

# Understanding Digital Rights in An Era of Digital Politics in Africa

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## Abstract

As more African countries connect their citizens to the Internet and other digital technologies in a bid to improve services, questions are being asked about the protection of human rights for nationals online. The wake of the COVID-19 pandemic forced many countries on the continent to search for alternative ways to provide services. Varying national shutdowns impacted democratic processes such as elections and accompanying actions such as voter registration and campaigning. This paper aims to assess the trends and challenges around the implementation of digital rights and propose a way forward for scholars and practitioners promoting digital rights. It uses a South African example to demonstrate the protection of human rights (*by default digital rights*) by a Constitution deemed as one of the most progressive in the world. Data was collected using desktop research to identify and assess common themes and differences across the continent. The results show that as technologies continue evolving at a fast pace, it is fundamental for African governments to reassess and adapt their laws to maintain and protect the rights of their citizens online.

**Keywords:** Digital Technology, COVID-19, Digital Rights, Digital Politics, Africa

## Introduction

The digital age has brought with it many opportunities to explore the offerings of fast online information sharing to inform, mobilise, and engage citizens politically. However, there are challenges regarding how to harness these opportunities while enjoying and protecting human rights. Scholars and researchers in the field of governance are still trying to find answers to how African governments can guarantee and protect human rights online. Digital rights are human rights brought to prominence by the United Nations Human Rights Council resolution of 2012 when it resolved that the ‘same rights that people have offline must also be protected online.’ This includes the right to freedom of expression, privacy, and access to information (Media Defence, 2020).

Digital rights are an important and evolving subject in contemporary human rights research and policymaking (Centre for Human Rights, 2022). In understanding them, it is also important to explore the role of the Internet in promoting such rights. According to Bussiek (2022), the 1<sup>st</sup> of January 1983 is considered the official birthday of the Internet. He argues that it all started as a tool of exchange among scientists and professionals and gradually expanded to draw more people in the new millennium. Due to the success of the Internet, the video/voice calling service Skype was launched in 2003, Facebook in 2004, Twitter

(now known as X) in 2006, Instagram in 2010, Google in 2011, and TikTok in 2017 (Bussiek, 2022). Today, billions of people worldwide use the Internet daily, including participating in political processes online.

Due to the Internet revolution, 495 million people, or 46% of the population in Sub-Saharan Africa subscribed to mobile phones in 2020 (Bussiek, 2022). He further asserts that,

All in all, 4.95 billion people around the world actively use Internet. The new digital technology turned the world into a global village. Humanity in all parts of the globe became connected. The speed of information increased exponentially. People now communicate with each other in real time over long distances. Questions are answered within seconds on Google. And the internet was about to democratise the entire world. The Arab Spring 2010, starting in Tunisia, was termed a 'Facebook revolution', the Sudan uprising 2019 would not have been possible without social media. People come together and organise for a common cause by digital means. Online media have sprung up and multiplied, bloggers started blogging, everyone is able to have her or his say (Bussiek, 2022:1).

Digitalisation has no doubt played a key role in increasing Internet connectivity in Africa (Runde and Bryja, 2023) even though the continent is still struggling to modernise its ageing telecommunications infrastructure (Mare, 2023). Its rapid acceleration during the COVID-19 pandemic was evident as citizens became increasingly dependent on digital technologies for financial transactions, socialisation, education, political engagement, news and information, remote working, and religious meetings (Mare, 2023). With this responsibility comes the protection of digital rights to ensure that individuals enjoy the same rights online as when offline.

According to Goggin, Vromen, Weatherall, Martin, Webb, Sunman, and Bailo (2017), it is difficult to ensure that individuals have the same rights in digital spaces as in analogue ones given the fast pace of the use of technology. Using insights from various sources including the Centre for Human Rights, this paper will show that the development of digital rights in Africa is slow, and it coincides with a poor democratic climate and weak protections for human rights. Furthermore, the continent is facing serious challenges of digitalisation including weak infrastructure, hardware, software, and issues of access lie across gender, economic status, and rural-urban lines (Centre for Human Rights, 2022).

The rest of this paper is organised into various sections to include a definition of the key terms used in the arguments, followed by the problem statement, research aims, and methodology. These are followed by a contextual background with sub-sections on the state of democracy in Africa, an overview of how technology interlinks with politics, and the state of Africa's human rights record.

This paper also has a section on the state of Internet access in Africa with a sub-section discussing issues of affordability and the extent of the digital divide. This section is followed by discussions on the important issues of online privacy and data protection leading to a reflection on cyberspace laws. The impact of Internet shutdowns and fake news on digital rights is also highlighted. The findings section is followed by recommendations and a conclusion on the next steps for governments, scholars, and others interested in the promotion of digital rights.

## Definition of Key Terms

*Digital rights* – Broadly, digital rights refer to human and legal rights in the digital realm or cyberspace, or in interaction with technology (Reventlow, 2017). Reventlow (2017) argues that these rights allow citizens to access, use, create, and publish digital content on devices such as computers and mobile phones. These rights are protected under provisions of the United Nations and the African Human Rights Framework and in practical terms, they aim to protect citizens from oppression, deprivation, and violence that jeopardize human interests (Mathiesen, 2014).

*Digital politics* – Refers to the intersection of digital technologies and forms of political engagement. In the last decade, global and local politics have been completely transformed by new technologies (Manchester Metropolitan University, n.d.). They argue that there has been a surge in the politicised use of technologies such as social media and smartphones by governments, corporations, activists, and non-profits. Politicians and civilians also use these tools to mobilise, engage, and protest.

*Digital technology* – Johnston, Kervin, Wyeth (2022), and several other scholars argue that the definition of digital technology is also broad. They state that it includes tools, systems, and devices (including personal computers and mobile phones) that can generate, create, store, or process data. In keeping with the aims of this chapter, the expected result of using digital technology in politics is improved citizen engagement and increased participation using various online tools.

*Governance* – Governance refers to the action or manner of governing (Munshi, Abrahan, and Chaudhuri, 2009). Therefore, government is expected to make decisions, resolve conflict, organise elections, and distribute resources among other functions (Cole, 2008).

## Problem Statement

Examples of digital rights issues in Africa are many and complex. The following have been selected to explain the problem statement. According to the Centre for Human Rights (2022), despite the gains that came with the Internet revolution, its penetration rate remains comparatively low in Africa. For instance, they argue that in 2020, only the Seychelles, South Africa, Mauritius, and Botswana had access to the Internet for half of their populations. Limited Internet access has even led to a debate about whether it should be considered a human right (Media Defence, 2020). Countries such as Somalia, South Sudan, and Mozambique have often been affected by ravaging wars that destroy their digital infrastructure (Runde and Bryja, 2023) and limiting Internet access for citizens.

There are also reported Internet shutdowns, the disruption of online networks and social media sites in countries such as Ethiopia and the Democratic Republic of Congo (Maseko, 2024), and the blocking and filtering of content is considered a form of prior restraint to freedom of expression (Media Defence, 2020). Furthermore, serious patterns of digital rights violations have been reported in many countries including unlawful surveillance practices (Centre for Human Rights, 2022). Implementing a 'social media tax' in Uganda in 2018 led to a drop in Internet penetration by five million users within three months (Media Defence, 2020). Moreover, using digital media can be complicated (Pangrazio and Sefton-Green, 2021). They warn that the process comes with the potential for invasions of privacy, increasing dataveillance, and the erosion of the democratic sphere among other risks.

## Research Aims

This paper has two main aims which are,

- To assess important trends, developments, and challenges in respect of digital rights in Africa.
- To propose recommendations for various role players promoting digital rights.

## Methodology

Data for this paper was collected using a comprehensive desktop review of global and African literature on digital rights and digital politics. The author also relied on data from official policy documents, research reports, and other scholarly resources that were duly referenced. This paper uses a South African example to demonstrate the protection of human rights (*by default digital rights*) by a Constitution deemed as one of the most progressive in the world. South Africa's human rights record was assessed based on more recent reports and interpretations from three key organisations such as the South African Human Rights Commission (SAHRC), Amnesty International, and Human Rights Watch covering the periods of 2022 and 2023. This list of organisations is not exhaustive but will provide the reader with a good idea of the country's human rights standing. The data was analysed by carefully reading the information from various sources and then reviewing the findings. This method made it easier to compare the results of the different sources and then choosing the most important information.

## Contextual Background

The Londa Report of 2022 argues that access to digital life has become increasingly important as the world recovers from the effects of the COVID-19 pandemic. They posit that technology has not only connected marginalised communities in an increasingly globalised society, but it has also significantly impacted human rights. The Institute for Security Studies (2021) argues that most of Africa's problems in implementing democracy stem from bad governance. It asserts that many leaders are failing to effectively manage their economies, cultural and social diversities, and political inclusion. This leads to a loss of trust in state institutions and in their capacity to execute basic functions and deliver services. According to the organisation, the economic and political inclusion of women, youth, minorities, and other marginalised groups remains a major challenge for many African countries.

Coetzee (2017) argues that the idea of good governance is critical for the continent to promote the idea of prosperity, proper living conditions, and progress. She adds that good governance practices are globally supported by institutions such as the World Bank and the International Monetary Fund, and they are important for developing countries if they want to achieve better lives and living conditions for their people. Coetzee (2017) argues that good governance practices include openness, honesty, and integrity which sadly are not always maintained in some African countries. It is against this backdrop that a case for the protection of human rights, especially digital rights is made on the continent.

Coetzee's sentiments are also shared by Fourie and Schoeman (2010) who also argue that it would be difficult for development to take place anywhere without good governance. They also add that norms and values such as political transparency are also critical for the

development of various countries. The challenge, however, in Africa, is the declining state of democracy which will be explored in detail below.

### State of Democracy in Africa

Africa has experienced a democratic decline in the past ten years accelerated by the COVID-19 pandemic (Campbell and Quinn, 2021). Furthermore, they argue that an increasing number of Africans are also living in authoritarian states meaning their governments are outright dictatorships. According to the Economist Intelligence Unit's (EIU) most recent 2022 Democracy Index, in authoritarian states, some formal institutions of democracy may exist, but these have little substance. Elections, if they do occur, are not free and fair and there is disregard for abuses and infringements of civil liberties. Mauritius is the only country with a full democracy on the continent, which means that basic political freedoms and civil liberties are respected and the political culture and functioning of government are conducive to the flourishing of democracy (Economist Intelligence Unit, 2022).

Furthermore, some African leaders have failed to fix historical challenges linked to colonialism, apartheid, and racism, leading to shallow and compromised democratic values Taylor (2018). Democratic citizenship on the African continent is also happening less often due to failures in traditional methods of participation known as invited spaces of participation (Masiko-Kambala, Görgens, and van Donk, 2012). According to Fombad (2021), democracy and constitutionalism are still not firmly consolidated and secure in Africa. He argues that the number of countries with failed or flawed electoral processes far exceeds those that have improved records.

An analysis of citizen participation in some democratic societies paints a picture of people who have lost confidence and trust in the government system (Masiko-Kambala et al. 2012). Young people in many countries feel disempowered by their political parties and other officials in leadership positions, hence they withdraw from participating in governance processes (Lues, 2014; Tshuma and Zvaita, 2019). In 2021, the European Parliament also raised a concern about restrictions on the freedom of expression both online and offline in many African democracies and the undermining of term limits by some governments and presidents.

Campbell and Quinn (2021) also argue that in a bid to promote democracy, some African countries have been re-organising themselves along their regional groupings. They argue that the Economic Community of West African States (ECOWAS) has devoted serious energy and resources to defending democracy. It has done this by playing a major role in rolling back military dictatorships in West Africa and opposing military coups. However, they note that ECOWAS has been less effective in preventing third-term bids by incumbents. Campbell and Quinn (2021) also argue that the Southern African Development Community (SADC) has been derailed by its inability or unwillingness to address political matters in countries such as Zimbabwe, because of the ruling ZANU-PF's origins as a liberation movement. They also highlight that the Economic Community of Central African States (ECCAS) is stocked with autocrats, while the East African Community (EAC) has been weak.

### Overview - Emerging Technologies and Politics

The world once relied on communication mediums such as radio, print, or television to connect people. These so-called traditional methods of communication were in many instances tightly controlled by governments. The emergence of the Internet and digital

technologies has empowered people to speak up, organize, and challenge the government on its policies affecting the progress of society (Anthonio, 2022). He argues that some governments, especially in authoritarian regimes will often suspend Internet usage if users contradict their authority. Furthermore, Anthonio (2022) posits that digital technologies have been useful in times of elections and the Internet has been used by politicians and activists to campaign online and mobilise as evidenced by the Arab Spring in Egypt in 2011, the #IAmSudanRevolution in 2019 and the #EndSARS in Nigeria in 2020.

Since the 1980's, the digital revolution has moved beyond the Internet to include mobile devices, social media, big data, and computing clouds (Clarke, 2012). The rapid adoption of digital technologies has also fundamentally changed global politics. According to Mare (2023), as far as political participation and engagement are concerned, digital spaces have allowed activists and citizens to circumvent the shrinking democratic space. Citizens have used digital technologies to expand the civic space while a few authoritarian governments have employed the same technologies to survey citizens and implement state-ordered internet shutdowns (Mare, 2023). Goyayi (2021) argues that the intersection of corruption, determination to win elections, and other widely reported concerns such as database hacking, media manipulation, and foreign technological interference are another deadly combination threatening the integrity of elections. In this way, technology is both a weapon and a crippling agent to the election.

### Africa's Human Rights Record and Digital Rights

Anthonio (2022) argues that the Internet is an enabler of fundamental human rights, including the freedoms of opinion and expression, freedoms of assembly and association, the right to access information, and the right to education. In 2018, the United Nations Human Rights Council reaffirmed its 2012 resolution on the promotion, protection, and enjoyment of human rights on the Internet. This resolution, adopted by consensus at the 38th Session of the council in Geneva, stated that the same rights that people have offline must also be protected online. However, Anthonio (2022) warns that when the Internet is purposefully disrupted or manipulated, so too are the rights of those using it.

The state of Africa's human rights record leaves much to be desired. It is highlighted in this paper to give a better understanding of how it might impact general thinking about digital rights. The International Human Rights organisation Amnesty International argues that in 2022, almost all countries on the African continent had been battling with devastating economic impacts of the COVID-19 pandemic and their recovery is impacted by conflicts, economic disruptions arising from Russia's invasion of Ukraine, and other factors such as extreme weather conditions. It says millions have fled conflicts in countries such as Ethiopia and Burkina Faso, while the basic rights of millions of people regarding access to food, health, and an adequate standard of living have also been severely compromised. Furthermore, the organisation argues that human rights defenders, activists, journalists, and opposition members face intimidation and harassment, arrests, detention, and prosecution as authorities tighten their grip on the rights to freedom of expression and association.

The number of people fleeing conflict or climate crises continued to rise. Yet, international funding shortfalls left authorities barely equipped to adequately address refugees' urgent basic needs. The prevalence of violence against women across the region reflected the entrenched patterns of gender discrimination and other forms of inequality. In some countries, LGBTI people and people

with albinism were not protected from discrimination and violence. The high risk of environmental degradation or displacement of communities resulting from planned or existing mining or infrastructural projects persisted (Amnesty International, 2022:1)

The 2022 Human Rights Watch report shows that human rights violations continued in 26 African countries monitored by the watchdog, with the situation worsening in most of them. These countries include Cameroon, the Central African Republic, Chad, Ethiopia, Mozambique, Nigeria, South Sudan, Angola, Burundi, Eswatini, Rwanda, Uganda, and Zimbabwe. For instance, pro-democracy protests resulted in scores being killed and thousands arrested in Eswatini as the embattled King Mswati tried to maintain power.

## Internet Access in Africa – Overview

The global average Internet penetration rate stood at over 66% as of December 2021 and that of Africa stood at just 43% (Anthonio, 2022). He argues that many African governments restrict access for various reasons, including implementing access-limiting laws and digital tax policies.

According to Bussiek (2022), the African Commission on Human and Peoples' Rights adopted the Declaration of Principles on Freedom of Expression and Access to Information in Africa in 2002. This declaration was updated in 2019 to include digital rights. It makes provision for universal, equitable, affordable, and meaningful access to the Internet to realise these rights (Bussiek, 2022). He also cautions that the conditions in many countries are not encouraging as discussed below.

### Affordability and Digital Divide

#### Affordability

One of the main hurdles to Internet access in Africa is bad policies that are pricing people out of technology (Anthonio, 2022). He argues that even when citizens have Internet access, authorities, and service providers find new ways to prevent large sections of their populations from entering the digital world. Furthermore, Anthonio (2022) argues that high data costs also remain a barrier to widespread Internet use even for people living in spaces with sufficient connectivity. This view is also shared by Bussiek (2022) who also asserts that governments, especially in Sub-Saharan Africa are renowned for restricting access to the Internet to limit critics and opposition parties, especially ahead of elections. Bussiek argues that a precondition for access to the Internet is access to a stable power supply. However, this does not occur in many countries including South Africa where the phenomena of mass rolling power cuts also known as loadshedding are the order for the day.

According to the Centre for Human Rights (2022), the cost of mobile data is higher in Africa and there are big price differences from country to country. For example, they state that 1GB of mobile data cost less than US\$2 in Mozambique in 2020, and less than US\$2.50 in Tanzania and Zambia, while in Eswatini and Namibia, 1GB cost as much as US\$10. Excessive data prices have been blamed on poor infrastructure, which necessitates costly

upgrades and investments (Centre for Human Rights, 2022). Furthermore, the low-income status of many countries is a contributing factor to the lack of affordability for mobile data.

## Digital Divide

Africa's persistent and worsening digital divide also presents barriers to digital access for specific demographics in both urban and rural areas, including women and children, and people living with disabilities (The Digital Rights Landscape in SADC Report, 2022). They argue that some countries have limited data on gender disparities in Information and Communications Technology (ICT) making it hard to determine the real needs of those countries. Mutsvairo and Ragnedda (2019) argue for the need to fix digital gaps in Africa, but policymakers need to ensure that their solutions are in line with their constitutional responsibilities. According to the Centre for Human Rights (2022), there is ample data on how the gender digital divide widens the gap of inequality, particularly in disadvantaged areas. They argue that in Africa, women are less likely to have a smartphone and internet access when compared to men. On a positive note, countries such as Mauritius, Namibia, and South Africa have been having increasing Internet usage by women (Centre for Human Rights, 2022).

## Privacy and Data Protection

Bussiek (2022) argues that government surveillance is widespread in many African countries without sufficient legal basis. For example, in Zimbabwe, the interception of private communications is permitted without a warrant issued by a court. He adds that the Transport and Communication Minister has the authority to order such surveillance. Meanwhile, the Centre for Human Rights (2022) argues that as of 2022, 61% of African States have enacted data protection and privacy legislation, but the implementation of such laws has been slow (Digital Rights Landscape in SADC Report, 2022).

Privacy and Data Protection laws have also been signed in countries such as South Africa whose introduction of the Protection of Personal Information Act (POPIA) is discussed further below. Either lack of funding or the failure to establish implementation agents has led to implementation challenges (Bussiek, 2022). He also argues that countries such as the Democratic Republic of Congo do not have data protection laws but a Digital Code which includes provisions relating to data protection. According to CIPESA (2019), many African countries have mandatory SIM card registration where subscribers are required to furnish telecom companies with extensive personal details, including their names and home addresses. Moreover, some of the personal information is collected by government departments and some private sector entities with no safeguards for safekeeping such information. This puts the personal data of users at big risk of abuse by state and non-state actors (CIPESA, 2019).

## Cybersecurity Laws

Many African countries have passed cybercrime legislation in recent years or are in the process of doing so (Bussiek, 2022). He also argues that the general concern is that many of these laws are over-ambitious and lack clear definitions of terminology. For instance, Sibe (2022) argues that in Nigeria, Parliament enacted the Cybercrime Act 2015. The National Information Technology Development Agency (NITDA) also rolled out the Nigerian Data



Protection Regulation (NDPR) in 2019. Furthermore, Sibe (2022) argues that Ghana passed its Cybersecurity Act 2020 to coordinate the nation's response to the prevention and management of cyberattacks and breaches. The country also previously signed into law the Data Protection Act in 2012 to protect the privacy and personal data of individuals.

Meanwhile, Sibidla (2021) argues that several draft laws are currently under consideration in some African countries. For instance, the Computer Crime and Cybercrime Bill 2020 and Data Protection Bill, 2020 was posted on the Government of Eswatini's website on 10 May 2021 in Eswatini. In Ethiopia, the government continued with its consideration of the draft Data Protection Proclamation, 2020, which has been under consideration since April 2020. In 2021, Kenya gazetted the Computer Misuse and Cybercrime (Amendment) Bill, 2021. The Bill seeks to provide for the prohibition against the sharing of pornography through the internet. Sibidla argues that in Malawi, the Ministry of Information is leading a Task Force to draft the data protection law for the country.

Internet surveillance is used to keep in check those who are critical of the government (Bussiek, 2022). According to Mare (2023), digital rights and responsibilities do not operate in a social vacuum. They must be actualised in different political, social, and economic environments. Some of these environments are permissive, whilst others are restrictive. Mare (2023) argues that countries such as Angola, Eswatini, Mozambique, and Zimbabwe can be classified as having restrictive legislative frameworks. These countries can also be classified as authoritarian according to the 2022 Democracy Index. Botswana, Lesotho, Namibia, Malawi, and South Africa boast of permissive legal instruments, although the situation remains tenuous in some of these countries (Mare, 2023). Furthermore, he posits that the passage of draconian laws that allow for the interception of communications in countries such as Angola, Eswatini, Mozambique, and Zimbabwe have also contributed to the shrinkage of the civic space.

Gibson (2022) argues that the world remains optimistic about a proposed Global Digital Compact by the United Nations, which is a set of shared principles for the globe's digital future. According to Gibson (2022), member states are expected to reach an agreement on the compact in September 2024, and it will outline shared principles for an open, free, and secure digital future for all. She further argues that the application of uneven laws across different countries and unregulated private Internet providers has resulted in multinational tech companies largely regulating themselves and failing to control harmful narratives online, including hate speech and disinformation.

## Internet Shutdowns and Fake News

*Internet shutdowns* are a growing threat to freedom of expression across the globe, especially on the African continent. According to Anthonio (2022), authoritarian regimes impose them to control protests and demonstrations. Furthermore, he argues that the use of repressive measures often results in the violation of the fundamental rights of citizens, including access to information, assembly, and the right to life. Experiences and literature from the African continent have, however, shown that Internet shutdowns are not always effective in silencing citizens who continue to mobilise despite the closing of digital spaces.

The Centre for Human Rights (2022) argues that in July 2021, the UN passed a resolution that condemns Internet shutdowns which often take the form of blocking websites or digital applications known as apps, network throttling, and partial or full disruptions to mobile or

broadband services. It posits that civic participation in digital political processes is limited during shutdowns, and the ability of the media and politicians to share and disseminate information is compromised. For instance, Internet shutdowns have been reported during elections in December 2018 in the Democratic Republic of Congo in areas with a strong opposition presence (Centre for Human Rights, 2022). There have been similar incidents in Tanzania in 2020 and Zambia in 2021, with shutdowns also imposed in response to protests and civil unrest in Eswatini, Ethiopia, Gabon, Senegal, and South Sudan (Anthonio, 2022). He argues that Ethiopia remains the biggest perpetrator in Africa with at least 23 recorded shutdowns since 2016.

Bussiek (2022) also argues that *fake news* is another growing challenge in the era of digital rights and digital politics. He adds that misinformation and disinformation have become the focus of debates and policy measures in recent times. Misinformation refers to false or misleading information without the intention to cause harm, whilst disinformation is false or misleading information that is deliberately created and intends to cause confusion, stoke divisions, or spread falsehoods (Bussiek, 2022).

## Human Rights in South Africa

Considering that digital rights are an extension of human rights for the Internet age, it is important to map out the state of human rights in South Africa. It has been widely reported by institutions such as the World Bank that South Africa with a population of over 60 million remains one of the world's most unequal societies, although it has one of the largest economies in Africa. According to the SAHRC (2021), human rights are protected under the Constitution of South Africa, Act 108 of 1996 which is the supreme law. The Bill of Rights contained in Chapter 2 of the Constitution is the foundation that enshrines the democratic rights and values of human dignity, equality, and freedom for all who live in South Africa (SAHRC, 2021). Furthermore, they argue that under the country's laws, the commission is not only empowered to promote, respect, observe, and assess a culture of human rights, but it can also investigate and take steps to redress where human rights have been violated among its many functions. Nationally, Human Rights Day is observed annually on 21 March as a reminder of citizen rights and those who sacrificed their lives for the country's freedom. South Africa's human rights record has been assessed based on reports from three key organisations discussed below.

### SA Human Rights Commission

In its trends and analysis report released in 2021, the SAHRC argues that the COVID-19 pandemic negatively impacted human rights, especially in healthcare, security, and education. It also observed the widening inequality gap and its impact on the poor who are struggling to access basic rights. The commission also acknowledged the challenges it faces due to budget cuts and a low staff complement. It recorded a total of 499 complaints during the 2020/2021 financial period linked to the pandemic and the violation of social and economic rights. According to Schimmel (2023), since the fall of apartheid, Black South Africans have experienced the most severe human rights violations. She argues that aside from Black women and children, lesbian/gay/bisexual/transgender individuals face extremely high rates of violent assaults. According to Schimmel (2023), South Africa appears to be failing to protect certain groups in society. She argues that ongoing corruption is another measure by which South Africa is failing to fulfil human rights.

## Amnesty International

Amnesty International (2023) also lists incidents of gender-based violence as a concern in South Africa while perpetrators enjoyed impunity. The organisation argues that education authorities are failing to eradicate pit latrines in schools, the National Health Insurance Bill will likely negatively impact access to quality healthcare, and a worsening energy crisis marked by power cuts known as load-shedding affects the rights of citizens to access water, health, and education.

## Human Rights Watch

In its World Report (2023), Human Rights Watch argues that South Africa failed to take meaningful measures to improve the protection of social and economic rights which have been undermined by widespread unemployment, inequality, poverty, the government's response to the COVID-19 pandemic, and corruption. According to the report, a combination of poor governance and unethical business practices has left many communities living in poverty.

## South Africa's Digital Rights Record

According to the Paradigm Initiative (2021), South Africa retains a good reputation in respect of internet rights and freedoms. In the 2022 Inclusive Internet Index, South Africa scored 74.3 points ranking it first in Africa and 49th out of 120 countries worldwide. The index is a tool to measure, track, and assess country-level progress toward creating an accessible, affordable, and relevant Internet that all citizens are ready to use (Inclusive Internet Index, 2022). Furthermore, the Paradigm Initiative (2021) argues that despite its number one ranking and efforts to move towards an inclusive digital environment, South Africa still faces substantial hurdles in advancing digital rights linked to existing inequalities and other barriers to access.

By in large, the constitutionally protected right to freedom of expression is well respected in South Africa (Paradigm Initiative, 2021), and the use and enjoyment of this right is moving online where there are an estimated 45.34 million active Internet users (Statista, 2024). According to the same report, close to 26 million Internet users or 42.8% of the total population used social media to access and disseminate information as of January 2024. However, there are concerns about the gender gap in Internet access also prevalent in Sub-Saharan Africa (Inclusive Internet Index, 2022).

The recognition and protection of the right to privacy is also considered a fundamental human right in South Africa's Constitution. In 2020, the country enacted POPIA to regulate the collection, use, and processing of personal data. Through POPIA, citizens are empowered with enforceable rights over their personal information (POPIA, 2024). According to Sibe (2022), the 2021 Cybercrimes and Cybersecurity Act was also passed a year later mandating electronic communication service providers and financial institutions to act when their systems suffer a cybersecurity attack or breach.

According to the Paradigm Initiative (2021), high data costs remain a challenge in South Africa and an obstacle to Internet access and connectivity. In turn, they are a barrier to exercising digital rights. They also argue that a stark rural/urban digital divide and the failure to advance digital skills in rural areas are also concerning. Following a decision by

the country's Competition Commission in December 2020, that pricing in South Africa was unacceptably high, mobile operators MTN and Vodacom were instructed to reduce their prices by 30– 50% (Research ICT Africa, 2020). However, data pricing remains high.

## Findings

This paper had two aims which are assessing important trends, developments, and challenges in respect of digital rights in Africa, and proposing recommendations for various role players promoting digital rights. This paper found that substantial barriers to Internet access for many African communities are continuing. Despite the persistent inequalities and digital divides, some governments such as South Africa are making efforts to include more of their nationals in digital transformation programmes. However, a lack of funds, mounting cases of violations, and no follow-throughs against those who break the law remain a challenge. Problems such as high data costs and unstable power supplies persist in many African countries posing further threats to efforts by citizens to engage online. This paper also found that while some governments are making progress in developing data protection policies, implementation remains a problem. Existing laws are not adequate to safeguard the personal information of citizens online and their right to privacy. This means that an effective way to stop the flow of fake news, for instance, might still be a long way off.

## Recommendations

Like similar studies before, this paper recommends the reform of surveillance laws in several countries through policymaking and jurisprudence to improve oversight. As already discussed, infringements on the human and digital rights of citizens impact their freedom of expression, their right to privacy and data protection, access to information, and dignity and equality. Civil society groups can do more to apply more pressure on authoritarian governments to follow and respect international human rights laws. They can also do more to mobilise marginalised groups so that their voices are heard more in ongoing debates about the benefits of digitalisation. Governments, private companies, academia, civil society, media, and private citizens can also join hands as Anthonio (2022) recommended to fight Internet shutdowns and close the gender gap in Internet access. Legislatures and the executive could also be involved in efforts to preserve access to a free, secure, and open digital space. They need to ensure that governments are held accountable and uphold their constitutional responsibilities to ensure vibrant democracies in Africa that allow healthy choices, debate, and engagement without fear of persecution. Governments must also end the harassment and intimidation of human rights defenders and others promoting digital rights.

## Conclusion

The evidence gathered in this paper paints a bleak picture of the state of digital rights in Africa. Once hailed as a beacon for human rights, South Africa's own human rights record leaves much to be desired yet the SAHRC maintains that it has continued to serve South Africans dutifully. It remains to be seen if South Africa can also 'dutifully' protect digital rights. The evidence also shows that many African countries must still do more to ensure the protection of digital rights in line with international best practices. Countries with existing

privacy laws are struggling with implementing them for various reasons. Civil society organisations can do much more to promote and defend digital rights through education programmes targeting the youth. The potential of the Internet to disseminate information and encourage citizen engagement cannot be understated, so it goes without saying that many countries are violating the digital rights of their citizen to express themselves freely. Internet shutdowns only serve to promote fake news. Therefore, frank discussions need to take place between scholars, government representatives, and civil society about the real threats of Internet shutdowns to devalue democracy in Africa.

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