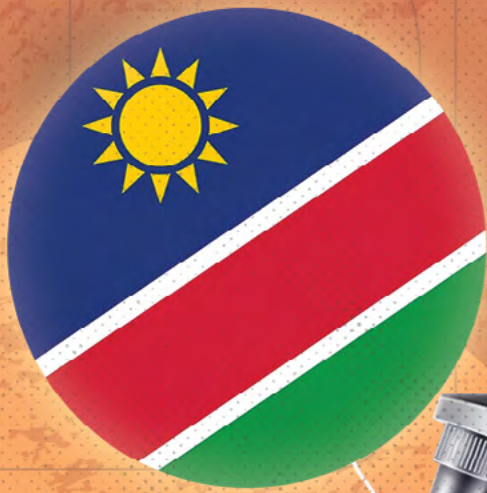


LONDA

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

NAMIBIA



2022

LONDA

Digital Rights and Inclusion in Africa Report 2022

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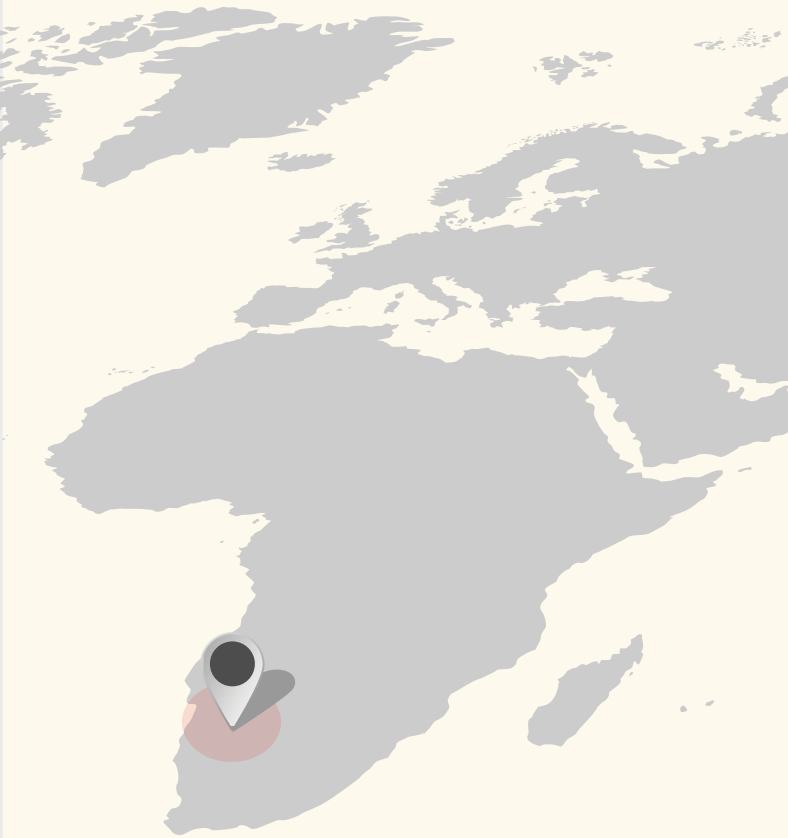
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Namibia



▶ 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.

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](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%20surveillance> (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 continent¹⁰ 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 (MITC) 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 League (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 LPM, 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 'LPM 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 2009²⁶ 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

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-geingob/> (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

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 Marksell 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).



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.

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 (4IR).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.

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
<p>Government should therefore consider the following:</p> <ul style="list-style-type: none"> • 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. 	<p>ICT companies in the private sector should consider the following:</p> <ul style="list-style-type: none"> • 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. <p>⁵⁴ United Nations 'Principles on Business and Human Rights' (2011) https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed on 14 December 2022).</p>	<p>Civil society and academia should consider the following recommendations:</p> <ul style="list-style-type: none"> • 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.



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