging technologies present both opportunities and threats for the promotion and protection of human and peoples' rights in Africa"*[31].

In compliance with this, Senegal has launched its Initiative for the Development of Artificial Intelligence (IDIA)[32]. This is a research project that aims to improve and strengthen the use of AI in the region, especially in areas such as agriculture, education, health and the environment. The implementation of this project requires working in synergy with structures such as IPAR, CURI-ICAD and JONCTION and the Virtual University of Senegal for the adoption of common regional and national policies, strategies and to guarantee responsible use.

Also, the use of artificial intelligence, robotics and other new and emerging technologies must be compatible with the rights and duties enshrined in regional and international human rights instruments in order to maintain the human dignity, privacy, equality, non-discrimination, inclusion, diversity, safety, fairness, transparency and accountability.[33]

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[27]   http://www.osiris.sn///IMG/pdf/document_Decret_relatif_au_service_universel_39.pdf

[28]   O. THIONGANE, Digital promises - Senegal and Africa connect, Sédar, December 2020, p. 46-47.
[29]   The Coordination and Management Unit (UCG) of the FDSUT, installed in December 2019, intends to ensure other projects according to O. THIONGANE, in Digital promises - Senegal and Africa connect, Sédar, December 2020.

Conclusion and Recommendations

This report is intended as a source of information for authorities, stakeholders and the general public. One of the objectives is to provide an overview of the country's situation regarding respect for human rights in the digital age. It is therefore necessary to strengthen the legal and regulatory framework for data governance by involving all stakeholders to promote digital inclusion. It is also time for Senegal to reclaim our democracy through a strong guarantee of freedom of expression and of the press.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
• The Senegalese government must further guarantee internet freedom. Any restrictions on freedom of expression and of the press must be provided for by law, be proportionate, legitimate, and necessary in a democratic society. • The government must constantly inform citizens about surveillance practices in order to guarantee respect for the right to privacy and the protection of personal data. • The State should implement laws and policies on digital identity systems while paying particular attention to privacy and recognising international data	• The sector in collaboration with the State must ensure that all citizens benefit from the advantages of the universal service fund. • Private companies must respect privacy in the practices of collecting and processing personal data.	• Civil society organisations should continue to play a key role in advocating and protecting digital rights by ensuring digital inclusion for all citizens. • Civil society organisations should work hand in hand with stakeholders, such as the government, the private sector, the media and the public to promote an understanding of data governance and emerging technologies. • Civil society organisations should conduct awareness and advocacy campaigns on digital rights and digital inclusion in Senegal.

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30   ACHPR/Res.473(XXXI) 2021
31   https://www.achpr.org/fr_sessions/resolutions?id=504#:~:text=473%20R%C3%A9solution%20sur%20la%20n%C3%A9cessit%C3%A9,473(XXXI)%20202021
32   Senegal: launch of an initiative for the development of AI in French-speaking Africa, https://comprendre.media/senegal-lancement-dune-initiative-pour-le-developpement-de-lia-en-afrique-francophone/
33   473 Resolution on the Need to Develop a Study on Human and Peoples' Rights and Artificial Intelligence (AI), Robotics and Other New and Emerging Technologies in Africa - ACHPR/Res.473(XXXI) 2021.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
protection principles. · The State must inform decision-makers and users of AI systems and potentially initiate a process of reflection for legislative reforms aimed at improving public policies in favour of responsible artificial intelligence. · The State should develop a legal and ethical governance framework for AI, robotics and other new and emerging technologies, in accordance with international standards.		

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South Africa

▶ Executive Summary

In 2022, South Africa championed legislation and policy to advance digital rights and the use of technologies. However, there were delays in implementing policy objectives and targets were often unmet. Continued delays in implementing ICT plans and strategies excludes underserved populations from accessing information and exercising other fundamental rights in digital spaces. On the whole, the Judiciary grappled with the issue of hate speech perpetuated online and has made interesting, albeit divergent, findings on online harms. This country report seeks to provide an overview of the advancements as well as some of the challenges and tensions in South Africa's digital rights landscape.
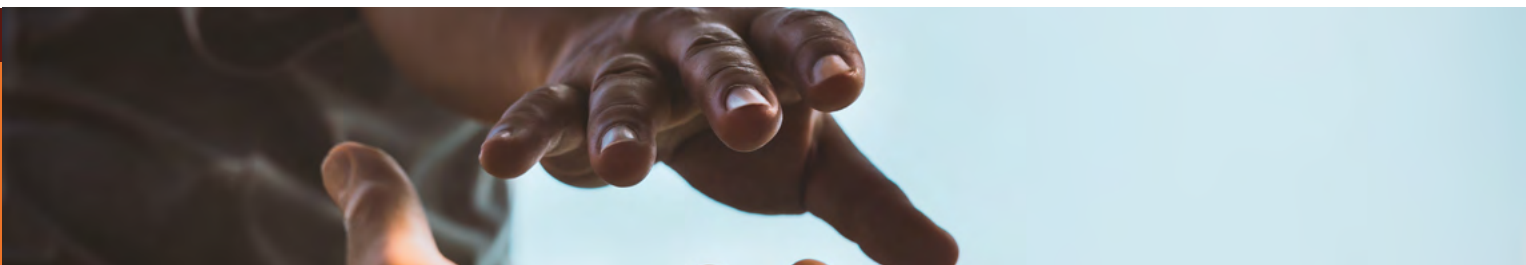
Introduction

South Africa is a constitutional democracy with an advanced human rights framework following its first democratic elections in 1994, which was the first step towards ending decades of racial segregation (although the country continues to grapple with racial discrimination). The country's progressive human rights framework is evidenced by South Africa's ranking of 79 out of 100 for its political rights and civil liberties in the 2022 Freedom in the World Report.[1] In 2022, South Africa recorded an internet penetration rate of 68.2 per cent and had 41.19 million internet users.[2]

Despite its advanced human rights framework, South Africa is not exempt from social and political tensions that contribute to online harms such as hate speech and cyberbullying. In 2022, it was reported that the anti-migrant and xenophobic hashtags on Twitter #OperationDudula ("*dudula*" translates roughly into "push away" in isiZulu and isiXhosa languages) received 15,697 mentions between July 1, 2022 and July 15, 2022 and the tag #PutSouthAfricansFirst received 13,257 mentions in the same period.[3] Xenophobic online posts and hashtags also materialise in the physical mobilisation against foreigners in South Africa.[4]

South Africa has in place data protection legislation in the form of the Protection of Personal Information Act 4 of 2013 (POPIA), which establishes the Information Regulator as the regulatory authority responsible for its enforcement including protecting data subjects and holding data processors accountable for unauthorised data processing.[5] The Constitution makes provision for the right to access information, which is given practical expression through the Promotion of Access to Information Act 2 of 2000 (PAIA).[6] Other key pieces of legislation related to accessing and processing information include the Electronic Communications and Transactions Act 25 of 2002 (ECT) – which seeks to ensure universal access to electronic communications and transactions as well as to regulate and facilitate electronic communications,[7] – as well as the Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA) 70 of 2002 and the Film and Publications Amendment Act of 2019. Broadly, in 2022, South Africa has been proactive in adopting legislation to enable and protect digital rights, but practical enforcement and implementation impede progress.

1   Freedom House 'Freedom in the World' (2022) https://freedomhouse.org/country/south-africa/freedom-world/2022 (accessed December 7, 2022).
2   Data Reportal 'Digital 2022: South Africa' (2022) https://datareportal.com/reports/digital-2022-south-africa?rq=south%20africa (accessed December 8, 2022).
3   The Centre for Analytics and Behavioural Change 'Periodic report: Conversations on social media about foreign nationals in South Africa' (2022) https://cabc.org.za/wp-content/uploads/2022/08/Periodic-report-2_ForeignNationals_02.08.22.docx.pdf (accessed December 13, 2022).
4   *Id.*
5   Protection of Personal Information Act 4 of 2000 (POPI) https://popia.co.za/
6   Promotion of Access to Information Act 2 of 2000 (PAIA) https://www.saps.gov.za/resource_centre/acts/downloads/promotion_of_access_act2_2000.pdf
7   Electronic Communications and Transaction Act 25 of 2002 https://www.gov.za/sites/default/files/gcis_document/201409/a25-02.pdf

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

Access to the internet is increasingly recognised as having a bearing on the realisation of the right to freedom of expression, access to information, and the right to vote, all of which enjoy constitutional protection.[8] The internet supports the realisation of these fundamental rights in an age in which most people have an online presence and make use of the internet to advocate for their rights and hold public bodies accountable. South Africa has not experienced government-led internet shutdowns, a trend which continued in 2022, although incidents of throttling, blocking, and filtering have occurred in the past.[9]

South Africa has high levels of inequality in access to the internet, largely driven by atypically high mobile data costs. South Africa ranked 135 out of 233 countries for its data costs.[10] With an average price of $2.04 for 1GB of data, the cost of data in South Africa is attributed to inadequate infrastructure to enable 4G and 5G coupled with heavy reliance on the availability of broadband.[11] The Independent Communications Authority of South Africa (ICASA) published its bi-annual tariffs report for the period of January 2022 to June 2022 in which data costs by various mobile operators are outlined. Out of the four leading mobile network operators in South Africa – MTN, Cell C, Telkom Mobile, and Vodacom – three operators' data prices remained unchanged from 2021.

The exception was Cell C which reduced its mobile data costs by 25 per cent in 2022.[12]

The digital divide is still prevalent in South

Africa and tends to impede access to specific demographics such as women and children, rural communities, and persons with disabilities (PWDs).[13] The worsening electricity crisis in South Africa is exacerbating the divide. In 2022, the country experienced the most intensive levels of load shedding,[14] a colloquial local

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8   Constitution of South Africa, 1996 (the Constitution)

9   Reuters 'Instagram looking into issues after user complaints' (2022) https://www.timeslive.co.za/news/sci-tech/2022-10-31-instagram-looking-into-issues-after-user-complaints/ (accessed December 7, 2022); News 24 'Signal jamming in Parliament ruled unlawful' (2016) https://businesstech.co.za/news/government/138483/signal-jamming-in-parliament-ruled-unlawful/ (accessed December 15, 2022)

10   Cable.co.uk 'Worldwide mobile data pricing 2022' (2022) https://www.cable.co.uk/mobiles/worldwide-data-pricing/#regions (accessed December 14, 2022)

11   ICASA 'Retail tariffs report Quarter 2, 2022/23 (Jan-June)' (2022) https://www.icasa.org.za/tenders/retail-tariffs-report-quarter-2-2022-23 (accessed December 13, 2022) Above n 10.

12   Id.

13   Centre for Human Rights, 'Digital Rights Landscape in Southern Africa' (2022) https://www.chr.up.ac.za/expression-information-and-digital-rights-unit-resources (accessed on January 18, 2022)

14   Media release by the Council for Scientific and Industrial Research(CSIR) (2022) https://www.csir.co.za/csir-releases-statistics-on-power-generation-south-africa-first-half-2022-and-loadshedding-data#:~:text=This%20year%20is%20the%20

term for power cuts. By December 2022, the country experienced over 200 days of power cuts.[15] The effects of this are particularly stark from an education standpoint as the country aims to move towards technology-enhanced learning. Statistics South Africa conducted a survey which reveals that only 22 per cent of households own computers or laptops.[16] In the healthcare sector, there have been calls to mobile network operators and the government to provide "free to use WhatsApp data packages" to allow under-served communities access to digital healthcare applications.[17]

Nevertheless, some positive developments include the conclusion of the spectrum auction in March 2022, which raised R14.4 billion to contribute towards reducing communications costs by the national government. The bidders for the spectrum auction, include Cell C, Liquid Intelligent Technologies, MTN, Rain Networks, Telkom, and Vodacom, who were all contesting for the 700MHz, 800MHz, 2600 MHz, and 3500MHz bands.[18] In a notice published in November 2022, ICASA also introduced the Draft Radio Frequency Spectrum Assignment Plan,[19] the next step towards completing the decade-long process of freeing up broadband space to enable internet access and improved connectivity. Freeing up the spectrum to enable faster, more affordable internet access would have far-reaching opportunities for connectivity.

Following the spectrum auction, ICASA requires the winners to provide zero-rated mobile content for public benefit, the zero-rated websites will enable mobile phone operators to download educational resources and useful websites for free.[20]

In June 2022, the Constitutional Court handed down judgment in the case of *e.TV v Minister of Communication and Digital Technologies*, which concerned the planned transition from analogue to digital television broadcasting.[21] The Constitutional Court held that the previously determined analogue switch-off date of March 31, 2022 was unconstitutional and invalid. This decision required a balancing of several factors. On the one hand, the migration from analogue to digital will free up the radio frequency spectrum to be used by mobile network operators in improving internet access and connectivity. On the other hand, the switch-off will impact South Africans who primarily rely on free-to-air analogue TV to receive news and for entertainment purposes. South African civil society organisations formed a campaign under the #SaveFreeTv[22] hashtag to advocate for the government to engage with all parties to come to a reasonable solution that considers differing perspectives and lived realities.

FREE SPEECH AND MEDIA FREEDOMS
Free speech in South Africa is protected under section 16(1) of the Constitution. It provides everyone with the right to freedom

most,loadshedding%20than%20the%20entire%202020 (accessed on January 18, 2022).

15   TechCentral, 'South Africa passes 200 days of load shedding in 2022' (2022) (accessed on January 18, 2022)

16   N Ngqambela, 'South Africa must bridge the digital divide to best benefit from 4IR' (2022) https://mg.co.za/opinion/2022-11-10-south-africa-must-bridge-digital-divide-to-best-benefit-from-4ir/   (accessed on January 18, 2023)

17   H Adams, 'Bridging the SA digital healthcare divide - no person left behind' (2022) https://www.itweb.co.za/content/KBpdg7pmWaPMLEew

18   ICASA 'ICASA concludes successful spectrum auction and collects more than R14.4 billion proceeds' (2022) https://www.icasa.org.za/news/2022/icasa-concludes-successful-spectrum-auction-and-collects-more-than-r14-4-billion-proceeds (accessed December 13, 2022)

19   ICASA 'Erratum the draft radio frequency assignment plan for frequency band 1518 to 1525 MHZ' (2022) https://www.icasa.org.za/legislation-and-regulations/erratum-the-draft-radio-frequency-assignment-plan-for-frequency-band-1518-to-1525-mhz (accessed December 7, 2022)

20   T Kahn "Zero-rated online content for public benefit bodies hailed as breakthrough" (2022) https://www.businesslive.co.za/bd/national/education/2022-03-30-zero-rated-online-content-for-public-benefit-bodies-hailed-as-breakthrough/ (accessed December 14, 2022)

21   *e.TV (PTY) Limited and Others v Minister of Communication and Digital Technologies and others* (89/22; CCT 92/22) [2022] ZACC 22; 2022 (9) BCLR 1055 (CC) https://collections.concourt.org.za/bitstream/id/61394/CCT%2089-22%20and%20CCT%209222%20etv%20and%20Others%20v%20Minister%20of%20Communications%20and%20Others.pdf   (accessed December 7, 2022)

22   See #SaveFreeTV site: https://savefreetv.org.za/

of expression, including freedom of the press, freedom of artistic creativity, freedom to share information, and academic freedom. The right does not, however, extend to speech that incites violence, hate speech, and propaganda for war.[23] The right to freedom of expression has been lauded by the Constitutional Court as being "of the utmost importance in the kind of open and democratic society the Constitution has set as our aspirational norm".[24]

In 2022, South Africa scored 75.56 per cent on the media freedom index, placing it 35 out of 180 countries, with no journalists killed or arrested in the year under review.[25] The 2022 ranking is three places higher than the 2021 score and can be attributed to South African courts viewing unreasonable limitations to media freedom with circumspection. Despite these rankings and the Judiciary's efforts, South African journalists continue to be publicly attacked by political leaders.[26]

One notable instance of this was former President Jacob Zuma's private prosecution against legal journalist Karyn Maughan (together with state prosecutor Billy Downer). Zuma's private prosecution against Maughan was initiated in October 2022 and has been described as an abuse of process and "blatant intimidation" of a journalist.[27] The former president essentially accuses Maughan for disclosing his medical records. An example of the cyberbullying and harassment which

journalists may be subjected to is from April 2022, which saw online abuse hurled at an entertainment reporter, Julia Madibogo.[28] Madibogo laid charges for the abuse, which is reported to have been perpetuated by fans of a social media influencer.

South Africa remains a polarised country in the aftermath of its past and has been plagued by xenophobic sentiments and proliferation of racism online and offline. In November 2022, a white woman was arrested for a WhatsApp voice note that called for black men to be killed and black women to be prevented from reproducing.[29] With respect to xenophobic speech, a video which made headlines in the country depicted the MEC of Health in the Limpopo province, Dr Phophi Ramathuba, accusing a foreign national (Zimbabwean) patient in a hospital bed of straining the healthcare system.[30]

In February 2022, the Supreme Court of Appeal (SCA) handed down judgment in a matter concerning tweets about colonialism[31] that were made in 2017 by Helen Zille while she was the Premier of the Western Cape province.[32] Following the tweets, several complaints were laid against Zille to the Public Protector who found the tweets to have been irrational and insensitive thus violating the constitutional right of freedom of expression.[33] In its review of the Public Protectors' findings, the SCA overturned the decision of the Public

23 Section 16(2)(a) to (c) of the Constitution
24 *S v Mamabolo* (CCT 44/00) [2001] ZACC 17; 2001 (3) SA 409 (CC); 2001 (5) BCLR 449 (CC) http://www.saflii.org/za/cases/ZACC/2001/17.html (accessed December 14, 2022)
25 Reporters without Borders 'South Africa' (2022) https://rsf.org/en/country/south-africa (accessed December 14, 2022)
26 F Patel 'Niehaus calls Karyn Maughan a 'dog' that must be 'kicked' in Twitter rant' (2022) https://www.citizen.co.za/news/south-africa/niehaus-karyn-maughan-dog-twitter/ (accessed December 14, 2022)
27 *Id.*
28 SANEF, 'SANEF condemns cyberbullying of City Press Journalist', (2022) https://sanef.org.za/sanef-condemns-cyberbullying-of-city-press-journalist/
29 C Bhengu 'SAHRC to investigate voice note by woman who wants black people 'banned', not pit bulls' (2022) https://www.news24.com/news24/southafrica/news/sahrc-to-investigate-voice-note-by-woman-who-wants-black-people-banned-not-pit-bulls-20221125 (accessed December 7, 2022)
30 N McCain 'You are killing my health system: Limpopo MEC under fire over comments on Zimbabweans' (2022) https://www.news24.com/news24/southafrica/news/watch-limpopo-health-mec-under-fire-over-comments-blaming-zimbabweans-for-huge-strain-on-hospitals-20220824 (accessed 14 December 2022).
31 The tweets stated that claiming that the legacy of colonialism was not only negative - Zille expressed that colonialism contributed to the establishment of an independent Judiciary, transport infrastructure, and piper water.
32 *Premier, Western Cape v Public Protector and Another* (771/2020) [2022] ZASCA 16; [2022] 2 All SA 95 (SCA); 2022 (3) SA 121 (SCA) http://www.saflii.org.za/za/cases/ZASCA/2022/16.html (accessed December 14, 2022). Zille was also the leader of the opposition political party, the Democratic Alliance,
33 *Id.*

Protector citing it as irrational for failing to read the tweets within the context they were made, and for unjustifiably limiting Zille's freedom of expression. The SCA was tasked squarely with focusing on whether Zille breached specific sections of the Executive Ethics Code when she posted the impugned tweets. Despite the narrow question before it, the Court acknowledged the gravity of words and expressed that colonialism is widely-considered to be abhorrent.[34] This acknowledgement is a significant one given South Africa's traumatic past and its present racial dynamics.

Before the decision of the SCA, the Constitutional Court in *Qwelane v the South African Human Rights Commission* made an order directing Parliament to remedy the defects in the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).[35] PEPUDA allows for criminal prosecution for hate speech. Alongside this law reform process, Parliament is still seized with the Prevention and Combating of Hate Crimes and Hate Speech Bill.[36]

The Bill provides a comprehensive framework for prosecuting those found guilty of hate speech. Importantly, it also recognises hate speech perpetuated through electronic means.[37] Criticism against the Bill centres on its broad definition of hate speech – including if the subject reasonably believes that a statement caused them any degree of harm – may potentially discourage free speech on topics of national and public interest.[38] The Bill covers a wide array of grounds of discrimination which, in turn, offers protection to a broad group of individuals in one consolidated document.

The express intolerance for hate crimes by the courts was further expressed in the judgement in *South African Human Rights Commission v Masuku and another* from February 2022 which found that the anti-Semitic utterances made by Masuku were harmful, incited harm, propagated hatred and amounted to hate speech.[39] The Court ordered Masuku to apologise to the Jewish community within 30 days of the order. The Equality Court matter of *South African Human Rights Commission (SAHRC) v Matumba* engaged with issues pertaining to online expression.[40] The case involved content amounting to harassment that was posted online through an allegedly false social media account, argued to have been run by Matumba. The Equality Court dismissed the application primarily on procedural grounds and concerns with witness testimonies, ultimately finding that the Twitter account could not be linked to Matumba.[41] While the Equality Court did not fully grapple with whether the content amounted to harassment, the case raises interesting questions about online anonymity. For future cases, there may be a scope to consider. Although the African Commission on Human and People's Rights (ACHPR) Declaration of Principles on Freedom of Expression and Access to Information,[42] the applicable regional instrument, advocates for the right to online anonymity and the use of pseudonyms, there is still a balance which is required when it comes to online harms.

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34   Above n 32 at paras 1 and 2.

35   (686/2018) [2019] ZASCA 167; [2020] 1 All SA 325 (SCA); 2020 (2) SA 124 (SCA); 2020 (3) BCLR 334 (SCA) https://collections.concourt.org.za/bitstream/handle/20.500.12144/36639/Revised%20judgment%20%2024%20August%202021%20CCT%201320%20Qwelane%20v%20SAHRC%20and%20Another.pdf?sequence=60&isAllowed=y (accessed December 14, 2022)

36   Prevention and Combating of Hate Crimes and Hate Speech Bill (2018) https://www.gov.za/sites/default/files/gcis_document/201804/b9-2018preventioncombatingofhatecrimeshatespeecha.pdf (accessed December 14, 2022)

37   *Id* at section 4(2)

38   P de Vos 'Hate speech Bill could be used to silence free speech' (2019) https://www.dailymaverick.co.za/opinionista/2019-02-26-hate-speech-bill-could-be-used-to-silence-free-speech/ (accessed December 8, 2022)

39   *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and another* (CCT 14/19) [2022] ZACC 5; 2022 (4) SA 1 (CC); 2022 (7) BCLR 850 (CC) https://www.saflii.org/za/cases/ZACC/2022/5.html (accessed December 14, 2022)

40   *South African Human Rights Commission (SAHRC) v Matumba 1/2020 2022 (no link to transcript.*

41   *Id.*

42   (ACHPR) Declaration of Principles on Freedom of Expression and Access to Information (2020) https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf (accessed on December 14, 2022)

Anonymity and pseudonyms should not be used to perpetuate hate speech.

The Constitutional Court also heard an important application concerning free speech that involved a mining company that sued environmental activists for defamation seeking relief of R14 million.[43] The environmental activists requested the Court to develop the common law to recognise the defence of Strategic Litigation Against Public Participation (SLAPP).[44] SLAPP is litigation that is intended to frustrate and undermine public participation and dissent by trapping activists in perpetual and costly litigation. It is recognised as a mechanism to undermine freedom of expression and discourage public participation. On November 14, 2022, in a landmark judgment, the Constitutional Court found that the recognition of the SLAPP defence did not require the development of our common law because it was already accommodated in the doctrine of abuse of process.[45]

In July 2022, the Competition Commission of South Africa[46] published a provisional report regarding the Online Intermediation Platform Market Inquiry (OIPMI).[47] The OIPMI investigated competition in the digital economy. Some of its findings were targeted at dominant players such as Google for declining to include media freedom in the digital sphere in its mandate.[48] The South African National Editors Forum (SANEF), a key role player in these discussions, published a position paper focused on the interaction between the digital advertising industry and journalism freedom and sustainability.[49] The SANEF paper recommends inclusion and transparency in advertising payment terms and collective bargaining that does not undermine online platforms and protects the media industry.[50]

With respect to online safety the Domestic Violence Amendment Act 14 of 2021 was signed into law in early 2022.[51] The Act is a notable development in addressing gender-based violence in South Africa. It recognises the contribution that online platforms make in exposing its users to harassment and sexual abuse online, through digital audio, text, video, images, or simulated or manipulated content, and enables victims and survivors of online harms to obtain legal protection against such conduct.[52]

It further adopts an intersectional approach relying on gender-neutral language to extend protections beyond binary gender identities. A constitutional challenge was launched towards the end of 2022 which seeks to amend the law to reflect an objective test for content in terms of sexual offences.[53] The challenge includes references to various sexual offences, including the harmful disclosure of sexually explicit

43   *Mineral Sands Resources (Pty) Limited and another v Christine Reddell and others* (CCT 66/21) [2022] ZACC 37 https://collections.concourt.org.za/bitstream/id/62058/[Revised%20Judgment]%20CCT%206621%20Mineral%20Sands%20 Resources%20(Pty)%20Ltd%20and%20Others%20v%20Reddell%20and%20Others%20(PDF).pdf (accessed December 8, 2022)

44   *Id.*

45   Above n 43.

46   The Competition Commission is established in terms of the Competition Act 89 of 1998. Its mandate is to regulate competition between different entities through, among other, investigative means, and ensuring market transparency in the market.

47   Competition Commission of South Africa 'Online Intermediation Platform Market Inquiry: Provisional Summary Report' (2022) https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-SummaryReport.pdf (accessed December 15, 2022)

48   *Id.*

49   SANEF, 'The sustainability of journalism and competition in the digital economy' (2022) https://sanef.org.za/ download/the-sustainability-of-journalism-and-competition-in-the-digital-economy/# (accessed on January 18, 2023)

50   *Id.*

51   Domestic Violence Act 14 of 2021 https://www.justice.gov.za/legislation/acts/2021-014.pdf (accessed December 14, 2022)

52   T Power, 'The DVA Act: one step closer to online safety' (2022) ALT Advisory (https://altadvisory.africa/2022/02/22/ the-dva-act-one-step-closer-to-online-safety/) (accessed January 19, 2023).

53   *Embrace Project & Another v Minister of Justice and Correctional Services & Others* (48656/22) (https://powersingh. africa/2022/12/01/the-embrace-project-npc-and-another-v-minister-of-justice-and-correctional-services-and-others/) (accessed January 19, 2023).

content via electronic means.[54] The litigation is still in the early stages, however, and should the challenge be successful, this may impact cases relating to the non-consensual sharing of sexual content by requiring an objective threshold for consent.[55]

PRIVACY AND SURVEILLANCE

In 2022, the Information Regulator applauded the Department of Basic Education for issuing POPIA-compliant consent forms to 900,000 final year high school pupils for the processing of their personal information and examination results.[56] The enforcement powers of the Information Regulator were exercised once more in August 2022, when the Information Regulator instituted legal proceedings against the South African Police Service (SAPS) for making public the personal information of victims/survivors of sexual violence.[57]

In this case, the victims/survivors were filming a video with a production crew when they were attacked by a group of about 20 armed men in the Krugersdorp area.[58] This incident received coverage in the media and the victims/survivors names, ages, home addresses, and details pertaining to the assault were leaked by SAPS officials. It is unclear what progress has been in this matter.

From a surveillance standpoint, there have not been many noteworthy developments in 2022.

In January 2023, the Minister of Health confirmed that although Covid-19 restrictions had all been lifted, genomics surveillance has continued under the Network for Genomic Surveillance of South Africa.[59]

Considerations around online safety,

particularly where it relates to children, are important. In April 2022, MTN, a mobile network operator, launched the Child Safety Online Africa Portal.[60] This portal is a reporting mechanism to combat the spread of abusive and exploitative material of children online. Also on the topic of online child exploitation, in November 2022, a report published by the Disrupting Harms project indicated that the prevalence of this type of harm had increased

54   Section 11A of the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 (https://www.gov.za/documents/criminal-law-sexual-offences-and-related-matters-amendment-act) (accessed 19 January 2023).
55   *Id* at section 5(2)(a)
56   Information Regulator 'The Regulator commends the Department of Basic Education for compliance with POPIA and obtaining consent from matriculants' (2022) https://inforegulator.org.za/wp-content/uploads/2022/11/MEDIA%20STATEMENT%20THE%20REGULATOR%20COMMENDS%20THE%20DEPARTMENT%20OF%20BASIC%20EDUCATION%20FOR%20COMPLIANCE%20WITH%20POPIA%20AND%20OBTAINING%20CONSENT_.pdf (accessed December 14, 2022).
57   Information Regulator 'Information Regulator issues a summons against South African Police Service' (2022) https://inforegulator.org.za/wp-content/uploads/2020/07/MEDIA-STATEMENT_-REGULATOR-ISSUES-A-SUMMONS-AGAINST-SOUTH-AFRICAN-POLICE-SERVICE-.pdf (accessed December 14, 2022).
58   Michalsons, 'Information Regulator versus SAPS. The scalding tea' https://www.michalsons.com/blog/information-regulator-versus-saps-t.he-scalding-tea/59455 (accessed on January 18, 2022).
59   Media Statement, 'Minister Joe Phaahla on recent Covid-19 developments' (2023) https://www.gov.za/speeches/minister-health-dr-joe-phaahla-10-jan-2023-0000 (accessed on January 18, 2023)
60   N Morafo, 'Child Safety Online Africa Portal launched' (2022) https://mg.co.za/opinion/2022-04-11-child-safety-online-africa-portal-launched/ (accessed on January 18, 2023)

in South Africa (as well as a few other African states).[61] The Cybercrimes Act is also expected to curb online harms. The Act covers offences such as unlawful interception of data, cyber fraud, cyber extortion, and the non-consensual distribution of intimate images.

With respect to cybersecurity, on November 9, 2022, notice was published in the Government Gazette by a Member of Parliament proposing the establishment of the Office of the Cyber Commissioner as a Chapter 9 institution, alongside the Public Protector and other Chapter 9 institutions.[62] The Office of the Cyber Commissioner would advise the public sector on cyber security, support the establishment of core standards for cyber security, and protect fundamental rights that may be violated through cybercrime. At the time of writing, being January 2023, there had been no traction on this. South Africa is yet to ratify the African Union Convention on Cyber Security and Personal Data Protection (the Malabo Convention).[63] The Malabo Convention obliges State Parties to adopt legislation which criminalises certain forms of online content, including insulting language based on protected characteristics, child sexual exploitation, and discriminatory content.[64]

DATA GOVERNANCE

POLICY FRAMEWORK
South Africa has a relatively established data protection legal framework, having enacted POPIA. At the heart of POPIA are eight conditions for the lawful processing of data. To foster understanding of POPIA, the Information Regulator routinely publishes guidance notes on various aspects of the Act. For example, guidance notes on the processing of children's personal information and special personal information are accessible on the Regulator's website. While there are separate pieces of legislation which respond to specific areas of data protection – for example, POPIA is South Africa's data protection act and The Cybercrimes Act 19 of 2020 sets out cybercrimes – there is no coordinated data governance strategy or policy. Such a strategy or policy would ideally take into account people, processes, and the use of technology with respect to data.[65] If South Africa were to formulate a data governance policy, the intersection between the Department of Communications and Digital Technologies and regulators such as ICASA and the Information Regulator would need to be clear.

DIGITAL IDS
The Draft Official Identity Management Policy was published in 2020 to ensure that South Africa's identity management aligns with modern technological advancements.[66] According to the implementation strategy of the Policy, the policy and legal framework for the population register and National Identity System (NIS) were expected to have been in place by March 2022, but there have been no reports on whether the NIS has been implemented yet.[67]

In other developments, in September 2022, the Department of Home Affairs announced its plans to digitise over 350 million civic paper records dating back to 1895.[68] This is a

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61   Disrupting Harm 'Disrupting Harm in South Africa: Evidence on online child sexual exploitation and abuse'https://www.end-violence.org/sites/default/files/2022-11/2028%20DH%20SOUTH%20AFRICA%20REPORT%20%281%29.pdf (2022) (accessed on January 18, 2023)

62   General Government Notice 1390 of 2022 https://static.pmg.org.za/the-constitution-eighteenth-amendment-bill-2022-notice-of-intention-to-introduce-a-private-members-bill-into-parliament-and-invitation-for-public-comment-thereon_20221109-GGN-47478-01390.pdf (accessed November 7, 2022)

63   African Convention on Cyber Security and Personal Data Protection (Malabo Convention) https://au.int/sites/default/files/treaties/29560-treaty_0048__african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf (accessed on December 8, 2022)

64   Id.

65   V Kalanjee, 'POPIA drives data governance best practice to top priority' (2021) https://www.itweb.co.za/content/KA3WwMdDxJNMrydZ (accessed on January 19, 2023)

66   Department of Home Affairs "Draft Official Identity Management Policy' (2020) https://www.gov.za/sites/default/files/gcis_document/202101/44048gon1425.pdf (accessed December 7, 2022)

67   Id.

68   South African Government 'Home Affairs on the progress of digitisation project' (2022) https://www.gov.za/speeches/

collaborative project with the Department of Employment and Labour. It is also part of an initiative to employ prospective Information Technology candidates in these departments. It is envisaged that this initiative would contribute to innovative ways of updating the country's record-keeping mechanisms while creating employment opportunities.

THE UNIVERSAL SERVICE AND ACCESS FUND

The Universal Service and Access Fund was established to bridge the digital divide and

ensure internet access for underserved communities by providing "ICT for all."[69] The latest report by the Universal Service Fund was published in 2018/19. Generally, the fund's targets are directed at improving internet penetration in schools, healthcare facilities, public sector facilities, and broadband access, but it has largely been unsuccessful in meeting these targets.[70] The poor performance of the fund has been attributed to the deficient execution of its operations and the slow implementation of digital migration plans.

Although the fund aimed to establish smart villages in underserved areas, advance digital broadcast connectivity and improve accountability for its infrastructure projects, the Department of Communications and Digital Technologies has resolved to dissolve the Universal Service and Access Agency of South Africa (USAASA) by March 2023.[71]

In December 2022, MTN SA and MTN Global Connect in partnership with 2Africa undersea cable launched the 45,000km cable in the Western Cape province, the undersea cable will provide improved internet connectivity and access by allowing mobile network operators access to data centres. The undersea cable will become fully operational in 2023 and will provide much-needed infrastructure to bring South Africa up to speed with growing demands for internet connection and access.[72] In its 2022 *State of ICT Sector Report*, ICASA indicated that the rural population in all nine provinces have 2G and 3G network coverage and that two of the nine provinces have two per cent coverage of the 5G network.[73]

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

AI GOVERNANCE

verification-assessment-and-interview-candidates-dha-digitisation-project-underway-6-sep (accessed December 8, 2022)

69   Universal Service and Access Agency of South Africa 'Vision Statement' (n.d.) http://www.usaasa.org.za/about/strategic-overview.html (accessed December 14, 2022)

70   Universal Service and Access Fund 'Annual Report 2018/19' (2019) http://www.usaasa.org.za/export/sites/usaasa/resource-centre/download-centre/downloads/USAF-2019_V19.pdf (accessed December 13, 2022)

71   S Mzaekandaba 'Communications ministry reveals key timelines for USAASA' (2021) https://www.itweb.co.za/content/KA3WwqdDnz5qrydZ (accessed December 14, 2022)

72   MTN 'MTN GlobalConnect, MTN South Africa land 2Africa subsea cable in Western Cape to strengthen internet connectivity' (2022) https://www.mtn.com/mtn-globalconnect-mtn-south-africa-land-2africa-subsea-cable-in-western-cape-to-strengthen-internet-connectivity/ (accessed December 14, 2022)

73   ICASA 'The State of the ICT Sector Report in South Africa' (2022) https://www.icasa.org.za/uploads/files/State-of-ICT-Sector-Report-March-2022.pdf (accessed December 15, 2022)

South Africa is ranked 68 out of 160 countries for AI readiness and is encouraged to develop AI skills to train young learners.[74] However, the country does not have a national AI strategy. Regarding the protection of personal information, POPIA provides for automated decision-making when processing personal information. Section 71 prohibits automated decision-making about a data subject where the decision made has legal implications.

In November 2022, the Department of Science and Technology, in collaboration with the University of Johannesburg and Tshwane University of Technology, established the Artificial Intelligence Institute of South Africa (AIISA).[75] The AIISA aims to support the private and public sectors in driving creative AI technology and knowledge, and generate knowledge and AI applications to enable the country to become a more competitive player globally. It is anticipated that AIISA will play a catalytic role in prompting further AI governance developments in the country, particularly in regulating its ethical and human rights consequences. This initiative is in addition to the Commission of the Fourth Industrial Revolution (4IR) that the President appointed in 2019 to support government efforts toward the digital revolution, including the use of AI, and is composed of 30 people.[76]

ICTS IN OTHER POLICY FRAMEWORKS
South Africa has incorporated ICTs into its development planning in various ways. There were some notable developments in 2022. In November, the Cabinet approved the Science, Technology, and Innovation (STI) Decadal Plan.[77] This is part of a medium-term strategy of the Department of Science and Innovation that will prioritise ICTs and smart systems in health

innovation, sustainable energy, and education.

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74   Oxford Insights 'Government AI Readiness Index 2021' (2021) https://static1.squarespace.com/static/58b2e92c1e5b6c828058484e/t/61ead0752e7529590e98d35f/1642778757117/Government_AI_Readiness_21.pdf (accessed December 14, 2022). The report uses 42 indicators to assess AI readiness based on the government's readiness, the technology sector's readiness, and data and infrastructure to support AI. tools and deliver them to citizens.
75   South African Government 'Minister Khumbudzo Ntshavheni launches Artificial Intelligence Institute of South Africa and AI hubs' (2022) https://www.gov.za/speeches/minister-khumbudzo-ntshavheni-launches-launch-artificial-intelligence-institute-south (accessed December 8, 2022)
76   The Presidency of the Republic of South Africa 'President appoints Commission on Fourth Industrial Revolution' (2019) https://www.thepresidency.gov.za/press-statements/president-appoints-commission-fourth-industrial-revolution (accessed December 14, 2022)
77   Department of Science and Innovation 'The Science, Technology and Innovation Decadal Plan' (2022) https://static.pmg.org.za/220202STI_Decadal_Plan.pdf (accessed December 7, 2022)

Conclusion and Recommendations

The year 2022 somewhat saw positive developments for digital rights. There is certainly room to increase access to the internet and bridge the digital divide. Proactive measures which include freeing up spectrum, lowering mobile data costs, and actioning proposed policies, in addition to investing in much-needed digital literacy training programmes for children and underserved communities, should remain on the agenda in 2023. The following recommendations are made for each of the various actors in the digital rights landscape.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
Regulators: • Regulators should take enforcement measures and be seen to take enforcement measures. For example, the outcome of the Information Regulator's assessment on the leaking of victims'/survivors' personal information by SAPS is unclear despite having been raised by the Regulator some time ago. • The finalisation of the spectrum auction process will provide much-needed certainty to different mobile operators. It may also be useful to ICASA to facilitate participation by smaller telecommunications businesses and promote competition.	*Mobile network operators and private companies:* • Companies in the private sector should fully immerse themselves in business and human rights. There is no doubt that the migration away from analogue television is going to involve contracting with the private sector. Accordingly, it is imperative that private sector actors understand and uphold constitutional values, as well as international instruments pertaining to business and human rights. • Mobile network operators can prioritise efforts which advance digital rights in their Corporate Social Responsibility (CSR). As highlighted	Civil society organisations: • On the digital rights front, civil society organisations should continue to grapple with new and existing questions around digital rights and emergent technology. For example, the widespread impact of genomics surveillance is yet to be understood. • By remaining engaged in public participatory processes, civil society can continue to hold levers of power accountable and foster the protection of human rights in the creation of law and policy.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
	in the report, the intensifying electricity crisis in South Africa is contributing to the digital divide. Sectors which may need support include education, healthcare, and small, medium, and micro enterprises (SMMEs).	

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South Sudan

▸ Executive Summary

This research report provides an overview of digital rights and inclusion in South Sudan. It looks at the Cybersecurity and Computer Misuse Provisional Act (Cybersecurity Act) recently signed into law. The report also analyses South Sudan's developments in data governance, the Universal Services Access Fund (USAF) usage and success, and growths and impediments in the ICT sector in South Sudan. Information in this report was gathered through field and desk research. One-on-one interviews with technology, human rights and civil society activists were conducted to seek their views on the Cybersecurity Act. Most respondents revealed that they were aware of the penalties in the Act and could easily become victims of the law. In data governance, USAF and ICT developments, it has been identified that South Sudan has no data protection law and has not ratified the Malabo Convention.

Introduction

After 12 years of independence and some 21 years of brutal civil war with Sudan, South Sudan has very poor infrastructure. Specifically, technological developments are at a standstill. In 2020, Tufts University ranked Kenya, Rwanda and Tanzania as leading countries in digital growth and development in East Africa. Meanwhile, South Sudan, one of the youngest countries in Africa,[1] requires technological transformation to enable economic development and enhance freedom of expression and access to information. Article 22 of the Transitional Constitution of the Republic of South Sudan 2011 guarantees the right to privacy.[2] South Sudan has ratified the International Convention on Civil and Political Rights (ICCPR), which provides for the right to privacy under Article 17 and the African Charter on Human and Peoples Rights, whose Article 5 provides for the right to respect one's dignity, including the right to privacy. However, South Sudan is yet to sign and ratify the African Union Convention on Cyber Security and Personal Data Protection. Information and Communication Technologies (ICT) are fast evolving in the country, and as a result, technology could spur economic development.

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1   East African Communities Republic of South Sudan https://www.eac.int/eac-partner-states/south-sudan (accessed on 7 February 2023).
2   Transitional Constitution of the Republic of South Sudan, 2011 https://www.refworld.org/pdfid/5d3034b97.pdf (accessed on 7 February 2023).

Country Analysis

INTERNET FREEDOM

In mid-September 2022, South Sudan signed into law the Cybercrime and Computer Misuse Provisional Order, 2021 (the Order).[3] The bill was drafted by the National Ministry of Justice and Constitutional Affairs and taken directly to the Office of the President, where it was endorsed and signed into law. While this is a timely legislation to counter challenges that come with increased digitalisation, the Order has some concerning provisions for the uptake of ICT and the enjoyment of online rights and freedoms. Rights activists have faulted the new law on Computer Misuse, arguing that it could curtail press freedom and freedom of speech and expression.

South Sudan has commitments to freedom of expression and access to information under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights. As such, laws must reflect the commitments concerned. The purpose of the Order, under Section 3, is "to protect and prevent any crimes committed through computer or computer system, Internet or any related activities."[4] There is a need to protect users of ICT from cybercrimes while ensuring free internet use. The Order, however, has vague provisions in Section 5 for offences of indecent content and pornography which may unjustifiably infringe on freedom of expression. Section 18 creates the offence of publication of indecent content with a prison term of up to three years for this offence and is a threat to freedom of expression. Limitations of rights must conform to international standards where the limitations are not overly broad.[5]

The Order, under sections 23 (c) and (d), recognises the need to protect children from child pornography and potential sexual exploitation by penalising the publication of child pornography and child sex solicitation. This is progressive in the digital age to ensure child safety. Similarly, section 24 prohibits the transmission of child pornography. A person criminally liable under this section could face up to 10 years' imprisonment, a fine, or both. Section 23(c) penalises whoever "publishes child pornography, makes it available, facilitates the access of child pornography through a computer or a computer system."[6] In addition,

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3   Cybercrime and Computer Misuse Provisional Order, 2021 (the Order) https://dr.211check.org/wp-content/uploads/2022/05/Cyber-crimes-and-Computer-Misuse-Provisional-Order.pdf (accessed on 4 February 2023).
4   Cybercrime and Computer Misuse Provisional Order, 2021 (the Order) https://dr.211check.org/wp-content/uploads/2022/05/Cyber-crimes-and-Computer-Misuse-Provisional-Order.pdf (accessed on 4 February 2023).
5   Cybercrime and Computer Misuse Provisional Order, 2021 (the Order) https://dr.211check.org/wp-content/uploads/2022/05/Cyber-crimes-and-Computer-Misuse-Provisional-Order.pdf (accessed on 4 February 2023).
6   Cybercrime and Computer Misuse Provisional Order, 2021 (the Order) https://dr.211check.org/wp-content/uploads/2022/05/Cyber-crimes-and-Computer-Misuse-Provisional-Order.pdf (accessed on 4 February 2023).

section 23(d) penalises anyone that "proposes, grooms, solicits to meet a child to engage in sexual activities or produces pornographic content using a computer or a computer system." Many international and national tech and civil society activists consider these provisions commendable. The Order, in Section 19, criminalises the publication of false news with a possible prison term of up to five years. The criminalisation of false news is strongly discouraged by international standards as it infringes on freedom of expression.[7] Some 3,000 people responded to questionnaires dispatched by this researcher conducting field research to establish if they were aware of the Order and the offence created by it. Findings revealed that 80 per cent of the respondents were aware of "computer misuse" crimes, while 20 per cent were unaware of such crimes. In addition, 81 per cent of the respondents revealed that they are aware of the "Indecent Content" crime, while 19 per cent said they were unaware. Lastly, 83 per cent of the respondents admitted having knowledge of pornography being a crime, while 17 per cent didn't have any idea about the crime. The findings revealed a general awareness of the law.

INTERNET ACCESS AND DISRUPTIONS
According to South Sudan's National Communication Authority (the Commission), as of December 2022, the Commission worked with over 20 Internal Service Providers (ISPs) and three Mobile Network Operators (MBOs) to increase internet access. South Sudan's internet penetration was estimated at 10.9 per cent in January 2022.[8] About 80 per cent of South Sudanese people live in rural areas showing the need for expansion of broadband access for rural communities.[9] While no internet disruptions were recorded in 2022, South Sudan has a history of disrupting internet access. On August 29, 2021, South Sudan disrupted the internet until August 30, 2021, ahead of protests planned by the Peoples' Coalition for Civil Action.[10] Information Minister Michael Makuei reportedly blamed this disruption on a 'technical hitch'.[11]

FREE SPEECH AND MEDIA FREEDOMS
People in South Sudan use social media to influence policies. This is due to a closed environment for offline freedom of assembly and expression, which has made many South Sudanese people netizens in the country and in the diaspora leverage the presence of online media to advocate for different interests. Online media use has not gone well for some local celebrities who found themselves behind bars for expressing their views. An example is the 2021 arrest of music artiste, Larson Agok, who was arrested and later released for using his Facebook account to question why President Salva Kiir was not visiting the suffering population in the Bahr-el-Ghazal region.[12]

In 2022, South Sudan ranked 128 out of 180 countries in the World Press Freedom Index[13] with journalists facing censorship, threats and intimidation, unlawful arrest and death. Journalists bear the brunt of reporting news, and the online space enables quick information sharing. In March 2022, former Eye Radio editor, Woja Emmanuel, was allegedly kidnapped and tortured in the capital city of Juba over his

7   African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression and Access to Information in Africa (Principle 22) https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf (accessed on 4 February 2022).

8   Data Reportal Digital 2022: South Sudan https://datareportal.com/reports/digital-2022-south-sudan (accessed on 22 January 2023)

9   The Borgen Project Information Technology in South Sudan https://borgenproject.org/information-technology-in-south-sudan/#:~:text=In%20South%20Sudan%2C%20nearly%2080,valuable%20international%20and%20regional%20information (accessed on 7 February 2023).

10   NetBlocks Internet disrupted in South Sudan ahead of planned anti-government protests https://netblocks.org/reports/internet-disrupted-in-south-sudan-amid-anti-government-protests-oy9Y6My3 and https://www.reuters.com/world/africa/internet-disrupted-streets-quiet-south-sudan-after-call-protests-2021-08-30/ (accessed on 7 February 2023).

11   All Africa South Sudan: Internet Down Due to 'Technical Problem' - Minister https://allafrica.com/stories/202108310184.html (accessed on 7 February 2023).

12   Radio Tamazuj Popular singer Larson Angok arrested in Wau https://radiotamazuj.org/en/news/article/popular-singer-larson-angok-arrested-in-wau (accessed on 7 February 2023).

13   Reporters without Borders South Sudan https://rsf.org/en/country/south-sudan (accessed on 7 February 2023).

reports of a political nature while Eye Radio has been receiving censorship threats.[14] Experts say the future of press freedom in this country is still dark, with some organisations like the National Press Club, the Union of Journalists of South Sudan and the Committee for the Protection of Journalists standing with the media. More needs to be done by the government to improve the state of media in the country.

DATA GOVERNANCE

South Sudan has a national data protection law but has not ratified the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention). Currently, The Ministry of Telecommunication and Postal Services provides oversight, regulates and licences the local telecommunications companies.[15] The way data is stored in some public and private sector facilities sometimes leads to data loss, simply because most of the data is stored in analogue format with only some in digital format. Regarding Digital IDs, the Director of the Department of Nationality, Passports, and Immigration in South Sudan highlighted that his department was set to roll out e-passports in 2023.[16]

REVIEW OF UNIVERSAL SERVICES AND ACCESS FUND (USAF)

South Sudan has a Universal Services and Access Fund (USAF). The USAF is established by article 73 of the National Communication Authority Act of 2012 (NCA).[17] It was operationalised in October 2019. Article 73 (2) of the NCA says the USAF's key objectives shall be to develop and deploy communication services to cover the entire population of South Sudan, including urban and rural areas. Additionally, USAF's objectives, as stipulated in Article 74, include

promoting increased use of advanced tools and equipment and encouraging broader utilisation of e-applications and e-services for both rural and urban areas of South Sudan, and enhancing advancements in research and development within the field of communication and promoting the use of advanced technologies. However, little has been done to meet the objectives of Article 74. In terms of the USAF Secretariat Interim Standard Operating and Implementing Procedures, "communications licensees are obliged to contribute a two per cent statutory levy from their annual gross revenue," which is a contribution to developing communications services in rural South Sudan.[18] However, information on the exact amount of money collected by the Fund is not readily accessible.

14   Ijnet South Sudan's censored media space is forcing journalists to quit the profession https://ijnet.org/en/story/south-sudan%E2%80%99s-censored-media-space-forcing-journalists-quit-profession#:~:text=He%20highlighted%20a%20case%20from,before%20escaping%2C%E2%80%9D%20he%20added.

15   South Sudan Telecommunications https://dlca.logcluster.org/display/public/DLCA/3.4+South+Sudan+Telecommunications (accessed on 7 February 2023).

16   EyeRadioSouth Sudan to roll out EAC e-passport early 2023 https://www.eyeradio.org/south-sudan-to-roll-out-eac-e-passport-early-2023/ (accessed on 7 February 2023).

17   National Communication Authority Act 2012 https://ictpolicyafrica.org/en/document/bfc7dffmhxj?page=37 (accessed on 7 February 2023).

18   USAF Secretariat Interim Standard Operating and Implementing Procedures http://usaf.gov.ss/wp-content/uploads/2020/10/Reviewd_Draft_SOIP_to_be_Submitted.pdf (accessed on 7 February 2023).

DEVELOPMENTS IN THE ICT AND ENGINEERING TECHNOLOGIES

South Sudan does not have an Artificial Intelligence national strategy. The Revised South Sudan National Development Strategy (2021-2024), however, identifies the inadequate infrastructure, such as internet capacity and penetration, as an area that requires development. The goal, in terms of

commitment to ensuring opportunities for youth in innovation.[20]

the strategy, is to support the private sector to increase accessibility and affordability of internet services through the provision of broadband capacity with reach to all states.[19] The Information Ministry combines ICT, broadcasting services and the government's media office – events that reduce the focus on developing a national ICT infrastructure strategy. The NCA held a town hall meeting with different stakeholders to discuss areas in need of development in the communications sector in South Sudan in line with the mantra of connecting South Sudan, highlighting

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19   Revised South Sudan National Development Strategy 2021-2024 https://www.undp.org/south-sudan/publications/revised-national-development-strategy-south-sudan-2021-2024 (accessed on 8 February 2023).
20   Sudan Tribune Connecting South Sudan featuring National Communication Authority https://sudantribune.com/article268029/ (accessed on 7 February 2023).

Conclusion and Recommendations

To have an enabling environment in South Sudan, there is a need for prioritisation of a national artificial intelligence strategy and the enactment of data protection laws that will allow citizens to be safe as they co-exist with emerging technologies. South Sudan is still in the process of rolling out its broadband strategy to increase internet infrastructure. This will ensure tangible steps in realising sustainable development goals. Given the analysis in this report, the following recommendations are made.

| GOVERNMENT	ACADEMIA	CIVIL SOCIETY
• Create a safe environment for internet freedom by amending the Cybercrime and Computer Misuse Order after adequate public consultations. • Educate the public on the crimes stated in the law to raise awareness. • Enact a data protection law and provide resources for capacity building and upskilling people, so the policy is properly implemented. • Conduct proper nationwide consultations on the draft Data Protection Bill before it goes to parliament so it does not violate freedom of expression and privacy. • Apart from the telecommunications sector representatives, South Sudan's USAF board must also have civil society represented so that its work is monitored and supervised appropriately. • Ensure more transparency on the exact amount of the USAF.	• There is a need for academia to carry out extensive research in different digital fields for better-informed future decisions for the private sector, government and the donor community.	• While delivering internet services, the private sector should not succumb to the government's unethical pressures to allow illegal access to personal data and abuse digital rights, especially blockage of internet networks and services. • The private sector should also invest more in digital literacy for its staff, proper data storage facilities and ensuring data is properly kept for future reference. • Lastly, there is a need for the sector to invest more in ICT infrastructure. This will influence other potential investors to boost their investment support.

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Sudan

▶ Executive Summary

This report discusses the digital rights issues and digital inclusion progress in Sudan. The report provides recommendations to the government, civil society and the media. 2022 is considered one of the worst years for digital rights in Sudan. The authorities practised several digital authoritarianism features such as network disruption, censorship, information manipulation and legal abuse. The report shows that there are institutional disinformation campaigns. Despite that, the government established a centre to combat the rumours.

The Sudanese government shut down the internet several times, during many events, justifying this practice with many excuses. It also imported Israeli spyware and produced several disinformation campaigns using state resources. Moreover, the Sudanese government abused the laws with vague terms, which normalise digital repression and make it lawful. Despite these violations, the authorities have made some efforts to provide telecommunication access to the people through the Universal Service Fund. To facilitate telecommunication access to the people, the Universal Service Fund signed agreements with some telecommunications companies to expand the coverage, but it faces some obstacles which impeded the development efforts.
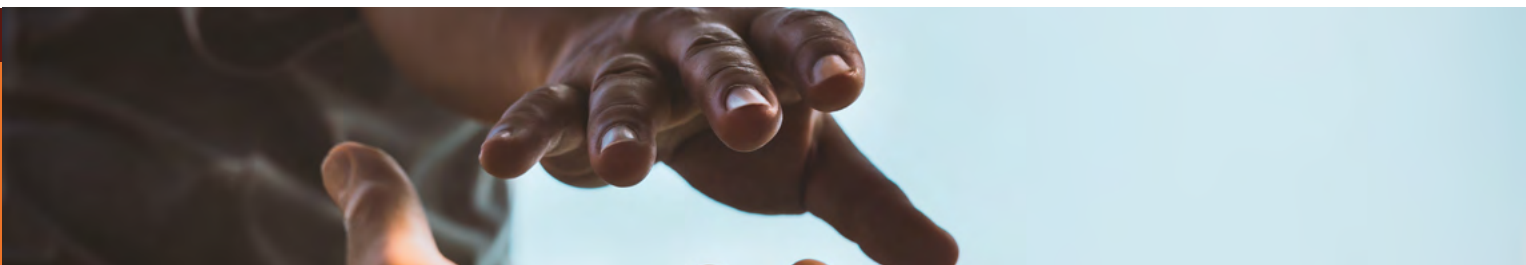
Introduction

Sudan lies at the crossroads of Sub-Saharan Africa and the Middle East, located in northeastern Africa. It is bounded on the north by Egypt, on the east by the Red Sea, Eritrea, and Ethiopia, on the south by South Sudan, on the west by the Central African Republic and Chad, and on the northwest by Libya.[1] Since the ousting of Sudan's authoritarian leader Omar al-Bashir in 2019 who ruled for three decades, the Sudanese people gained hope to build a democratic country after the last revolution.[2] However, the military did not let this hope move forward as Sudan is now ruled by a military regime that has ruled since October 25, 2021, when Lt Gen Burhan led a military coup against his partners in the transitional government which came after the Sudan uprising.

As of January 2022, Sudan's total population was 45.45 million. Some 14.03 million of the citizens use the internet, which leads the internet penetration to stand at 30.9 per cent.[3] According to data from GSMA Intelligence, there were 35.76 million cellular mobile connections in Sudan at the start of 2022.[4] There are four main Internet Service Providers (ISPs) in Sudan, three of which are foreign-owned (Zain, MTN, and Canar) and the fourth is Sudatel, whose board of directors includes a member of the Transitional Sovereign Council – the Head of State – and the Minister of Finance.[5] To demonstrate some of the key developments, this report predominantly relies on desktop research as well as insights from the practical experience of working on digital rights in Sudan. This report focuses on key developments related to Internet freedom, data governance, developments in ICT and emerging technologies, and a review of the Universal Service Fund.

1   Britannica, "Sudan", https://www.britannica.com/place/Sudan, (accessed on December 8, 2022)
2   BBC, "Omar al-Bashir: Sudan's ousted president", https://www.bbc.com/news/world-africa-16010445, (accessed on December 8, 2022)
3   Data Portal, "DIGITAL 2022: SUDAN", https://datareportal.com/reports/digital-2022-sudan, (accessed on December 12, 2022)
4   Data Portal, "DIGITAL 2022: SUDAN", https://datareportal.com/reports/digital-2022-sudan, (accessed on December 12, 2022)
5   EMIS, Sudatel Telecom Group, https://www.emis.com/php/company-profile/SD/Sudatel_Telecommunications_Group_Ltd__Sudatel_Telecommunications_Group_Ltd__en_2134991.html, (accessed on December 12, 2022)

Country Analysis

INTERNET FREEDOM

The internet space in Sudan is under the State's control as the internet freedom index continues to fall. According to the *Freedom On The Net 2022 report*, Sudan's score for internet freedom is 29 out of 100, which is classified as "Not Free".[6] This ranking covers the second half of 2021 and the first half of 2022. The first half of 2022 witnessed numerous events that limited Internet Freedom and violated the citizens' digital rights, including network disruptions, content filtering, and state-based disinformation.

NETWORK DISRUPTIONS

In 2022, the authorities shut down the internet four times on different events. On June 11, 2022, the public prosecutor ordered a shutdown of the internet for three hours on a daily basis, and it continued for 12 days.[7] The reason given was that it was necessary to prevent cheating during the national secondary school exams. Following this, on June 30, 2022, the internet was disrupted during the million-man march in Sudan for 25 hours.[8] In October 2022, two disruptions occurred, the first incident was on October 18, in synchronisation with tribal conflict in the Blue Nile region,[9] and the second was on October 25, during the anti-coup march, and it lasted for eight hours.

FREEDOM OF EXPRESSION AND MEDIA FREEDOMS

The Sudanese authorities still blocked news websites and online platforms, as at September 2022, to restrict sharing of opposition information, prevent the protestors from coordinating, and limit sharing of the documentation of human rights violations abroad.

On September 27, the public prosecutor ordered the blocking of the website of the *Al-Sudani* newspaper.[10] The Sudanese Electronic Press Association condemned the order, saying: "We reject prior trials and convictions from any party except the Judiciary". Ultimately, the website was not blocked after the leakage of the prosecutor's order.[11] In January, the Sudanese authorities withdrew the licence of *Al Jazeera Mubasher TV* channel and its staff in Sudan, justifying the decision due to "the un-professional coverage of the Sudanese affairs and the reporting of incorrect information that damages the country's interest and social fabric".[12]

In February 2022, security forces arrested Mohanad Hamid, a member of the Central Committee of Sudanese Doctors, because he was calling and mobilising against the coup, online and offline.[13] Also, the authorities issued an arrest warrant against Abdalrahman Al-

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6   Freedom House, "Freedom On The Net 2022, Sudan", https://freedomhouse.org/country/sudan/freedom-net/2022, (accessed on December 17, 2022)

7   SMEX, "Cost of Internet Shutdowns", https://smex.org/the-cost-of-internet-shutdowns/, (accessed on December 18, 2022)

8   Carter Center, "Carter Center Statement on Internet Shutdown in Sudan", https://www.cartercenter.org/news/pr/2022/sudan-063022.html, (accessed on December 18, 2022).

9   Altaghyeer, "[Cut off internet service from areas of tribal tensions in the Blue Nile region]", https://www.altaghyeer.info/ar/2022/10/18/%D9%82%D8%B7%D8%B9-%D8%AE%D8%AF%D9%85%D8%A9-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%B1%D9%86%D8%AA-%D9%85%D9%86-%D9%85%D9%86%D8%A7%D8%B7%D9%82-%D8%A7%D9%84%D8%AA%D9%88%D8%AA%D8%B1%D8%A7%D8%AA-%D8%A7%D9%84/, (accessed on December 18, 2022).

10   Reuters, "Sudanese authorities launch cases against newspaper, bar association", https://www.reuters.com/world/africa/sudanese-authorities-launch-cases-against-newspaper-bar-association-2022-09-28/, (accessed on September 16, 2022).

11   Alsudani, "[For the second time without conducting an investigation with the newspaper]", https://www.alsudaninews.com/ar/?p=159541, (accessed on December 27, 2022).

12   Al Jazeera, "Sudan withdraws licence of Al Jazeera Mubasher", https://www.aljazeera.com/news/2022/1/16/sudan-withdraws-al-jazeera-mubasher-license, (December 27, 2022).

13   Freedom House, "Freedom on The Net 2022 Sudan", https://freedomhouse.org/country/sudan/freedom-net/2022, (accessed on December 17, 2022).

Ajib, a journalist who published an article about corruption at the Ministry of Minerals. The Syndicate of Journalists condemned this practice describing the police as: "they did not respect his most fundamental rights".[14]

PRIVACY AND SURVEILLANCE

The State-based practice of surveillance and privacy violation in Sudan has a bad record as the authorities used different technologies from several vendors during various eras. In May 2022, Light House Reports, a non-profit based in the Netherlands, published a report claiming that Rapid Support Forces (RSF) – a paramilitary force in Sudan – imported "Predator", a spyware developed by Intellexa, a cyber firm based in Cyprus, registered in the European Union, and owned by Tal Dilian, a former Israeli intelligence operative.[15] "Predator" is a phone hacking software which once on your phone, can gain complete control over the mobile devices it infects. This includes accessing personal messages and files, recording calls, and monitoring the environment through the camera and microphone.[16] The report on the *State of Internet Freedom in Africa 2022* mentioned that Sudan's capital, Khartoum, has 4,000 governmental CCTV cameras spread across the city.[17]

DISINFORMATION

The Sudanese authority is using the method of spreading disinformation and fake news through social media and online news websites to "crush internet-based dissent" through the Cyber-Jihad Unit.[18] In February 2022, *Beam Reports*, a Sudanese fact-checking platform published a report showing that Rapid Support Forces (RSF) used an "inauthentic" research centre based in Paris to spread its propaganda and wash its reputation and bad history in human rights.[19] Also, they published a report defining how the authorities prefaced the October 2021 coup with a disinformation campaign.[20] In December 2022, the government of Khartoum State declared the establishment of the Centre of Combating Rumours.[21] Citizens

14   Cipesa, "Three Years After Al-Bashir Ouster, Sudan's Internet Freedom Landscape Remains Precarious", https://cipesa.org/2022/12/three-years-after-al-bashir-ouster-sudans-internet-freedom-landscape-remains-precarious/, (accessed on December 22, 2022).
15   Light House Reports, "FLIGHT OF THE PREDATOR", https://www.lighthousereports.nl/investigation/flight-of-the-predator/, (accessed on November 30, 2022).
16   Atlas VPN, "What is Predator spyware? Threat to mobile devices", https://atlasvpn.com/blog/what-is-predator-spyware-threat-to-mobile-devices, (accessed on December 6, 2022)
17   CIPESA, "State of Internet Freedom in Africa 2022: The Rise of Biometric Surveillance", https://cipesa.org/2022/09/state-of-internet-freedom-in-africa-2022-the-rise-of-biometric-surveillance/, (accessed on December 29, 2022)
18   BBC, "Sudan to unleash cyber jihadists", https://www.bbc.com/news/technology-12829808, (accessed on November 23, 2022)
19   Beam Reports, "How RSF seeks to improve its reputation through a foreign interface", https://www.beamreports.com/2022/02/14/%D9%83%D9%8A%D9%81-%D9%8A%D8%B3%D8%B9%D9%89-%D8%A7%D9%84%D8%AF%D8%B9%D9%85-%D8%A7%D9%84%D8%B3%D8%B1%D9%8A%D8%B9-%D9%84%D8%AA%D8%AD%D8%B3%D9%8A%D9%86-%D8%B5%D9%88%D8%B1%D8%AA%D9%87-%D8%B9%D8%A8%D8%B1/, (accessed on December 14, 2022).
20   Beam Reports, "How an organized disinformation campaign paved the way for the October 25 coup", https://www.beamreports.com/2022/10/23/%d9%83%d9%8a%d9%81-%d9%85%d9%87%d8%af%d8%aa-%d8%ad%d9%85%d9%84%d8%a9-%d9%85%d9%86%d8%b8%d9%85%d8%a9-%d9%85%d9%86-%d8%a7%d9%84%d9%85%d8%b9%d9%84%d9%88%d9%85%d8%a7%d8%aa-%d8%a7%d9%84%d9%85%d8%b6%d9%84/, (accessed on December 23, 2022).
21   Spokesperson platform, "Inauguration of the Anti-Rumour Centre in Khartoum next Wednesday", https://

flagged many questions about the mission of this centre because of how the government practises institutional disinformation and at the same time establishes a centre to combat it.

DATA GOVERNANCE

Internet-related legal framework in Sudan has many laws that fully and partially govern data and the internet. Sudan has ratified key international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples' Rights (ACHPR), which guarantee the right to freedom of assembly, freedom of expression, and the right to receive, impart and disseminate information.

However, the Interim Constitutional Charter of 2019 guarantees the right to access the internet with some limitations as it stipulates: "Every citizen has the right to access the internet, without prejudice to public order, safety, and morals in accordance with what is determined by law."[22] Most of Sudan's internet-related laws have terms that are vague, non-defined, and may be misused by the government. The Telecommunication and Postal Regulation Authority Act (TPRA) has mentioned that "anyone may not access telecommunication or eavesdrop on or monitor it without permission from the prosecutor or the competent judge."[23]

Furthermore, the Cybercrimes law gives the so-called "competent authority" the right to violate the citizens' privacy. The law imposed a punishment of imprisonment, a fine or both for anyone who violates the privacy of the citizens. However, the same article considered the same actions not a crime if they came under the permission of the public prosecutor, judicial or competent authority. The term "competent authority" is a broad term, making the law subject to misuse.[24]

The National security law has some repressed articles. One of them is article 25 because it leaves unlimited power for the staff of the General Intelligence Service (GIS) to violate citizens' privacy. It stipulates: "The security service has the right to request information, data, documents or things from anyone to check it or take it". The law gives the Sudanese GIS full authority to do this without any court order, which exposes citizens to violations under the pretext of security.[25]

The Sudanese National Council, or Parliament, passed the "Right to Access Information Act" in 2015. This is the first law related to information accessibility in Sudan. Even though the law has been legislated, it remains idle. For example, the law mandates the establishment of "The Commission for the Right to Access Information" as the regulator for accessing information at any public institution but nothing has been done to set up this commission, which means citizens still cannot exercise their right to information.[26]

The law has many defects that limit the freedom of access to information because it lists 12 types of categorised information that are restricted from citizens, including information related to "national security" and "foreign policy". As mentioned in the above laws, these terms are ambiguous, which allows the authorities to limit the people's ability to fully access information, which restricts the path to transparency and accountability. Article 10(g) further undermines citizens' ability to access information by empowering any public institution to enforce fees on citizens requesting information. The act does not oblige

spokesperson.gov.sd/?p=8668, (accessed on December 24, 2022).

22   Constitute Project, "Sudan's Constitution of 2019", art. 57 (2) https://www.constituteproject.org/constitution/Sudan_2019.pdf?lang=en, (Accessed on December 30, 2022).

23   TPRA law, art 74, http://tpra.gov.sd/wp-content/uploads/2018/06/Telecommunications-and-Postal-Regulation-Act.pdf.

24   Combating Cybercrimes law, art 23, https://moj.gov.sd/files/download/204.

25   National Security Law, art 25, https://menarights.org/sites/default/files/2016-11/Sudan%20National%20Security%20Act%202010%20%28AR%29.pdf.

26   Advox, "Unfreedom Monitor Report: Sudan", https://advox.globalvoices.org/2022/08/04/unfreedom-monitor-report-sudan/, (accessed on December 30, 2022).

the information holders any duty to proactively disclose information in their possession. [27]

The Regulation on Filtering and Blocking Websites and Web Pages on the Internet, for the year 2020, gave the TPRA the right to block websites without judicial order while requiring the affected citizens to go to court to unblock the websites. Broad terms such as "belief" have been mentioned in the regulation to justify website blocking. The regulation didn't define what "belief" is.[28]

In addition to internet-related laws, the authorities use other laws and regulations to repress digital rights in Sudan. In October 2022, the Human Aid Commission (HAC), the regulator of non-governmental organisations in Sudan, notified the director of the Sudanese Consumers Protection Society (SCPS) of its decision to cancel SCPS's registration, seize its assets and properties and suspend its bank accounts inside and outside Sudan. The SCPS has a history of advocating against network disruptions by using the legal path against Internet Service Providers (ISPs).[29]

However, despite these bad aspects of the legal framework in Sudan, there are some encouraging provisions such as those mentioned in the Regulation of Filtering and Blocking Websites and Web Pages on the Internet, and the Regulation for Licensing and Regulating the Work of Financial Institutions for Mobile Payment.

The first regulation requests that ISPs block all child pornography websites, weapons websites, and all sites that spread hate speech, racism and religious discrimination. The second regulation requires Mobile Payment service providers to encrypt all transactions with End-to-End Encryption.

DIGITAL ID
Sudan has had no notable Digital ID projects, but authorities have mentioned these as key several times. In April 2021, during the transitional period, the Minister of Telecom and Digital Transformation attended the first workshop on Block Chain technology in Sudan. The ministry mentioned that the workshop dealt with "the most important in Sudan, which is Digital ID".[30]

The acting Minister of Telecommunication and Digital Transformation visited the Civil Registry administration in July 2022. The Minister appreciated the Civil Registry's efforts to keep up with and use digital applications and digital transformation through electronic programs. He also said they are ready to provide support to catch up with Digital ID and Digital Signature.[31]

UNIVERSAL SERVICE FUND
The Universal Service Fund Project started in Sudan in 2003 when the Information Technology Development Council was formed. It was then incorporated into the Information Technology Development Fund in the year 2005, and finally, the Universal Service Fund was established in the year 2018 according to TPRA law.[32]

The regulator, TPRA, conducts annual surveys for the comprehensive service project. As of 2018, the survey targeted, for the first phase,

27   Global Voices, "The case for reforming the Sudanese Access to Information Act", https://globalvoices.org/2019/08/28/the-case-for-reforming-the-sudanese-access-to-information-act/, (accessed on December 30, 2022)

28   Advox, "How the government in Sudan legalized internet categorizing and content filtering", https://advox.globalvoices.org/2022/08/02/how-the-government-in-sudan-legalized-internet-categorizing-and-content-filtering/, (accessed on December 30, 2022).

29   Cipesa, "Three Years After Al-Bashir Ouster, Sudan's Internet Freedom Landscape Remains Precarious", https://cipesa.org/2022/12/three-years-after-al-bashir-ouster-sudans-internet-freedom-landscape-remains-precarious/, December 22, 2022.

30   Twitter, @MTDTSudan, https://twitter.com/MTDTSudan/status/1380615883584901125?s=20&t=6i3JJVYGmwcG8lbdSqi3Bw, (accessed on December 30, 2022).

31   SUNA, "The Minister of Communications praises the police's implementation of digital transformation projects with its service transactions", https://www.suna-sd.net/read?id=743751, (accessed on 29 December 2022).

32   TPRA, "Universal Service Fund", https://tpra.gov.sd/wp-content/uploads/2018/06/Universal-Service-Fund.pdf, (accessed on December 14, 2022).

In 2022, TPRA found that there are some obstacles facing the implementation of the project that could be summarised as below:[35]

Delaying the implementation of work, which is the responsibility of the operating companies in accordance with the contracts concluded

The delay in importing devices and equipment

Other obstacles (logistical, administrative, environmental conditions, etc.)

The process of companies sharing the communication towers needs specific structural and technical specifications, and therefore the current method allows for companies to develop a design that meets the requirements of operating only one tower

Poor quality and continuity of service have been noticed on the operator's part in the service provision areas.

According to the above information provided by TPRA, the government has a clear plan and effort to expand the telecom service coverage but at the same time, it is clear that the Universal Service project is facing enormous obstacles.

Currency inflation represents the main issue that has prevented ISPs from collaborating in implementing the project, as the operation cost puts high pressure on the ISPs. Also, the Telecommunication tax is another factor. In March 2022, the Sudanese authorities raised the telecommunication Value Added Tax from 35 to 40 per cent.[36] This tax added more obstacles for citizens to access internet services, which affected the revenue of the ISPs and subsequently, the development efforts.

Despite these obstacles, Zain reported that it would invest US$800 million in the next five years to develop and expand its existing network in Sudan, with plans to deploy

55 areas not covered by communication networks, in order to collect correct data and then classify them in terms of economic feasibility (17 feasible areas and 38 non-feasible areas). Economically unfeasible areas are covered with the support of the Universal Service project. As for the economically feasible areas for the operators, they are covered by the operators by including them in their annual coverage plans.[33]

In the second phase, the Universal Service project aimed to survey 505 areas not covered by telecommunications networks to collect data for study and classification in terms of economic feasibility. The survey identified 168 economically non-viable areas the universal service project will cover. Then, the TPRA signed a framework agreement with Zain-SD, to cover 83 uncovered areas, and MTN-Sudan, to cover 10 uncovered areas.[34]

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33   TPRA, "Universal Service Fund", https://tpra.gov.sd/regulation-issues/%d8%a7%d9%84%d9%85%d8%b4%d8%a7%d8%b1%d9%8a%d8%b9/universal-service/, (accessed on December 14, 2022).

34   TPRA, "Definition of Universal Service", https://tpra.gov.sd/wp-content/uploads/2018/06/Definition-of-universal-service.pdf, (accessed on 14 December 2022).

35   TPRA, "Consultation for the optimal model for the comprehensive service project", https://tpra.gov.sd/wp-content/uploads/2022/03/%D8%A7%D8%B3%D8%AA%D8%B4%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D9%86%D9%85%D9%88%D8%B0%D8%AC-%D8%A7%D9%84%D8%A7%D9%85%D8%AB%D9%84-%D9%84%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D8%A7%D9%84%D8%AE%D8%AF%D9%85%D8%A9-%D8%A7%D9%84%D8%B4%D8%A7%D9%85%D9%84%D8%A9.pdf, (accessed on 14 December 2022).

36   Alnilin, "Increasing the added value of all telecommunications companies services in Sudan", https://www.alnilin.com/13245648.htm, (accessed on December 30, 2022).

new and upgraded infrastructure to prevail competitively in the Sudanese market.[37] This decision came after its rejection of the offer of Invictus, a holding company in Sudan, to buy Zain Sudan for US$1.3 billion.[38]

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

The Sudanese government is continuing its efforts in digital transformation, but without a clear vision. According to the TPRA website, Sudan has three long-term plans for digital inclusion that include the Quarter-Century National Strategy for Communications Plan, the General National Emergency Plan, and the Broadband Plan.[39] The above-mentioned plans were developed early on but as at the end of the year 2022, Sudan did not have a national strategy or plan to develop Artificial Intelligence technology.

However, the Civil Registry administration is working in a continuous rhythm to digitise its services. From June 2022, Sudanese citizens could submit their applications to issue their travel passports from anywhere in Sudan through an online platform.[40] The platform enables citizens to submit their data and pay online through the E-15 system – the governmental payment system – and then wait for a notification telling them to visit the office to provide their biometric data (face photo and fingerprints).This step has solved the crisis of passports. Previously, citizens would wait for weeks in order to submit their applications, and then wait for more than a month to receive the official travel document. Moreover, in December 2022, the Ministry of Justice declared the start of working through Digital Signatures to authenticate official documents.[41] This will limit document fraud

and fabrication.

Developing Telecoms, "Zain commits $800m to Sudan upgrade", https://developingtelecoms.com/telecom-business/operator-news/14290-zain-commits-us-800m-to-sudan-upgrade.html, (accessed on December 30, 2022).
Mubashir, "Zain decides not to proceed with the sale of its stake in the two companies in Sudan", https://www.mubasher.info/news/4041783/-%D8%B2%D9%8A%D9%86-%D8%AA%D9%82%D8%B1%D8%B1-%D8%B9%D8%AF%D9%85-%D8%A7%D9%84%D9%85%D8%B6%D9%8A-%D9%82%D8%AF%D9%85%D8%A7-%D9%81%D9%8A-%D8%A8%D9%8A%D8%B9-%D8%AD%D8%B5%D8%AA%D9%87%D8%A7-%D8%A8%D8%B4%D8%B1%D9%83%D8%AA%D9%8A-%D8%A7%D9%84%D8%B3%D9%88%D8%AF%D8%A7%D9%86/, (accessed December 17, 2022).
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LONDA - DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

Conclusion and Recommendations

In Sudan, the authorities do not allow citizens to practice their digital rights by tightening the cyberspace using different tools which include enacting bad laws, importing and using censorship technologies, network disruptions, online information manipulation, and web content filtering. The gap in telecommunications service coverage and the reasons for that create a clear digital divide between the people in rural and urban areas, which can be considered a kind of digital repression. The government does not have any plan to keep up with modern technologies such as Artificial Intelligence.

GOVERNMENT	MEDIA	CIVIL SOCIETY
• The government should stop network disruptions. • The government should not target its citizens using spyware. • The government should not withdraw media licences. • The Sudanese government should amend the laws of (Combating Cybercrimes, 2018 (amendment of 2020), Press and Press Publications law of 2009, Telecommunication and Post Regulation Authority, 2018 and National Security, 2010 (amendment of 2020) which contain vague terms and imposing harsh and disproportionate punishments on State workers. • The government should implement the Access to Information Act to increase access to information, which will reduce propagation of disinformation. • The government	• The media in Sudan should continue their efforts in detecting and documenting digital authoritarianism events. • Media should work to protect their staff by building strong coalitions and pushing against laws that are used to repress journalists. • The Syndicate of Journalists should provide Digital Safety training to its members.	• Civil Society in Sudan should push forward against digital authoritarianism practices by encouraging regional and international support, mobilising the resources to put pressure on the government to stop repressing the people's rights. • Civil society must raise the awareness of the Sudanese people through training and media campaigns. • Civil Society should provide Digital Safety training to people targeted with spyware.

| GOVERNMENT	MEDIA	CIVIL SOCIETY
should reduce the telecommunication tax and ensure affordable data. · The government should get benefits from the reduced telecommunication tax by using it to develop the ICT sector. · The government should work to provide the needs which will assist the telecommunication companies to cover the non-economically feasible areas. · The government, using the Telecom Operation License and after providing all needs, must impose penalties on the Telecom companies which make shortcomings in their obligation with the Universal Service Fund.		

Tanzania

This report presents the situation of digital rights and inclusion in Tanzania. Although the Constitution of the United Republic of Tanzania, 1977, the Access to Information Act, 2016, the Media Services Act, 2016 and the Electronic and Postal Communications Act, 2010 protect the digital rights to privacy and freedom of expression, there are certain problematic provisions in the very same laws that affect the digital rights. These provisions have been used by Government authorities to curtail the enjoyment of digital rights particularly free speech, media freedoms and the right to privacy.

Access to the internet has been tampered with by the Government's attempts to reduce speed and block access to certain websites and applications such as adult content websites and Mange Kimambi App to mention, to mention a few. These websites and applications cannot be accessed in Tanzania except through VPNs.

The enactment of the Personal Data Protection legislation in 2022 is a milestone achievement in protecting personal data and the right to privacy. However, the ongoing collection of biometric information in the production of national Digital IDs and electronic passports raises concerns about data governance. This report recommends the amendment of the Constitution and other legislation to recognise and protect digital rights in a broader manner and immediately operationalise the data protection legislation.
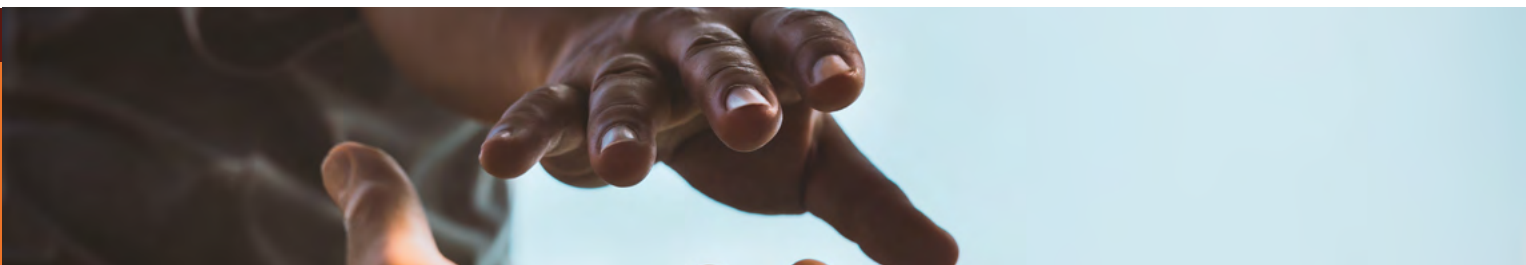
Introduction

Tanzania is a united republic made up of Mainland Tanzania and Zanzibar. The current statistics show that there is an increased digital citizenry in Tanzania. According to the current statistics released by Tanzania Communications Regulatory Authority (TCRA), the number of internet users in Tanzania is 31.12 million.[1] The foregoing numbers show that almost half of the population of Tanzania is connected to the digital space or has access to internet services.

To increase its digital presence and transform its economy into a digital one, Tanzania is implementing a Development Vision 2025 (TDV) and Five-Year Development Plan 2021-2025. These strategies seek to expand networks of high-speed internet connection in both rural and urban areas.[2] Furthermore, Tanzania is currently implementing the Digital Tanzania Project (DTP) which is funded by the World Bank.[3] Like the foregoing strategies, this too, seeks to increase access to high-quality broadband internet services for government, businesses, and citizens, and improve the government's capacity to deliver digital public services. This project also seeks to make Tanzania a more attractive and competitive place for digital investment and innovation and ensure that the benefits of digital technology are reaching all citizens and helping lay the groundwork for the growth of the digital economy.

As this report will highlight in the upcoming sections, Tanzania has embarked on several projects which have had an impact on the expression of digital rights. These include but are not limited to the introduction of e-government and e-transactions, biometric digital identity, digital services tax, and postcodes registration projects. Technically, all these projects are in one way or another impacting the enjoyment of digital rights in Tanzania.

Tanzania has no specific legislation on digital rights although these rights are by necessary implication recognised and protected by the Constitution and other relevant legislation. It should be noted that rights to privacy and freedom of expression are to some extent guaranteed by the Constitution of the United Republic of Tanzania 1977 (the Constitution).

The right to privacy is guaranteed under article 16 and freedom of expression is guaranteed under article 18 of the Constitution. Similarly, these rights are also provided under the Access to Information Act, 2016 (the ATI), the Media Services Act, 2016 (the MSA), the Cybercrimes Act, 2015 and the Electronic and Postal Communications Act, 2010 (the EPOCA). On the other hand, these laws are also highly criticised as being draconian and abrogating human rights. It is also worth noting that Tanzania has recently enacted a Personal Data Protection Act, making it the

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1   The Citizen, 'TCRA: Digital economy growth on track as internet use expands', available at https://www.thecitizen.co.tz/tanzania/news/national/tcra-digital-economy-growth-on-track-as-internet-use-expands-3998392 (accessed on January 28, 2023).
2   See Tanzania Five Year Development Plan, 2021-2025. The plan is available at *https://www.tro.go.tz › 2021/06 › FYDP-III-English* (accessed on December 27, 2022).
3   World Bank 'Tanzania: World Bank Supports Expanded Access to Opportunities and Services, Especially for Women and Youth', available at https://www.worldbank.org/en/news/press-release/2021/05/27/tanzania-world-bank-supports-expanded-access-to-opportunities-and-services-especially-for-women-and-youth, (accessed on December 27, 2022).

fourth East African Community nation to have such kind of legislation.[4] This is a milestone achievement in the protection of digital rights.

INTERNET FREEDOM

The internet has emerged as a new medium/channel for individuals to express their views and opinions. It provides different avenues of freedom of expression that allow people to share their thoughts. However, several issues cloud the freedom people may have in accessing or using the internet. These issues are generally grouped into three categories: issues relating to government control of internet freedom; issues relating to

government surveillance of internet activities; and lastly, issues relating to government

activism/propaganda in shaping the content of the internet to suit the Government's interests.

INTERNET ACCESS AND DISRUPTIONS

There are about 31.12 million persons who can access the internet in Tanzania.[5] This is almost half of the population of Tanzania which currently stands at 61,741,120 people.[6] In a bid to increase access to the internet for a large number of people, the Government removed VAT from importation of smart phones to ensure that smartphones are sold at a cheaper price and therefore many people can afford to purchase them.[7] Additionally, the government has taken a commendable move of amending the Electronic and Postal Communications (Licensing) Regulations, 2018 to remove the requirement for a TCRA licence to sell mobile phones.[8] This in turn facilitates mobile phone trading and consequently increased access to the internet.

Apart from those commendable moves, there have also been attempts by the Government to disrupt internet access. There are reported incidents of internet disruptions or attempts by the government to reduce internet speed. These have been particularly reported during the election period[9].

In recent days, the Government has blocked access to some websites, especially those which offer adult content (pornography). These websites cannot be accessed in Tanzania. Although this move can be justified on the grounds of morality yet the same limits unreasonably the right to access information and freedom of expression by limiting the access to such content.

In the same line, the Government has also blocked access to some applications such as an Mange Kimambi, a notable government critic

4   Kenya, Uganda, and Rwanda enacted data protection legislation before Tanzania.
5   The Citizen, 'TCRA: Digital economy growth on track as internet use expands', available at https://www.thecitizen.co.tz/tanzania/news/national/tcra-digital-economy-growth-on-track-as-internet-use-expands-3998392 (accessed on January 28, 2023).
6   Official Census Report, 2022. Read more at: https://www.tanzaniainvest.com/economy/population-reaches-61-million and follow us on www.twitter.com/tanzaniainvest, (accessed on December 28, 2022).
7   Vatupdate 'Tanzania to remove VAT on smartphones to boost access to internet', available at Https://www.vatupdate.com/2021/06/17/tanzania-to-remove-vat-on-smartphones-to-boost-accessto-to-internet/, (accessed on December 21, 2022).
8   See the amendment of the Licensing Regulations of 2022, particularly the third schedule thereto. The amendments are available at TCRA Website (www.tcra.go.tz).
9   The incidents were mostly reported during the 2020 general elections and 2022 by-elections in constituencies.

living in the United States. All these websites and applications can only be accessed by using a Virtual Private Network (VPN). Ironically, the use or ownership of a computer program such as VPN to circumvent content prohibited by the Government is a criminal offence in Tanzania under the Cybercrime Act.[10]

FREE SPEECH AND MEDIA FREEDOMS

Although Article 18 of the Constitution and Section 7(1) of the Media Services Act, 2016 guarantee freedom of speech and media freedom respectively, there are other provisions of the law which encroach on these freedoms.

The Government has been using provisions of the Media Services Act, 2016 and the Electronic and Postal Communications (Online Content) Regulations, 2020 to suspend licenses and punish numerous media organisations, as well as arrest intermediaries. The Media Services Act, 2016 grants unfettered powers to the Minister to suspend or revoke the licence of media houses.[11] Using the said Act, several newspapers have been suspended or banned indefinitely. This restricts freedom of speech and media freedom in particular. Also, the Act imposes a requirement of journalists' accreditation, it provides for a seditious offence and criminal defamation which are considered to affect media freedoms.[12]

Freedom of expression online has also been curtailed by the arrest of journalists and other online government critics. For example, on April 21, 2022, advocate Peter Madeleka, an online activist was arrested and detained by police after posting in his Twitter account about a conspiracy to kill him by the immigration officers.[13] Madeleka has been using his Twitter account to criticise immigration officers on corruption and misuse of the office.

In another incident, a Zanzibar-based journalist, Yassir Mkubwa, was arrested on June 20, 2022 and detained by the police after interviewing the ruling party cadre, Baraka Shamte, who criticised the President of Zanzibar. In the said interview, Shamte stated that he does not think that President Mwinyi deserves a second term, citing his "failures to display good qualities as a leader" as a reason.[14]

Online Content Regulations have also been used to suspend online media and to reinforce the Government's censorship powers. The regulation contains a broad list of the prohibited content and provisions for takedown notifications, criminal defamation and requirement to obtain licence.[15] All these are said to affect the freedom of these online media to share information and their contents. These regulations have been notoriously used by the Government to prosecute persons who owned YouTube channels without procuring a licence or publishing content online which the Government has been opposing. The enforcement of the Media Services Act and Online Content Regulations has negatively impacted the enjoyment of free speech and media freedoms.

PRIVACY AND SURVEILLANCE

On one hand, the right to privacy is provided under article 16 of the Constitution. The same right is to some extent reinforced under section 97 of the Electronic and Postal Communications Act, 2010 and the Personal Data Protection Act, 2022 which entered into force on December 2, 2022.[16]

On the other hand, there are various pieces of legislation which are used by the Government to restrict or abrogate the right to privacy. These are the Cybercrimes Act, 2015, the Electronic

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10   Section 6 (1)(b) of the Cybercrime Act, 2015 provides to that effect.

11   CPJ, 'Tanzanian government revokes license of Tanzania Daima newspaper', available at https://cpj.org/2020/06/tanzanian-government-revokes-license-of-tanzania-daima-newspaper/(accessed on December 27, 2022).

12   Sections 38(3), 58 and 59 of the Media Services Act, 2016.

13   The Chanzo Initiative, 'Police in Dar arrest activist Peter Madeleka over unspecified charges', available at https://thechanzo.com/2022/04/21/the-chanzo-morning-briefing-april-21-2022/ (accessed on January 27, 2023).

14   The Chanzo Initiative, 'Journalist arraigned in Zanzibar over cybercrime charges', available at https://thechanzo.com/2022/06/22/the-chanzo-morning-briefing-june-22-2022/ (accessed on January 23, 2023).

15   These are provided under regulations 9(g), 11(3) & (4), 15, 16(1), paragraphs 10 and 2(b) of the schedule to the Electronic and Postal Communications (Online Content) Regulations, 2020 as amended.

16   See Government Notice No.45 of December 2, 2022.

and Postal Communications Act, 2010 and the Electronic and Postal Communications (Online Content) Regulations, 2020. All these laws provide for information disclosure procedures which have no adequate safeguard against possible abuse by the law enforcement agencies.

The lack of adequate safeguard puts the right to privacy in jeopardy. For instance, the Cybercrime Act empowers police officers to demand disclosure of information from service providers without prescribing the procedure to be followed or safeguards that may protect against possible abuse.

The Online Content regulations abrogate the right to privacy by requiring the online content provider to use tools that identify the source of the content. This provision hinders journalism and whistleblowing because people cannot guarantee their sources will be protected. Also, the Regulations prohibit use or distribution of tools that allow people to access prohibited content, meaning that virtual private networks (VPNs) are effectively banned, restricting people's capacity to stay anonymous online. These requirements do not align with the basic tenets of the rights to privacy and anonymity.

Generally, surveillance is not permitted in Tanzania except under the circumstances provided by the Prevention of Terrorism Act, 2002 and the Tanzania Intelligence and Security Services Act, 1996. However, there have been reported incidents of surveillance in contravention of these laws which harms the enjoyment of digital rights. It has been alleged that the Tanzanian State has deployed Pegasus phishing technology from Israel to conduct surveillance and hack into the mobile phones of targeted individuals.[17]

This appears to have been the case when it was reported that several public officials had their phones tapped and voice recordings of

the conversation between former Ministers Nnape Nauye, January Makamba and former ruling party Secretary General Abdulrahman Kinana were leaked to the public.[18]

DATA GOVERNANCE

For several years, the Government was reluctant to enact data protection legislation despite a constant public call for the same. However, on November 1, 2022, the Personal Data Protection Bill was passed by Parliament. The Bill was signed into law by the President on November 27, 2022.[19] The Act came into force on December 2, 2022 via a Government Notice No.45 of 2022.

While the Data Protection Act offers protection when it comes to safeguarding the privacy of personal data, it nonetheless raises serious concerns in some key areas. The notable issues are the independence and impartiality of the Data Protection Commission whose members are handpicked by the President. Another

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17   Stewart,J. Revealed: Magufuli used Israel hi-tech Pegasus to hack journalists, critics and opponents' available at https://sautikubwa.org/revealed-magufuli-used-israeli-hitech-pagasus-to-hack-journalists-critics-opponents/ (accessed on December 20, 2022).

18   The Citizen, 'The letter that is rocking CCM', available at https://www.thecitizen.co.tz/tanzania/news/national/the-letter-that-is-rocking-ccm-2687412, (accessed on December 18, 2022).

19   Information received from the Government Printer.

concern is on the data transfer, the data subject has not been accorded the power of consent to bodies that collect, process, store, or use personal data outside Tanzania's borders. This means that their data may be prone to misuse. Since the legislation has been in force for a few days, the practicalities of its implementation will be better assessed in data governance. This is because, effective operation of the Personal Data Protection Act depends on regulations which are yet to be made.[20]

Digital IDs as a part of the data governance regime are governed by the Registration and Identification of Persons Act, 1986. This Act is administered by the National Identification Authority (NIDA). Through this Act, NIDA is empowered to collect among other things biometric information of citizens. Ordinarily, fingerprints are taken when processing IDs. Again, fingerprints are taken when processing travel passports under the Passports and Travel Documents Act, 2002. Notably, the information which is captured by NIDA is shared to other service providers such as telecommunications companies and financial institutions.

Under the Electronic and Postal Communications (SIM cards Registration) Regulations, 2020, individuals must register their SIM cards using biometric information. Biometric information falls under the category of sensitive personal data. Sadly, the sensitive personal data is captured and shared without a proper legal framework for the protection of personal data.[21] In other words, the data are shared without proper safeguards to guarantee the right to privacy and protection of the personal data as required by international standards.

UNIVERSAL SERVICE FUND

The Universal Service Fund was established and governed by the Universal Communications Services Access Fund Act, 2006 (the UCSAF). In Tanzania, the fund is known as UCSAF. The

fund started operations on July 1, 2009. The Universal Service fund is available in Tanzania and has been used to subsidise the construction of communications infrastructure in areas which are less attractive commercially.

For instance, in 2022, the fund constructed 88 communication centres in regions of Mtwara, Lindi, Tabora, Rukwa, Geita, Dodoma, Iringa,

Njombe, Ruvuma, Mbeya, Tanga, Kilimanjaro, Arusha, Manyara, Mara, Kigoma, Singida, Morogoro, Pwani, Kusini Pemba, and Kaskazini Pemba.[22] Furthermore, UCSAF promotes socio-economic development of the rural and urban underserved areas through ICT interventions to ensure the availability of communication services and to bridge the digital divide between rural populations and urban populations.[23] Some of the notable tasks that UCSAF has been doing to bridge the digital divide is providing ICT learning equipment to public schools and

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20   See s.64 of the Personal Data Protection Act,2022. Note that the Act is only available in Swahili version.
21   The Personal Data Protection Act came into force on December 2, 2022. Institutions and regulations necessary for the effective operation of the Act are yet to be established.
22   The Ministry of Information and Communication Technology Budgetary Speech, 2022.
23   UCSAF Press release, available at https://www.ucsaf.go.tz/press-releases/ucsaf-implements-digital-projects-that-

connecting them to the internet, and upgrading the rural communications towers from 2G to 3G to facilitate internet access.[24]

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

Tanzania lacks a specific policy or legislation on Artificial Intelligence (AI). Nevertheless, there are laws and regulations which regulate in one aspect or another, the applications of AI. These are the Cybercrime Act, 2015, the Electronic Transactions Act, 2015 and the Judicature and Application of Laws (Remote Proceedings and Electronic Recording), 2021. The Judiciary in Tanzania has been using the AI system for transcribing and translating the Court's proceedings.[25]It has also installed ICT facilities for online courts and an e-filing system. It is a pioneer of the AI system in Tanzania.

The Government has mainstreamed ICT in most of its development action plans and strategies. For instance, the National Strategy for Growth and Reduction of Poverty (MKUKUTA), Tanzania's Mini Tiger Plan, and the Tanzania long Term Perspective Plan 2011/12-2025/26, emphasise the need to increase application of technology in accelerating productivity.[26]

In July 2013, the Government implemented the Tanzania e-government Strategy which seeks to increase the Government's Digital Presence and Interaction in ICT. Through this strategy the e-Government Authority has been established and most of the Government transactions are currently being done online, including a centralised online payment gateway known as Government Electronic Payment Gateway (GePG).
Tanzania Development Vision 2025 (TDV) and Five-Year Development Plan 2021-2025 seek, among other things, to expand networks of high-speed internet connection in both rural and urban areas. The Plan focuses on

technology, and innovation, with a specific emphasis on advanced and modern information and communication technology (ICT) as an enabling tool to reach the intended goal. This will transform the economy to a digital one and keep pace with the rest of the world.

promote-quality-of-life-for-tanzanians (accessed on December 27, 2022).
24   UCSAF Press release, available at https://www.ucsaf.go.tz/press-releases/ucsaf-implements-digital-projects-that-promote-quality-of-life-for-tanzanians (accessed on December 27, 2022).
25   Almawave 'Almawave S p A : Artificial Intelligence in support of the Tanzanian justice system' https://www.marketscreener.com/quote/stock/ALMAWAVE-S-P-A-120091815/news/Almawave-S-p-A-Artificial-Intelligence-in-support-of-the-Tanzanian-justice-system-40705369/(accessed on January 27, 2023).
26   Tanzania Long Term Perspective Plan 2011/12-2025/26, available at https://effectivecooperation.org/content/tanzania-national-development-plan-2021, (accessed on December 27, 2022).

Conclusion and Recommendations

Tanzania is rapidly increasing its digital presence through the implementation of various projects that seek to transform its economy to a digital one. This is evident in the increasing number of internet users, adoption of e-government and implementation of the Universal Communications Services Access Fund (UCSAF) to bridge the digital divide between the rural and urban populations. However, there is no specific legislation on digital rights in Tanzania, even though digital rights are recognised and protected by the Constitution of the United Republic of Tanzania, 1977, the Access to Information Act, 2016, the Media Services Act, 2016, and the Electronic and Postal Communications Act, 2010. Digital rights such as the right to privacy and freedom of expression are guaranteed under articles 16 and 18 of the Constitution respectively.

The Government of Tanzania has taken some positive steps to increase access to the internet. Some of the steps include the removal of VAT from the importation of smartphones and the abolition of the Tanzania Communication Regulatory Authority's licence for selling mobile phones. These have enabled the ease of access to ICT equipment and consequently increase access to the internet. However, on the other hand, the government has restricted access to the internet by reducing internet speeds, especially during election periods, restricting access to some websites and applications unless with the use of VPNs.

Although the Constitution and Media Services Act, 2016 provides for free speech and media freedom, the same has been curtailed by other provisions of the law. The government has been using laws such as the Media Services Act, 2016 and Electronic and Postal Communications (Online Content) Regulations, 2020 to suspend or revoke licences of the media houses, restrict freedom of expression and prosecute the Government critics and intermediaries.

Unsafeguarded procedures for disclosure of information provided under the Cybercrime Act, 2015 and Online Content Regulations, 2020 curtail the right to privacy and freedom of expression. Tanzania has passed Personal Data Protection legislation to govern the collection, retention and use of personal data. Although the data protection legislation is not yet in operation, other authorities such as NIDA and Immigration Department have been collecting biometric information for the purpose of issuing digital IDs and electronic passports. These sensitive personal data are also shared with telecommunications companies while there are no proper legal safeguards to ensure the privacy of the data subjects and the protection of personal data.

Against the foregoing findings, this report recommends the following:

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
• Amend the Media Services Act, 2016, the Cybercrime Act, 2015 and the Electronic and Postal Communications (Online Content)	• Work with the government to ensuring internet access, especially to marginalised communities. • Devise projects	• Advocate for the amendment of the laws and inclusion of digital rights. • Conduct awareness programs and training on digital rights and

| GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
Regulations, 2020 to address all draconian provisions which curtail the right to privacy and freedom of expression. These are section 32 of the Cybercrimes Act, 2015, section 38(3), 58 and 59 of the Media Services Act, 2016 and regulations 9(g), 11(3) & (4), 15 and 16 (1) of the Electronic and Postal Communications Online Content) Regulations, 2020. · Without delay, make necessary regulations for effective operation of the Personal Data Protection Act, 2022. · Amend the Constitution to recognise specifically digital rights and increase the online protection of these rights.	which may improve or increase access to the internet and thereby help the community to tap the potentials of the digital economy.	digital citizenry. · Conduct strategic litigation on cases of digital rights violations.

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The Gambia

This report presents detailed findings of The Gambia's progress on the state of Digital Rights and Inclusion. With several initiatives launched in the fight for digital inclusion, the contributions of the government and stakeholders are recorded to shed light on developments made in the Information, Communication and Technology (ICT) sector.

A notable integration made across sectors includes the introduction of the digital Covid-19 Certificates and implementation of the Digitised Mass Birth Certificate, and National Health Insurance Registration, by the Ministry of Health in partnership with the Ministry of Communication and Digital Economy. Another milestone pioneered by the Ministry of Communication and Digital Economy is implementation of the Digital Addressing System using Google codes carried out in the capital city of Banjul and key towns in the urban areas, like the Kanifing Municipal Council (KMC) area to boost postal services and e-commerce.

The challenge of The Gambia today is to bring mobile data cost down, with the current cost of 1GB of mobile data being $5. Price reduction in this area will contribute to getting affordable and meaningful connectivity to all in Gambia where 99 per cent of mobile voice coverage exists. The possibility of this happening with the coming of a second submarine cable, through the Western African Digital Integration Project funded by the World Bank, will help tackle the challenge of affordability currently affecting most Gambians. The Universal Access Fund policy in place has to address rural connectivity for the majority of Gambians in rural areas. The Information Communication Act of 2009 under review has to be completed on time to make Gambians feel safe that no draconian law exists that can hinder free speech, promote openness, and above all, that citizens can use the internet safely and securely.
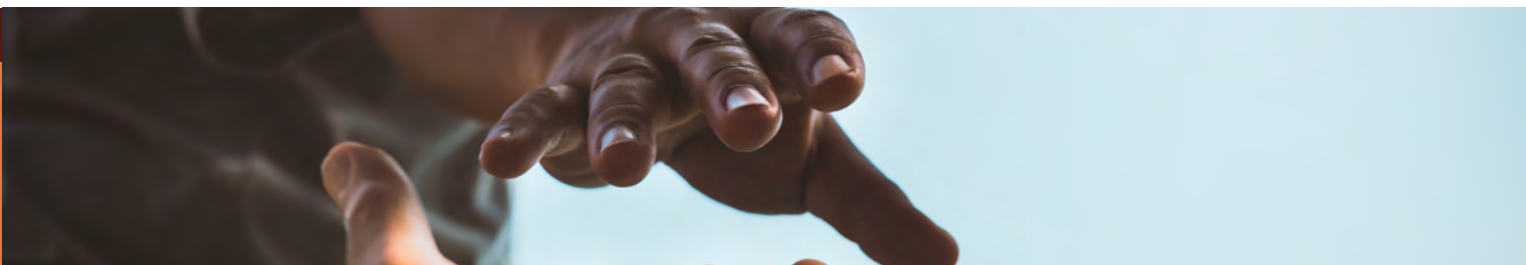
Introduction

After decades of digital stagnation that has encamped the progress of digitisation in The Gambia, the road to recovery and democratic sustenance was put into effect in the December 2016 Presidential elections. In 2018, two years after the inauguration of the coalition government, the National Development Plan (NDP) 2018-2021 was enacted in Parliament with the goal of "deliver[ing] good governance and accountability, social cohesion and reconciliation and a revitalized and transformed economy for the wellbeing of all Gambians." The NDP outlines eight Strategic Priority areas complemented by the seven cross-cutting enablers in which ICT is a catalyst for development. [1]

The National Development Plan (NDP) 2018-2021 was created with the goal to deliver good governance and accountability, social cohesion and national reconciliation and a revitalised and transformed Gambian economy for the wellbeing of all Gambians. The Gambia's NDP consists of eight strategic priority areas and seven critical enablers in which Information Communication Technology was listed as the sixth critical enabler for national development. [2] The Recovery Focused National Development Plan (RF-NDP) a continuation of the 2018-2021 NDP under current formulation still holds ICT as a critical enabler- "Making The Gambia a Digital Nation and Creating a Modern Information society," for the development, growth and sustainability of the nation. With digitisation being one of the pillars of the National Development Plan, it goes without saying that the goal to accelerate economic development using ICT is a step in the right direction. The government of The Gambia in the pursuit of realising the proposed Digital Transformation Agenda has in this regard recently decoupled the Ministry of Information and Communication Infrastructure into two line Ministries – the Ministry of Information Services and the Ministry of Communication and Digital Economy. For the first time in The Gambia's history, an ICT professional is appointed the Minister of Communication and Digital economy, a professional who returned from the USA and relinquished his USA citizenship to serve in this position.

The goal of the Recovery Focused National Development Plan (RF-NDP) is to make digitisation a catalyst for accelerating economic growth, improving efficiency in both the public and private sectors and strengthening competitiveness in all sectors of the economy. [3]

Since the dawn of its newfound democracy, where freedom of expression is the hallmark of President Adama Barrow's administration after he was sworn into power on January 19, 2017, The

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1   The Gambia National Development Plan (accessed October 27, 2022), from (https://mofea.gm/ndp)
2   National Development Plan 2018-2021 https://mofea.gm/ndp
3   Policy Statement by H.E. Mr Ousman A Bah, Minister of Communication and Digital Economy, The Gambia, (accessed October 27, 2022) from (https://pp22.itu.int/en/itu_policy_statements/ousman-a-bah-gambia/)

Gambia has achieved significant strides. With freedom of expression, citizen participation online and offline has greatly increased, as several issues pertaining to State and country have been criticised openly online. Internet penetration stands at 51 per cent as of January 2022, a 27.3 per cent improvement from the January 2021 report.[4] This can be greatly attributed to the National Broadband Initiative launched by the Gambia Telecommunication company (GAMTEL) in partnership with Huawei, in 2019, to improve internet speed and access across the country.

The Gambia has one of the highest penetration rates of mobile phones in Africa. Although Gamtel is owned by the government, there have been no internet restrictions on digital rights spearheaded by the current government. One of the major challenges still facing The Gambia is the usage of the 1997 Constitution. Although there were efforts made to introduce and ratify the 1997 Constitution, the amended draft was rejected by Parliament in 2021 and therefore, the draft Constitution didn't make it to a referendum. In this regard: "the current government had failed in its promise to deliver a new Constitution."[5]

A lot of strides have been made since the establishment of the National Human Rights Commission of The Gambia[6] such as the monitoring of the implementation of the Truth Reconciliation and Reparation Commission (TRRC) and the Country Specific Information on the Implementation of the Convention on the Elimination of all Forms of Discrimination Against Women in the Gambia.[7] The country is presently revising its Information Communication Act of 2009 which will align it with best practices on digital rights and privacy. On the margins of the 17th United Nations Internet Governance Forum held in Addis

Ababa in November 2022, the new Minister of Communication and Digital Economy Ousman Bah, signed the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention).[8] A number of initiatives including a second submarine cable, implementation of a national digital identity card, harmonisation of the national payment gateway, and a functional e-government portal and data centre are expected to kick off in 2023.

INTERNET DISRUPTIONS

There were about six internet outages in the country between 2021-2022 as a result of technical challenges.[9] The disruptions were caused by cutting of the broadband cables by road construction projects, interruptions due to the sun affecting the submarine cables when ships brush off on it, and lack of a backup submarine cables to reduce dependency on the ACE Submarine cable. The government is working to get a second submarine cable to strengthen internet access and connectivity penetration by creating another internet gateway for the country. This is expected to happen through the Western Africa Regional Integration Project funded by the World Bank.[10]

INTERNET FREEDOM AND ACCESS

Cyber bullying is on the rise in the country since the pandemic began. There is no legislation on cyber bullying in the Gambia. With regards internet access, several rural areas don't have connectivity; internet penetration is still at 51 per cent. The implementation of the approved Universal Access Fund needs to be strengthened. There should be establishment of community networks to support internet access and internet infrastructure in rural Gambia. The Government should fast track and strengthen the establishment of information

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4   https://freedomhouse.org/country/gambia/freedom-net/2022.
5   The Constitutional Review Commission (CRC), Draft Constitution https://crc220.org/
6   National Human Rights Commission Strategic Plan https://www.gm-nhrc.org
7   Country Specific Information on the Implementation of the Convention on the Elimination of all Forms of Discrimination Against Women in the Gambia, (CEDAW Report) September 2022 https://www.gm-nhrc.org/reports
8   African Union Convention on Cyber Security and Personal Data https://au.int/sites/default/files/treaties/29560-sl-AFRICAN%20UNION%20CONVENTION%20ON%20CYBER%20SECURITY%20AND%20PERSONAL%20DATA%20PROTECTION.pdf
9   Freedom House https://freedomhouse.org/country/gambia/freedom-net/2022
10   West Africa Regional Digital Integration Project https://ppiaf.org/activity/africa-west-africa-regional-digital-integration-project

and innovation hubs in rural Gambia, to promote digital inclusion for socio-economic development at the grassroots level, as well as support hubs like Jokkolabs Banjul, Start-Up Incubator, Gambia Tech Project Global Meet-Up Project funded by the UNDP Accelerator Lab, and other NGO's working to accelerate Digital Inclusion in rural Gambia.

SPEECH AND MEDIA FREEDOM

In December 2022, the Government of the Gambia released a statement of an alleged coup plotted by soldiers of The Gambia Armed Forces.[11] However details of the coup still remain questionable by many citizens as only low ranking officials were arrested and presented to the public as the perpetrators of the coup. In the same month the Campaign Manager of the United Democratic Party Momodou Sabally was arrested over a TikTok video citing how President Adama Barrow will be removed from office before the next local government elections.[12] However, some people believe the arrest of Sabally was a violation of his human rights. In response to public outcry, the police posted a statement clarifying that Sabally had been called to the station for questioning.

Article 207 of the Constitution of The Gambia on Media Freedom and Responsibilities clearly states that "The press and other information media shall at all times, be free to uphold the principles, provisions and objectives of this Constitution, and the responsibility and accountability of the Government to the people of The Gambia,"[13] thereby enabling Freedom of Expression of the press and all persons at large. On the December 23, 2022, the judge presiding over the case approved the State's request to extend the detention of Sabally to January 5, 2023 on account of the festive and holiday season.[14]

PRIVACY AND SURVEILLANCE

The Government of The Gambia has created the Privacy and Data Protection Strategy which has not yet been approved. The strategy comes

as part of the Information and Communication Act of 2009 currently under review.[15]

DIGITAL IDS

Vehicle licenses issued by The Gambian Police Force have embedded Quick Response Code (QR codes) that enables access of the vehicle ownership through scanning the code and getting full details of who the particular vehicle is licensed to. However, it doesn't have any encryption for protection. This allows breach of personal data protection. The new biometric ID cards issued by the Immigration Department have electronic chips integrated but they haven't been digitised yet to be machine readable.[16]

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11   Press Release of the Alleged December 2022 Coup in The Gambia https://gainako.com/the-gambia-and-ecowas-condemn-december-2022-alleged-coup-attempt/
12   Momodou Sabally's arrest https://foroyaa.net/police-arrest-momodou-sabally/
13   Constitution of The Republic of The Gambia highlighting Media Freedom http://hrlibrary.umn.edu/research/gambia-constitution.pdf
14   Judge Extends Momodou Sabally's Detention https://foroyaa.net/judge-extends-saballys-detention-till-january/
15   Data Protection Provisions https://www.dataguidance.com/jurisdiction/gambia
16   Gambia Immigration Department issues new biometric ID's https://thepoint.gm/africa/gambia/article/gid-announces-

DATA GOVERNANCE

There is currently no data protection policy and law in effect in The Gambia. However, there is a draft in to be implemented under Western Africa Regional Integration Project funded by the World Bank where data governance will be embedded. The Ministry of Communication and Digital Economy is also working with the European Union to fast track its Digital Economy goals. The Gambia Bureau of Statistics (GBOS) aggregates all information on statistical data in the country.

Information is available to the public on their website.[17] On December 2, 2022, at the 17th Annual Internet Governance Forum held in Addis Ababa, Minister Ousman Bah, signed and ratified the Malabo Convention adding The Gambia to the list of countries who have ratified the African Union Convention on Cybersecurity and Personal Data Protection.

The Gambia Information and Communications Technology Agency Act of 2019 seeks to advance a Data Protection Policy that includes provisions on data gathering and assessment. This will cater for a comprehensive Data Protection Legislation in the future. However, The Gambia is yet to enforce the authority that issues data protection guidelines.[18]

ICT DEVELOPMENT AND INFRASTRUCTURE

In June 2022, after the decoupling of the Ministry of Information and Communications Infrastructure into the two line Ministries of Information Services and Communications and Digital Economy, the president appointed Mr Ousman Bah, as Minister for Communications and Digital Economy.[19] This was a development celebrated by the ICT sector as a milestone with the appointment of a minister with qualifications aligned with the ICT sector of the Gambia. This recent development comes at a time when the Gambian Government has identified ICT as a priority sector in the Recovery Focused National Development Plan (RF-NDA) currently in formulation.[20] The Ministry of Communications and Digital Economy under the supervision of its line Minister has embarked on several structural changes initiated in the following areas:

- The review of the Information and Communication Technology Act to introduce major reforms in the legal and regulatory framework to better take into account innovative and emerging technologies;
- Securing a second backup submarine cable to support the existing ACE cable;
- Development of a Digital Economy Master Plan currently supported by the European Union (EU);
- Development of e-Government Systems and platforms;
- Introduction of National ID systems;
- Improvement of Digital Payment Systems and Gateways;
- Implementation of a robust Digital Literacy Program to develop and strengthen digital skills;
- Establishment of Tier 3 National Data Centre.[21]

The ICT sector currently contributes 3.7 per cent to the nation's GDP. The internet penetration rate as at the beginning of 2022 remains at 51.0 per cent. Internet users have increased by 2.9 per cent from 2021 to 2022. Other notable developments in the ICT sector include the increase of e-commerce platforms such as

new-scheme-for-id-residential-cards

17   The Gambia Bureau of Statistics (GBoS) Website, (Accessed October 28, 2022), from https://www.gbosdata.org/downloads/census-2013-8).

18   Key Acts, Directives, Bills and Guidelines, Gambia Data Protection Overview https://www.dataguidance.com/notes/gambia-data-protection-overview

19   Office of the President of The Republic of The Gambia: President Adama Barrow Appoints New Minister of Communications and Digital Economy, 24th June 2022, (Accessed October 28, 2022), from (https://www.op.gov.gm/index.php/president-barrow-appoints-new-minister-communication-digital-economy).

20   Information on the Reframed National Development Plan https://pp22.itu.int/en/itu_policy_statements/ousman-a-bah-gambia/

21   Policy Statement by H.E. Ousman A. Bah, Minister of Communications and Digital Economy, (Accessed October 28, 2022), from (https://pp22.itu.int/en/itu_policy_statements/ousman-a-bah-gambia/).

dex, Chopser, NaGaaw, 1Bena, eZone, etc., and digital start-ups like Assutech, HighTech TV show, Innovate Gambia, ANG Capital, Baybull Soft, Outboost Media and Analytics. Hubs in the industry are also contributing to Start-Up and Entrepreneurship development; they include Jokkolabs Banjul, Start-Up Incubator, Disruptive Lab, The Hub, and The Gambia Tech Project, and funded projects like the Youth Empowerment Project (YEP) funded by the EU and ITC.

They have all contributed to incubation, mentorship, acceleration and scale-up facilitating the growth and sustainability of

the tech ecosystem and the Start-Up and Entrepreneurship Ecosystem.

Key pioneering stakeholders within the tech ecosystem, Information Technology Association of the Gambia (ITAG), International Trade Center (ITC), Youth Empowerment

Project (YEP), and Accelerator Labs, held the second edition of the Technology Exhibition in September 2022. The event brought together stakeholders, policy makers, actors and players in both the public and private sectors in The Gambia tech ecosystem to create a platform of collaboration, discussion and inclusivity for individuals, entrepreneurs, start-ups and institutions. In line with the program of activities was the presentation of the first ICT Award ceremony in recognition of tremendous services by organizations and individuals.[22]

Notable recipients were the Ministry of Health who were conferred with the Innovative ICT Product of the Year award for the introduction of the Covid-19 QR certificates, Insist Global Limited as ICT Employer of the Year for its contribution to Youth Empowerment through its internship program, and InnovaX Global Health as ICT Solution Provider of the Year for its adaptation of Digital Services to healthcare. The passing of the National Health Insurance Scheme Bill in 2021 by the National Assembly under the leadership of the Minister of Health Amadou Samatha, was adopted to reduce out of pocket health expenditure on families and communities.[23] The implementation process began in February 2022 across Banjul, Kanifing, and Brikama Administrative Areas with the Mass Birth Registration and Health Insurance Membership Registration.

The integration of Edtech and Agtech in education and agriculture especially in rural Gambia is another socio-economic development milestone. The launch of the Marble App developed by Assutech was adopted and used in the December 4, presidential elections to predict election results and provide monitoring and evaluation for the public throughout the voting and counting process of the presidential election.[24]

Gamtel is a Telecommunication company owned by the Government of The Gambia and has developed a national fibre optic backbone

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22   ITAG ICT Expo 2022, September 1, 2022, (Accessed October 28, 2022), from (https://itag.gm/ict-expo-2022/).
23   National Health Insurance Scheme (NHIS) Bill 2021, (Accessed October 28, 2022), from (https://www.moh.gov.gm/national-health-insurance-scheme-nhis-bill-2021-has-been-passed-by-the-national-assembly/).
24   Marble Election App 2021 by Assutech, (Accessed 28th October 2022), from (https://www.assutech.gm/).

to provide last mile access to consumers. However, "even with this development, internet coverage remains an issue for rural Gambia in terms of access, availability and reliability." The current ISP licensed operators in The Gambia are Africell, Comium, Dk Telecom, Inet, Gamtel, Qcell, and Unique Solutions.[25]

The National Assembly Select Committee on Education and ICT in October 2022 had an audience with the management of the Public Utility Regulatory Authority (PURA) to discuss issues regarding the regulatory effectiveness, insurance of licensing and its processes, spectrum fee collection, the tariff on the telecommunication sector, network coverage penetration specifically in CRR, reliability of the fibre cable, and the collocation of antenna's and towers. This visit was carried out to understand the regulatory operations of PURA amidst the growing concerns and complaints by consumers to review the PURA ACT of 2001.[26]

UNIVERSAL SERVICE FUND

The Ministry of Communication and Digital Economy in partnership with the Alliance for Affordable Internet signed an agreement in June 2022 to work together with stakeholders in the ICT sector to review the Universal Service Policy. This partnership will support the establishment of meaningful and affordable connectivity especially for rural communities of the Gambia.[27] Even though the agreement has been signed, the implementation has not yet commenced and the project is still under the Ministry of Finance.

DEVELOPMENT IN ICT AND EMERGING TECHNOLOGIES

The Access to Information Bill was approved in July 2021. The Ministry of Communication and Digital Economy is working to have all government communication channels synced.

The decoupling of the Ministry of Information Communication and Infrastructure to the two line ministries of Information and Communication and Digital Economy falls

in line with the National Development Plan in which building a Digital Economy is a core focus area of the government.

The National Development Plan (2018-2021), a key enabling area is building a digital economy which has rolled over into Version 2 of the reframed National Development Plan. Under the Leadership of Ousman Bah, the Ministry of Communication and Digital Economy has begun the implementation of several major projects such as, the introduction of National ID systems, improvement of digital payment system and gateways, development of a digital economy masterplan supported by the

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25   The Gambia Public Utilities Regulatory Authority: Internet Service Providers (ISP) Overview, (Accessed October 28, 2022), from (https://pura.gm/ict/sub-sectors/internet-service-providers/).
26   National Assembly Select Committee on ICT Consult PURA to Better Understand Regulatory Issues, 11th October 2022, (Accessed October 28, 2022), from (https://pura.gm/national-assembly-select-committee-on-ict-consults-with-pura-to-better-understand-regulation-issues/).
27   A4AI and The Gambia sign a Memorandum of Understanding to advance Universal Access https://a4ai.org/news/a4ai-and-the-gambia-sign-a-memorandum-of-understanding-to-advance-universal-access/

European Union, development of e-government systems and platforms.[28]

In August 2022, the Ministry of Health began the digitised Mass Birth Certificate and National Health Insurance Scheme nationwide to aid in the digital transition of citizen data to the Civil Registration and Vital Statistic (CVRS) Data system.[29] The following documents were requested from citizens as part of the Mass Birth Certificate and National Health Insurance Scheme by the Ministry of Health; birth certificate, passport, national identification card, driver's license, infant welfare card, Alkalo attestation or a resident permit.[30] The implementation phase began with the registration of citizens from Banjul, Kanifing and Brikama local government areas.

ADVANCED BROADBAND ICT INFRASTRUCTURE DEVELOPMENT

The Government of The Gambia through its National Broadband Network (NBN) has brought broadband access through the Gambia Telecommunications Company Limited (Gamtel) and Huawei project which was launched in 2020 with a new National Broadband policy for the Gambia to have alternative backup to the ACE Cable by the end of 2021 with at least 75 per cent of homes to have affordable access to high speed internet connectivity by 2022.

The Overarching ICT4D Policy Objectives are as follows:

- To develop an economy based on the development and the deployment of advanced and reliable national information and communications infrastructure and services.
- To facilitate the development and the transformation of the Gambian economy into that in which the provision and delivery of goods and services of the key sectors of the economy are to a large extent facilitated by information and communications technologies.
- To promote the development of an economy in which a reasonably large proportion of the population has access to information and communications technology products and services.

They also include the following policy guidelines:

1. ***National Broadband Policy 2020 to 2024***
This Policy recognises ICTs as critical enablers for the achievement of the objectives of the NDP and broadband is recognised as a key facilitator for the growth and advancement of the entire ICT-sector especially in the creation of information society that breeds a revitalised and transformed modern economy.

2. ***National Cybersecurity Strategy 2020 to 2024***
Its overall mission is to determine, identify, analyse and address the immediate cyber security threats against people, entities, and critical national infrastructure of The Gambia. This will be achieved through adequate provision of protection for our critical national infrastructure and over time become a self-sufficient country attending to its cyber security needs.

The Gambia now has its own Computer Security and Incident Response Team.[31]

3. ICT4D POLICY
The Pillars of The ICT4D Policy Statement Are;
To facilitate the process of transforming The Gambia into a predominantly information-rich and knowledge-based society and economy, the following priority policy focus areas

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28   Policy Statement by Ousman Bah, Minister of Communication and Digital Economy https://pp22.itu.int/en/itu_policy_statements/ousman-a-bah-gambia/
29   Digital Birth and Health Insurance Scheme in The Gambia https://thepoint.gm/africa/gambia/headlines/gambia-roll-outs-first-ever-digital-birth-health-insurance-schemes
30   Public Announcement on documents needed for the Mass Birth Certification and National Health Insurance Scheme by the Ministry of Health https://twitter.com/MohGambia/status/1555571964735111174
31   The Gambia Computer Security and Incidence Respond Team (gmCSIRT), (Accessed October 28, 2022), from (https://gmcsirt.gm/about/).

constituting the eight pillars of policy shall be targeted towards:

Human Capital Development
Electronic Government Development
Promoting Technology-Enabled Education and STI Development
Agricultural Development and Modernisation
Private Sector Development and Empowerment
Promoting Technology-Driven Social and Community Services Provision and Delivery
Youth and Women Development and Empowerment
Promoting Technology-Neutral Legal, Regulatory Regime, Advanced
Broadband ICT Infrastructure Development, Universal Access and Service (UAS), and Cyber Security Capabilities.

ARTIFICIAL INTELLIGENCE AND EMERGING TECHNOLOGIES

AI strategies are non-existent at the moment, however discussions are included within our overall Data Protection and Privacy Strategy because the draft policy also applies to "the processing of personal data in the private and public sectors, whether by automated or non-automated means, and irrespective of the nationality or place of residence of the data subject."[32]

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32   The Gambia Data Protection Overview https://www.dataguidance.com/notes/gambia-data-protection-overview

Conclusion and Recommendations

The state of digital rights in the Gambia has come a long way since 2017. However, the major setbacks the country still encounters are the high cost of internet access as well as connectivity issues. Although numerous forums of discussions like the Gambia National Internet Governance Forum have raised growing concerns on behalf of citizens, the problem still remains a challenge. The question on the implementation strategy of government in terms of the cybersecurity Bill still remains questionable with several targeted hacks at the Central Bank the most recent occurred in November 2022, the issue of data privacy and security still needs to be further strengthened. Furthermore, more initiatives are needed to raise awareness on digital rights in the country especially the protection of women and girls majorly victims of cyberbullying and online harassment.

GOVERNMENT

- To strengthen Digital Rights in the Gambia, the following recommendations should be adopted by the Government;
- Establish a Universal Access Policy to address marginalised communities in terms of internet access and affordability in rural Gambia
- Install a second submarine cable to ensure better connectivity and also ensure that internet cost is reduced so that there can be inclusive access and bridging of the digital divide between rural and urban communities.
- Increase literacy education at Junior and Senior Secondary Schools with a robust curriculum development plan to assess, evaluate and measure the progress and capabilities of students and teachers.
- Ensure meaningful connectivity and internet accessibility at public schools and tertiary institutions research and development of Entrepreneurship at the tertiary level.
- Introduce Digital Literacy Education and strengthen digital literacy at the tertiary level, especially at the University and vocational training institutes.
- There should be more advocacy and engagement between government and stakeholders.
- There should be more public and private sector involvement in the Gambia National Internet Governance Forum (IGF). The Youth Connekt Initiative should be strengthened with access and opportunities also opened to youth in The Gambia's rural to promote digital inclusion and entrepreneurship.
- To promote digital rights information should be made accessible in the languages people understand to promote inclusive access.
- There should be more collaboration between civil society, the private sector and government for improvement in entrepreneurship, youth employment and education.
- The growth and development of Start-Up and Entrepreneurship should be promoted and strengthened with meaningful funding available to Start-Ups to foster Youth Empowerment and Development.
- More and more women and girls should be encouraged to get into tech enabled careers or fields to close the digital divide between men and women. Through promotion of STEM education for girls, through mentorship and capacity building mainly focused on young girls and women powered by leading women in the ICT and internet ecosystems of the Gambia to ensure more women participation in the sciences and governance.

▶ Executive Summary

For many Togolese, access to public, private and social services is a challenge. The government is hoping one solution could be its ambitious e-ID Togo biometric identification program and the recent deal to connect the country to Google's Equiano cable, the first of its kind to reach Africa from Portugal expected to double internet speed for Togo's 8.9 million residents. Google said the cable will indirectly create 37,000 jobs in Togo by 2025 and boost GDP by $193 million[1]. Also, Togo became the first country in West Africa to launch a 5G network in 2020. In recent years, internet penetration in Togo has almost tripled, from about seven per cent in 2017 to about 21 per cent in 2020[2].

However, the political apparatus and the freedom of expression of people and the media remains a challenge. Although the government has launched ambitious projects aimed at creating more jobs through digital skills and connectivity, ICT has not yet been introduced into educational programs in the country and recent policies and programs developed by the government lack the participation of key factors such as civil society organisations, the technical community and academia.

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1   *The Equiano Subsea Cable has arrived in Togo, first stop in Africa* (2022) *Official Google Africa Blog*. Available at: https://africa.googleblog.com/2022/03/the-equiano-subsea-cable-has-arrived-in.html (Accessed: January 25, 2023)
2   *BTI 2022 Togo Country Report* (2022) *BTI*. Available at: https://bti-project.org/en/reports/country-report/TGO (Accessed: January 25, 2023)
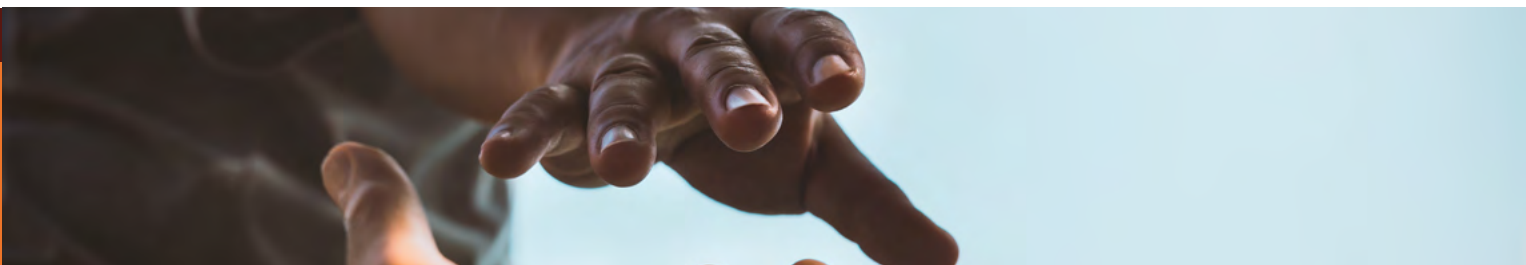
Introduction

Located in West Africa on the Gulf of Guinea, Togo is bordered to the west by Ghana, to the east by Benin and to the north by Burkina Faso. Sandwiched between these countries, Togo's narrow sliver of land is home to a wide variety of languages, a complex religious history and delicious food.

The majority of Togo's population lives in small villages scattered throughout the rural areas. Lomé, the largest urban centre, is spread along the coast. One of the most crucial minerals of Togo is phosphate, and the country has approximately 60 million tons in reserves, making the West African nation the 19th largest producer of minerals in the world.
The country also has various untapped potential to produce minerals like limestone, gold, and diamonds, iron ore, gypsum, manganese, zinc, rutile, and more[3]. Low market prices for Togo's major export commodities, however, coupled with the volatile political situation of the 1990s and early 2000s, had a negative effect on the economy.

Togo's President Faure Gnassingbe, was re-elected for a fourth term in 2020, extending his 15-year rule and a family dynasty that began when his father took power in a 1967 coup. Although the constitution provides for freedom of speech, in practice that right is restricted, and journalists often exercise self-censorship.

The country's total population was 8.9 million in December 2022[4]. According to Kepios' data, Togo's population increased by 201,000 between 2021 and 2022[5]. At the start of 2022, 43.9 per cent of Togo's population lived in urban centres, while 56.1 per cent lived in rural areas.

Kepios analysis indicates that internet users in Togo increased by 259,000 between 2021 and 2022. For perspective, these user figures reveal that 6.35 million people in Togo did not use the internet at the start of 2022, meaning that 74.1 per cent of the population remained offline at the time.

In November 2022, Togo was on the front pages of almost all the tech and telecom newspapers across the globe for being the first African country to be connected to The Equiano cable of

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3   *Natural Resources & Mining Industry in Togo* (2022) *Arise IIP*. Available at: https://www.ariseiip.com/natural-resources-mining-industry-in-togo/#:~:text=Phosphate%20mining%20is%20a%20major,of%20minerals%20in%20the%20world (Accessed on January 25, 2023)
4   *Togo population (live)* (2023) *Worldometer*. Available at: https://www.worldometers.info/world-population/togo-population/ (Accessed on January 25, 2023)
5   Kemp, S. (2022) *Digital 2022: Togo - DataReportal – global digital insights, DataReportal*. DataReportal – Global Digital Insights. Available at: https://datareportal.com/reports/digital-2022-togo# (Accessed on January 25, 2023)

Google, the first of its kind to reach Africa.

"Togo, which was not on the list of beneficiary countries of the first cohort, was integrated after several months of negotiations and it becomes the first African country to host the cable," rejoiced the Togolese Minister of Digital Economy and Digital Transformation, Cina Lawson, on March 18, on the quay of Togo Terminal of the autonomous port of Lomé.

"This success allows us to meet the requirements of the government roadmap on strengthening internet connection to the global network," added the Togolese minister. The cable, "which must offer 20 times the bandwidth of any other existing cable in West Africa" is synonymous with an increase in internet speed, an improvement in the experience users, and a reduction in data costs of more than 14 per cent by 2025, according to data from her ministry.

In 2020, in the midst of the Covid-19 pandemic, Togo became the first country in West Africa, and the third in Africa, to deploy a 5G network. Commenting on the surprise launch, Cina Lawson, Minister of the Digital Economy and Digital Transformation, said: "5G will facilitate innovative uses by allowing the emergence of new services that meet the needs of various sectors of the economy (energy, health, industry, transport, etc).

In addition, the government's objective is for mobile coverage to benefit all Togolese. It is therefore important to ensure that the deployment of this technology is not limited to large cities alone, but that it contributes to improving the quality of coverage so that all localities in Togo can benefit from 5G services."

Also in the midst of the Covid-19 pandemic, Togo through the Ministry of Digital Economy and Digital Transformation (MENTD) launched the Novissi cash transfer scheme. An unconditional cash transfer (UCT) programme to assist informal workers whose livelihoods have been upended by the coronavirus pandemic, Novissi is a fully digital social assistance programme.

As of March 2021, Novissi had reached 819,972 beneficiaries and disbursed approximately US$23.9 million (13,308,224,040 FCFA). The initiative was praised across the world as a giant step for the implementation of the digital economy and social assistance during crises.

With these headlines, an outsider to the country's economy may think that the country has designed a digital roadmap and a clear policy development process that brings actors together to bridge the digital divide. However, the leapfrog process has shown over the time its limit since most of the people outside the capital city are still struggling to connect to 2G networks while the country is launching a 5G network and an ambitious AI project without existing legal framework and the appropriate regulatory frameworks for these technologies.

POLICY LEAPFROG VS MULTI-STAKEHOLDER POLICY PROCESS

In the early 2010s, a report by the International Institute for Sustainable Development explained that the absence of policy development processes was due to the political instability in the West African nation[6]. After a constitutional amendment in 2002 and a presidential election in 2003, the country descended into political chaos. In 2005, the international community and regional bodies urged a power-sharing deal, which lasted until 2007 when the government was reshuffled twice with new ministers. Attempts at engaging the government to formulate an ICT policy were subjected to great risk, even though a political agreement for Togo called the Accord Politique Global (APG) was signed in neighbouring Burkina Faso in August 2006, following a dialogue between the government and various opposition parties. It was nearly impossible under the chaotic political circumstances experienced in Togo in the early 2000s to pay attention to ICT policy concerns, despite the attempts to do so.

Similarly, it was also almost impossible to engage the government with ongoing national and regional policy initiatives such as those

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6   "Supporting Multistakeholder Internet Public Policy Dialogue in a Least Developed Country: The Togo Experience," Ben Akoh, *International Institute for Sustainable Development*, July 2012.

spearheaded by the United Nations Economic Commission for Africa (UNECA) under the National Information and Communication Infrastructure (NICI) initiative and the Economic Community of West African States (ECOWAS) ICT reform. In total over 10 attempts have been made to produce a national ICT policy document without yielding much by way of tangible outcomes.

However, the current Minister of Digital Economy and Digital Transformation has been in that position since 2010. Drawing from her over 15 years of experience and expertise in telecommunications policy and regulation, she was tasked to lead Togo through a profound transition to an inclusive digital economy. Again, most initiatives, including laws and regulations during her 12 years at the helm of the ministry, have been isolated leapfrog policy sprints without a strong foundation to build a multi-stakeholder policy process that include the key actors such as users represented by Civil Society Organizations, the technical community and the academia. The secrecy of the processes and lack of accountability, inclusion and transparency are strong indicators that most policy sprints and isolated projects by the government through the ministry are not necessarily for the purpose of laying a strong foundation for the country's digital economy but rather out of concern to adapt state policies to the global digital landscape during their tenure as government officials.

The most recent policy that concerned the Novissi program[7] was composed by only ministers and an advisor from the Presidency. Novissi was expedited through typical budget and policy negotiations with a dedicated in-house team, led by a Senior Economic Advisor to the president, and the Minister of Digital Economy and Digital Transformation. Both worked with the emergency inter-ministerial committee, which was formalised via presidential decree to coordinate emergency policy responses to the pandemic.

The committee is composed of the following officials: the President of the Republic; the Prime Minister; Minister for Digital Economy and Digital Transformation; Minister of Grassroots Development, Handicrafts, and Youth; Minister for the Economy and Finance; Minister for Territorial Administration, Decentralisation, and Local Government; Minister for Infrastructure and Transport; Minister of Mines and Energy; the Minister of Water, Rural Equipment and Waterworks; Secretary of State for the Informal Sector; and Advisor to the President.

The committee ensured that Novissi was developed within this institutional body and process, and reflected the social assistance priorities of the government. Again, the government failed to build a multi-stakeholder team with experts in the field and other important stakeholders.

INTERNET FREEDOM AND NETWORK DISRUPTION

Internet disruption, government surveillance and abuse of citizens' personal data have

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7   *Using AI and digital data to target cash transfers in Togo* (2021) *CEGA*. Available at: https://cega.berkeley.edu/research/using-ai-and-digital-data-to-target-cash-transfers-in-togo/ (Accessed: January 25, 2023).

put Togo on the spotlight between 2017 and 2021. The year 2022 has been quite stable in terms of internet freedom aside few cases where a number of web influencers were jailed for their opinions online in the absence of a legal framework regulating the freedom of expression online.

In late 2021, pro-democracy activist Fovi Katakou[8] was also provisionally released under judicial supervision after nine days of arbitrary detention. He was accused of "apology for crimes and offences" (Article 552 of the Togolese Penal Code) and "incitement to revolt against the authority of the State" (Article 495 of the same Code) in relation to a Facebook post dated December 10, 2021 in which he warned about the problems of insecurity, injustice, and lack of infrastructure in Togo.

In 2022, Aristide Soglo, alias Aristo le Blédard, a well-known French-Togolese influencer was arrested several times and condemned on several occasions to pay fines for his opinions expressed online[9]. He was accused of defamation and in the absence of a law regulating online space in Togo, the central direction of the judicial police (DCPJ) has been using Togo's Criminal Code. Other influencers and bloggers including Raoul Le Blanc[10], a well-known comedian, Gogoligo, and gospel artiste, Papson Moutité, have been jailed for expressing opinions on social media networks, especially Facebook[11].

Two years ago, in a landmark case, the Economic Community of West African States (ECOWAS) Community Court of Justice, directed the government of Togo to "enact and implement laws, regulations and safeguards in order to meet its obligations with respect to the right to freedom of expression online in accordance with international human rights instruments" and "take all necessary measures to guarantee non-occurrence of network disruptions and abuse of citizen's freedom of expression."

In early 2022, the Council of Ministers adopted a new code of criminal procedure[12], a draft Bill of 1047 articles "to bring more modernity in the Togolese criminal procedure or to respond to new challenges such as terrorism or maritime piracy." According to the government, the new bill will meet the major international standards in terms of individual freedom and the protection of the dignity of individuals. However, it is unclear if online freedom provisions are included in the new bill. In the absence of public hearings and calls to comment, it is still not possible for other stakeholders to bring their contribution to the Bill.

Regarding network disruption, Togolese have enjoyed network stability in urban communities except a few isolated incidents[13] that were solved within hours or a day. Most incidents were mostly The Electronic Communications and Postal Regulatory Authority (ARCEP) has opened a sanction procedure against GVA Togo, a fibre optic Internet service provider (ISP) following disruptions reported several times on its network[14]. ARCEP accused the ISP

8   HAKA, A. (2021) *Togo-L'activiste Fovi Katakou arrêté chez lui dans la matinée, Icilome*. Available at: https://icilome.com/2021/12/togo-lactiviste-fovi-katakou-arrete-chez-lui-dans-la-matinee/ (Accessed: January 25, 2023).

9   KAMAKO, B.L. (2021) *Aristo le Blédard gardé à vue par la police togolaise pour diffamation, Togo Breaking News*. Available at: https://togobreakingnews.info/aristo-le-bledard-garde-a-vue-par-la-police-togolaise-pour-diffamation/ (Accessed on January 25, 2023).

10   News, B.T.B. (2022) *Showbiz: Raoul le blanc encore jeté en prison, Togo Breaking News*. Available at: https://togobreakingnews.info/showbiz-raoul-le-blanc-encore-jete-en-prison/ (Accessed on January 25, 2023).

11   News, B.T.B. (2021) *Papson et gogoligo en prison dans l'affaire adebayor, Togo Breaking News*. Available at: https://togobreakingnews.info/papson-et-gogoligo-en-prison-dans-laffaire-adebayor/ (Accessed: January 25, 2023).

12   *LOMEGRAPH* (2022) *Le Togo va introduire le bracelet électronique à son code de procédure pénale*,. Available at: https://lomegraph.com/code-de-procedure-penale-bracelet-electronique/ (Accessed on January 25, 2023).

13   Ayi Renaud Dossavi (2022) *Togo: L'ARCEP lance une procédure de sanction contre Canalbox, suite à des dysfonctionnements Récurrents, Togo First - Actualité économique au Togo*. Available at: https://www.togofirst.com/fr/telecoms/0309-10538-togo-l-arcep-lance-une-procedure-de-sanction-contre-canalbox-suite-a-des-dysfonctionnements-recurrents (Accessed: January 27, 2023).

14   Agence Ecofin (2022) *Au Togo, Canalbox Visé par une procédure de sanction conduite par l'arcep, pour dysfonctionnements récurrents*, *Agence Ecofin*. Available at: https://www.agenceecofin.com/communication/0409-100852-au-togo-canalbox-vise-par-une-procedure-de-sanction-conduite-par-l-arcep-pour-dysfonctionnements-recurrents (Accessed: January 27, 2023).

for "non-compliance with the obligations of network stability, availability and continuity of services" and also for failure to notify incidents to customers and the regulator.

"The Regulatory Authority for Electronic Communications and Posts (ARCEP) has noted with regret for several weeks, serious and recurring shortcomings in the provision of services by the operator Groupe Vivendi Africa Togo (GVA Togo), in particular the multiplication of cases of unavailability of services and more particularly slow speeds below 1Mbps instead of the speeds subscribed by consumers of 50 Mbps and 200 Mbps respectively," a statement said.

GVA Togo has been a game changer in Togo, offering the cheapest fibre optic subscription within ECOWAS. The ISP doubled its subscribers from around 18,000 to 36,000 at the end of December 2021, against a backdrop of strong growth since its arrival in Togo.

A few months earlier, the leader of the telecom market, Togocom had been sanctioned to pay over two billion CFA francs, corresponding to two per cent of its annual turnover of the financial year 2021[15], for serious breaches to its obligation of network stability and to the availability of its mobile electronic communications services, in accordance with article 31 of the law on electronic communications. These sanctions follow a number of benchmark reports and case studies released by the Regulator in 2022 to ensure availability and quality of services from the telecom operators.

DATA GOVERNANCE

The Togolese Constitution of October 14, 1992, lays the foundation for data protection and privacy by guaranteeing the "respect for the privacy, honour, dignity and image"
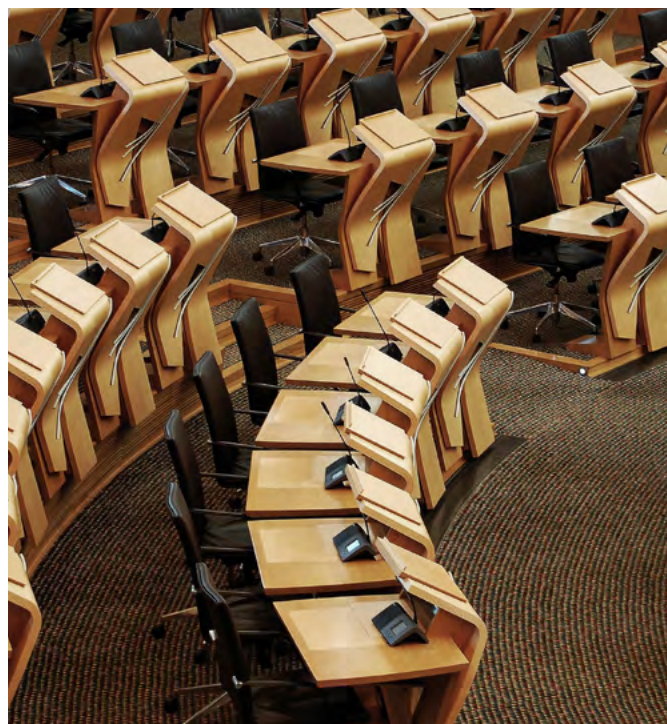
of every citizen. Apart from that, article 29 of the Constitution states that "the State guarantees the secrecy of correspondence and telecommunications. Every citizen has the right to the secrecy of his correspondence and of his communications and telecommunications."[16] The law dedicated to the protection of personal data in Togo is the Data Protection Act (DPA) n °2019-014 of October 29, 2019, relating to the protection of personal data[17]. It regulates the collection, processing, transmission, storage and use of personal data. It applies to individuals, the State, local communities, private and public companies, as well as to automated or non-automated processing of data carried out within the territory of Togo or in any jurisdiction where the Togolese laws apply.

One of the aims of the data protection law is to empower individuals and give them control over their personal data. It has a chapter on the rights of data subjects (individuals) which includes the right of access, the right to rectification, the right to erasure, the right to

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15   *Autorité de Régulation des communications electroniques...* (2022). Available at: https://arcep.tg/wp-content/uploads/2022/06/Decision-2022-006-ARCEP-CD-Portant-sanction-TGC-pour-manquement-obligation-de-disponibilite-permanente-continue-et-reguliere-fourniture-des-services-de-CE.pdf (Accessed: January 25, 2023).

16   *Togo 1992 (rev. 2007) Constitution* (2023) *Constitute*. Available at: https://www.constituteproject.org/constitution/Togo_2007?lang=en (Accessed on January 25, 2023).

17   *Journal Officiel du Togo* (2020). Available at: https://www.jo.gouv.tg/sites/default/files/JO/JOS_11_05_2020%20-%2065E%20ANNEE%20N%C2%B0%2016%20BIS.pdf (Accessed on January 25, 2023).

restrict processing, the right to data portability, the right to object and the right not to be subject to a decision based solely on automated processing. The DPA established seven core principles for the handling of personal data. These principles include: principle of consent and legitimacy; principle of lawfulness and loyalty; principle of finality, relevance and conservation; principle of accuracy; principle of transparency; and principle of confidentiality and security; among others.

This law also provides for the creation of a regulatory agency for the protection of personal data, *Instance de protection des données à caractère personnel* (IPDCP).

According to the law, IPDCP is supposed to be an independent administrative authority responsible for ensuring that the processing of personal data is carried out in accordance with the provisions set out in law.

The challenge regarding data governance in Togo remains the creation of the IPDCP and its members to uphold the law. Despite announcements by the government, the entity has not yet been created.

The other challenge includes the legal framework for biometric identification data that was set by law on the identification of individuals in Togo (e-ID Act), voted on September 3, 2020, by the Parliament[18]. The new law, according to the government, will guide and regulate the collection of citizens' data by the government. The e-ID Act is therefore the second law governing personal data. However, it is still not yet fully implemented.

FREEDOM OF THE PRESS AND MEDIA

With 234 newspapers and magazines, 94 radio stations and a dozen television networks serving 8.9 million people, Togo has a rich media landscape. However, despite the abundance of media outlets, including the appearance of

new online sites in recent years, most of them operate under strong political influence.

Since 2004, the press law no longer imposes prison sentences for violations, but the law is often bypassed. Language adopted in 2020 guarantees the independence of journalism and journalists' access to information, on the condition of respecting "classified defence information". Access to information remains difficult for journalists, especially those from

privately owned media outlets that are critical of the authorities. Also, the State is still jailing journalists using other legal instruments such as Togo's Criminal Code. In December 2021, Togo charged two journalists who had been critical of the government with "contempt of authority" and "spreading false statements on social media."

Ferdinand Ayite and Joel Egah, editors of the bi-weekly *L'Alternative* and the weekly *Fraternite*, respectively, were arrested and detained on December 10, 2021 over comments made during an online broadcast. The two journalists

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18   Macdonald, A. (2022) *Togo amends law on biometric identification to advance digital ID ambitions: Biometric Update, Biometric Update |.* BiometricUpdate.com. Available at: https://www.biometricupdate.com/202206/togo-amends-law-on-biometric-identification-to-advance-digital-id-ambitions (Accessed: January 25, 2023).

240   LONDA - DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

and their moderator were released from Lomé civil prison and placed under judicial supervision on the evening of December 31, 2021[19]. Despite their release, the two journalists were still being prosecuted for "contempt of authority" (Article 490 of the Togolese Code of Criminal Procedure), "defamation" (Article 290 of the Togolese Penal Code) and "incitement to revolt against the authority of the State" (article 495 of the same Code). Joel Egah died a few weeks later over health complications due to his time spent in jail, according to his family.

Note that the right to freedom of expression is enshrined in the Togolese Constitution, as well as in several regional and international human rights protection instruments, in particular Article 19 of the International Covenant on Civil and Political Rights and Article 9 of the African Charter on Human and Peoples' Rights, ratified by Togo in 1984 and 1982, respectively.

Bridging the digital divide through education

In his book "*Open letter to fifty-year-old Africa*",[20] Togolese statesman and ex-African Union's Secretary-General Edem Kodjo, urged most African countries to embrace digital transformation of the continent as it's the only way to project the continent. In Togo, the educational reform has not yet touched the inclusion of digital literacy into any official curriculum and there is no university or higher education institution in the country teaching IT policy.

In 2015, as a part of another leapfrog policy process, the government launched a pilot project called "Ecole Numérique Togo" (ENT), a project which aims to introduce digital technology in education and to emphasise the crucial importance of ICT in the education system. Over seven years later, there is no available impact report on the pilot phase and over 1,548,876 pupils and over 85,000 students are yet to benefit from CT curricula.

One of the causes of the educational stagnation in Togo, and regarding ICT in particular, is funding. However, the government got a support of 15 billion CFA Francs from the World Bank to support the ENT initiative which has not established any policy, roadmap or perspective on how the government intends to introduce ICT in educational curricula.

Introducing ICT curricula in Togolese schools is now an emergency as the entire continent is moving toward the fourth industrial revolution. In the 2000s, the digital divide in Togo was considerable. But over the past ten years, with a mobile phone penetration rate of over 90 per cent, with 2.23 million internet users, it is very important to explore other areas of funding to support such ambition beyond international aid, donors funding and loans.

THE UNIVERSAL SERVICE AND ACCESS FUND (USAF)

The Universal Service & Access Fund (USAF), a funding mechanism to draw contributions, usually from telecommunications network operators towards ensuring that ICT services are accessible and affordable to the widest number of people possible, has been instrumental in funding digital inclusion and

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19   *Togo: Escalade des attaques contre les défenseurs des droits humains* (2022) *Togo: Escalade des attaques contre les défenseurs des droits humains ~ Tournons la Page*. Available at: https://tournonslapage.org/fr/actualites/togo-escalade-des-attaques-contre-les-defenseurs-des-droits-humains (Accessed on January 25, 2023).

20   Kodjo, E. (2010) *Lettre Ouverte à l'Afrique Cinquantenaire*. Paris: Editions Gallimard.

digital literacy projects.

In other countries on the continent, these funds are also critical institutions in the sense that they have an outsized influence on the online experiences of marginalised populations in a country.

In Togo, the fund's focus since its initiation in 1998 has initially centered on the availability of the 'voice' telephony service and access points in rural areas. Twenty years later, in 2018, the government has adopted a decree to expand the service towards broadband and digital inclusion projects for underserved communities to connect 95 per cent of the population.

Although the regulator has made mention of the use of the fund in its annual reports, there is no impact report or transparency about the process and the various projects funded by the Fund. The Regulator is in charge of executing projects under the fund with supervision from the ministry of ICT.

Conclusion and Recommendations

GOVERNMENT	CIVIL SOCIETY
• Government must establish a multi-stakeholder process for policies, laws and regulations including civil society organisations (CSOs), academia and the technical community • Government must safeguard free expression, access to information both online and offline • Government, regulatory authorities and telcos must maintain access to telecom, internet services, digital platforms, and circumvention technologies, particularly during elections, protests, and periods of conflict. Intentional disruptions to internet access and online services impact individuals' economic, social, political, and civil rights. • Government must enshrine human rights principles, transparency, and democratic oversight in laws that regulate online content in Togo. • Government should avoid blocking or imposing onerous regulatory requirements on community networks, and imposing outright or arbitrary bans on social media and messaging platforms. • Through the USAF, the government and the regulator should be able to expand connectivity, create additional demand for internet access, support existing pillars of the country's economy, and deliver on various social goods and government services. • Through the USAF, with priority to inclusive access to the internet, government and the regulator must subsidise connectivity for those at the margins, such as those living in rural areas as well as women and girls • The government in collaboration with other stakeholders must set up a multi-stakeholder entity and committee to manage the USAF to help deliver on high-level governmental objectives and support the country's overall economic development. • Government must support online media and foster a resilient information space. Combating disinformation and propaganda begins with public access to reliable information and local, on-the-ground reporting. • Government and stakeholders must fully integrate human rights principles in competition policy enforcement and encourage new investment in the	• Civil society organisations must advocate for the immediate, unconditional release of those imprisoned for online expression protected under international standards and encourage redress measures. • Civil society organisations must conduct early-warning analysis on election interference tactics likely to occur during the country's local and legislative elections, and mobilise advocacy campaigns to prevent negative impacts.

| GOVERNMENT	PRIVATE SECTOR
telecom industry. · Government must address the digital divide. Unequal access to the internet contributes to economic and social inequality and undermines the benefits of a free and open internet. In the short term, governments should work with service providers to lift data caps.	· Companies must engage in continuous dialogue with civil society to understand the effects of company policies and products and the needs of consumers.

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▶ Executive Summary

In 2022, the Tunisian government undertook several projects to advance the telecommunication infrastructure and improve the ecosystem for the digital economy. However, as the country faces a critical moment marked by political change and socio-economic pressure, human rights have continuously been undermined with prosecutions and arrests of critics, and measures undermining freedom of information and press freedom.

In addition to old repressive laws from the Ben Ali era that are still in force and threaten internet freedom, newly adopted legislation imposes strict criminal sanctions which can have a chilling effect on freedom of expression. This country report seeks to provide an overview of the Tunisian digital rights landscape. It analyses relevant public policies, multi-sectorial collaborations, and programs enhancing the implementation of emerging technologies, including the 5G network, and discusses obstacles hindering further progress.
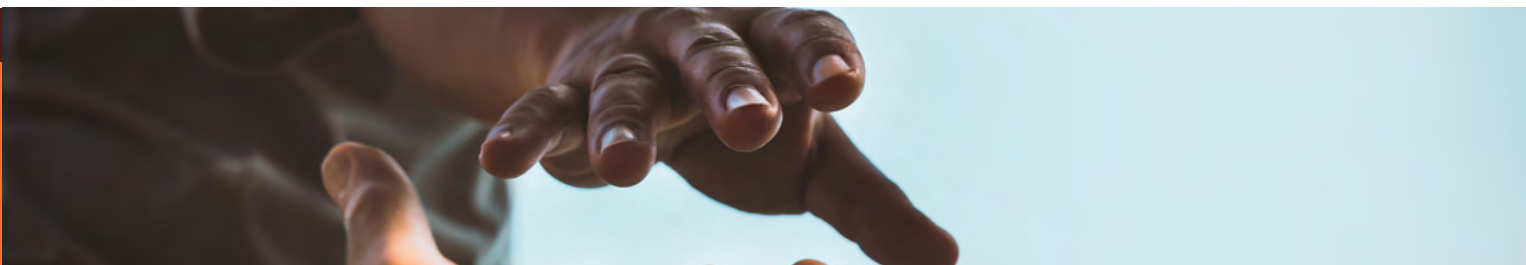
Tunisia

Introduction

Tunisia is part of the Maghreb region of North Africa and home to over 11.8 million citizens.[1] In 2022, the number of internet subscriptions reached 95.3 per 100 inhabitants.[2] Mobile connectivity continues to be widespread. In September 2022, mobile internet penetration reached 93.8 per cent.[3]

For Tunisians, 2022 was marked by political and constitutional changes along with a slow economic recovery after the dramatic recession of 2020 (9.2 per cent drop in GDP).[4] On July 25, 2022, exactly one year after the suspension of Tunisia's Parliament, the president's assumption of wide-ranging powers and a partial suspension of the 2014 Constitution, Tunisia adopted through a referendum a new Constitution introducing a more presidential regime and a bicameral legislative system.[5] On September 15, 2022, a new electoral law was adopted, and on December 17, 2022, parliamentary elections took place.[6] The constitutional referendum and elections are part of a political roadmap outlined by the president on December 13, 2021 and initiated in January 2022 by the launch of an electronic platform for a nationwide consultation.[7]

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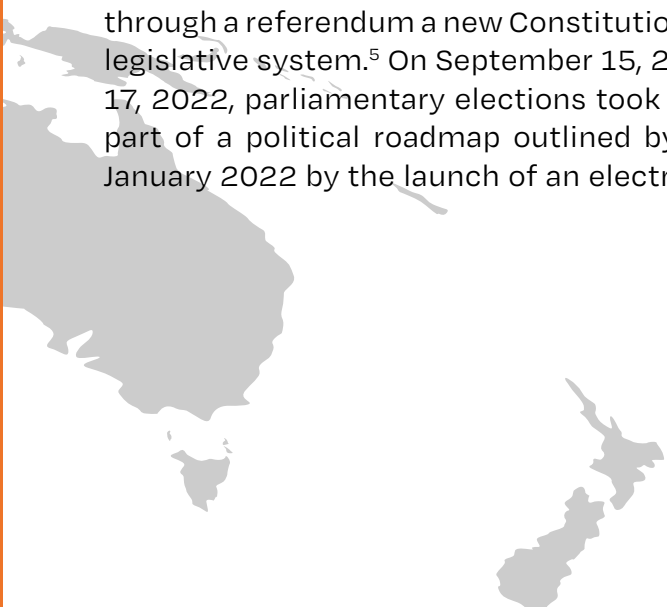
1   Instance national des statistiques 'Estimation de la population' (2022) http://www.ins.tn/statistiques/111 (accessed on January 25, 2023).

2   Ministère des technologies de la communication 'Nombre d'abonnements au réseau Internet /100 habitants' https://www.mtc.gov.tn/index.php?id=334&L=298 (accessed on January 25, 2023).

3   Instance Nationale des Télécommunications 'Tableau de Bord Mensuel Data Mobile' Septembre 2022 http://www.intt.tn/upload/files/TB4_Data-Mobile%20-09_2022.pdf (accessed on January 25, 2023).

4   World Bank 'Tunisie Bulletin de conjoncture Réformes économiques pour sortir de la crise' (2021) https://documents1.worldbank.org/curated/en/909301642180849531/pdf/Tunisia-Economic-Monitor-Economic-Reforms-to-Navigate-Out-of-the-Crisis-Winter-2021.pdf (accessed on January 25, 2023)

5   The Guardian 'Tunisia referendum approves expansion of president's powers – officials' July 2022 https://www.theguardian.com/world/2022/jul/26/tunisia-president-referendum-result-new-phase-kais-saied (accessed on January 25, 2023)

6   Carter Center 'Historically Low Turnout in Tunisia's Parliamentary Election Confirms Need for Renewed Dialogue' (2022) https://www.cartercenter.org/news/pr/2022/tunisia-121922.html (accessed on January 25, 2023)

7   Tunisie Numerique 'Plateforme de la consultation nationale : Des opérations d'essais sont en cours' (2022) https://www.tunisienumerique.com/plateforme-de-la-consultation-nationale-des-operations-dessais-sont-en-cours/ (accessed on January 25, 2023)

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

The Tunisian government has undertaken several regulatory measures and infrastructure projects over the years to extend broadband framework to remote areas and develop the digital economy. In 2022, the number of internet subscriptions reached 95.3 per 100 inhabitants.[8] Mobile connectivity continues to be widespread. In September 2022, mobile internet penetration reached 93.8 per cent.[9] According to the National Telecommunications Authority, 4G network alone covers 91.3 per cent of the population.[10]

In March 2022, the two online communications platforms, Zoom and Microsoft Teams, were blocked for a short period while Members of Parliament that had been suspended by the President in July 2021 attempted to hold an online plenary session.[11] Testing data from OONI showed that Zoom.us presented signs of TCP/IP (transmission control protocol/internet protocol) blocking.[12] Authorities did not take responsibility for the disruptions.

FREE SPEECH AND MEDIA FREEDOMS

Extending freedom of expression is one of the biggest gains of the 2011 Tunisian revolution. However, the Tunisian government has tightened its noose around activists, bloggers, journalists, and anyone who is critical of the government and its policies. In 2022, several bloggers and journalists in Tunisia were prosecuted for their online content that is critical of the president, security forces, or the government. The prosecutions were initiated on the basis of the penal code, the code of military justice or the telecommunications code. In May 2022, blogger Amina Mansour was sentenced to six months in prison for satirical comments on Facebook in which she criticised President Saïed and his close associates. Mansour was charged under Article 67 of the penal code, which stipulates that anyone who insults the president of the republic can be imprisoned for a period of up to three years.[13]

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8   Ministère des technologies de la communication 'Nombre d'abonnements au réseau Internet /100 habitants' https://www.mtc.gov.tn/index.php?id=334&L=298 (accessed on January 25, 2023)

9   Instance Nationale des Télécommunications 'Tableau de Bord Mensuel Data Mobile' Septembre 2022 http://www.intt.tn/upload/files/TB4_Data-Mobile%20-09_2022.pdf (accessed on January 25, 2023)

10   Instance nationale de telecommunication 'Revue Internationale des Télécommunications Positionnement international de la Tunisie en 2019" http://www.intt.tn/upload/files/Positionnement%20international%20de%20la%20Tunisie%20en%202019.pdf (accessed on January 25, 2023)

11   Reuters 'Online communications platforms down in Tunisia as parliament tries to meet," March 30, 2022, https://www.reuters.com/article/tunisia-politics-zoom-idAFL5N2VX4QA (accessed on January 25, 2023)

12   OONI 'OONI Measurement Aggregation Toolkit (MAT)' https://explorer.ooni.org/chart/mat?probe_cc=TN&test_name=web_connectivity&domain=zoom.us&since=2022-03-08&until=2022-06-08&axis_x=measurement_start_day (accessed on January 25, 2023)

13   Article 19 ""Tunisia: Activist Amina Mansour faces jail term for Facebook posts," Article 19, May 26, 2022" https://www.article19.org/resources/tunisian-activist-jailed-facebook-posts/ (accessed on 25 January 2023)

Additional repressive laws on false news and cybercrime were adopted presenting additional obstacles to free speech and media freedoms. In March 2022, President Saïd issued Decree Law 2022-14 on combating illegal speculation. The law criminalises the deliberate spreading of "false or incorrect news or information" that could cause consumers to refrain from buying products or could disrupt the supply of goods to markets and thereby cause prices to rise.[14] In a statement, Amnesty International expressed its concerns over the decree's "vaguely worded provisions that could lead to prison terms of between ten years and life including for public debate of the economy."[15]

On September 13, 2022, Decree Law 2022-54 relating to the fight against crimes related to information and communication systems was adopted. Under article 24 of the decree, the creation, promotion, publication, transmission or preparation of false news, hate speech, data containing personally identifiable information, or forged documents is sanctioned with ten years in prison and a one hundred thousand dinar fine if the victim is a public official.[16] Human rights organisations largely criticised the new decree for the vague and broad nature of the terminologies used, lack of precise definitions, and excessively harsh and disproportionate criminal sanctions.

Tunisian journalists usually face legal intimidation and physical harassment by security forces for their work. Online media journalists Tarek Laabidi and Seif Koussani appeared before the Ben Arous courthouse after being arrested and their equipment confiscated on March 23, 2022 when trying to cover a campaign against police impunity.[17]

In March 2022, online journalist Khalifa Guesmi was detained for a week after he refused to reveal sources for his recent report on the arrest of a group of terrorism suspects.[18] Tunisian public media workers went on strike on April 2, 2022 in protest against shrinking press freedoms and attempts by President Kaïs Saied and his government to control public media's editorial.[19]

PRIVACY AND SURVEILLANCE

The right to privacy and personal data protection are protected under Article 30 of the new Constitution and the Organic Law 2004-63 on the Protection of Personal Data. Despite these safeguards, Tunisians' right to privacy remains vulnerable.

The newly adopted Decree-law 2022-54 contains several provisions that threaten the right to privacy. For instance, Article 9 allows law enforcement agencies to access an infinite range of personal data across all electronic devices without a judicial warrant. Additionally, Article 6 of the same decree requires telecommunications providers to store for a minimum period of two years data identifying the users of their services, data related to the traffic analysis, data related to the communication devices, the geolocation data of the user, and data related to the access and exploitation of value-added protected

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14   Décret-loi n°2022-14 du 20 mars 2022, relatif à la lutte contre la spéculation illégale https://legislation-securite.tn/law/105237 (accessed on January 25, 2023)

15   Amnesty international "Tunisia: New anti-speculation law threatens freedom of expression"https://www.amnesty.org/en/latest/news/2022/03/tunisia-new-anti-speculation-law-threatens-freedom-of-expression/ (accessed on January 25, 2023)

16   Decree n° 2022-54 relating to the fight against crimes related to information and communication systems http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_4796-78-XXhckAKDSH/PageDernierParu/SYNC_1934787844 (accessed on January 25, 2023)

17   Nawaat statement https://www.facebook.com/nawaat/photos/a.423635536213/10160090573916214/ (accessed on January 25, 2023)

18   Reuters "Tunisia releases a journalist detained a week ago for refusing to reveal his sources"https://www.reuters.com/world/africa/tunisia-releases-journalist-detained-week-ago-refusing-reveal-his-sources-2022-03-25/?fbclid=IwAR1cFH0LEonnChzIQCX70nqe0XWGaV04OMZa8Ugwhq7jU4Ji3fYja4g15MM (accessed on January 25, 2023)

19   IFJ "Tunisia: Public media workers announce one-day strike over risk to media freedom and editorial independence" https://www.ifj.org/media-centre/news/detail/category/press-releases/article/tunisia-public-media-workers-announce-one-day-strike-over-risk-to-media-freedom-and-editorial-indep.html?fbclid=IwAR0e_v8MGpVYKECP6y1Y-4qOIlBG_vfzc9qCXzcd2FdRGElCkKdd5Bt8854 (accessed on January 25, 2023)

content.[20]

Two women judges were victims of doxing campaigns on Facebook as part of a defamation campaign meant to shame them into silence following a strike against the president's dismissal of over 50 judges. Civil society organisations urged authorities to conduct a transparent and independent investigation to identify the perpetrators, hold them accountable for their actions, and strengthen Tunisia's data protection laws.[21]

DATA GOVERNANCE

The first adoption of data protection law in the Tunisian legal framework dates back to 2004, and was followed by the creation of the national authority for data protection. The national authority was tasked with overseeing the enforcement of the legal framework on data protection.[22] However, in many occasions, the president of the instance highlighted the insufficiency of both human and financial resources deployed in favour of the instance.
Public institutions processing personal data carried out on the occasion of public security or national defence or criminal prosecutions or when the processing is necessary to execute their missions, are not subject to prior authorisation from the national authority and are not required to obtain verbal and written consent from data subjects when collecting and processing data.

The 2004 data protection law places restrictions on the cross-border transfer of personal data, with the data transfer permitted where certain conditions are met, and where authorisation is granted by the national instance for data protection.[23] The transfer of personal data to a foreign State may not take place if this State does not provide an adequate level of protection, in reference to the kind

and the purpose of the data, the period of its processing, the foreign State where the data shall be transferred, and the precautions which have been taken for data safety. In 2018, the INPDP issued a list of 49 countries estimated by the instance to provide an adequate level of data protection.

DIGITAL IDS

The National Strategic Digital Tunisia Plan 2020 calls for the development of a unique identifier for citizens (IUC) together with the development of e-services and a national interoperability framework.

In June 2022, the Minister of Communication Technologies issued a circular introducing the mobile ID project, the first digital national identity project planned for citizens via mobile phone.[24] The project concerned will transform SIM cards into identity tools by linking users'

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20   Decree n° 2022-54 relating to the fight against crimes related to information and communication systems https://legislation-securite.tn/law/105348 (accessed on January 25, 2023)
21   Access Now 'How online doxxing is endangering women judges in Tunisia' https://www.accessnow.org/how-online-doxxing-is-endangering-women-judges-in-tunisia/ (accessed on January 25, 2023)
22   INPDP 'Les normes de protection des données dans le corpus juridique national' https://www.inpdp.tn/Presentation.html (accessed on January 25, 2023)
23   Loi organique numéro 63 en date du 27 juillet 2004 portant sur la protection des données à caractère personnel https://www.inpdp.tn/ressources/loi_2004.pdf (accessed on January 25, 2023)
24   Ministry of telecommunication technologies 'Circulaire 20 Juin 2022' https://www.mtc.gov.tn/fileadmin/user_upload/

national identity card numbers to their phone numbers.[25] Under a partnership agreement, telecom operators are tasked to verify users' identities and link their phone numbers with their ID card numbers.[26] The National Agency for Electronic Certification then issues personal identification numbers for every identified citizen and generates personal QR Codes, which citizens can use to sign administrative documents online. Additionally, users may access and review their data through a special portal.[27]

In addition to the individual oversight guarantee, the Tunisian IUC model was intentionally meant to protect data privacy by reducing the proliferation of a unique identifier across multiple systems. The IUC will be a back-end-only number that cannot be stored in other databases or made public. Alternatively, a mapping of the IUC to other sectoral identifiers will be stored in the central system only to facilitate identity verification and interoperability.[28] For this model to achieve its data protection promises, other privacy- and security-enhancing measures and guarantees are needed, including the adoption of a new data protection law that provides adequate safeguards or effective guarantees for personal data protection.

BIOMETRIC IDS
The biometric passports and identification cards project was first proposed in 2016 but was put on hold after pushback from civil society due to concerns over the absence of efficient safeguards for Tunisians' digital rights. In January 2022, the Interior Ministry announced plans to continue the development of this project.[29] But the new statement did not specify the necessary amendments to Law 1993-27 on national identity cards, a timeline for next steps, the stakeholders who would be involved, or the budget allocated to the project. Past discussions had focused on two different versions of the same draft Bill — one from 2016 and the second from 2020. In a statement responding to the announcement, several civil society groups criticised the ministry for disregarding the principle of transparency and the participatory approach that should be applied to legislation affecting the privacy rights of Tunisian citizens.[30]

REVIEW OF THE UNIVERSAL SERVICE FUND
Telecommunications Law 2001-01 established the need for basic services to be provided to all the people of Tunisia. The law amendment in 2008 came to introduce the notion of universal service. In 2013, a ministerial order further extended the list of universal services to include access to telephone telecommunications services, provision of public telecommunications centres, provision of the service to persons with specific needs, provision of internet access with a minimum speed of 128 kbps, social offers, and routing free emergency calls.

circulaire_mobile_id.pdf (accessed on January 25, 2023)

25   Mobile ID portal https://www.mobile-id.tn/faq (accessed on January 25, 2023)

26   We Are Tech 'Tunisia kicks off mobile identity project" https://www.wearetech.africa/en/fils-uk/news/public-management/tunisia-kicks-off-mobile-identity-project (accessed on January 25, 2023)

27   Tunisie numerique 'Tunisia-Launch of digital identity project for citizens' https://news-tunisia.tunisienumerique.com/tunisia-launch-of-digital-identity-project-for-citizens/ (accessed on January 25, 2023)

28   World Bank. 2020. Identification for Development (ID4D): Diagnostic of ID Systems in Tunisia, https://openknowledge.worldbank.org/bitstream/handle/10986/34364/Diagnostic-of-ID-Systems-in-Tunisia.pdf?sequence=1 (accessed on January 25, 2023)

29   Ministry of Interior "Resume sending the project to complete the biometric passport and biometric identification card and expedite its implementation," https://www.interieur.gov.tn/actualite/27229/%D8%A7%D8%B3%D8%AA%D8%A6%D9%86%D8%A7%D9%81-%D8%A8%D8%B9%D8%AB-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D8%A5%D9%86%D8%AC%D8%A7%D8%B2-%D8%AC%D9%88%D8%A7%D8%B2-%D8%A7%D9%84%D8%B3%D9%81%D8%B1-%D8%A7%D9%84%D8%A8%D9%8A%D9%88%D9%85%D8%AA%D8%B1%D9%8A-%D9%88%D8%A8%D8%B7%D8%A7%D9%82%D8%A9-%D8%A7%D9%84%D8%AA%D8%B9%D8%B1%D9%8A%D9%81-%D8%A7%D9%84%D8%A8%D9%8A%D9%88%D9%85%D8%AA%D8%B1%D9%8A%D8%A9-%D9%88%D8%AA%D8%B9%D8%AC%D9%8A%D9%84-%D8%AA%D9%86%D9%81%D9%8A%D8%B0%D9%87 (accessed on January 25, 2023)

30   SNJT http://snjt.org/2022/01/24/%d9%85%d9%86%d8%b8%d9%85%d8%a7%d8%aa-%d9%88%d8%ac%d9%85%d8%b9%d9%8a%d8%a7%d8%aa-%d8%ad%d9%82%d9%88%d9%82%d9%8a%d8%a9-%d8%aa%d8%af%d8%b9%d9%88-%d8%a5%d9%84%d9%89-%d8%b9%d8%af%d9%85-%d8%a7%d8%b9%d8%aa/ (accessed on January 25, 2023)

Decree 2013-5199 listed universal service development programs among the beneficiaries of the fund for the development of communications, information technology and telecommunications.[31]

Instance Nationale des Télécommunications created by Telecommunication Law No. 2001-01, is the regulatory authority in charge of the administration, regulation and management of the telecommunication sector, including the USF. All telecom service providers are required to comply with the universal service requirements. The rates applied for the provision of services are to be approved by the Ministry in charge of telecommunications.

The State may grant compensation for the expenses incurred. As part of the regional coverage obligation of telecom operators, the INT imposed on the three operators when granting 4G licenses in March 2016, regional coverage commitments (two lots comprising more of 100 sectors per operator belonging to governorates with development priorities).[32] In 2015, the INT organised a multistakeholder workshop on the development of a Universal Service Policy in telecommunications.[33] While the policy is yet to be published, funds are not separately raised for the universal service fund. Developments in ICT and Emerging Technologies

In addition to the "*Digital Tunisia 2020*" national strategic plan, the Ministry of Communication Technologies adopted the national strategic plan "*Digital Tunisia 2021-2025*".[34] This plan focuses on six strategic orientations including digital and financial inclusion, which provides for facilitating access to connection, the fight against digital illiteracy and the development of online services. Another axis of the strategy is generalisation of the use of emerging technologies and disruptive technologies such as IoT, Artificial Intelligence, Cloud, and blockchain.[35]

In April 2022, the Ministry of Communication Technologies announced completion of the "white zones" coverage project.[36] The five-year plan increased internet access and mobile coverage in 94 underserved areas which have a low population density across 15 governorates and provided improved access to around 180,000 inhabitants, 164

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31   Décret n° 2013-5199 du 12 décembre 2013, fixant les interventions et les activités concernées par les participations du fonds de développement des communications, des technologies de l'information et de la télécommunication ainsi que les modalités de leur financement. https://www.mtc.gov.tn/fileadmin/Investisseurs/Decret2013_5199_-FODEVTIC_-_Francais.pdf (accessed on January 25, 2023)

32   MTCEN et Banque mondiale. 2020. Diagnostic de l'économie numérique de la Tunisie https://documents1.worldbank.org/curated/en/822451592422759317/pdf/Diagnostic-de-lEconomie-Numerique-de-la-Tunisie.pdf (accessed on January 25, 2023)

33   INT 'WORKSHOP «POUR L'ÉLABORATION D'UNE POLITIQUE DE SERVICE UNIVERSEL DES TÉLÉCOMMUNICATIONS EN TUNISIE»' http://www.intt.tn/fr/index.php?typeactu=89&actu=538 (accessed on January 25, 2023)

34   ANET 'Le plan national stratégique "Tunisie Digitale 2021-2025"' https://www.emploi.nat.tn/fo/Fr/global.php?page=2&id=3889 (accessed on January 25, 2023)

35   Francophonie Djerba 'La stratégie numérique en Tunisie 2025" https://www.francophoniedjerba2022.tn/fr/la-tunisie-numerique#:~:text=Cette%20strat%C3%A9gie%20qui%20s'articule,%2C%20banque%20postale%2C%E2%80%A6 (accessed on January25, 2023)

36   MCT Facebook page https://www.facebook.com/MinistereTCTD/posts/pfbid02qptjLyUWvQUTY2Duo14cJ4S5Bc14j5kkrA2CtDLZ3vs3x14pLwrLfR5SMVTPgAqSl (accessed on 25 January 2023)

educational establishments, and 59 health centres. The "white zones" coverage project is part of the implementation of the national strategy "Digital Tunisia 2020" Initiated by the Ministry of Communication Technologies and implemented by the majority State-owned mobile operator Tunisie Telecom.[37]

Supported by national digital strategies, mobile network operators have built extensive LTE infrastructure, and have been undertaking testing and trials of 5G services. Commercial services are expected to be launched by 2023. The regulator, the national frequency agency, has already identified low, mid and high bands for 5G, namely 700 MHz, 3400 – 3600 MHz and the 26 GHz band respectively, and their current availability.[38]

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37   Turess' November 18, 2019, https://www.turess.com/hakaek/183724. (accessed on 25 January 2023)
38   GSMA 'MENA 5G Spectrum – Setting Out the Roadmap' https://www.gsma.com/spectrum/resources/mena-5g-spectrum-roadmaps/ (accessed on January 25, 2023)

LONDA - DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

Conclusion and Recommendations

The findings presented in this report point to the progress in regard to digital inclusion in Tunisia. However, increased restrictions on Tunisians' digital rights continue to rise compared to the previous years as authorities adopt restrictive legal texts and uses existing legal loopholes.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
The following recommendations are made to the government: • Authorities must adopt a participatory approach when drafting and implementing rights-related legislation, thus avoiding the multiplication of contradictory legal texts and procedures that undermine online freedoms. • Authorities are called to enact a new data protection law that respects individuals' rights, ensures the protection of Tunisian citizens' personal data, and is in compliance with Tunisia's international commitments. • The government must end all legal and policy measures used to silence and censor critical voices. • The presidency must repeal articles 24 and 9 of Decree-Law 2022-54 on the Crimes Related to Information and Communication Systems as they contain unprecedented restrictions on the freedom of expression and press. • Authorities must not pressure the private sector to take steps that unnecessarily or disproportionately interfere with freedom of expression online.	The following recommendations are made for the private sector. • Comply with the principles of data protection, and human rights at all times.	The following recommendations are made to civil society organisations: • Consolidate joint efforts to oppose the adoption of laws and decrees threatening digital rights in the country. • Document information related to censorship and intimidation of activists and provide assistance for maliciously prosecuted bloggers.

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Uganda

▸ Executive Summary

Uganda is one of the African countries with the highest mobile data costs, with 1GB of data which cost up to 16.2 per cent of an average Ugandan's monthly income compared to the Sub-Saharan average of 9.3 per cent.[1] With the recent increase in internet users in Uganda, there are still several factors that limit internet access such as the 12 per cent tax directly imposed on internet data which makes data bundle quite expensive and continues to limit internet access in Uganda. Facebook still remains blocked in Uganda and while there has been no report on the disruption of other forms of connectivity in 2022, increasing threats, harassment, and targeted commercial surveillance tools against journalists and activists by the government continue.

In September 2022, Uganda amended the Computer Misuse Act 2011 in order to prohibit the sharing of information that promotes hate speech, prevent the sharing of false information, and enhance protections against cybercrimes. The Uganda Communications Commission (UCC) also introduced a new licensing framework for telecommunications that industry watchers worry may lead to overregulation in the sector. A new licensing framework with unclear effects in the sector can lead to restriction of operation by service providers and monitoring of activities by State actors.

Personal and employee data has been collected, stored, and managed, however, data has been transferred in the territorial scope which has led to breach response, and sanctions. Although, there is little evidence that policymakers revise data governance policies in response to public concerns and response.

This report recommends that the government should establish the Universal Service Funds as a separate, and independent entity free from political interference in order to achieve its purpose of promoting accessibility and inclusion in Uganda. While [recommending that] civil society builds the capacity of grassroots communities to push back against and advocate for a free and open internet from digital exclusion, the report further calls for the private sector to harness technology for innovation, economic production, and service delivery.

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1   CIPESA 'Digital Taxation in Uganda: A Hindrance to Inclusive Access and Use of Digital Technologies' (March 2022) https://cipesa.org/wp-content/files/briefs/Digital-Taxation-in-Uganda-A-Hinderance-to-Access-and-Use-of-ICTS.pdf (accessed on December 30, 2022).

Introduction

Uganda is a landlocked country in East Africa bordered by Kenya, South Sudan, the Democratic Republic of the Congo, Rwanda, and Tanzania.[2] Uganda has a population of around 49 million according to the Worldometer elaboration of the latest United Nations data[3] with Yoweri Kaguta Museveni being its current president. Out of Uganda's estimated population, about 19 per cent of the population lack access to basic telephony services, and 73 per cent of the population lack access to broadband.[4] Additionally, about 57 districts out of 113, and over 1,000 sub-counties out of 1,386 lack any fibre connectivity.[5] The actual population that uses the internet is still much lower even though many users have multiple subscriptions. For instance, internet subscriptions stood at 22 million, or a penetration of 52 per cent.[6]

In 2021, the Network Readiness Index, which assesses the application and impact of technology in economies around the world, ranked Uganda 116 out of 130 countries.[7] Uganda scored lowest on GSMA's Mobile Connectivity Index, which measures key enablers of mobile internet adoption such as infrastructure, affordability, content, and services.

However, it is important to note that the 2022 state of internet freedom in Uganda improved slightly because there were no reported connectivity disruptions, although Facebook is still restricted in Uganda. Additionally, self-censorship continues to occur among journalists and digital rights activists, and their family or relatives continue to face physical violence and threats coupled with constant monitoring of opposition leaders and journalists who are critical of the state's wrongdoings.[8] In a nutshell, the information and communication technology (ICT) sector continues to grow, with reported investments and improvements in the performance of government-controlled electronic systems.[9] The Uganda digital rights and inclusion report for 2022 aims at conducting an in-depth analysis of the state of digital rights and inclusion as well as offering key recommendations for advancing digital rights and inclusion in Uganda.

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2   The Common Wealth https://thecommonwealth.org/our-member-countries/uganda (accessed on January 18, 2023).

3   Uganda Population https://www.worldometers.info/world-population/uganda-population/#:~:text=The%20current%20population%20of%20Uganda,year%20according%20to%20UN%20data. (accessed on Tuesday, January 17, 2023)

4   Uganda Communications Commission 'RCDF Policy 2017/18–2021/22 (RCDF III) Stakeholder Validation Workshop March 2017' http://ucc.co.ug/files/downloads/RCDF_Policy_2017_18_to_202_22_Stakeholders_Validation_Report_March_10_2017.pdf (accessed on December 28, 2022).

5   Uganda Communications Commission 'RCDF Policy 2017/18–2021/22 (RCDF III) Stakeholder Validation Workshop March 2017' http://ucc.co.ug/files/downloads/RCDF_Policy_2017_18_to_202_22_Stakeholders_Validation_Report_March_10_2017.pdf (accessed on December 28, 2022).

6   CIPESA 'Digital Taxation in Uganda: A Hindrance to Inclusive Access and Use of Digital Technologies' (March 2022) https://cipesa.org/wp-content/files/briefs/Digital-Taxation-in-Uganda-A-Hinderance-to-Access-and-Use-of-ICTS.pdf (accessed on December 28, 2022).
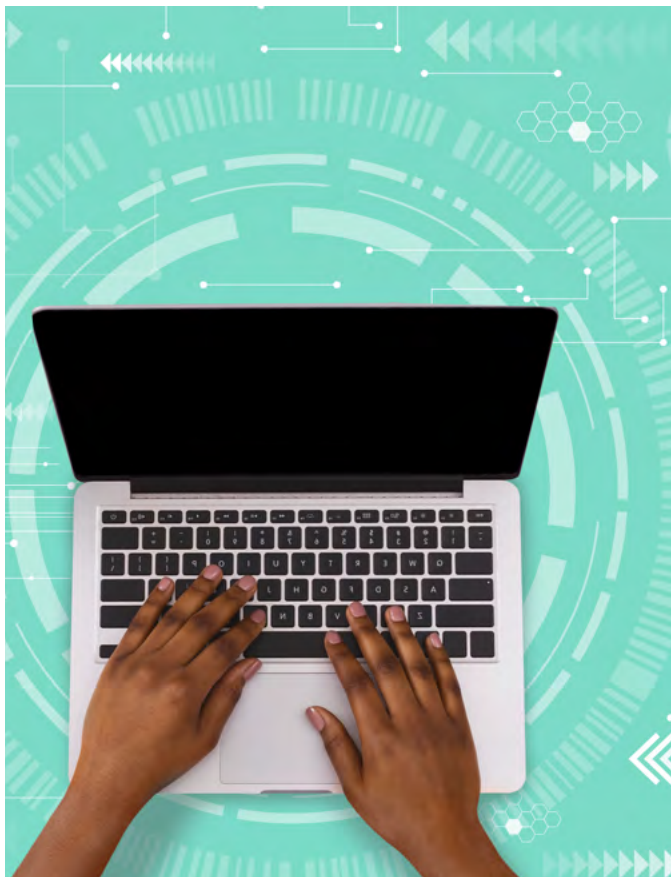
7   CIPESA 'Digital Taxation in Uganda: A Hindrance to Inclusive Access and Use of Digital Technologies' (March 2022) https://cipesa.org/wp-content/files/briefs/Digital-Taxation-in-Uganda-A-Hinderance-to-Access-and-Use-of-ICTS.pdf (accessed on December 28, 2022).

8   Simon Kemp 'Digital 2022: Uganda' February 15, 2022 https://datareportal.com/reports/digital-2022-uganda (accessed on December 12, 2022).

9   Information and Communication Technology Sector 'Semi-Annual Budget Monitoring Report Financial Year 2020/21' (April 2021) https://www.finance.go.ug/sites/default/files/Publications/ICT%20Sector%20Semi-Annual%20Monitoring%20Report%20FY2020-21.pdf (accessed December 29, 2022).

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

Uganda has witnessed a significant increase in penetration, internet access, and usage with a 1.8 million increase in internet users between 2021 and 2022 and an internet penetration rate of 54 per cent as of December 2021.[10] According to the *Digital 2022 Report*, in January 2022, Uganda's internet penetration rate was 29.1 per cent, even though Uganda's population increased by 1.3 million (+2.9 per cent) between 2021 and 2022.[11] Some

50.7 per cent of Uganda's population is female, while 49.3 per cent is male.[12] In 2022, 62 per cent of men were using the internet compared to 57 per cent of women. Hence, the global internet use gender gap still stands at eight percent due to high internet costs, limited access to electricity in rural areas, limited digital literacy, network disruptions, gender disparities, and affordability challenges with respect to internet-enabled devices such as computers and smartphones.[13]

Internet costs still remain unaffordable for the majority of Ugandans. For example, the number of mobile connections in Uganda decreased by 698,000 (-2.5 per cent) between 2021 and 2022.[14] Kepios analysis indicates that internet users in Uganda increased by 1.8 million (+15.1 per cent) between 2021 and 2022. However, "these user figures reveal that 33.85 million people in Uganda did not use the internet at the start of 2022, meaning that 70.9 per cent of the population remained offline at the beginning of the year'.[15] Also, the 12 per cent taxation directly imposed on internet data makes internet purchase quite expensive and continues to limit internet access in Uganda.

There is a direct relationship between high taxes and low uptake of the internet. A survey by the National Information Technology Authority (NITA-U) found that 76.6 per cent of respondents named high data costs as the main reason why their use of the internet was limited.

In Uganda, 1GB of data still costs up to 16.2

10   Freedom House 'Freedom On The Net 2022 Uganda' https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022)
11   Simon Kemp 'Digital 2022: Uganda' February 15, 2022 https://datareportal.com/reports/digital-2022-uganda (accessed on December 12, 2022).
12   Simon Kemp 'Digital 2022: Uganda' February 15, 2022 https://datareportal.com/reports/digital-2022-uganda (accessed on December 12, 2022).
13   International Telecommunication Union (ITU) 'Bridging the gender divide' https://www.itu.int/en/mediacentre/backgrounders/Pages/bridging-the-gender-divide.aspx (accessed on December 29, 2022).
14   https://datareportal.com/reports/digital-2022-uganda (accessed on December 12, 2022).
15   https://datareportal.com/reports/digital-2022-uganda (accessed on January 18,2023)

per cent of an average Ugandan's monthly income compared to the Sub-Saharan average of 9.3 per cent.[16] Facebook, with more than 3,328,000 million local subscribers,[17] still remains blocked in Uganda from the 2021 Uganda national elections for more than a year now.[18] However, internet users continue to access Facebook using "some" Wi-Fi networks or via virtual private networks (VPNs).[19] Its blockage in Uganda has affected the business and entertainment community who have repeatedly asked the government to lift the ban because of its adverse effect on businesses.[20]

There has been no report on disruption of internet connectivity in 2022, however, Uganda's backbone connection to the global internet is privately owned in a competitive market. According to *Freedom on the Net Report 2022*, 29 ISPs were connected to the Uganda Internet Exchange Point (UIXP) as of March 2022.[21]

FREE SPEECH AND MEDIA FREEDOMS

In September 2022, Uganda amended the Computer Misuse Act 2011 in order to prohibit the sharing of information that promotes hate speech, prevent the sharing of false information, and enhance protections against cybercrimes. Critics say the law came to restrict individuals that don't shy away from critiquing Museveni's

authoritarian regime online including the opposition politicians.[22] In 2020, during the protest that followed the arrest of Robert Kyagulanyi Ssentamu (Bobi Wine), in which 50 civilians were killed, Teddy Nalubowa, a Ugandan TikToker, was remanded in prison for recording and sharing a video that celebrated the death of a former security minister who led the troops that killed 50 civilians during the protest. She was charged with offensive communication and infringement of the Computer Misuse Act 2011 amidst public uproar over the harassment and intimidation of dissidents.[23] There are several neglected court cases on online freedom of expression which leaves the individuals involved frustrated.[24]

The amended Computer Misuse Act is likely to be used to silence dissenting voices online by limiting their writing or sharing of content on online platforms.[25] In March 2022, the executive director of Alternative Digitalk TV – an online television channel, Norman Tumuhimbise, and presenter, Farida Bikobere, were charged with offensive communication and cyberstalking directed at the president, for publicising books written by Tumuhimbise that examine Museveni's policies since he became president in 1986. They were granted bail and released nine days later, along with seven other journalists from the same channel.[26]

16   CIPESA 'Digital Taxation in Uganda: A Hindrance to Inclusive Access and Use of Digital Technologies' (March 2022) https://cipesa.org/wp-content/files/briefs/Digital-Taxation-in-Uganda-A-Hinderance-to-Access-and-Use-of-ICTS.pdf (accessed on December 28, 2022).
17   CIPESA 'Digital Taxation in Uganda: A Hindrance to Inclusive Access and Use of Digital Technologies' (March 2022) https://cipesa.org/wp-content/files/briefs/Digital-Taxation-in-Uganda-A-Hinderance-to-Access-and-Use-of-ICTS.pdf (accessed on December 28, 2022).
18   Sandra Aceng 'The Impact of Internet Shutdowns on Women in Uganda' (2021) https://preparepreventresist.org/wp-content/uploads/2022/07/Impact-of-Shutdowns-on-Women-in-Uganda.pdf (accessed on December 30, 2022).
19   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).
20   CIPESA 'Digital Taxation in Uganda: A Hindrance to Inclusive Access and Use of Digital Technologies' (March 2022) https://cipesa.org/wp-content/files/briefs/Digital-Taxation-in-Uganda-A-Hinderance-to-Access-and-Use-of-ICTS.pdf (accessed on 28 December 2022).
21   Freedom House 'Freedom On The Net 2022 Uganda' https://freedomhouse.org/country/uganda/freedom-net/2022#footnote8_9skyp7o (accessed on December 10, 2022)
22   Uganda Communications Commission 'Uganda's Changes On Computer Misuse Law Spark Fears It Will Be Used To Silence Dissidents' (October 15, 2022) https://cipesa.org/2022/10/ugandas-changes-o-n-computer-misuse-law-spark-fears-it-will-be-used-to-silence-dissidents-2/ (accessed on December 30, 2022)
23   Uganda Communications Commission 'Uganda's Changes On Computer Misuse Law Spark Fears It Will Be Used To Silence Dissidents' (October 15, 2022) https://cipesa.org/2022/10/ugandas-changes-o-n-computer-misuse-law-spark-fears-it-will-be-used-to-silence-dissidents-2/ (accessed on December 29, 2022).
24   Freedom House 'Freedom On The Net 2022 Uganda' https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).
25   https://cipesa.org/2022/10/ugandas-changes-o-n-computer-misuse-law-spark-fears-it-will-be-used-to-silence-dissidents-2/ (accessed on December 29, 2022).
26   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).

Journalists and digital rights activists who are critical of the State by reporting wrongdoings still continue to face self-censorship as well as arrest and harassment of their relatives and family members due to continued activism online.[27] For instance, in late September 2022, the home of journalist Remmy Bahati, based in Fort Portal City was raided amid fears over the growing crackdown on dissent in Uganda. Robert Kyagulanyi, commonly known as Bobi Wine, said that Bahati may have been targeted for speaking out against government excesses, including human rights abuses.[28]

Additionally, Ugandan author Kakwenza Rukirabashaija, fled the country after his release from jail in late January 2022 after his arrest in December 2021 related to tweets about President Yoweri Museveni and his son, Muhoozi Kainerugaba, which were treated as offensive communications.[29] He was tortured while in detention, his passport taken away and was on constant surveillance.[30]

There has been the introduction of a new licensing framework by the Uganda Communications Commission for telecommunications which has been alleged may lead to overregulation in the sector. For instance, in July 2021, for the first time, the UCC's radio licensing framework included a licence for online radio broadcasters.[31] Service providers are governed by several legal and regulatory frameworks that require them to filter, remove, and block any content that is considered illegal by authorities.

Several other laws undermine free speech and media freedom even though the Uganda Constitution provides for them. For instance, Press and Journalist Act 2000 requires journalists to register with the statutory Media Council, whose independence is believed to be compromised by the government's influence over its composition.

PRIVACY AND SURVEILLANCE
Targeted commercial surveillance tools have been used against journalists and activists by the government.[32] For example, two prominent Ugandan journalists and an opposition leader were notified by Apple that their iPhones may have been targeted by Pegasus in December 2021. Pegasus is a spyware product developed by the Israeli company, NSO Group.[33] This is in violation of Article 27 of the Constitution which prohibits interference with the

privacy of a person's home, correspondence,

27   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).
28   Opio Mike 'Who is next? Home of journalist Remmy Bahati raided amid fears over growing crackdown on dissent in Uganda' (October 2, 2022) https://www.thekampalareport.com/latest/2022100219890/who-is-next-home-of-journalist-remmy-bahati-raided-amid-fears-over-growing-crackdown-on-dissent-in-uganda.html (accessed on December 28, 2022).
29   Aljazeera 'Ugandan author Kakwenza Rukirabashaija flees the country: Lawyer' (February 9, 2022) https://www.aljazeera.com/news/2022/2/9/ugandan-author-flees-after-alleged-torture-says-lawyer (accessed on December 29, 2022).
30   Aljazeera 'Detained Ugandan satirical novelist tortured in custody: Lawyer' (January 5, 2022) https://www.aljazeera.com/news/2022/1/5/detained-ugandan-satirical-novelist-tortured-in-custody-lawyer (accessed on December 29, 2022).
31   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).
32   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).
33   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).

communication, or other property. This is also enshrined in the Data Protection and Privacy Act 2019 and accompanying regulations, which came into force in April 2021. Pegasus is commonly used by about 45 governments to spy on journalists, human rights defenders, and opposition politicians and this makes compliance with this act very challenging.

The Ugandan police purchased UFED, a technology developed by the Israeli firm, Cellebrite, that enables authorities to hack into password-protected smartphones according to an August 2022 report by the Israeli newspaper, *Haaretz*.[34]

The RIC Act has given the government absolute surveillance power requiring telecommunications companies to install equipment that enables real-time electronic surveillance of suspected terrorists. This Act also gives the Security Minister the ability to request access to personal communications based on national security concerns following an order granted by a High Court judge.[35]

DATA GOVERNANCE IN UGANDA

UGANDA'S POLICIES AND LAWS ON DATA GOVERNANCE

An analysis of the data governance in Uganda including the current laws and policies in place such as the privacy laws and regulations that are also applied across the world, the open data policy 2017; and other related policies and laws such as the Constitution of Uganda, Computer Misuse (Amendment) Act 2022, the launch of the National Data Transmission Backbone Infrastructure (NBI) Optic Fiber Network; National Development Plan III (NDP III); the National ICT Policy (2014) including other related guidelines and mapping on data governance in Uganda shows how data

including both personal and employee data has been transferred in territorial scope, and direct marketing, breach response, and sanctions.

Although Uganda usually seeks public comment on proposed laws and regulations related to data, there is little evidence that policymakers revise their data governance policies in response to public concerns, despite the fact that data governance, just like the data-driven economy, is constantly evolving, reflecting changes in technology, society, and policymakers' will and expertise.[36] This can affect how private and often public entities are required to treat personal information when these entities collect, store, utilise and monetise personal data.[37]

However, key policy developments include Open Data Policy 2017 which focuses on making all public sector data open by default with the exception of personally identifiable information and data with security or commercial or intellectual property rights or environmental restrictions. This is expected to help improve the transparency and accountability of the government.[38] The Data Protection and Privacy Act, 2019 is also regulating the collection, use or disclosure, and processing of personal data, provides for the rights of the persons whose data is collected, and the obligations of data collectors, data processors, and data controllers.

The Personal Data Protection Office (PDPO) was established in 2021 in order to oversee the implementation of and enforcement of the Data Protection and Privacy Act, 2019 independently.

DIGITAL IDS
Uganda is in the process of implementing an upgrade of the national identification system

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34   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).
35   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).
36   Thomas Struett, Adam Zable, and Susan Ariel Aaronson, Ph.D. 'Global Data Governance Mapping Project Year Two Report' https://globaldatagovernancemapping.org/images/DataGov-Year-2/year-two-mapping-report-1.pdf (accessed on December 26, 2022).
37   https://globaldatagovernancemapping.org/images/DataGov-Year-2/year-two-mapping-report-1.pdf (accessed on December 26, 2022).
38   Open Data Policy (May 2017) https://www.ict.go.ug/wp-content/uploads/2018/06/Open-Data-Policy-First-Draft-vX.pdf (accessed on November 30, 2022).

to include DNA, palm print, and eye scan data to the details of the individual in the national register from 2024 to eliminate crime in the country.[39] The national identity card has been issued to 26 million people to enable them access a wide variety of services; individuals who lack the card will be excluded from some services. The digital ID programme can entrench digital exclusion and discrimination of vulnerable groups from accessing government services.[40] The centralised biometric databases can potentially face increased cybersecurity risks and can be vulnerable to attacks and loss yet biometrics cannot be easily replaced like passwords and tokens.[41] There are no known restrictions on encrypted communication.[42] The system can also be used for surveillance, especially biometric systems with facial recognition capability. This eliminates the requirement for consent because it can be used without the knowledge or participation of the data subject.[43] It is also limiting the anonymity of social media users, and bloggers.[44] Data subjects are not utilising the existing laws such as The Registration of Persons Act 2015 and Data Protection and Privacy Act 2019 to question the state of data collection and misuse in Uganda.

THE UNIVERSAL SERVICE FUND

In Uganda, the Universal Service Fund is the Rural Communications Development Fund (RCDF) whose major areas of focus include access, connectivity, affordability, and equity. The RCDF was established in 2003 and is managed by the UCC.[45] Uganda is currently implementing the RCDF Policy 2017/18 – 2021/22 (RCDF III).[46] Some of the national policy and legal documents which were the source of both the general guidance and specific objectives to be pursued by RCDF III include the Uganda Vision 2040, the National ICT Policy (2014), the ICT Sector Strategy and Investment Plan (2015 – 2020) and the Uganda Communications Act (2013).[47]

There is a lack of evidence of a systematic impact of universal access and service funds activities especially at lower administrative levels such as the villages and parishes[48] because rural penetration remains very low and most people in rural areas still do not have access to basic communications.[49] There are extremely limited examples of best practices with respect to Universal Service Fund management and even those that can be cited as being best practice examples have their individual drawbacks and shortcomings. The RCDF over the years between 2009 and 2015 managed to publish annual reports with an integrated minimal summary of how finances has been managed, but some annual reports missed financial reports with both annual reports and financial reports between 2015 and 2022 not accessible online. However, the RCDF Operational Guidelines 2017/18–2021/22 was developed to guide its implementation between 2017/18 and 2021/22.[50]

Digital inclusion has been overlooked because

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39   State of Internet Freedom in Africa 2022 https://cipesa.org/wp-content/files/reports/State_of_Internet_Freedom_in_Africa_2022.pdf (accessed on December 29, 2022).
40   https://cipesa.org/wp-content/files/reports/State_of_Internet_Freedom_in_Africa_2022.pdf (accessed on December 29, 2022).
41   https://cipesa.org/wp-content/files/reports/State_of_Internet_Freedom_in_Africa_2022.pdf (accessed on December 29, 2022).
42   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on December 10, 2022).
43   https://cipesa.org/wp-content/files/reports/State_of_Internet_Freedom_in_Africa_2022.pdf (accessed on December 10, 2022).
44   https://freedomhouse.org/country/uganda/freedom-net/2022 (accessed on 10 December 2022).
45   https://www.ucc.co.ug/reports-and-publications/ (accessed on December 30, 2022).
46   Uganda Communications Commission 'RCDF Operational Guidelines 2017/18–2021/22 (RCDF III)' https://www.ucc.co.ug/wp-content/uploads/2017/09/RCDF-Operational-Guidelines.pdf (accessed on December 19, 2022).
47   https://www.ucc.co.ug/wp-content/uploads/2017/09/RCDF-Operational-Guidelines.pdf (accessed on December 19, 2022).
48   https://www.ucc.co.ug/files/downloads/10%20YEARS%20OF%20RCDF.pdf (accessed on February 4, 2022).
49   GSMA 'Sub-Saharan Africa – Universal Service Fund study' (September 2014) https://www.gsma.com/publicpolicy/wp-content/uploads/2016/09/GSMA2014_Report_SubSaharanAfricaUniversalServiceFundStudy.pdf (accessed on December 26, 2022).
50   Reports and Publications https://www.ucc.co.ug/reports-and-publications/ (accessed on February 5, 2023).

the funds in theory now support the creation of telecentres, but either the policy or the defined targets for telecentres have not considered the accessibility, and assistance that persons with disabilities need, including the target and direct support services for girls and women.[51] For example, there are 4,511 secondary schools in Uganda. However, out of these, 903 of them are supported by the government while 3,608 are private or community-owned. Assuming that 50 per

cent of these already own ICT labs either from previous RCDF interventions or through private investment would leave the UCC with 2,256 schools to equip with an estimated US$20,000 needed to equip each school with ICT tools.[52] The Uganda Communications (Universal Services and Access Fund) Regulations, 2019

say in section 13 (2) that "The Commission shall monitor internally and externally funded projects to ensure that funds are utilised in accordance with the terms of disbursement and the Uganda Communications (Universal Service) Regulations, 2019."[53]

However, there is no transparency in how much is accounted for, its availability, and whether it is serving a legitimate purpose. Even though the fund has been established to address the connectivity needs of some of the unconnected communities, a lot remains to be done in scaling its work and delivering impact.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

AI STRATEGIES
The rapid evolution of ICT has led to an increase in the development of new or emerging technologies which can lead to increased level of remote control through software updates, including the collection of data about users without the users' knowledge which may lead to security and privacy concerns.[54]

National AI strategies are very important in achieving sustainable development goals. However, it is important to understand how societies are transformed by disruptive technology. The logic of social media business models and AI ranking systems has had a harmful impact on the news media, further weakening press freedom and the rights to freedom of expression and access to information.[55]

Uganda has set up a national task force to advise the government on domesticating technological advances from the fourth industrial revolution to fast-track the country's

51   https://www.gsma.com/publicpolicy/wp-content/uploads/2016/09/GSMA2014_Report_SubSaharanAfricaUniversalServiceFundStudy.pdf (accessed on December 26, 2022).
52   https://www.ucc.co.ug/wp-content/uploads/2017/09/RCDF-Operational-Guidelines.pdf (accessed on December 19, 2022).
53   Universal Services and Access Fund 2019 https://www.ucc.co.ug/wp-content/uploads/2021/10/Universal-Services-and-Access-Fund-2019.pdf (accessed on December 29, 2022).
54   https://www.ucc.co.ug/wp-content/uploads/2017/09/RCDF-Operational-Guidelines.pdf (accessed on December 19, 2022).
55   Resource Guide on AI Strategies (June 2021) https://sdgs.un.org/sites/default/files/2021-06/Resource%20Guide%20on%20AI%20Strategies_June%202021.pdf (accessed on 29 December 2022).

economic development.[56] Besides this, Uganda is also partnering with China technology giant, Huawei, to launch a facial recognition surveillance system that uses AI to identify and log the identities of people walking around in public spaces to fight crime.[57]

In 2018, Uganda established the National Expert Taskforce on the Fourth Industrial Revolution which has also incorporated the findings from the opportunities and readiness assessment, peer country assessment, and a broad process of local stakeholder consultation to reflect the country's developmental objectives. The Uganda National 4IR Strategy identifies key opportunity areas where 4IR technology can contribute to concrete gains in Uganda's development objectives.[58] Achieving the vision of 4IR by 2040 would require that strategies support wealth creation and the emergence of globally competitive industries.[59] However, in the country's development policies, including Vision 2040, the third national development plan (NDPIII), and the Digital Uganda Vision, a clear vision has been identified for the future.[60] AI ethical framework should focus most importantly on the pace of technological innovation on the digital divide; the risks of creating new forms of exclusions; biases embedded within algorithms, including gender biases; the protection of privacy and personal data; the disruption of governance models; the issues of just distribution of benefits and risks; impacts on employment and the future of work; human rights and dignity; transparency,

accountability, responsibility; security and risks arising out of dual-use of technology. For instance, the use of AI to profile people based on their personal information is a central feature of surveillance capitalism, and yet mostly masked in clandestineness.[61]

INCLUSION OF ICTS IN NATIONAL ACTION PLANS OR STRATEGIES

Uganda adopted its third National Action Plan (NAP) in 2021 for the period 2021-2025.[62] However, the government developed the digital government strategy as a follow-up project on the development of a Government Enterprise Architecture (GEA) and e-Government Interoperability Framework (eGIF) for Uganda.[63] The strategy represents the vision for the Government of Uganda and its needs to work for Ugandan citizens and businesses during the next five years.[64]

56   Government of Uganda-Huawei Facial Recognition System (October 24, 2022) https://oecd.ai/en/dashboards/policy-initiatives/http:%2F%2Faipo.oecd.org%2F2021-data-policyInitiatives-27386 (accessed on December 24, 2022).
57   https://oecd.ai/en/dashboards/policy-initiatives/http:%2F%2Faipo.oecd.org%2F2021-data-policyInitiatives-27386 (accessed on December 24, 2022).
58   Uganda's National 4IR Strategy https://ict.go.ug/wp-content/uploads/2020/10/Executive-Summary-Ugandas-National-4IR-Strategy.pdf (accessed on December 29, 2022).
59   Uganda's National 4IR Strategy https://ict.go.ug/wp-content/uploads/2020/10/Executive-Summary-Ugandas-National-4IR-Strategy.pdf (accessed on December 29, 2022).
60   Uganda's National 4IR Strategy https://ict.go.ug/wp-content/uploads/2020/10/Executive-Summary-Ugandas-National-4IR-Strategy.pdf (accessed on December 29. 2022).
61   Tara Davis & Murray Hunter 'What Companies and Government Bodies Aren't Telling You About AI Profiling' (October 6, 2022) https://cipesa.org/2022/10/opinion-what-companies-and-government-bodies-arent-telling-you-about-ai-profiling/ (accessed December 29, 2022).
62   http://1325naps.peacewomen.org/index.php/uganda/#:~:text=Uganda%20adopted%20its%20third%20National,National%20Action%20Plan%20(NAP) (accessed on December 30, 2022).
63   Digital Government Strategy https://www.nita.go.ug/sites/default/files/2022-02/Digital%20Government%20Strategy%20-%20Draft.pdf (accessed on December 29, 2022).
64   https://www.nita.go.ug/sites/default/files/2022-02/Digital%20Government%20Strategy%20-%20Draft.pdf (accessed on December 29, 2022).

Conclusion and Recommendations

Access to the internet is a basic human right. The Ugandan government still continues to stifle press freedom, the rights to freedom of expression, and access to information through imposing unfavorable government policies, target of regular technical attacks, arresting and raiding of homes of journalists, target of critics and opposition leaders with surveillance, torture, and detention. Although there have been no reported connectivity disruptions, freedom of expression still continues to be violated in various ways.

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
To the Government	To the private sector	To the Civil Society
• There is a need to reform the Universal Service Fund and make it a separate, and independent entity free from political interference in order to achieve its purpose of promoting accessibility and inclusion in Uganda. • Strengthen institutional coordination across concerned public sector entities in order to meet demand and supply requirements of digital rights in Uganda. • The government must conduct a study on AI and assess how the AI field has evolved and its implications for the future in order to ensure a human rights-based approach to the use of AI in Uganda. • The government should come up with a national AI strategy to ensure human rights protection in the	• Harness technology for innovation, economic production, and service delivery. • The need to encourage publishing transparency reports by telecommunication sectors for the public to discern what private information the government has gained access to. • There is a need for data controllers to comply with Section 29 of the Data Protection and Privacy Act, 2019 by registering with the Personal Data Protection Office. • Conduct a review of internal practices to ensure adherence to the ICT and internet related laws and produce an annual analysis report on the state or impact of the private sector operations on digital rights in Uganda.	• Create a national reference guide on digital rights strategies in Uganda to discuss digital rights-related issues in order to promote more meaningful deliberations on digital rights-related resolutions. • Advocate for an inclusive, free, open, safe, and secure (FOSS) internet for all and build the capacity of grassroots communities to push back against and advocate for a free and open internet from digital exclusion. • Active participation in all review processes of the government of Uganda by the UN Human Rights Council and the African Commission on Human and Peoples' Rights to ensure honest reporting by the government on their

| GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
deployment of tech locally. • There is a need to ensure inclusion, security, privacy, and data ownership in digital identity systems, and to support the interoperability and neutrality of digital identity systems as part of its transformation agenda. • Public engagement or awareness campaigns on digital rights and inclusion in Uganda. • The UCC should collaborate with civil society in efforts to promote digital literacy and innovation. • Adopt a multi-stakeholder approach that encourages the understanding of internet governance locally, especially by key policymakers. • Reduction of taxation levied on devices and internet connectivity to enhance the affordability of devices and internet data bundles.		performance and to call for the protection of freedom of expression, access to information, data protection, and privacy that have been guaranteed in international and regional instruments to which Uganda is a party. • Continue to advocate for ICT policy development and implementation that promotes freedom of expression

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Zambia

▶ Executive Summary

The year under review saw notable legal reforms bear fruit such as the abolishment of the defamation of the President clause from the Penal Code (Amendment) Act 2022. Several other repressive legislations such as the Cybersecurity and Cybercrimes Act 2021 were earmarked for review through participatory consultative processes. Furthermore, there was a significant movement to review the Access to Information Bill 2021 and Zambia Media Council Bill 2021. And in commitment to improving the country's ICT sector, a draft National ICT Policy 2022 and National Digital Transformation Strategy 2022 - 2026, were finalised and circulated for stakeholder input.

The country began implementing a digital identity system and pushed forward to complete the controversial Smart City project. Although several individuals were detained and arrested over defamation of the president charges, the abolishment of the law spurs hope of reduced incidents. Zambia welcomed a fourth mobile network operator and launched its first 5G network initiative. While the developments are commendable, there is still the need to enhance current legal reforms and ensure follow-through on the bills that have been earmarked for review. In addition, more efforts to bridge the digital divide and enhance the development of the ICT sector to transform Zambia into a digital economy.
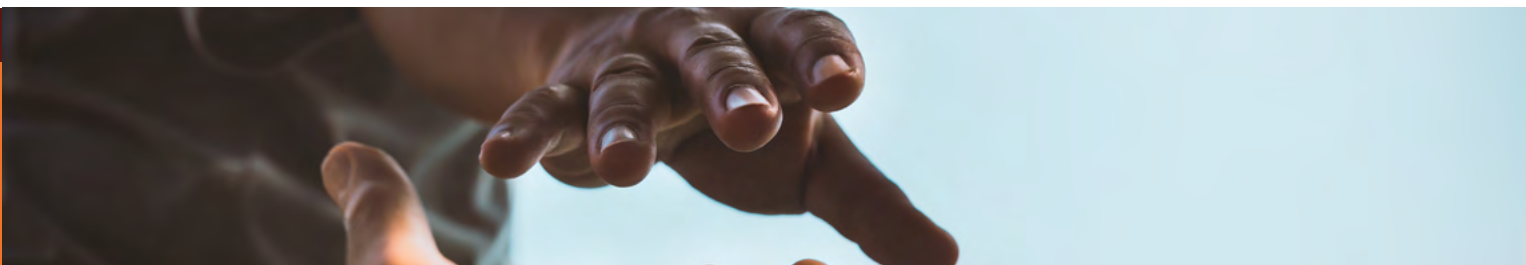
Introduction

According to a recently concluded 2022 census,[1] Zambia's population stands at 19.6 million with the female and male population percentages pegged at 51 per cent and 49 per cent respectively. About 60 per cent of Zambians live in rural areas and 40 per cent in urban centres. In 2022, Zambia's political and economic landscape remained stable with a GDP of 22 billion.[2] The United Party for National Development 'new dawn government' which took office in 2021 made many optimistic pronouncements on key sector reforms to improve the socioeconomic growth of the country.

The Ministry of Technology and Science oversees ICT policy development and implementation while the Zambia Information and Communications Authority (ZICTA) regulates the sector. In October 2022, ZICTA unveiled a new seven-member board of directors under new Statutory Instrument no. 28 of 2022 ICT (administration of authority) which came into effect in April 2022.[3] Efforts are ongoing to recruit a new Director General[4] after the previous director left in June 2021. Additionally, five other directors were fired in February 2022 under unclear circumstances[5].

Various legislations exist that govern ICTs such as the Information Communication Technology Act 2009,[6] Cybersecurity and Cybercrimes Act 2021[7], Data Protection Act 2021[8], e-Government Act 2021[9] and Electronic Communications and Transactions Act 2021 (repealed).[10] In addition, policies such as the National Cybersecurity Policy 2021,[11] and the Postal and Courier Services Policy 2021 – 2031 regulate the sector.[12]

In November 2021, Zambia joined the 13 African states that have ratified the African Union Convention on Cybersecurity and Personal Data Protection (Malabo Convention).[13]

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1   Zambia Statistics Agency (2022) Census of Population and Housing https://www.zamstats.gov.zm/download/6815/?v=9623 (accessed December 21, 2022).
2   World Bank (2021) Zambia Data GDP https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=ZM (accessed on December 21, 2022).
3   Lusaka Times (2022) Mutati unveils ZICTA board, urges it to reduce ICT fees https://www.lusakatimes.com/2022/10/25/mutati-unveils-zicta-board-urges-it-to-reduce-ict-fees/ (accessed December 21, 2022).
4   Mutimushi exit from ZICTA confirmed (2021) https://zambianbusinesstimes.com/mutimushi-exit-from-zicta-confirmed/ ((accessed December 21, 2022).
5   News Diggers (2022) ZICTA fires 5 directors https://diggers.news/local/2022/02/15/zicta-fires-5-directors/ (accessed December 21, 2022).
6   Information Communication Technology Act 2009.
7   Cyber Security and Cybercrimes Act 2021.
8   Data Protection Act 2021.
9   E-Government Act 2021.
10   Electronic Commerce and Transactions Act 2021.
11   MISA Zambia (2021) National Cyber Security Policy approved, https://zambia.misa.org/2021/01/27/national-cyber-security-policy-approved/ (accessed December 21, 2022).
12   National Postal Policy of 2021, http://www.mtc.gov.zm/wp-content/uploads/2021/06/National-Postal-Postal-Policy-2021-2031.pdf (accessed December 21, 2022).
13   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 December 21, 2022).

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

In the second quarter of 2022, the mobile subscription rate stood at 99 per cent

accounting for 19 million people while the internet penetration rate stood at 53 per cent accounting for 10 million internet users according to Zambia Information and Communications Authority (ZICTA).[14]

Furthermore, 53 per cent of the population access the internet using mobile broadband while a meagre 0.5 per cent use fixed-line internet subscriptions.[15] In terms of gender gaps in ICTs, the 2018 ZICTA National ICT Survey revealed that 17 per cent of males had access to the internet compared to 12 per cent of females in 2018. In terms of mobile phone ownership, 87 per cent of males owned a phone in comparison to 81 per cent females.[16]

In addition, 29 per cent of males compared to 30 per cent of females owned a smartphone. In November 2022, MTN Zambia launched the country's first fifth-generation mobile network technology (5G) in a bid to offer faster internet speeds, better security and stability, and the ability to handle high-volume connections over mobile data.[17]

The number of active Internet Service Providers (ISPs) increased from 17 recorded in 2021 to 19 in 2022.[18] A fourth Mobile Network Operator (MNO) called Zedmobile and trading as Beeline Telecommunications, which is wholly Zambian owned, was launched in December 2022.[19]

In August 2021, Zambia experienced a partial internet shut down which lasted 48 hours.[20] Social media platforms such as WhatsApp, Facebook, Messenger and Twitter were inaccessible. An Open Observatory of Network Interference (OONI) report indicated that social media sites were blocked, confirming that the three network providers were using the same

14   ZICTA (2022) ICT Indicators http://onlinesystems.zicta.zm:8585/statsfinal/ICT%20Indicators.html (accessed December 21, 2022).

15   Ibid

16   Zambia Information and Communications Technology Authority (ZICTA) (2018) National Survey on Access and Usage of Information and Communication Technologies by Households and Individuals https://www.zamstats.gov.zm/phocadownload/Other_Institutions/ZICTA%20ICT%20Survey%20-%202018.pdf (accessed December 21, 2022).

17   MTN (2022) MTN Zambia launches the country's first 5G network https://www.mtn.com/mtn-zambia-launches-the-countrys-first-5g-network/ (accessed December 21, 2022).

18   Ibid

19   Zambian Observer (2022) Zambia's Fourth Mobile Network Operator Launched https://zambianobserver.com/zambias-fourth-mobile-network-operator-launched/ (accessed December 21, 2022).

20   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 January 16, 2023).

technique to restrict Internet access and social media sites.[21] Chapter One Foundation, a local human rights organisation filed a high court order against the regulator ZICTA to restore the internet which was subsequently restored on August 14, 2021.[22]

Finally in March 2022, the two parties entered into a consent agreement where the regulator agreed to act within its legal authority and to inform the public of any internet access disruption within 36 hours of such an incident. This strategic litigation case is the first for Zambia and an enormous score for internet freedom in the country.[23]

FREE SPEECH AND MEDIA FREEDOMS

In Zambia, the 2016[24] Constitution affirms the right to freedom of expression,[25] assembly and association,[26] access to information,[27] and privacy.[28] The country is also party to several regional and global human rights standards such as the African Charter on Human and Peoples Rights (ACHPR)[29], the International Convention on Civil and Political Rights (ICCPR),[30] the Windhoek Declaration,[31] and African Platform on Access to Information.[32]

Television and radio broadcasts are regulated by the Independent Broadcasting Authority (IBA) through the Independent Broadcasting Authority (IBA) Act 2010[33] while the national broadcaster, Zambia National Broadcasting Corporation (ZNBC), is regulated under the ZNBC Act 2017.[34] Internet broadcasting is not regulated in Zambia. The Media Development Policy[35] sets a roadmap for self-regulation and development of the media sector.

Prior to taking office, the United Party for National Development (UPND) government made several positive pronouncements to reform various repressive legislation, in particular, to review the Cybersecurity and Cybercrimes Act 2021 and enact the Access to Information Bill 2013[36] and Zambia Media Council (ZAMEC) Bill 2019.[37]

In May 2022, the government announced that it would begin the process of amending the Cybersecurity and Cybercrimes Act 2021.[38] Subsequently, stakeholder consultations commenced in September 2022.[39] Similarly, in March 2022, the government announced that it would hold more consultations with stakeholders on the Access to Information Bill in all the 10 provinces of the country.[40] This

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21   As above n 20
22   All Africa (2021) High Court Orders Restoration of Internet Services https://allafrica.com/stories/202108150063.html (accessed January 16, 2023).
23   News Diggers, COF, ZICTA enter consent judgement in internet shutdown case, https://diggers.news/courts/2022/03/22/cof-zicta-enter-consent-judgement-in-internet-shutdown-case/ (accessed December 21, 2022).
24   Constitution of Zambia Act 18 of 2016.
25   Constitution of Zambia Act 18 of 2016 art 20 n23 above.
26   N 23 above above, art 29.
27   n 23 art 21.
28   n 23, art 17.
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 December 21, 2022).
30   Universal Declaration of Human Rights (UDHR), https://www.un.org/en/aboutus/universal-declaration-of-human-rights (accessed December 21, 2022).
31   Windhoek Declaration.
32   African Platform on Access to Information https://www.africanplatform.org/ (accessed December 21, 2022).
33   Independent Broadcasting Authority Act (amended in 2010)
34   Zambia National Broadcasting Corporation (ZNBC) Act 2017 (as amended in 2017)
35   Media Institute of Southern Africa (MISA) (2022) Media Development Policy launched https://misa.org/blog/media-development-policy-launched/ (accessed December 22, 2022).
36   News Diggers (2021) We'll move with speed to enact Access to Information Bill – Kasanda https://diggers.news/local/2021/09/16/well-move-with-speed-to-enact-access-to-information-bill-kasanda/ (accessed December 22, 2022).
37   Zambia National Broadcasting Corporation (ZNBC), (2021) ACCESS TO INFORMATION BILL https://www.facebook.com/znbctoday/videos/access-to-information-bill/571311514201071/ (accessed December 22, 2022).
38   IT Web Africa (2022) Zambia's President agrees to reconsider cyber security laws https://itweb.africa/content/GxwQD71DVkYvlPVo (accessed December 22, 2022).
39   Ministry of Technology and Science (2022) Call For Comments On The Review Of The Cyber Security And Cyber Crimes Act No. 2 Of 2021 https://www.mots.gov.zm/?p=1522 (accessed December 22, 2022).
40   Lusaka Times (2022) Government's plan to take the Access to Information Bill to 10 provinces for fine tuning

was a great departure from the government's earlier sentiments where they promised to enact the 21-year-old Bill in a timely manner.[41]

Moreover, civil society and media organisations were opposed to this decision because the Bill has been subjected to too many stakeholder consultations over the past years and wondered if the pronouncements were mere political rhetoric.[42] In June 2022, the Zambia Media Council (ZAMEC) Bill 2019,[43] which seeks to provide a mechanism for national media self-regulation, failed to take off after some stakeholders such as the Media Owners Association of Zambia, MISA Zambia Chapter and BBC Media Action rejected the final draft bill citing that some clauses were detrimental to the development of the media sector.[44]

Between January 2022 and December 2022, Paradigm Initiative recorded about 12 arrests and detentions of individuals who were charged with defamation of the President under Section 69 of the Penal Code Act for posts made online. Of the 12 people arrested, two were released, six were jailed, and four are awaiting trial. The individuals ranged from citizens that aired their views online to political opponents.

In May 2022, 46-year-old Andsen Zulu of Lusaka, was sentenced to one-year imprisonment for alleging in a Facebook post that President Hakainde Hichilema is a "member of the anti-Christ".[45]

In July 2022, two youths from the countryside, 28-year-old Danny Kapambwe and 19-year-old Justine Chimpinde, were jailed for two years with hard labour for insulting the President on TikTok.[46]

In August 2022, Benson Tembo, a pastor, was imprisoned for 15 months with hard labour for calling President Hichilema a satanist during a sermon.[47] On September 1, 2022, police in Lusaka arrested 35-year-old Lawrence Bwalya Muchinda of Lusaka for allegedly issuing defamatory remarks against the President on TikTok.[48]

Lastly, police arrested opposition Patriots for Economic Progress (PeP) leader, Sean Tembo, on 1st September, for allegedly insulting the President on Facebook. Mr Tembo was granted bail after six days of detention.[49]

Zambian human rights groups have long urged previous governments to abolish the law used in the past by governments to silence critics. Furthermore, the UPND government during the 2021 election campaigns promised to revoke this archaic law,[50] and finally, on December

opposed https://www.lusakatimes.com/2022/03/29/governments-plan-to-take-the-access-to-information-bill-to-10-provinces-for-fine-tuning-opposed/ (accessed December 22, 2022).
41	n 35 as above
42	Lusaka Times (2022) Government's plan to take the Access to Information Bill to 10 provinces for fine tuning opposed https://www.lusakatimes.com/2022/03/29/governments-plan-to-take-the-access-to-information-bill-to-10-provinces-for-fine-tuning-opposed/ (accessed December 22, 2022).
43	Zambia National Broadcasting Corporation (ZNBC), (2021) ACCESS TO INFORMATION BILL https://www.facebook.com/znbctoday/videos/access-to-information-bill/571311514201071/ (accessed December 22, 2022).
44	Money FM MOAZ rejects final draft ZAMEC Bill (2021) https://www.moneyfmzambia.com/2022/06/16/moaz-rejects-final-draft-zamec-bill/ (accessed December 22, 2022).
45	Lusaka Times 2022 Evelyn Hone College driver jailed one year for defaming President Hakainde Hichilema https://www.lusakatimes.com/2022/05/30/evelyn-hone-college-driver-jailed-1yr-for-defaming-hh/ (accessed December 22, 2022).
46	Lusaka Times 2022 Two Chienge residents jailed 24 months with hard labour for defaming President Hakainde Hichilema https://www.lusakatimes.com/2022/07/01/two-chienge-residents-jailed-24-months-with-hard-labour-for-defaming-president-hakainde-hichilema/ (accessed December 22, 2022).
47	Zambia reports CHIPATA EVANGELIST JAILED 15 MONTHS FOR CALLING HH 'SATANIST 2022 https://ms-my.facebook.com/208755685909131/posts/chipata-evangelist-jailed-15-months-for-calling-hh-satanist-the-chipata-magistra/5350055115112470/ (accessed December 22, 2022).
48	Mwebantu 2022 35-year-old Lusaka TikToker arrested for defaming HH in his video https://www.mwebantu.com/35-year-old-lusaka-tiktoker-arrested-for-defaming-hh-in-his-video/ (accessed December 22, 2022).
49	Lusaka Times 2022 Zambia Police Confirm the Arrest and Detention of Opposition Party Leader Sean Tembo https://www.lusakatimes.com/2022/09/02/zambia-police-confirm-the-arrest-and-detention-of-opposition-party-leader-sean-tembo/ (accessed December 22, 2022).
50	Voice of Africa 2022 Rights Groups Say Zambia's Defamation Law Is Used to Silence Critics of Presidenthttps://www.voanews.com/a/rights-groups-say-zambia-s-defamation-law-is-used-to-silence-critics-of-president-/6738060.html (accessed December 23, 2022).

24, 2022, President Hichilema abolished the defamation of the president clause which is commendable and a critical milestone for Zambia.[51]

PRIVACY AND SURVEILLANCE

As far as 2013, Zambia began implementing a controversial Smart City Project as part of a broader safe city initiative which involves setting up Closed-Circuit Television (CCTV) street cameras in public places. This initiative sparked fears among human rights defenders, civil society and citizens over its potential use for surveillance and monitoring activities on citizens since the technology is not governed by a legal and policy framework nor subject to judicial oversight. In August 2022, the new government confirmed that they would go ahead to conclude the controversial project which was 98% complete.[52]

DATA GOVERNANCE

In March 2021, Zambia enacted its first data protection law in a bid to provide protection of personal data and information that is processed electronically. The regulator, ZICTA, assumed the role of data protection authority although to date the country is yet to see tangible results as the law is not yet fully operational and a data protection commissioner is yet to be appointed.[53] In addition, there are low levels of data privacy awareness amongst the majority of the population.

In March 2022, Zambia started implementing the Integrated National Registration Information System (INRIS), a digital biometric national identity management system that will replace the traditional paper and manual national registration system that has been susceptible to abuse and fraud over the years. [54] The INRIS technology has been deployed in several districts of the country and will facilitate digital identification documents such as national registration cards, and birth and death certificates.[55] The INRIS is also key in implementing the planned e-voting system.[56]

REVIEW OF THE UNIVERSAL SERVICE FUND

The Zambia Information and Communications Technology Authority (ZICTA) implements several projects under the Universal Access and Service Fund (UASF)[57] which is established under the ICT (Universal Access) Regulations Act 2012. Of the total revenue collected in 2021, ZMW 86.27 million (USD5 million) was appropriated to the UASF and the regulator further established a new directorate of Universal Access and Service Fund to enhance corporate governance.[58] The UASF-funded projects include the construction of 1,009 communication towers to attain 92 per cent population coverage with mobile network and enhance the quality of service, and last mile fibre optic connectivity to education and research institutions — in partnership with Zambia Research and Education Network (ZAMREN) — to enhance the provision of low-cost broadband connectivity to public universities, colleges, schools and research institutions.

The connecting learning institutions project aims to supply computers and establish computer labs in government primary, secondary and tertiary institutions countrywide. The other key projects include

51 Lusaka Times (2022) HH Announces the abolition of the death penalty and defamation of the president crime https://www.lusakatimes.com/2022/12/24/hh-announces-the-abolition-of-the-death-penalty-and-defamation-of-the-president-crime/ (accessed December 24, 2022).
52 IT Web Africa (2022) Zambia presses ahead with controversial US$210m CCTV camera project, https://itweb.africa/content/RgeVDMPRY1bvKJN3/ap6GxRKqYaqb3Wjr (accessed December 23, 2022).
53 ALN Africa (2022) Data Localisation Requirements under the Data Protection Act https://aln.africa/insight/data-localisation-requirements-under-the-data-protection-act/ (accessed December 23, 2022).
54 ITWeb Africa (2022) Zambia implements biometric ID registration system https://itweb.africa/content/nWJadMbeW5r7bjO1/ap6GxRKqYaqb3Wjr (accessed December 23, 2022).
55 Ibid
56 IT Web Africa (2022) Zambia: the country must hold off on e-voting plans says gov't https://itweb.africa/content/rW1xLv5ndjk7Rk6m/ap6GxRKqYaqb3Wjr (accessed December 23, 2022).
57 1.5 percent of gross annual turnover collected from all licensed mobile network operators.
58 ZICTA (2022) 2021 Annual Report https://www.zicta.zm/annual-reports (accessed December 23, 2022).

the digital health programme, the universal health connect project, which aims to promote universal access to ICTs in the health sector, and the inclusive connect programme which aims to empower persons with disabilities with customized computer equipment to institutions working with persons with disabilities.

The UASF's effectiveness was previously questioned due to non-attainment of some goals.[59] However, at the end of 2021, 24 additional communication towers were erected, bringing the project to 96 per cent completion, 198 primary and secondary schools were given computers, 75 research and education institutions were connected to the internet, four health institutions were selected for implementation of the health connect project, and 14 special schools were supplied with computers and software. The fund has gone a long way to expand network connectivity and connect underserved learning institutions with ICT tools and services, contributing to bridging the digital divide. In addition, the establishment of a new USAF directorate under ZICTA has helped to enforce transparency and accountability in the administration of the fund.

However, more work remains to be done, including the improvement of network quality following customer complaints and the Technology and Science Minister calling for the ICT regulator to investigate poor network connectivity.[60] In addition, poor network quality contributed to holding off e-voting plans by the Electoral Commission of Zambia until the country attains reliable network coverage and connectivity.[61] Furthermore, more efforts to bridge the current digital divide. A 2022

Zambia Inclusive Digital Economy Status Report revealed that the country has a digital divide of 47 per cent, and 56 per cent of the rural population is not digitally included. Furthermore, the gender digital divide is 34 per cent.[62]

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

In June 2022, the first drafts of the revised National ICT Policy and new National Digital Transformation Strategy were finalised and circulated for stakeholder consultation. In addition, the country's Eighth National Development Plan 2022 - 2026[63] was launched in September 2022.[64] The three documents

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59   Zambian Business Times (2020) Use of US$4m universal access fund at ZICTA questioned https://zambianbusinesstimes. com/use-of-us4m-universal-access-fund-at-zicta-questioned/ (accessed December 23, 2022).
60   IT Web Africa (2022) Zambia's Tech Minister calls for ICT 'reboot' https://itweb.africa/content/j5alrvQAAQGvpYQk (accessed December 23, 2022).
61   IT Web Africa (2022) Zambia: country must hold off on e-voting plans says gov't https://itweb.africa/content/rW1xLv5ndjk7Rk6m/ap6GxRKqYaqb3Wjr (accessed December 23, 2022).
62   Ministry of Technology and Science and UNCDF (2022) Zambia Inclusive Digital Economy Status Report https://www.uncdf.org/article/7655/supporting-zambias-path-to-digital-transformation-with-the-inclusive-digital-economy-status-report (accessed December 23, 2022).
63   Eighth National Development Plan (2022) https://www.sh.gov.zm/wp-content/uploads/2022/09/EIGHTH-NATIONAL-DEVELOPMENT-PLAN-2022-2026-05-07-2022.pdf (accessed December 22, 2022).
64   Develop Zambia Forum (2022) Zambia Launches 8th National Development Blueprint https://www.develop-zambia.

set out roadmaps to develop the country's ICT sector, leverage the technological benefits to revolutionise other key sectors of the economy, establish a coordinated approach in fostering technological adoption and overall facilitate the digital transformation of Zambia's economy.

While Zambia has passed some key legislations on data protection, cybersecurity, consumer protection and intellectual property, amongst others, none that are foundational for responsible Artificial Intelligence (AI) development and use, or AI strategy, exist.[65]

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com/zambia-launches-8th-national-development-blueprint/ (accessed December 22, 2022).

65   UNESCO (2022) Landscape study of AI policies and use in Southern Africa: executive summary https://unesdoc.unesco.org/ark:/48223/pf0000382651/PDF/382651eng.pdf.multi (accessed 22 December 2022).

Conclusion and Recommendations

The year 2022 saw significant success and developments in the ICT sector and internet freedom landscape. However, for these efforts to bear significant fruit, there will be the need for government to intensify efforts on policy and legislative reforms at a time when Zambia is emerging from a climate of fear, repression and intolerance that was witnessed in previous governments where internet laws were used to target people's online freedoms. In addition, there is a need for relevant stakeholders to ensure that the ICT sector develops into an inclusive, affordable and vibrant internet ecosystem that will complement the country's innovation and development plans.

RECOMMENDATIONS

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
The government is urged to: • Review sections 6, 7, 54, 59, 65 and 69 of the Cybersecurity and Cybercrimes Act 2021 in a timely and participatory manner. • Enact the Access to Information Law and end the 21-year-long waiting process. • Review the Zambia Media Council Bill and enact it through a participatory process spearheaded by media practitioners and journalists. • Appoint a Data Protection Commissioner and establish a Data Protection Office that is independent of the regulator, ZICTA. • Raise awareness of data protection in the country among corporations and citizens, especially in light of the planned	The Private Sector is urged to: • Implement appropriate measures on data governance to ensure and enhance compliance with the Data Protection Act. • Continue to take steps to complement the government's efforts in improving the ICT sector through investments that ensure universal, equitable, affordable and meaningful access to the Internet and other digital technologies. • Produce regular transparency reports disclosing their commitment to upholding human rights in accordance with the UN Guiding Principles on Business and Human Rights.	Civil Society Organisations (CSOs) are urged to: • Continue to raise awareness on digital rights and digital inclusion in Zambia • Amalgamate advocacy efforts and engagements with the government on policy and legislative reforms on media and digital rights. • Collaborate with the government in the development of a national AI strategy. • Continue to play an oversight role and provide the necessary checks and balances in the development and enforcement of human rights-based ICT policy and legal frameworks.

| GOVERNMENT	ACADEMIA	CIVIL SOCIETY
roll-out of digital IDs. · Enact legislation for the safe use of public security information systems. · Develop a comprehensive legal and ethical governance framework for Artificial Intelligence technologies, robotics and other emerging technologies in compliance with international standards. · Take measures to protect journalists, media practitioners and citizens from arbitrary arrests and detention, and unlawful surveillance. · Pardon and grant amnesty to those serving jail terms for the abolished defamation of the president law. · Commit to keeping the internet on and inform citizens of any network disruptions within a reasonable timeframe. · Increase the annual budget allocation towards the growth of ICTs in an effort to bridge the existing digital divide and improve internet connectivity while taking into consideration the needs of rural communities, people with disabilities, women and children in accordance with the National ICT Policy and National Digital Transformation Strategy.	The Academia is urged to: · Conduct more research on digital rights and digital inclusion, including studies on Artificial Intelligence and emerging technologies, to inform the development of various ICT-related strategies and policies. · Contribute to monitoring and documenting the digital rights and inclusion developments in Zambia.	

▸ Executive Summary

This report is an overview of the state of digital rights in Zimbabwe. It highlights the incidence of internet disruptions in Zimbabwe and raises concerns about State action targeting the media and the draconian criminal sanctions in the Cyber and Data Protection Act [Chapter 12.07] as read with the Criminal Law (Codification and Reform) Act, 2004 used to shrink the online civic space. The government initiated a draft Cyber and Data Protection Regulations to operationalise some sections of the Cyber and Data Protection Act [Chapter 12.07] (CDPA).

Commendably, the government launched several Community Information Centres to increase Internet access and digital literacy in underserved areas in the country while ECONET was the first mobile network operator to launch 5G. The Judicial Service Commission authorised the Integrated Electronic Case Management System (IECMS) in February 2022 and rolled out virtual courts in the year, a positive step in advancing access to justice. Information gathered from several civil society organisations, media and government representatives showed concerns over the rise in misinformation ahead of presidential elections in 2023, signalling high levels of political intolerance. Further, an overview of the Universal Service Fund and highlights of government priorities on Artificial Intelligence and emerging technologies are given.

The report ends with key recommendations to the government to ensure compliance with its human rights obligations as prescribed in the Constitution of Zimbabwe and key human rights treaties. The report calls for promoting freedom of expression, privacy, internet freedom and digital access for marginalised communities. A call is made to the media and citizens to be more ethical, tolerant and diligent to avoid spreading misinformation and propagating hate speech. The private sector is called to bridge the divide ensuring affordable Internet access while the Zimbabwe Human Rights Commission is urged to continue to call for an online rights-respecting environment.
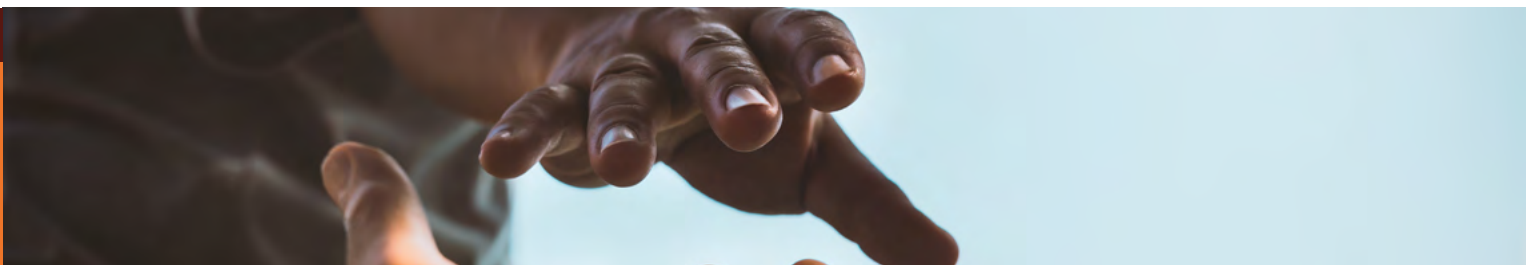
Zimbabwe

Introduction

Zimbabwe is a country in Southern Africa with a population of 15,420,701[1]. The Gross Domestic Product (GDP) for Zimbabwe in 2021 stood at 28.37, while in 2018, it was 38.16 showing a decline in the country's economic well-being.[2] With an increasingly difficult economy in 2022, the growth in ICTs was retarded, making the available cash for individuals to access digital technologies such as smartphones leaner. The effect was an increasing digital divide against the backdrop of a National Development Strategy 1 (NDS1), which among other things, aims to ensure growth in ICTs in Zimbabwe by the year 2025.[3] The Constitution of Zimbabwe (the Constitution) provides for fundamental rights and freedoms in Chapter 4. The Constitution does not make specific reference to digital rights but guarantees equality, privacy, freedom of expression, access to information and education under sections 56, 57, 61, 62 and 75, respectively.[4]

The United Nations settled that rights offline should also be protected online.[5] To this end, constitutionally protected rights in Zimbabwe must be equally safeguarded on the internet. For instance, where there are data breaches online, this is a violation of privacy. Where digital access is impeded for some segments of the population, that is a violation of equality. Internet freedom or digital rights are simply human rights in this light.

Zimbabwe has not yet ratified the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) adopted by the African Union on June 27, 2014, a disregard for compliance with an African treaty which guides States on how to address the risks and dangers associated with the use of electronic data and cybercrimes.[6] However, Zimbabwe is a state party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (African Charter), which provide for freedom of expression in articles 19 and 9 respectively.

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1   Worldometer 'Zimbabwe Population' https://www.worldometers.info/world-population/zimbabwe-population/ (accessed on December 30, 2022).
2   The World Bank 'GDP Current (US$)' https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=ZW (accessed on December 30, 2022).
3   National Development Strategy 1 (2021-2025) para 558 https://www.veritaszim.net/sites/veritas_d/files/NDS.pdf (accessed on December 30, 2022).
4   Constitution of Zimbabwe Amendment (No.20) Act of 2013 (the Constitution). See secs 56, 57, 61, 62 and 75 which provide for equality, privacy, freedom of expression, access to information and education.
 https://www.veritaszim.net/node/6030 (accessed on December 30, 2022).
5   United Nations A/HRC/32/L.20 'The promotion, protection and enjoyment of human rights on the Internet' https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F32%2FL.20&Language=E&DeviceType=Desktop&LangRequested=False (accessed on December 30, 2022).
6   See the African Union Convention on Cyber Security and Personal Data Protection preamble.

Country Analysis

INTERNET FREEDOM

INTERNET ACCESS AND DISRUPTIONS

Zimbabwe has had a bad record for internet disruptions, a reputation characterised by the blatant internet shutdown experienced in January 2019[7] following the fuel price hike protest action and other throttling trends ahead of planned protests and political events.

In 2022, an internet disruption was recorded, impeding the free flow of information, violating freedom of expression and access to information. Many users in Zimbabwe experienced internet throttling on February 20, 2022, during a political opposition party rally held in Harare. The incident was aimed at interfering with the live streaming of the Yellow Sunday rally by the opposition party, Citizens' Coalition for Change.[8]

Mobile network operators occasioned other disruptions to internet access. In February 2022, internet service providers (ISPs) expressed concerns over the imposed 10 per cent excise duty on all internet services. ISPs like ZOL announced this increase to their clients.[9] This regulatory increase on ISPs had a negative impact as the cost of data increased. An ECONET private Wi-Fi bundle for 5GB is $8.04, while one for 10GB is $12.06.[10] This cost is prohibitive for low-income earners amidst a tough economic climate.

FREE SPEECH AND MEDIA FREEDOMS

Zimbabwe dropped on the World Press Freedom Ranking from 126 out of 180 in 2020, to 130 out of 180 countries in 2021, and to 137 out of 180 countries in 2022, showing a decline in terms of its media freedom record.[11] While freedom of expression and media freedom is guaranteed in section 61 of the Constitution, the Criminal Law (Codification and Reform) Act, 2004 (the Criminal Code)[12] has provisions which pose a threat to the constitutionally guaranteed right. Section 33(2) of the Criminal Code provides for the offence of undermining authority or insulting the president, stating that a conviction will follow anyone who

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7   Access Now 'Zimbabwe orders a three-day, country-wide Internet shutdown'   https://www.accessnow.org/zimbabwe-orders-a-three-day-country-wide-Internet-shutdown/ (accessed on December 30, 2022).

8   Netblocks 'Internet slowdown limits coverage of Zimbabwe opposition rally' https://netblocks.org/reports/Internet-slowdown-limits-coverage-of-zimbabwe-opposition-rally-oy9Ykoy3 (accessed on December 30, 2022).

9   IT Web 'Internet costs increase in Zimbabwe as ISPs hit with new tax' https://itweb.africa/content/rW1xL759kpO7Rk6m and TechZim 'ZOL to start charging 10% tax on Internet packages next month!' https://www.techzim.co.zw/2022/02/zol-to-start-charging-10-tax-on-Internet-packages-next-month/ (accessed on January 15, 2023).

10   Econet 'Private Wi-Fi Bundle' https://www.econet.co.zw/services/bundles/Smart-USD-Bundle (accessed on January 15, 2023).

11   RSF 'Index' https://rsf.org/en/index (accessed on January 2, 2023).

12   Criminal Law (Codification and Reform) Act (Chapter 9:23), 2004 https://www.veritaszim.net/node/225 (accessed on December 31, 2022).

publicly, unlawfully and intentionally does the following:

makes any statement about or concerning the President or an acting President with the knowledge or realising that there is a real risk or possibility that the statement is false and that it may engender feelings of hostility towards; or cause hatred, contempt or ridicule of the President or an acting President, whether in person or in respect of the President's office; or

makes any abusive, indecent or obscene statement about or concerning the President

or an acting President, whether in respect of the President personally or the President's office.

The penalty for undermining the authority of or insulting the President is a fine not exceeding level six (ZW$30,000)[13] or imprisonment for a period not exceeding one year or both. This provision was used on several occasions in 2022 to effect arrests for both offline and online speech. Tinashe Evans Wille, from Bindura was arrested on October 13, 2022 for allegedly shouting to the ruling party ZANU PF the words "*Pasi ne* ZANU PF, Mnangagwa *imbwa*" translated to "Down with ZANU PF, Mnangagwa is a dog."[14] The *ZimLive* Editor Mduduzi Mathuthu, was also arrested and charged for allegedly undermining the authority of the president in a tweet which followed a May 17, 2022 announcement by President Emmerson Mnangagwa that the government was suspending the lending of banks, the tweet in issue read as follows: "*I understand Mnangangwa was in Glen Lorne drinking when he was called to read this and Mthuli Ncube and John Mangudgya only learnt of the bank lending suspension when they were shown the speech. Work of some CIO economics department.*"[15]

In November 2022, Edith Mupondi, a teacher was charged with contravening section 88(b) of the Postal and Telecommunications Act [Chapter 12:05] for allegedly sending by telephone, a message that she knew to be false for the purpose of causing annoyance, inconvenience or needless anxiety to any person, a provision overly broad and unreasonably limiting of speech. The allegations were that she sent a message to a WhatsApp group that translated, "At Epworth High School, Mr Muzondo, Mr Mudzengere and Mrs Sithole, please respect us by staying at your respective homes. You are fighting people that are clamouring for payment of improved salaries for teachers."[16]

The Cyber and Data Protection Act (CDPA),

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13   Statutory Instrument 209 of 2021, a level 6 fine is ZW $30,000 (US$94) https://www.veritaszim.net/sites/veritas_d/files/SI%202021-209%20%20Criminal%20Law%20%28Codification%20and%20 Reform%29%20%28Standard%20Scale%20of%20Fines%29%20Notice%2C%202021.pdf (accessed on January 28, 2023).

14   263 Chat 'Police Arrests Bindura Man For Insulting ED' https://www.263chat.com/police-arrests-bindura-man-charged-with-insulting-ed/ (accessed on December 31, 2022).

15   CITE 'ZimLive editor arrested for 'insulting' President Mnangagwa' https://cite.org.zw/zimlive-editor-arrested-for-insulting-president-mnangagwa/ (accessed on December 31, 2022).

16   Zim Morning Post 'Teacher arrested over decrying poor pay on WhatsApp' https://www.zimmorningpost.com/teacher-arrested-over-decrying-poor-pay-on-whatsapp/ (accessed on January 11, 2023).

[Chapter 12:07][17] is a law in Zimbabwe enacted in December 2021 amidst fears that it would be used to crack down on the media. The first journalists to fall victim to the law which amended the Criminal Code are two journalists, Wisdom Mdzungairi and Desmond Chingarande, from *News Day*, a national paper. They were arrested on August 3, 2022, for allegedly sharing false data messages. The two were charged with contravening Section 164C of the Criminal Code as amended by the CDPA, which relates to publishing false data messages intending to cause harm. The offence violates freedom of expression as provided for in section 61 of the Constitution, articles 19 and 9 of the ICCPR and African Charter.

Similarly, 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 draconian criminal penalty not exceeding a level 14 fine or 20 years imprisonment.[18] It is settled that criminalisation of false news is an affront to freedom of expression.[19] The African Commission on Human and Peoples' Rights Declaration of Principles of Freedom of Expression and Access to information guides States on how to comply with their obligations under article 9 of the African Charter and principle 22, which specifically mentions that States shall repeal laws that criminalise sedition, insult and publication of false news.

MISINFORMATION AND HATE SPEECH

Information gathered from several civil society actors and the media in Zimbabwe through a deployed questionnaire revealed that misinformation is a cause for concern in Zimbabwe. The level of political tolerance was very low, with increased hate speech through online and mainstream media platforms. On August 12, 2022, the Zimbabwe Human Rights Commission condemned the hate speech by unruly political actors calling for respect for tolerance of divergent political views and interests.[20]

PRIVACY AND SURVEILLANCE

The CDPA provides for the protection of personal data, ideally adequate to safeguard privacy online. However, the same law, as far as it amends select provisions of the Criminal Code, may be used arbitrarily to violate the right under the guise of addressing cybersecurity.[21] There is a need for State security agents to have a better appreciation of the required need to prioritise privacy and only limit it in line with human rights standards. The Minister of Home Affairs and Cultural Heritage Kazembe Kazembe, attended the International Exhibition for National Security and Resilience in the United Arab Emirates from October 10

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17   Cyber and Data Protection Act, (Chapter 12:07) https://www.veritaszim.net/node/5522#:~:text=Act%20as%20gazetted%20with%20correct,in%20GN%20491%2F2022.%5D&text=ENACTED%20by%20the%20Parliament%20and%20the%20President%20of%20Zimbabwe.&text=This%20Act%20may%20be%20cited,%5BChapter%2012%3A07%5D (accessed on December 29, 2022) .

18   Statutory Instrument 83 of 2020 (S.I 83) https://www.veritaszim.net/node/4046 (accessed on December 30, 2022). 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.'

This reference also made in Paradigm Initiative's Londa Zimbabwe 2021 Report https://paradigmhq.org/report/londa-digital-rights-and-inclusion-annual-report-2021-zimbabwe/ (accessed on December 30, 2022).

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20   Veritas Commissions Watch 6/2022 https://www.veritaszim.net/node/5868 (accessed on January 2, 2023).

21   See the Cyber and Data Protection Act, (Chapter 12:07) https://www.veritaszim.net/node/5522#:~:text=Act%20as%20gazetted%20with%20correct,in%20GN%20491%2F2022.%5D&text=ENACTED%20by%20the%20Parliament%20and%20the%20President%20of%20Zimbabwe.&text=This%20Act%20may%20be%20cited,%5BChapter%2012%3A07%5D (accessed on December 29, 2022) .

And the amended Criminal Code provisions

to 12, 2022 with the purpose of learning how to strengthen national security.[22] There were concerns that this mission was motivated by the government's quest to increase surveillance, particularly in the upcoming 2023 presidential elections.[23]

DATA GOVERNANCE IN ZIMBABWE

DATA PROTECTION

Zimbabwe enacted a data protection law on December 3, 2021, which was titled the Data Protection Act (DPA) and on March 11, 2022, corrected the title to the Cyber and Data

Protection Act (CDPA), [Chapter 12:07].[24] The objective of the CDPA is to increase cyber security to build confidence and trust in the

secure use of information and communication technologies by data controllers, their representatives, and data subjects.

Notably, the enacted DPA of December 3, 2021, had a differently framed objective, which was to increase data protection to build confidence and trust in the secure use of information and communication technologies by data controllers, their representatives and data subjects. The CDPA objective suggests the prioritisation of cyber security over data protection and suggestively reflects the government's attitude towards cracking down on vulnerable groups such as the media and human rights defenders as they express themselves online. The CDPA currently in force gives the impression that it provides for cybercrimes when its actual effect is that it mainly provides for data protection so arguably, the original title of the act sufficed. The CDPA amends the Interception of Communications Act [Chapter 11:20], 2007[25] and amends the Criminal Code in sections 162 to 166 making provision for the investigation and collection of evidence of cybercrime and unauthorised data collection.

The CDPA vests the mandate of the Data Protection Authority in the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ), an additional mandate to its main roles and functions under the PTA, a move that was criticised long before the enactment of the data protection law. Of concern was the possibility of failure of POTRAZ to effectively discharge its mandate considering it is a regulatory authority in the postal and telecommunications sector before it addresses its designated role by the CDPA as a Data Protection Authority. The CDPA has existed for at least a year, so there is still a need to raise public awareness.

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22   Bulawayo 24 News 'Kazembe's visit to UAE surveillance expo ahead of 2023 raises eyebrows' https://bulawayo24. com/index-id-news-sc-local-byo-225764.html (accessed on December 31, 2022).
23   Bulawayo 24 News 'Kazembe's visit to UAE surveillance expo ahead of 2023 raises eyebrows' https://bulawayo24. com/index-id-news-sc-local-byo-225764.html (accessed on December 31, 2022).
24   Cyber and Data Protection Act, (Chapter 12:07) https://www.veritaszim.net/node/5522#:~:text=Act%20as%20 gazetted%20with%20correct,in%20GN%20491%2F2022.%5D&text=ENACTED%20by%20the%20Parliament%20and%20 the%20President%20of%20Zimbabwe.&text=This%20Act%20may%20be%20cited,%5BChapter%2012%3A07%5D (accessed on December 29, 2022) .
25   Interception of Communications Act (Chapter 11:20), 2007 http://www.veritaszim.net/node/252 (accessed on December 31, 2022).

In February 2022, POTRAZ called for anyone controlling the personal information of at least 30 data subjects to notify the DPA, employ a data protection officer and for anyone to report data breaches to POTRAZ.[26]

On November 16, 2022, POTRAZ invited inputs into the draft Cyber and Data Protection Regulations (Licensing of Data Controllers and Appointment of DPOs), 2022[27,] which provide for reporting of data breaches within 24 hours and prescribe the appointment of DPOs within six months of the regulations coming into effect among others provisions.[28] The deadline for submission of comments was December 12, 2022. Enactment of the regulations will be a milestone in line with section 32 of the CDPA as Zimbabwe takes baby steps toward full operationalisation of data protection in Zimbabwe.

DIGITAL IDS

Obtaining national identity cards (IDs) in Zimbabwe can be tedious and challenging due to the numerous requirements of obtaining birth certificates and administrative barriers. With the upcoming presidential elections in 2023, many undocumented people will be disenfranchised from voting. The Zimbabwe Electoral Commission rolled out its first phase of mobile biometric voter registration in February 2022 and proceeded to roll out the second phase, which ended on April 30, 2022, in a move to register more people to vote.[29] Through the biometric voter registration system, fingerprints and facial scans are taken for identification.

REVIEW OF THE UNIVERSAL SERVICE FUND

The Universal Service Fund (USF) in Zimbabwe was established by section 73 of the Postal and Telecommunications Act (Chapter 12:05)] of 2000 (PTA). Among other objects of the fund, section 74(c) of the PTA stipulates its purpose is to finance or assist in financing the extension of postal and telecommunication services to underserved areas and community centres within or outside such areas.[30] Funds are collected from holders of licenses in terms of the Act, including telecommunications operators. The amount collected under this fund, as of the end of 2022, is not readily ascertainable, but as of June 2018, it was

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26   The Chronicle 'POTRAZ calls for employment Data Protection Officers' https://www.chronicle.co.zw/potraz-calls-for-employment-of-data-protection-officers/ (accessed on January 1, 2023).

27   Tech Zim 'POTRAZ invites your input on data protection regulations, you might want to participate' https://www.techzim.co.zw/2022/11/potraz-invites-input-on-data-protection-regulations-please-participate/ (accessed on 1 January 2023) and POTRAZ https://www.potraz.gov.zw/?p=2341 (accessed on January 1, 2023).

28   Cyber and Data Protection Regulations (Licensing of Data Controllers and Appointment of DPOs) Regulations, 2022 https://www.potraz.gov.zw/wp-content/uploads/2022/11/Draft-Cyber-and-Data-Protection-Regulations-.pdf (accessed on January 1, 2023).

29   ZESN 'ERC & ZESN Deploy Observers for 2022 Voter Registration Blitz and Provides Analysis of Phase 1 List of Registration Centres' https://www.zesn.org.zw/wp-content/uploads/2015/10/ERC-ZESN-Statement-on-Observer-Deployment-FINAL-18022022.pdf

30   Postal and Telecommunications Act (Chapter 12:05)] of 2000 https://old.zimlii.org/zw/legislation/num-act/2000/4/Postal_Act.pdf (accessed on 1 January 2023). See section 74 below.
'74 Objects of Fund The objects of the Fund shall be—
 (a) the standardisation of postal and telecommunication services and the maintenance of high standards of quality in the provision of such services; and
 (b) to make grants to local authorities or their appointed agents for the purpose of assisting needy persons to obtain access to postal and telecommunication services; and
 (c) to finance or assist in financing the extension of postal and telecommunication services to underserviced areas and community centres within or outside such areas; and
 (d) to assist in the training of persons in the provision of postal or telecommunication services; and
 (e) to promote or contribute towards research and development in the field of postal and telecommunication services; and
 (f) to promote and contribute towards the expenses of the adaptation or facilitation of the use of telecommunication services for the benefit of disabled persons, including the provision without charge of directory information services appropriate to meet the needs of such persons; and
 (g) to encourage and facilitate, for the benefit of Zimbabwe, the transfer of telecommunications technology from foreign providers of such technology;
      in accordance with an annual implementation plan prepared by the Authority in consultation with cellular telecommunication, postal and telecommunication licensees and the appropriate successor company.

estimated at US$120,000,000. The Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ), as the Trustee for the Universal Service Fund, gazetted a call

for bidders on July 29, 2022, to among other things, provide solar power backup systems for 40 Community Information Centres (CICs) and 24 Community Village Information Centres (CVICs)[31] in Zimbabwe in a move that will presumably address challenges posed by the erratic supply of electricity in the areas the CICS and CVICs are situated.

In 2022, 32.5 per cent of Zimbabweans were living in urban areas while the majority, 67.5 per cent were in rural areas,[32] a clear sign of the need to ensure the disbursement of the USF for the purposes for which it is collected. In November 2022, the government launched 10 CICs in the capital city, Harare, to bridge the digital divide and promote internet access. The government also launched 16 CICs and school computer laboratories in Gweru, Shurugwi and Kwekwe in December 2022.[33] While an increase in CICs is a welcome development in urban areas, there is a need for more to be done for marginalised communities to bridge the digital divide.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

The largest mobile network operator, Econet, was the first to launch 5G technology in Zimbabwe on February 24, 2022,[34] a development which came against the backdrop of a growing digital divide in the country exposed by the Covid-19 pandemic. Twenty-two 5G Sites were launched as of May 6, 2022, the majority in Harare's capital city. National Development Strategy 1 (NDS1) is the government strategy for development from 2021 to 2025 which includes improvement of innovation through prioritisation of the Virtual Collaboration Nodes (VCN) programme to support e-applications across sectors, block-chain and big data analytics technologies, among others.[35] NDS1 highlights the government's commitment to develop and implement a policy on the adoption and adaptation of emerging technologies, mainly Big Data Analytics, Artificial Intelligence (AI) and Virtual Augmented Reality (VAR). There is currently no independent national AI strategy, and guidance is gleaned from NDS1 on the priorities of the government with regard to emerging technologies. The existence of the CDPA is a progressive legislative development ensuring data protection.

The Ministry of Finance allocated

31   Government Gazette General Notice 1711 of 2022 https://gazettes.africa/archive/zw/2022/zw-government-gazette-dated-2022-07-29-no-100.pdf (accessed on December 31, 2022).

32   Datareportal https://datareportal.com/reports/digital-2022-zimbabwe#:~:text=There%20were%204.65%20million%20Internet,percent)%20between%202021%20and%202022 (accessed on December 31, 2022).

33   263 Chat 'Community Information Centres A drive To Better Economy: Muswere' https://www.263chat.com/community-information-centers-a-drive-to-better-economy-muswere/ (accessed on January 1, 2023).

34   Econet https://www.econet.co.zw/services/5G-Launch (accessed on December 30, 2022).

35   National Development Strategy 1 (2021-2025) para https://www.veritaszim.net/sites/veritas_d/files/NDS.pdf (accessed on January 23, 2022).

ZWL$3,300,000,000 to the Ministry of Information Communication and Technology in the National Budget for the implementation of projects such as increasing broadband access and installation of smart e-government services.[36] This allocation was a marked reduction from the allocation of ZW$ 7,958,500,000 made in 2021.[37] There is a need for adequate resourcing of the ICT sector to bridge the digital divide and ensure growth in using e-services in Zimbabwe.

SMART CITY INITIATIVES

While smart city initiatives bring about efficiency in service delivery across many sectors such as health, education and agriculture, in the absence of transparency as to how they are implemented, distrust may be fostered. Additionally, where there is no transparency of process and proactive disclosure as to how data collected for the purposes of rolling out these initiatives are being used, vulnerable groups such as human rights defenders and the media may be placed at risk of data breaches and arbitrary surveillance. The Minister of Information Communication Technology, Postal and Courier Services, Dr Jenfan Muswere, mentioned that through ICT technologies, the government seeks to increase efficiency in law enforcement operations and city administration.[38] He reportedly highlighted that his ministry was working with the e-Government Unit housed in the office of the President and Cabinet to automate government systems and implement the Zim Connect project, which will offer e-services to citizens, private and public sectors.[39] Prioritising e-service was a positive step in service delivery and access to information across government services. However, the extent of influence of the e-Government Unit in the rollout of e-services through government platforms is unclear and may pose a concern for human rights. Additionally, the exclusion of low-income earning individuals from accessing e-services is a consequence of the existing digital divide.

LEVERAGING TECHNOLOGY FOR RIGHTS

Technology plays a key role in realising human rights and can connect marginalised communities to the rest of the world. In Zimbabwe, some success has been realised in the education sector. In 2021, the United Nations International Children's Emergency Fund (UNICEF) partnered with the Ministry of Primary and Secondary Education to roll out the Learning Passport platform, an application with over 1,000 pre-recorded radio lessons and modules for learners in line with the Zimbabwean Schools Examination Council (ZIMSEC) curriculum.[40] The application can be downloaded on Playstore for Android smartphones and is positive for children with access to digital technologies such as smartphones, laptops or desktop computers. Zimbabwe conducted its first digital census using digital technologies to conduct the process.

The 2022 legal year was launched under the theme, *Use of Technology to Enhance Efficiency and the Rule of Law in the Judiciary*.[41] The Judicial Service Commission began training its staff on the Integrated Electronic Case Management System (IECMS) in January 2022 and the ICEMS was commissioned on February 7, 2022.[42] Launching the ICEMS is

36   TechZim https://www.techzim.co.zw/2021/11/download-the-2022-national-budget-speech/ (accessed on January 1, 2023).
37   Veritas '2021 Budget' para.393 https://www.veritaszim.net/sites/veritas_d/files/2021%20%20NATIONAL%20 BUDGET%20STATEMENT.pdf (accessed on January 1, 2023).
38   The Sunday News https://www.sundaynews.co.zw/smart-cities-to-generate-investment-boost-economic-growth/ (accessed on December 31, 2022). National Development Strategy
39   The Sunday News https://www.sundaynews.co.zw/smart-cities-to-generate-investment-boost-economic-growth/ (accessed on December 31, 2022).
40   UNICEF Transforming Education '#ForEveryChild in Zim — a renewed commitment' https://www.unicef.org/ zimbabwe/stories/transforming-education-foreverychild-zim-renewed-commitment (accessed on January 2, 2023).
41   Further Africa ' Zimbabwe to introduces e-courts and commercial courts' https://furtherafrica.com/2022/05/03/ zimbabwe-to-introduces-e-courts-and-commercial-courts/ (accessed on January 2, 2023).
42   Sunday Mail 'Zim Courts Enter Digital Age' https://www.sundaymail.co.zw/zim-courts-enter-digital-age (accessed on 2 January 2023). See also the Chronicle Virtual Court in Zimbabwe takes justice delivery system to the people' https://www.

a timely development and a positive step in promoting access to justice in Zimbabwe. The operation of virtual courts is highly dependent on the Internet and the government is urged to consider consequential human rights violations that may occur due to internet disruptions. Such actions amidst positive steps towards digital transformation are retrogressive and tantamount to "shooting oneself in the foot".

chronicle.co.zw/virtual-court-in-zimbabwe-takes-justice-delivery-system-to-the-people/ (accessed on January 2, 2023).

287   LONDA – DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

Conclusion and Recommendations

Critical concerns marked the state of digital rights and inclusion in Zimbabwe for freedom of expression and the unwavering practice of disrupting the Internet. The media bore the brunt of the newly enacted CDPA while false news criminal sanctions continued in Zimbabwean law. Data governance in Zimbabwe continues to evolve as the implementation of the CDPA act continues on the path to full realisation. The following recommendations are made:

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
• Collaboratively work with all stakeholders to ensure no internet disruptions or shutdowns. • Repeal sections 33(2) and 164 C of the Criminal Code, section 14 of S.I 83 of 2020 and amend section 88(b) of the Postal and Telecommunications Act [Chapter 12:05]. • Be more proactive in disclosing information on smart city initiative rollout plans and ensure effective data protection for data subjects. • Ensure regular proactive disclosures of the value of the Universal Service Fund and its utilisation. • Develop a national Artificial Intelligence and Emerging Technologies strategy. • Ensure inclusive consideration for marginalised groups in the design and implementation of smart city initiatives. • Launch more CICs in	*To Mobile Network Operators* • Proactively disclose to the public any government instructions to disrupt the Internet. • Collaborate with the government to bridge the digital divide by reducing data tariffs and increasing broadband access in marginalised communities.	*To the Zimbabwean Community* • Responsibly share information and fact-check the truthfulness of information shared on social media platforms. • Exercise tolerance for divergent political views and interests, refraining from hate speech.

GOVERNMENT	MEDIA	
rural areas to bridge the digital divide for marginalised communities. • Enact Cyber and Data Protection Regulations that respect human rights following the call for inputs to the draft regulations to operationalise section 32 of the CDPA. • Practice and encourage tolerance for dissent and divergent political views. • Take legislative or other measures to improve its media freedom record, refraining from arbitrary arrests and harassment of the media. **To the Zimbabwe Human Rights Commission** • Continue to call for the promotion and protection of freedom of expression and access to information in Zimbabwe.	• Be guided by ethics in reporting, to avoid misinformation and disinformation. • Raise awareness of the CDPA law in collaboration with the government and civil society organisations.	

Summary

22	02	24
Countries with USF	Countries Without USF	Countries Total

Countries with Data Protection Laws and Internet Shutdown Incidence in 2022

Countries	2022 Internet shutdowns/ disruptions	Countries with Data Protection Laws
Kenya	No	Yes
Ethiopia	Yes	No
Zimbabwe	Yes	Yes
Malawi	No	No
Sudan	Yes	No
Tanzania	No	Yes
Tunisia	Yes	Yes
Rwanda	No	Yes
Benin	No	Yes
The Gambia	No	No
Namibia	No	No
Botswana	No	Yes
Angola	No	Yes
Ghana	No	Yes
South Africa	No	Yes
Central African Republic	No	No
Togo	No	Yes
South Sudan	No	Yes
Zambia	No	Yes
Nigeria	No	No
Uganda	No	Yes
DRC	No	Yes
Senegal	No	Yes
Côte d'Ivoire	No	Yes

04	17	
Internet Shutdowns/ Disruptions		Countries With a Data Protection Law

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