State of Internet Freedom in Africa 2020

Resetting Digital Rights Amidst The Covid-19 Fallout

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1 Introduction

The fight to contain the novel coronavirus disease (COVID-19) is hurting digital rights in Africa. This study seeks to document these harms and their effects as experienced in various African countries. It provides recommendations on ways to recalibrate digital rights in view of the fallout from the pandemic.

1.1 Background

The COVID-19 pandemic has caused a profound global public health challenge. As of September 26, 2020, Africa had registered 1.4 million cases, 35,163 deaths, and 1.2 million recoveries.[1] This was against a global total of 32.9 million cases, a million deaths and 24.3 million recoveries.[2] Since February 14, 2020, when the first case was reported in Africa, the number of disease incidences has been much lower in the region than in other parts of the world. Contrary to earlier predictions, Africa's COVID-19 toll has been steadily declining.[3] Nonetheless, governments across Africa have adopted measures such as closure of institutions of learning, curfews, travel bans, compulsory quarantines, mandatory wearing of face masks, and restrictions on public gatherings, among other social distancing measures, to contain the spread of the virus. While some of the measures such as travel restrictions and bans on religious gatherings have been eased in some countries like Uganda, Kenya, Tanzania, South Africa, others remain in place.

In addition, governments in collaboration with various stakeholders such as tech companies and international agencies have implemented a raft of extraordinary technological measures to enhance disease surveillance, coordinate response mechanisms, and promote public awareness.[4] These measures, such as mass surveillance, content moderation to prevent misinformation, contact tracing, and online tracking present new challenges and have significant repercussions for freedom of expression, privacy, access to information, assembly and association. As a result, there is growing tension between the protection of public health and the protection and promotion of civil liberties.

One of the key challenges to digital rights, especially privacy and personal data protection, has been the tracking and monitoring of people's movements, communications and health data by governments aided by private companies and humanitarian bodies. In this regard, technologies for mass surveillance have been deployed to collect and process troves of call data records, social media data, and phone location data. There is also usage of contact tracing mobile applications that allow for analysis of data and tracking of persons' movements and interactions.[5] A number of these measures breach the right to privacy, lack sufficient oversight, and do not respect existing data protection principles.[6]

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[1] *Africa CDC, Latest updates on the COVID-19 crisis from Africa CDC, https://africacdc.org/COVID-19/*

[2] *Worldometer, COVID-19 Coronavirus Pandemic, https://www.worldometers.info/coronavirus/*

[3] *Geoffrey York, Africa's low COVID-19 death rate has multiple causes, WHO says, September 25, 2020, https://www.theglobeandmail.com/world/article-africas-low-covid-19-death-rate-has-multiple-causes-who-says/*

[4] *COVID-19 in Africa: When is Surveillance Necessary and Proportionate? https://cipesa.org/2020/03/COVID-19-in-africa-when-is-surveillance-necessary-and-proportionate/*

[5] *Mobile Health Surveillance Is Here to Stay, So How Do We Protect Privacy? https://www.rand.org/blog/2020/08/mobile-health-surveillance-is-here-to-stay-so-how-do.html*

[6] *Personal Data Protection and privacy principles, https://archives.un.org/sites/archives.un.org/files/_un-principles-on-personal-data-protection-privacy-hlcm-2018.pdf*

As of March 2019, Africa had a combined internet penetration rate of 39.3%, amounting to 527 million users. Of these, 213 million were Facebook subscribers as of December 2019.[7] In Sub-Saharan Africa, mobile penetration stands at 44%, amounting to 456 million mobile users, of which 239 million access the internet from their mobiles.[8]

While some governments have proactively disseminated information on the pandemic, others have been complicit in spreading disinformation about the pandemic, while many others have set up units to fight disinformation.[9] A related concern has been the adoption by some governments of draconian laws to curb the spread of misinformation, which has had a chilling effect on freedom of expression and access to information. As such, laws have been widely used during the period to crack down on the media, dissenting voices, and government critics.[10] These new laws against fake news are often characterised by broadness and vagueness in their definitions and application. Further, they prescribe punitive sanctions,[11] such as prison sentences of up to six months in South Africa,[12] five years in Botswana and Algeria[13] and up to 20 years in Zimbabwe.[14]

Other countries, such as Ethiopia, carry a broad definition of misinformation that gives authorities discretionary powers to declare any piece of information false.[15] Indeed, some governments were quick to invoke these laws in their efforts to combat what they considered misinformation on the pandemic. In Egypt, for instance, the Supreme Council for Media Regulation in March 2020 suspended websites for six months for "spreading false news" on the coronavirus and charged their owners,[16] continuing a practice under which over 500 websites had been blocked by the end of 2019.[17]

Censorship was also reported, with some governments limiting access to information on the virus. In Egypt, Botswana,[18] Burundi, Tanzania, the Ivory Coast and Somalia,[19] only government statements on the virus could be published. In Swaziland, using printed and electronic media to obtain information about COVID-19 is banned without prior permission of the health ministry.[20] Indeed, across Africa there has been increased arrests, intimidation and threats on people sharing unofficial information about the virus.[21] Reporters Sans Frontiers recorded several assaults on journalists by policemen during the pandemic.[22] Meanwhile, Togo, Ethiopia, Algeria, Zimbabwe, and Guinea continued to disrupt communications, denying many citizens access to COVID-19-related news and information.

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7   Africa Internet Stats as at March 2020 2019, https://www.internetworldstats.com/stats1.htm

8   GSMA, Mobile Economy 2020, https://www.gsma.com/mobileeconomy/wp-content/uploads/2020/03/GSMA_MobileEconomy2020_SSA_Eng.pdf

9   Russian coronavirus disinformation may be for domestic audiences, expert says,
    https://www.euractiv.com/section/coronavirus/news/russian-coronavirus-disinformation-may-be-for-domestic-audiences-expert-says/

10 Government gazettes tough new laws, https://twitter.com/cipesaug/status/1245330240685178881

11 COVID-19 emergency laws spell disaster for press freedom https://rsf.org/en/news/COVID-19-emergency-laws-spell-disaster-press-freedom

12 South Africa criminalises the dissemination of false information regarding COVID-19,
    https://altadvisory.africa/2020/03/19/south-africa-criminalises-the-dissemination-of-false-information-regarding-COVID-19/

13 Fake news bill will tighten and gag press freedom in Algeria, https://rsf.org/en/news/fake-news-bill-will-tighten-gag-press-freedom-algeria

14 Public Health Prevention Containment and Treatment National Lockdown Order,
    https://www.veritaszim.net/sites/veritas_d/files/SI%202020-083%20Public%20Health%20%28COVID-19%20Prevention%2C%20Containment%20and%20Treatment%29%20%28National%20Lockdown%29%20Order%2C%202020.pdf

15 Ethiopia: Free speech risk amid COVID-19, https://www.hrw.org/news/2020/05/06/ethiopia-free-speech-risk-amid-COVID-19

16 Egypt withdraws British reporter's press credentials for questioning official coronavirus figures,
    https://rsf.org/en/news/egypt-withdraws-british-reporters-press-credentials-questioning-official-coronavirus-figures

17 Demonstrations in Egypt: a government official is likely to block BBC Arabic after covering limited protests, https://www.bbc.com/arabic/middleeast-49796070

18 Emergency powers COVID-19 regulations 2020, https://bw.usembassy.gov/wp-content/uploads/sites/125/Emergency-Powers-COVID-19-Regulations-2020.pdf

19 Somali officials cannot claim COVID-19 information monopoly, https://rsf.org/en/news/somali-officials-cannot-claim-COVID-19-information-monopoly-rsf-and-nusoj-say

20 The Coronavirus COVID-19 regulations 2020, http://www.gov.sz/images/CORONA/The-Coronavirus-COVID-19-Regulations-2020.pdf

21 Has COVID-19 changed the narrative on press freedom in Africa?, https://www.africaportal.org/features/has-COVID-19-changed-narrative-press-freedom-africa/

22 Coronavirus infects press freedom in Africa, https://rsf.org/en/news/coronavirus-infects-press-freedom-africa

Given the fast spread of the virus, there have also been concerns over the restrictions on movement and public gatherings imposed by governments.[23] Further, there has been widespread absence of transparency, accountability, and legal oversight over the emergency measures, many of which are disproportionate and have fallen short of international human rights standards and rule of law.[24] For example, in Botswana, parliament passed an emergency law in April 2020 granting the president sweeping powers to rule by decree for six months.[25] Such measures could grant authoritarian regimes a blank cheque to impose unnecessary, broad and permanent measures that could erode internet freedom. There are also fears that the temporary measures and deployed systems could be repurposed for other uses after the pandemic.[26]

Nonetheless, some positive measures have also been noted since the emergence of the pandemic. Telecom companies such as the MTN, Airtel, Vodafone and other operators in various African countries reduced or in some cases waived the cost of data bundles, online transactions and electronic payments.[27] Some Internet Service Providers equally discounted internet subscription fees and invested further to increase internet access.[28] While the benevolence of the private players was laudable, it was not indefinite as Airtel and MTN discontinued their mobile money and mobile broadband waivers at the end of May 2020.[29] Meanwhile, several governments have promoted the use of e-commerce and cashless transactions.[30] Further, social media has been used in countries like Rwanda, South Africa, Uganda and Kenya to increase access to information and promote consumer protection and awareness on the virus. Yet, alongside these positive developments at a time technology was gaining centrality in the lives of persons and communities, the COVID-19 pandemic also illuminated the unequal access to technology in African countries.

1.2 Study Rationale

In 2019, CIPESA reviewed the practices of African states on internet freedom over the past two decades.[31] The study revealed a growing trend of internet controls including the weaponisation of laws to legitimise repressive actions such as internet censorship, surveillance measures, network disruptions, and social media taxation. In their responses to the pandemic, African governments have not only adopted new strategies but also perfected existing strategies and practices that curtail internet freedom, albeit with much speed and less resistance now.

While technology can play an important role in containing the pandemic, its application should not violate human rights. The imposition of unregulated, unchecked and excessive emergency measures by governments in collaboration with non-state actors during the COVID-19 pandemic period raises fundamental questions on their commitment to protecting internet freedom and respecting digital rights. Hence, the debate about the ethics and legality of measures undertaken, and the extent of the associated risks, is an imperative.

23 *Europe: Amnesty International highlights human rights priorities for state responses to COVID-19,*
    https://www.amnesty.org/en/latest/news/2020/04/europe-amnesty-international-highlights-human-rights-priorities/

24 *Why COVID-19 is a Crisis for Digital Rights, https://digitalfreedomfund.org/why-COVID-19-is-a-crisis-for-digital-rights/*

25 *Censorship, the unexpected side-effect of COVID-19, https://mg.co.za/africa/2020-05-11-censorship-the-unexpected-side-effect-of-COVID-19/*

26 *Extraordinary powers need extraordinary protections, https://privacyinternational.org/news-analysis/3461/extraordinary-powers-need-extraordinary-protections*

27 *Humfrey Mpairwe, No MOMO Charges, New Data Bundles: Inside MTN's Plan On Corona Virus, Techpoint Magazine, March 19, 2020,*
    https://techpointmag.com/the-mtn-plan-on-corona-virus/ ; Joe Jinja, Corona Virus: Airtel Money Sending Fees Slashed For The Next 30 Days,Techpoint Magazine, March 19, 2020,
    https://techpointmag.com/airtel-money-fees-slashed-for-30days/

28 *Humfrey Mpairwe, "MTN Uganda Introduces New WORK From Home Internet Bundles," Techpoint Magazine, March 19, 2020,*
    https://techpointmag.com/mtn-work-from-home-internet-bundles/; see also, Branic, "Africell's New Data Bundles in response to Corona Virus to help those working from home,"
    March 21, 2020, https://www.branicsblog.com/africells-new-data-bundles-in-response-to-corona-virus-to-help-those-working-from-home/

29 *New Vision Admin "MTN, Airtel announce changes in mobile money rates," May 26, 2020,*
    https://www.newvision.co.ug/news/1519303/-sponsored-content-mtn-airtel-announce-changes-mobile-money-rates

30 *Humfrey Mpairwe, "MTN Uganda Partners with Vodacom Tanzania to Ease Mobile Money Transfer," Techpoint Magazine, February 25, 2020,*
    https://techpointmag.com/mtn-partnership-with-vodacom/

31 *State of Internet Freedom in Africa 2019, https://cipesa.org/?wpfb_dl=307*

While "well-intentioned", efforts to contain the virus could, if retained, potentially usher in a new era of digital surveillance and become a pathway to further undermine, repress and restrict internet freedom. In a continent where digital authoritarianism is rising, the legitimisation of surveillance, censorship and abuse of rule of law breaches under the guise of tackling a public health crisis could create a new normal, and erode the constitutional gains over the past decade. While desperate times may call for desperate measures, the measures adopted in response to this pandemic should not erode internet freedom. It is therefore important to track and document these measures and their effects on internet freedom in Africa.

1.3 Aim of the Study

The study sought to document the measures implemented by governments in Africa in fighting the COVID-19 pandemic and their varying impact on digital rights. The study also proposes remedial and mitigation measures to reset digital rights in Africa during and after COVID-19.

1.4 Methodology

The study employed a qualitative approach including literature review, policy and legal analysis, and key informant interviews. Media reports of events, reports by different organisations, academic works, government documents including laws and policies, were reviewed. Further, the study conducted interviews with key informants who included policy makers, researchers, academics, techies, journalists, and human rights defenders. Researchers based in various countries documented the local incidents and provided insights on the effects of such measures.

2 Results

This section traces the key COVID-19 preventive measures that have been implemented in various African countries. It details the various measures, and highlights their manifestations and their impact on digital rights.

2.1 Violations of Freedom of Expression

As the continent grappled with how to deal with the pandemic that still has no known cure, there was an increase in COVID-19-related mis/disinformation, especially on social media platforms. Governments responded by instituting various measures, including enactment of emergency laws that criminalised fake news, arrest and prosecution of journalists and bloggers, as well as threatening punitive sanctions against media houses found guilty of spreading fake news on COVID-19. There were also cases of online censorship, including deletion and shutdowns of websites in countries like Egypt, Morocco, and South Africa.

2.1.1 Enactment and Amendment of Repressive Laws Restricting Expression

Several countries have adopted repressive laws and regulations that have curtailed the right to freedom of expression. A number of these laws have broad definitions of fake or false news, or misinformation, and provide excessive and harsh penalties, compared to other national laws punishing more serious crimes. Accordingly, they have the potential to entrench censorship and abuse by law enforcement agencies. Some of the laws passed before the coronavirus crisis have been used to repress expression during the pandemic; others were tailor-made for COVID-19.

In Ethiopia, the government enacted the Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185/2020 in March 2020, which criminalised hate speech and spreading misinformation. It defines disinformation as "speech that is false, is disseminated by a person who knew or should reasonably have known the falsity of the information and is highly likely to cause a public disturbance, riot, violence or conflict."[32] This definition is broad and gives authorities wide discretion to determine what is false, or declare any information as false. Article 5 of the Proclamation prohibits the dissemination of "any disinformation on public meetings by means of broadcasting, print or social media using text, image, audio or video". The penalty is imprisonment not exceeding one year or a fine not exceeding 50,000 Birr (USD 1,350).

In March 2020, South Africa's Department of Cooperative Governance and Traditional Affairs (COGTA) published Regulations issued in terms of Section 27(2) of the Disaster Management Act, 2002.[33] Regulation 11(5) provides that any person who "publishes any statement, through any medium, including social media, with the intention to deceive any other person about COVID-19; COVID-19 infection status of any person; or any measure taken by the Government to address COVID-19, commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding six months, or both such fine and imprisonment."

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[32] *Proclamation No. 1185/2020, https://chilot.me/wp-content/uploads/2020/04/HATE-SPEECH-AND-DISINFORMATION-PREVENTION-AND-SUPPRESSION-PROCLAMATION.pdf*

[33] *The Regulations, https://altadvisory.africa/wp-content/uploads/2020/03/COVID-19-Regulations-issued-in-terms-of-the-Disaster-Management-Act-2002-18-March-2020.pdf*

Zimbabwe also introduced the Statutory Instrument 83 of the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020.[34] Section 14 of the law criminalises the publication or communication of false or fake 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." The penalty for the offence is a fine up to USD 10,000, or imprisonment for a period not exceeding 20 years, or both.[35]

In April 2020, Algeria passed a bill amending its Penal Code that criminalises the broadcast of "fake news" deemed to be harmful to "public order and state security".[36] The law was denounced by Reporters Without Borders as vague and a tool for censorship and intimidation of the press.[37] In May 2020, Niger adopted a controversial law that provides a legitimate basis for the interception of electronic communications.[38]

Tanzania's Electronic and Postal Communications (Online Content) Regulations, initially published in 2018,[39] were repealed and replaced in July 2020.[40] The regulations exacerbate the crackdown on free speech as they require the registration of all online publishers, impose annual licence fees on all online content services, grant the regulator sweeping powers to suspend media outlets and journalists, and detail a broad list of prohibited content which includes the publication of "content with information with regards to the outbreak of a deadly or contagious disease in the country or elsewhere without the approval of the respective authorities." The penalty for breach of the regulations is a fine of not less than five million Tanzanian shillings (USD 2,140), imprisonment for not less than 12 months, or both.

In March 2020, Morocco's government Council approved a controversial Bill 22-20 to regulate the use of social media, open broadcast networks, and similar networks. Under this law, a person who voluntarily, through social networks, encourages the public to withdraw funds from banks, is subject to a prison sentence of six months to three years or a fine of between 5,000 Moroccan dirham (MAD) (USD 500) and MAD 50,000 (USD 5,000), or both.[41] In addition, a person who voluntarily, through social networks, publishes or shares digital content containing false information intended to sow doubt on the quality and safety of certain products and goods, and presents them as if they constitute a threat and danger to public health and environmental safety, is subject to a prison sentence of six months to three years, or a fine of MAD 5,000 (USD 500) to MAD 50,000 (USD 5,000), or both. The bill also established a procedure administrative authorisation for all internet access providers and content providers.

The government justified the bill as necessary to "put an end to a legislative vacuum" on computer crime and to crack down on fake news and acts which damage the reputation and honour of individuals, "practices which have been particularly spread during the Coronavirus pandemic", according to official sources.[42] Civil society opposed the Bill and termed the government's actions as a trojan horse for the introduction of new forms of censorship.[43]

34 *Statutory Instrument 83 of 2020,*
    https://www.veritaszim.net/sites/veritas_d/files/Pub%20Health%20Lockdown%20Order%20%28SI%2083%2C2020%29%20Latest%20Consolidation.pdf

35 *Veritas,Court Watch 5-2019 The new standard scale of fines, http://www.veritaszim.net/node/3459*

36 *Algeria criminalises 'fake news' to protect 'state security'*
    https://www.aljazeera.com/news/2020/04/algeria-criminalises-fake-news-protect-state-security-200422201042011.html

37 *Algeria criminalises 'fake news', activists denounce law https://middle-east-online.com/en/algeria-criminalises-%E2%80%98fake-news%E2%80%99-activists-denounce-law*

38 *Niger Passes New Law on Interception of Communications, https://cipesa.org/2020/08/niger-passes-new-law-on-interception-of-communications/*

39 *Tanzania: Electronic and Postal Communications (Online Content) Regulations 2018,*
    https://crm.misa.org/upload/web/supp-gn-no-133-16-03-2018-epoca-online-content-regulations-2018.pdf

40 *Electronic and Postal Communications (Online Content) Regulations,*
    https://www.tcra.go.tz/document/The%20Electronic%20and%20Postal%20Communications%20(Online%20Content)%20Regulations,%202020

41 *Fake News in Morocco http://www.medialawinternational.com/moroccoarticle.html*

42 *Morocco, Under Pressure From Civil Society, the "liberticide" Bill Concerning Social Networks is Backtracking,*
    https://www.majalat.org/news/morocco-under-pressure-civil-society-liberticide-bill-concerning-social-networks-backtracking

43 *Joint press release,*
    https://www.article19.org/fr/resources/maroc-non-au-choc-liberticide-en-periode-de-crise-sanitaire/?fbclid=IwAR1jU64nIXeYscBiHIcGWszQonorwsWMIq-YtA5SkefQptY7cqCBinA1s4w

For example, the Budapest Convention on Cybercrime, which the government adopted in 2018 and claimed to be enabling, did not provide for the offences the Bill was creating.[44] Also, the development of the Bill was done in haste and was shrouded in secrecy. To underline the government's lack of transparency, no version of the Bill had been made public despite legal requirements to do so. Facing mounting pressure, the Minister of Justice recalled the Bill, and postponed further work on it until the end of the pandemic period and after holding necessary consultations with all players.[45]

Kenya, Niger, Burkina Faso, Senegal, Zambia, Egypt Cameroon and Nigeria, continued to implement existing laws with repressive provisions to curtail freedom of speech during the COVID-19 period.

In Kenya, some of the sections of the Computer Misuse and Cybercrimes Act, 2018 limit freedom of expression.[46] Section 22 prohibits the publication of false publications, that is, false, misleading or fictitious data or misinformation with intent that the data shall be considered or acted upon. The offence carries a penalty of not more than five million shillings (USD 46,240) or imprisonment not exceeding two years, or both. Section 23 prohibits the publication of false information that is calculated or results in panic, chaos, or violence, or is likely to discredit a person. This offence carries a penalty of no more than USD 46,240 or imprisonment not exceeding 10 years, or both.

Article 31 of Niger's 2019 law on cybercrime criminalises the "dissemination, production and making available to others of data that may disturb public order or threaten human dignity through an information system".[47] Likewise, Burkina Faso adopted a law in 2019 that targets journalists by criminalising the "demoralisation" of its defence forces by any means, and the dissemination of information that could "undermine" public order or security operations. Persons found culpable could face up to 10 years in jail or fines of USD 8,900.[48]

In Senegal, section 255 of the Penal Code prohibits the publication, dissemination, disclosure or reproduction, by any means whatsoever, of false news.[49] The penalty is imprisonment for a term between one and three years. Zambia's Penal code, under section 67, prohibits the publication either orally or in writing, of any false news, that is, any statement, rumour or report which is likely to cause fear and alarm among the public or disturb public peace.[50] The penalty is imprisonment for three years.

Egypt has continued to enforce Law 180 of 2018 Regulating the Press and Media, whose Article 4 grants the Supreme Media Council the authority to ban or suspend the distribution, broadcast, or operation of any publications, newspapers, media outlets, or advertising materials containing information deemed to threaten national security; disturb the public peace; or promote discrimination, violence, racism, hatred, or intolerance.[51] Further, Article 19 of the law authorises the Council to suspend or block any personal website, blog, or social media account that has more than 5,000 followers if it publishes fake news advocating and inciting the violation of a specific law or promoting violence or hatred. More than 500 websites and social media pages, including those belonging to the media and journalists, have been blocked during the pandemic.[52]

44   *Morocco Enacts New Law to Fight Fake News, Cybercrime,*
      https://www.moroccoworldnews.com/2020/03/296735/morocco-enacts-new-law-to-fight-against-fake-news-cybercrime/; No to liberticidal shock in times of health crisis,
      https://www.facebook.com/notes/euromed-rights-tunisiamoroccoalgerialibya/non-au-choc-liberticide-en-p%C3%A9riode-de-crise-sanitaire/2633270020325308/

45   *Morocco, Under Pressure From Civil Society, the "liberticide" Bill Concerning Social Networks is Backtracking,*
      https://www.majalat.org/news/morocco-under-pressure-civil-society-liberticide-bill-concerning-social-networks-backtracking

46   *Text of the Act, http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ComputerMisuseandCybercrimesActNo5of2018.pdf*

47   *Law against cybercrime, https://www.scribd.com/document/414507221/Loi-Cybercriminalite-Niger#from_embed*

48   *Burkina Faso tightens press freedom amid security crisis, https://www.theguardian.com/world/2019/jul/14/burkina-faso-tightens-press-freedom-amid-security-crisis*

49   *Senegal / Coronavirus: Abdoulaye Mbaye Pékh lectured for spreading fake news*
      https://cio-mag.com/ssenegal-coronavirus-abdoulaye-mbaye-pekh-sermonne-pour-diffusion-de-fake-news/&prev=search&pto=aue

50   *Penal Code http://www.parliament.gov.zm/sites/default/files/documents/acts/Penal%20Code%20Act.pdf*

51   *Initiatives to Counter Fake News: Egypt https://www.loc.gov/law/help/fake-news/egypt.php*

52   *Egypt blocks online "fake news" about coronavirus https://rsf.org/en/news/egypt-blocks-online-fake-news-about-coronavirus*

Moreover, Egypt's Law No. 175 of 2018 on Anti-Cybercrime grants investigating authorities power to block or suspend Egyptian-based or foreign websites featuring content that is deemed threatening to national security or the national economy. Under Penal Code, Law No. 58 of 1937, the deliberate spreading of false information or rumors abroad about the internal conditions of the country, which might weaken the country's financial credibility or harm its national interests, is punishable by a fine and a prison term of between six months and five years' imprisonment.

Cameroon's Law No. 2010/012 in section 78 prohibits the use of electronic or information systems to design, publish or propagate information without being able to attest its veracity or prove that the said piece of information is true.[53] The penalty for the offence is a term of imprisonment between six months and two years, or a fine between five million CFA (USD 8,896) and million CFA francs (USD 17,793), or both. The penalty may be doubled where the offence is committed with the aim of disturbing public peace. Some provisions of the Penal Code can potentially be applied to deal with people spreading disinformation and discrediting government action and prominent personalities on social networks.[54]

Section 24 of Nigeria's Cybercrimes (Prohibition, Prevention, etc) Act[55] has been criticised[56] for being vaguely worded and providing a basis for arrests of individuals and journalists expressing their opinions, including on COVID-19. Under the law, any person who sends a message or other matter by means of a computer system or network that they know "to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will, or needless anxiety to another or causes such message to be sent," commits an offence punishable by a fine of seven million Naira (USD 18,348) or imprisonment for a term not exceeding three years, or both

Section 76 of Ghana's Electronic Communications Act creates the offence of false communications, whereby if a person uses an electronic communications service, to send a communication which is "false or misleading and likely to prejudice the efficiency of life saving service or to endanger the safety of any person, ship, aircraft, vessel or vehicle" commits an offence.[57] The offence is punishable by a fine of not more than three thousand penalty units, or imprisonment for a term not exceeding five years, or both. A person is deemed liable if they did not take reasonable steps to find out whether the communication was false, misleading, reckless or fraudulent.

53   Law No. 2020/012 https://essokacybersecuritydiv.com/uploads/3/4/9/3/34930120/law_relating_to_cybersecurity_and_cybercriminality-1.pdf
54   Penal Code, https://www.wipo.int/edocs/lexdocs/laws/en/cm/cm014en.pdf
55   Text of the Act, https://www.cert.gov.ng/ngcert/resources/CyberCrime__Prohibition_Prevention_etc__Act__2015.pdf
56   Joint Letters May 27, 2020 Re: Use of cybercrimes legislation to restrict fundamental rights and freedoms in Kenya and Nigeria
     https://www.article19.org/wp-content/uploads/2020/06/Joint-Letters-Mr.-David-Kaye-UN-Special-Rapporteur.pdf
57   Electronic Communications Act, https://nca.org.gh/assets/Uploads/NCA-Electronic-Communications-Act-776.pdf

2.1.2 Enforcement of Repressive Laws

Besides the enactment of the repressive COVID-19-related laws and regulations, many governments across the continent also invoked laws predating the pandemic to intimidate, arrest, and detain persons, including whistleblowers and critics, in order to censor what they deemed false information in relation to COVID-19, yet some of the information was actually factual.

Tanzania was a leader among the countries where the most serious affronts to freedoms were witnessed. In April 2020, Tanzanian authorities arrested and charged at least four individuals for publishing information deemed unofficial about COVID-19. Awadhi Lugoya was arrested and accused of wrongful use of social media, for opening a Facebook account called "Coronavirus Tanzania" to spread "misleading information" about the pandemic.[58] Mariamu Jumanne Sanane, a third-year student at the University of Dar es Salaam, was arrested in April 2020 after she claimed on social media that there were 230 confirmed cases of COVID-19 and four deaths in Tanzania.[59] Afrikana Mlay was also arrested over accusations of spreading false information on social media, to the effect that the government was hiding the number of Coronavirus cases in the country.[60] Police claimed that the post was "intended to create panic and discourage efforts being undertaken by the government in fighting [the] spread of the virus."

During the same month, the Zanzibar Information Department suspended Talib Ussi Hamad, a journalist with the *Tanzania Daima* daily newspaper, for six months under the Registration of News Agents, Newspapers, and Books Act No. 5 of 1988 and its amendments No. 8 of 1997. Talib Hamad had allegedly reported about a COVID-19 patient without the patient's consent.[61] He filed a case in the Zanzibar High Court in July challenging the decision. The Zanzibar government lifted the suspension in August 2020.[62]

Likewise, *Mwananchi* daily newspaper had its online license suspended for six months after it posted a photo of President John Magufuli out shopping and surrounded by a crowd of people, eliciting online discussion on Tanzania's approach to addressing COVID-19 and the apparent breach of social distancing guidelines.[63] The newspaper was also fined five million Tanzanian shillings (USD 2,200) for the publication, which authorities claimed breached the Electronic and Postal Communications (Online Content) Regulations as it was allegedly misleading and had caused confusion in the community.[64]

Three other media organisations - Star Media Tanzania Ltd, Multichoice Tanzania Ltd and Azam Digital Broadcast Ltd – were on April 2, 2020 fined USD 2,200 each and ordered to apologise for "transmission of false and misleading information" about the country's approach to managing COVID-19.[65] In addition, Kwanza Online TV was suspended for 11 months in June 2020 for reposting on Instagram a health alert from the US Embassy warning of an "elevated" risk of COVID-19 in the country, which the regulator found to be misleading content that contravened professional standards, arguing that the media house had failed to verify the accuracy of the information in the alert.[66]

These developments are highly reflective of how the government of Tanzania has in recent years, especially during the prevalence of the COVID-19 pandemic, used repressive laws to crack down, silence and punish journalists for doing their jobs.[67]

58 PesaCheck, TRUE: A Tanzanian man has been arrested on charges of opening a Facebook account to spread COVID-19 misinformation,
    https://pesacheck.org/true-a-tanzanian-man-has-been-arrested-on-charges-of-opening-a-facebook-account-to-spread-976c24764967

59 China.org, Tanzanian university student arrested over spreading COVID-19 rumor, http://www.china.org.cn/world/Off_the_Wire/2020-04/11/content_75920828.htm

60 Tanzanian man held for allegedly spreading false information on COVID-19, http://www.xinhuanet.com/english/2020-04/06/c_138951913.htm

61 Tanzanian reporter banned for six months for coronavirus coverage, https://rsf.org/en/news/tanzanian-reporter-banned-six-months-coronavirus-coverage

62 Z'bar Govt Lifts Suspension Order against Journalist, https://mct.or.tz/suspension/

63 Tanzania: Authorities must end crackdown on journalists reporting on COVID-19,
    https://www.amnesty.org/en/latest/news/2020/04/tanzania-authorities-must-end-crackdown-on-journalists-reporting-on-COVID19/

64 TCRA suspends Mwananchi's online licence for six months,
    https://www.thecitizen.co.tz/news/TCRA-suspends-Mwananchi-s-online-license-for-Six-months/1840340-5527310-13ixgsgz/index.html

65 Covid-19: Media fined for broadcasting against Tanzania's stance, https://www.thecitizen.co.tz/news/Covid-19--Media-fined-for-/1840340-5514540-ojukruz/index.html

66 Tanzania bans Kwanza Online TV for 11 months citing 'misleading' Instagram post on COVID-19
    https://cpj.org/2020/07/tanzania-bans-kwanza-online-tv-for-11-months-citing-misleading-instagram-post-on-covid-19/

67 Tanzania: Authorities must end crackdown on journalists reporting on COVID-19,
    https://www.amnesty.org/en/latest/news/2020/04/tanzania-authorities-must-end-crackdown-on-journalists-reporting-on-COVID19/

Another country where the COVID-19 period witnessed a wave of attacks on journalists and social media users was Morocco where, by March 2020, police had arrested at least a dozen people for "spreading rumours" about the COVID-19.[68] By April 2020, the Public Prosecutor's Office had opened 93 judicial investigations leading to the prosecution of 70 people, of whom 19 were under arrest, while other investigations were still underway.[69] Later the same month, a Moroccan court sentenced a man to two months in prison and a fine of MAD 2,000 (USD 212). He had shared on Facebook a video of himself wearing a medical mask and gloves and claiming that COVID-19 had caused several deaths in Morocco.[70] Another YouTuber, Mi Naima or Mother Naima, was arrested for sharing videos on her YouTube channel and Facebook page claiming that coronavirus was not real.[71]

In Kenya, authorities arrested four individuals including two bloggers. They were charged under section 23 of the Computer Misuse and Cybercrimes Act 2018,[72] for publishing false information. In March 2020, 23-year-old Elijah Kitonyo, a student, was arrested after publishing claims on Twitter that the government was telling lies about the COVID-19 situation in the country.[73] According to the authorities, this contravened the Computer Misuse and Cybercrimes Act. In the same month, blogger Robert Alai was arrested and charged under section 22(1) of the same Act for publishing alarming and false information in a Twitter post which claimed that two people had died of COVID-19 in Mombasa.[74] The arrest came a day after a statement by the Cabinet Secretary for Health warning against misinformation about the virus.

In the same month, John Kiarie, a Member of Parliament, was detained, questioned, and later released by police over tweets claiming that over 7,000 Kenyans were in mandatory quarantine at Lenana School and Kinyanjui Technical Institute, contrary to the figure of 2,050 given by the government.[75] The health minister disputed the claims and rebuked the legislator, saying it was unethical and immoral for a leader to mislead Kenyans and spread lies about the pandemic with the aim of painting the government in a negative light.

In Uganda, Adam Obec of the Kampala Capital City Authority (KCCA) was arrested in April 2020 on allegations of "spreading false information regarding coronavirus."[76] According to the police, Obec circulated information on social media claiming that Uganda had recorded its first COVID-19 death in Koboko district, an action that purportedly triggered fear and panic in the public and undermined government's efforts to contain the pandemic. Also in Uganda, Pastor Augustine Yiga of Revival Church in Kampala was arrested and charged for uttering false information and spreading harmful propaganda in relation to COVID-19.[77] He was later released on a non-cash bail of UGX 2 million (USD 550), pending trial.[78]

68   *Morocco makes a dozen arrests over coronavirus fake news,*
    https://www.reuters.com/article/us-health-coronavirus-morocco/morocco-makes-a-dozen-arrests-over-coronavirus-fake-news-idUSKBN2162DI

69   *25,857 people prosecuted, including 1,566 under arrest, https://www.medias24.com/bilan-des-poursuites-et-arrestations-liees-a-l-etat-d-urgence-sanitaire-9569.html*

70   *Moroccan Police Arrest Another COVID-19 Scaremonger, https://www.moroccoworldnews.com/2020/03/296052/moroccan-police-arrest-another-COVID-19-scaremonger/*

71   *Morocco Arrests Female YouTuber for Spreading Coronavirus Fake News,*
    https://www.moroccoworldnews.com/2020/03/296708/morocco-arrests-female-youtuber-for-spreading-coronavirus-fake-news/

72   *Text of the Act, http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ComputerMisuseandCybercrimesActNo5of2018.pdf*

73   *DCI arrests man over COVID-19 tweet, https://www.nation.co.ke/news/DCI-arrests-man-over-COVID-19-tweet/1056-5492720-bgpj5kz/index.html*

74   *Blogger Alai to be charged over alarming coronavirus post, https://www.nation.co.ke/kenya/news/blogger-alai-to-be-charged-over-alarming-coronavirus-post--280580*

75   *MP John Kiarie grilled at DCI office over fake coronavirus tweet,*
    https://citizentv.co.ke/news/cs-kagwe-blasts-dagoretti-south-mp-john-kiarie-over-fake-7000-kenyans-in-quarantine-tweet-328364/

76   *COVID-19 CRISIS: KCCA staff arrested over spreading fake news on coronavirus,*
    https://www.pmldaily.com/news/2020/04/COVID-19-crisis-kcca-staff-arrested-over-spreading-fake-news-on-coronavirus.html

77   *Pastor Yiga arrested for misleading public on COVID-19,*
    https://www.monitor.co.ug/News/National/Pastor-Yiga-arrested-misleading-public-COVID19/688334-5507644-1380ounz/index.html

78   *Pastor Yiga released on bail pending trial,*
    https://www.monitor.co.ug/uganda/news/national/pastor-yiga-released-on-bail-pending-trial-1888268#:~:text=Tuesday%20May%2005%202020&text=Pastor%20Augustine%20Yiga%20alias%20Abizaayo,sureties%20were%20bonded%20at%20Shs5m

Similarly, on April 21 the Ugandan military arrested and detained Kakwenza Rukirabashaija, a writer, over a post on Facebook on April 6 that allegedly urged the public not to comply with public health guidelines issued to combat the spread of COVID-19.[79] The post suggested that the president needed to "be serious" about enforcing directives, and that "if the country plunges into the abyss of famine ... never blame coronavirus but yourself and bigoted methods." The author was thereafter charged with committing an act likely to spread a disease, contrary to section 171 of the Penal Code Act and later transferred to civil detention on remand.[80] He was later released on a non-cash bail of UGX 10 million (USD 2,700).[81]

In Ethiopia, Yayesew Shimelis, a journalist, in April became the first person to be charged under Article 4, 5 and 7 of Ethiopia's Hate Speech and Disinformation Prevention and Suppression Proclamation of 2020. Yayesew is a column contributor to Feteh magazine and hosts a weekly political programme on Tigray TV. He was detained for publishing a critical report of the government's handling of COVID-19 on his Facebook and YouTube channels.[82] He had also been accused of committing terrorism-related offences, but was not charged with those.[83]

In May, Bless Amedegbe, a 24-year-old Ghanaian, was arrested and detained for disseminating fake news on social media.[84] He had recorded a viral video which was circulated on WhatsApp and YouTube in which he allegedly incited the public to defy government restrictions to curb coronavirus, claiming that the stay-at-home initiative was a ploy by the government to install "5G cables" in the affected areas. According to him, those cables would kill Ghanaians.[85] Amedegbe was also accused of using social media to instigate the public to burn the house of President Nana Addo Dankwa Akufo-Addo and kill police officers. He was released on bond after being charged with assault of a police officer and false communication, contrary to Section 76(1) of the Electronic Communication Act, 2008.[86]

In Senegal, community journalist Abdoulaye Mbaye Pekh, was reprimanded by authorities for disseminating false news on the coronavirus. Abdoulaye claimed at a meeting that there was no coronavirus in the city of Touba. He later agreed to engage in civic education on the coronavirus.[87] Another person, Selbe Ndom, was summoned by authorities after declaring that there was no coronavirus in Senegal.[88] These measures came shortly after the health minister announced a campaign against dissemination of false information on the coronavirus.

In March, a Côte d'Ivoire court fined two journalists, Cissé Sindou and Marc Dossa, from the *Générations Nouvelles* newspaper five million CFA francs (USD 8,897) each for "publishing false news".[89] They had reported that there were two coronavirus cases in a prison in the capital city Abidjan, a claim denied by the authorities.

79   *Ugandan Security Forces Arrest Writer, TV Anchor After Coronavirus Posts,*
https://www.voanews.com/africa/ugandan-security-forces-arrest-writer-tv-anchor-after-coronavirus-posts

80   *Missing critical book writer, Kakwenza charged, remanded, https://nilepost.co.ug/2020/04/21/missing-critical-book-writer-kakwenza-charged-remanded/*

81   *Critical book writer, Kakwenza released on bail, https://nilepost.co.ug/2020/05/06/critical-book-writer-kakwenza-released-on-bail/*

82   *Ethiopian journalist Yayesew Shimelis detained following COVID-19 report,*
https://cpj.org/2020/04/ethiopian-journalist-yayesew-shimelis-detained-fol/#:~:text=On%20March%2027%2C%20federal%20police,face%20retaliation%20affecting%20their%20employment

83   *News Update: Prosecutors Charge Journalist Yayesew With Newly Enacted Hate Speech Law,*
http://addisstandard.com/news-update-prosecutors-charge-journalist-yayesew-with-newly-enacted-hate-speech-law/

84   *24-year-old social media influencer arrested for spreading fake news,*
https://www.myjoyonline.com/news/crime/24-year-old-social-media-influencer-arrested-for-spreading-fake-news/

85   *Social media instigator trial adjourned to June 24, https://www.businessghana.com/site/news/general/215218/Social-media-instigator-trial-adjourned-to-June-24*

86   *Man who instigated attack against Akufo-Addo because of "5G/Corona hoax" granted bail,*
https://www.nkojomensah.com/2020/05/man-who-instigated-attack-against-akufo.html

87   *Abdoulaye Mbaye Pekh attacks the media, https://www.corona24.news/c/2020/03/14/abdoulaye-mbaye-pekh-attacks-the-media.html*

88   *False information on the Coronavirus: After Mbaye Pekh, Selbé Ndom summoned to the SR,*
http://www.infos15.com/fausses-infos-sur-le-coronavirus-apres-mbaye-pekh-selbe-ndom-convoquee-a-la-sr.html

89   *Six Ivorian journalists heavily fined in March, https://rsf.org/en/news/six-ivorian-journalists-heavily-fined-march Abdoulaye Mbaye Pekh*

2.1.3 Threats and Intimidation by Government Officials

In several countries, senior government officials issued warnings to the public against the use of social media and other platforms to disseminate fake news.

In an April 2020 televised speech, South Sudan's president, and the undersecretary in the country's health ministry, Dr. Makur Koryom, warned their citizens against making xenophobic attacks against foreigners.[90] This came in the wake of increased hate speech on social media, in which nationals blamed foreigners for purportedly taking the coronavirus to South Sudan. While the government officials' warning was legitimate, it could potentially be abused by the state given its past record of curtailing free expression and other rights.[91]

In Zimbabwe, president Emmerson Mnangagwa in April also warned the public against spreading rumours regarding the coronavirus pandemic on social media, stating that they would face 20 years imprisonment for producing fake news.[92] The president was reacting to a purported statement from him regarding an extension in the nationwide lockdown. His threats were followed up with the arrest and prosecution of various journalists.

In Tanzania, another country with a big number of journalists and media houses that have been sanctioned, Kassim Majaliwa, the Prime Minister, in March 2020 warned the public against spreading misinformation around the coronavirus outbreak, stating that those found guilty would be dealt with.[93] He directed the Tanzania Communication Regulatory Authority (TCRA) to monitor and apprehend persons disseminating fake news, which he said was causing confusion in society. The government subsequently released a list of qualified persons to educate the public about COVID-19, and directed that all media get information only from those on the list.[94]

In Cameroon, the cabinet director of the country's Presidency, in a letter in May 2020 to the Director General of the National Agency for Information and Communication Technologies (ANTIC), asked that cybercriminals be tracked down.[95] This was in response to the increasing spread of fake news and fake accounts on social media, notably Facebook and Twitter, during the pandemic. The cabinet director also tasked the ANTIC with implementing measures within 24 hours to identify and track down all propagators of fake news on social networks. Similarly, in July, Cameroon's Minister of Communication warned the public against propagation of fake news online and claimed that the country had the capacity to collect evidence to identify criminals.[96]

In Somalia, the health ministry in March summoned journalists and ordered that information on COVID-19 could only be collected from the deputy minister and the spokesperson of the coronavirus taskforce.[97] A similar approach was adopted in Hargeisa, Somaliland, where the vice president ordered journalists not to publish any "negative" information related to the virus and to only relay "government messages".[98] Likewise, in a public statement, the Kenyan Cabinet Secretary for Health, Mutahi Kagwe, issued a warning, stating that "these rumours must stop … but because I know empty appeals will not work, we will proceed and arrest a number of them to prove our point."[99]

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90   *South Sudan President Warns Against Coronavirus-Related Hate Speech,*
     https://www.voanews.com/science-health/coronavirus-outbreak/south-sudan-president-warns-against-coronavirus-related-hate

91   *Freedom in the World/South Sudan, https://freedomhouse.org/country/south-sudan/freedom-world/2019*

92   *Zimbabwe: Up to 20 years in jail for virus fake news, https://www.aa.com.tr/en/africa/zimbabwe-up-to-20-years-in-jail-for-virus-fake-news/1804689*

93   *Waziri Mkuu aagiza hili kupambana na Corona, https://www.youtube.com/watch?v=BICbvXeJOwU*

94   *Faustine Ndugulile, https://twitter.com/DocFaustine/status/1241038512218148866?s=19*

95   *Cybercriminalité: le Cameroun traque les usurpateurs d'identité dans les réseaux sociauxCybercrime: Cameroon tracks identity thieves in social networks,*
     https://actucameroun.com/2020/05/17/cybercriminalite-le-cameroun-traque-les-usurpateurs-didentite-dans-les-reseaux-sociaux/

96   *Creation, Sharing of Fake news is a crime punishable by law, https://www.cameroon-tribune.cm/article.html/33646/fr.html/creation-sharing-of-fake-news-crime-punishable-law*

97   *Le virus de la censure se propage en Afrique, Censorship virus spreads in Africa*
     https://www.sudouest.fr/2020/05/06/le-virus-de-la-censure-se-propage-en-afrique-7463263-10275.php

98   *Somali officials cannot claim Covid-19 information monopoly, RSF and NUSOJ say,*
     https://www.nusoj.org/somali-officials-cannot-claim-covid-19-information-monopoly-rsf-and-nusoj-say/

99   *Police hold blogger Nyakundi over COVID-19 Twitter post, https://www.nation.co.ke/kenya/news/police-hold-blogger-nyakundi-over-COVID-19-twitter-post-281064*

In Liberia, the Solicitor General, Sayma Syrenius Cephas, at a press conference on April 29 threatened to confiscate the equipment and revoke the licenses of media outlets publishing or broadcasting "fake news".[100] In addition, he stated that individuals spreading lies on social media, including Facebook, would be hunted down and prosecuted during the state of emergency. The official further claimed that the state of emergency declared under article 87 of the constitution curtailed basic rights including the right to free speech and freedom of assembly. The warning was issued after rumours spread on Facebook that President George Weah had tested positive for the coronavirus.[101]

In Morocco, the Ministry of Interior in March 2020 warned the public against the dissemination of false and fictitious information. It stated: "All legal steps will be taken by the relevant authorities to identify those involved in sharing these allegations and lies."[102] As detailed in the previous sub-section, by April 2020 the Moroccan public prosecutor's office had opened 93 judicial investigations leading to the prosecution of 70 people.

While declaring a state of emergency under section 23(1) of the constitution, Lesotho's Prime Minister stated that members of the press should refrain from publishing fake news.[103] Houmed Msaidie, the Comoros government spokesman, in April threatened to bring legal proceedings against all journalists who publish information about the public health crisis "without going through the official channels."[104]

Similarly, Zambian authorities in March warned the public against circulating false information on social media platforms. Ngabo Nakonde from the Zambia Information and Communications TechnologyAuthority (ZICTA) indicated that the regulator would collaborate with other state agencies to crack down and prosecute people spreading false information about COVID-19, which the official said was an offence in the Penal Code.[105] The ZICTA has since urged the public to get reliable, official and verified information from the relevant authorities before sharing it.[106]

The Uganda Communications Commission (UCC) issued a warning against individuals misusing digital platforms to publish, distribute and forward false, unverified, or misleading stories and reports.[107] The UCC stated that those found engaging in these acts would be apprehended and prosecuted under the Computer Misuse Act, 2011, and the Data Protection and Privacy Act, 2019. Also in March 2020, UCC wrote to three media houses, BBS, NTV, and Spark TV and demanded that they show cause why regulatory sanctions should not be taken against them.[108] The regulator accused the media houses of airing content that had the potential "to confuse, divert and mislead unsuspecting members of the public against complying with the guidelines issued by the relevant Government authorities on the coronavirus."

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100   *Liberian official threatens to close media under state of emergency, https://rsf.org/en/news/liberian-official-threatens-close-media-under-state-of-emergency*

101   *Liberia: Chief Prosecutor Threatens to Use State of Emergency Powers to Shutdown Media Over 'Fake News', https://tinyurl.com/y6ybw9hs*

102   *Coronavirus: Morocco's Interior Ministry Warns Against Fake News,*
       https://www.moroccoworldnews.com/2020/03/295276/coronavirus-moroccos-interior-ministry-warns-against-fake-news/

103   *Legal Notice No. 26 of 2020 https://www.gov.ls/wp-content/uploads/2020/03/Lockdown-Gazette-Lesotho.pdf*

104   *Une plainte contre lagazette et Comores infos, https://www.youtube.com/watch?v=7PCAium5C38&feature=youtu.be&app=desktop;*
       MSAIDIE Houmed @MSAIDIEHoumed, https://twitter.com/MSAIDIEHoumed/status/1245309866870075392?s=20

105   *Zambia launches crackdown on people spreading fake news on COVID-19, http://www.xinhuanet.com/english/2020-03/20/c_138899158.htm*

106   *ZICTA warns against fake news circulation on COVID 19, https://www.lusakatimes.com/2020/03/19/zicta-warns-against-fake-news-circulation-on-COVID-19/*

107   *Public Advisory Notice on Circulation of Fake Information, https://twitter.com/UCC_Official/status/1241725721367756800*

108   *UCC calls out 3 TV stations on COVID-19, https://uccinfo.blog/2020/03/29/ucc-calls-out-3-tv-stations-on-COVID-19/*

2.2 Access to Information

Access to information is very critical for the realisation of fundamental human rights and basic freedoms. In the recent past, many African countries have embarked on a journey to ensure that the right to information is fully legislated and enjoyed. Out of 128 countries with Access to Information laws globally, 24 are from Africa.[109] They include Angola, Benin, Burkina Faso, Ethiopia, Ghana, Ivory Coast, Kenya, Liberia, Malawi, Morocco, Mozambique, Niger, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, and Zimbabwe.[110]

In times of crisis such as the current COVID-19 pandemic, access to timely and accurate information is essential. Indeed some governments have laboured to proactively disclose information on COVID-19 to the public. For instance, the Kenyan Ministry of Health has been providing regular updates on the pandemic both online[111] and offline through its various platforms. It has provided routine updates including situation reports;[112] COVID-19 protocols and guidelines;[113] various public awareness messages;[114] and daily press updates on the status of the pandemic.[115] The government also required all broadcasters to air the health ministry's Public Service Announcements (PSA) at no cost. As at May 10, more than 43,000 Public Service Announcements had been aired.[116] The Senegalese Ministry of Health also made efforts to make official information on the pandemic available to citizens through its website, with regular daily updates on the situation in the country.[117] In Ethiopia, all commercial, community and public media with a local, regional, or national reach were required by law to broadcast free of charge the public announcements, explanations and messages.[118]

In Uganda, President Yoweri Museveni and the Ministry of health have been proactive in providing regular updates on the pandemic. Specifically, the ministry of health has utilised its social media accounts, mainly the Twitter handle, @MinofHealthUG,[119] to share daily updates on the number of tests, confirmed cases, recoveries and deaths. The president's speeches on the other hand have been delivered and broadcast on all media houses – both television and radios across the country. They are also uploaded on his website.[120]

Indeed, the need for proactive disclosure of COVID-19 related information was affirmed by the courts in Zimbabwe. In April 2020, the Media Institute of Southern Africa (MISA) Zimbabwe filed an urgent application at the High Court seeking an order compelling the government to publish and disseminate with immediate effect, information on the private and public COVID-19 testing and treatment centres at national, provincial and district hospitals.[121] The High Court ruled in their favour and ordered the Ministry of Health and the Ministry of Information to promote citizens' access to information pertaining to the coronavirus. The court ordered the government to regularly publish and disseminate on all available platforms, including the daily COVID-19 updates issued by the health ministry, in all the official languages".[122]

Despite the above mentioned proactive disclosure, some governments' practices in response to COVID-19 have been anything but transparent. Examples here include Burundi, Egypt, Ethiopia, Morocco, Tanzania and Zimbabwe. In some instances, while there has been conduct of public health awareness and campaigns, there have also been denial of COVID-19 existence, restrictions on the sources of COVID-19 information to only government sources, internet restrictions, blocking, filtering and shutting down of websites. These measures have undermined peoples' access to the much needed COVID-19 information, including status updates on the extent of the spread and the mitigation measures but also denied citizens the right to participate in decision making concerning the pandemic.

109 *By country https://www.rti-rating.org/country-data/*

110 *FOI Laws https://africafoicentre.org/foi-laws/*

111 *Ministry of health https://www.health.go.ke/*

112 *Situation report https://www.health.go.ke/#1591180376422-52af4c1e-256b*

113 *Guidelines https://www.health.go.ke/#1585137302557-b337f64d-c55873d1-981a*

114 *Messages https://www.health.go.ke/#1589273898229-e262c479-13b6*

115 *Press releases https://www.health.go.ke/press-releases/*

116 *Leveraging ICTS in the fight against COVID-19 https://ca.go.ke/leveraging-icts-in-the-fight-against-COVID-19-pandemic/*

 117 *MINISTÈRE DE LA SANTÉ ET DE L'ACTION SOCIALE http://www.sante.gouv.sn/Pr%C3%A9sentation/coronavirus-informations-officielles-et-quotidiennes-du-msas*

118 *State of Emergency Proclamation Enacted to Counter and Control the Spread of*
COVID-19 and Mitigate Its Impact https://covidlawlab.org/wp-content/uploads/2020/06/Proclamation-of-Emergency.pdf

119 *Ministry of Health, Uganda https://twitter.com/MinofHealthUG*

120 *Speeches https://www.yowerikmuseveni.com/speeches*

121 *MISA files urgent application, https://zimbabwe.misa.org/2020/04/10/misa-files-urgent-COVID-19-court-application/*

122 *HIGH COURT ORDERS INFORMATION ACCESS ON COVID-19 https://zimbabwe.misa.org/2020/04/24/high-court-orders-information-access-on-COVID-19/*

2.2.1 COVID-19 Denialism by Governments

Some governments exhibited denialism about COVID-19, thus depriving their citizens of accurate information about the pandemic. In March 2020, Zimbabwe's defence minister, Oppah Muchinguri, speaking at a rally, stated that "Coronavirus is the work of God punishing countries who imposed sanctions on us".[123] The US and Europe imposed sanctions against members of the ruling regime over human rights abuses.

During the same month, Egypt expelled Ruth Michaelson, a reporter for *The Guardian*, over her news report[124] and coverage that cast doubt on the Egyptian government's official COVID-19 statistics.[125] The Egyptian State Information Service announced the revocation of The Guardian's credentials, demanded an apology from *The Guardian* and warned *The New York Times* over their critical coverage of the government and their social media posts on Twitter about the COVID-19 pandemic.[126] Declan Walsh, a correspondent of *The New York Times*, was summoned for retweeting a post by the doctor who conducted the study cited by The Guardian.[127]

In May 2020, Burundi expelled World Health Organization (WHO) experts who were backing the country's response to the pandemic.[128] The three included Dr. Walter Kazadi Mulombo, WHO's top official in Burundi; Dr. Jean Pierre Mulunda Nkata, the country's Coronavirus coordinator; Dr. Ruhana Mirindi Bisimwa, communicable diseases head; and Prof. Daniel Tarzyand, a laboratory expert in the testing for COVID-19. The government did not offer any reasons for declaring the WHO officials "persona non grata" days before the general election, despite concerns about the health risks of holding an election amidst the pandemic.[129]

The head of the Africa Centre for Disease Control and Prevention (CDC), John Nkengasong, termed the expulsions "unfortunate" and criticised the government's decision to hold elections during a health crisis.[130] The official responses to the virus included under-reporting of statistics and denials by then president Pierre Nkuruzinza, who died in June 20, officially of a "heart attack" but, according to some reports, due to COVID-19.[131] The government spokesman had said in March that the country was protected by God. While the government advised people to follow hygiene measures, it allowed campaign rallies to proceed prior to the May 2020 election.[132]

Burundi's neighbour Tanzania has been criticised for its lacklustre response to the COVID-19 pandemic, with the WHO citing its lack of transparency,[133] and a team of United Nations experts also noting that the government was not meeting its commitments on information sharing and transparency after it stopped releasing statistics on COVID-19 cases at the end of April. The experts stated in July 2020 that COVID-19 had compounded the pre-existing human rights concerns in Tanzania, notably regarding the right to freedom of expression, including freedom to seek, receive and impart information.[134] The country's opposition also strongly criticised the government's handling of the crisis, claiming authorities were hiding figures and were not taking the pandemic seriously.

President Magufuli also rejected the need to restrict movement of citizens, claiming stringent social isolation measures would severely damage the economy. In June, Magufuli declared the country virus-free, "thanks to God" and prayers by citizens.[135]

123 *Coronavirus 'god's punishment' of west: Zimbabwe defence minister*
https://www.news24.com/news24/africa/news/coronavirus-gods-punishment-of-west-zimbabwe-defence-minister-20200315

124 *Egypt: rate of coronavirus cases 'likely to be higher than figures suggest'*
https://www.theguardian.com/world/2020/mar/15/egypt-rate-coronavirus-cases-higher-than-figures-suggest?CMP=Share_iOSApp_Other

125 *Egypt expels Guardian reporter Ruth Michaelson over COVID-19 coverage* https://cpj.org/2020/03/egypt-expels-guardian-reporter-ruth-michaelson-ove/

126 *Statement To The Information Service: The Accreditation Of The "Guardian" Correspondent In Egypt Has Been Withdrawn And A Warning Sent To The "New York Times"*
Correspondent', https://www.sis.gov.eg/Story/200114?lang=ar

127 *Censorship virus spreads in Africa*, https://www.sudouest.fr/2020/05/06/le-virus-de-la-censure-se-propage-en-afrique-7463263-10275.php

128 *Burundi expels WHO coronavirus team as election approaches*,
mohttps://www.theguardian.com/world/2020/may/14/burundi-expels-who-coronavirus-team-as-election-approaches

129 *Burundi expels WHO team as it prepares for presidential election*,
https://www.reuters.com/article/us-health-coronavirus-burundi/burundi-expels-who-team-as-it-prepares-for-presidential-election-idUSKBN22Q0XS

130 *Burundi expels top WHO official ahead of presidential vote*, https://www.france24.com/en/20200514-burundi-expels-top-who-official-ahead-of-presidential-vote

131 *Burundi president dies of illness suspected to be coronavirus*,
https://www.theguardian.com/world/2020/jun/09/burundi-president-dies-illness-suspected-coronavirus-pierre-nkurunziz

132 *Burundi election: Facebook, Twitter, WhatsApp blocked*, https://www.bbc.com/news/world-africa-52737081

133 *Tanzania under fire from WHO for lackluster response to COVID-19 pandemic*,
https://www.dw.com/en/tanzania-under-fire-from-who-for-lackluster-response-to-COVID-19-pandemic/a-53304699

134 *UN experts call on Tanzania to end crackdown on civic space*, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26117&LangID=E

135 *Coronavirus: John Magufuli declares Tanzania free of COVID-19*, https://www.bbc.com/news/world-africa-52966016

2.2.2 Silencing Calls for Accountability

Instead of using the period of the pandemic to provide clear and evidence-based information, some governments have used the COVID-19 crisis as a pretext to silence voices of dissent. Such countries have stepped up their efforts to censor information and to censure individuals, including journalists and human rights defenders, who exposed governments' poor handling of the pandemic. A number of the media enterprises that were sanctioned have online social media channels and websites, and an online audience who were impacted by the actions of governments.

In May 2020, a Moroccan court ordered the arrest and prosecution of Omar Naji, a human rights defender from the Moroccan Association of Human Rights (AMDH).[136] Naji had published a Facebook post about police officers seizing merchandise from street vendors. He was charged under article 447-2 of the Penal Code which provides that anyone who spreads "false allegations or lies" with the aim of "harming privacy or defamation" is liable to a prison sentence of up to three years, and a fine of up to 20,000 dirhams (around USD 2,000). A number of human rights activists, journalists and other individuals in Morocco have been summoned, prosecuted and detained for their posts on social media, which the government labeled fake news.[137]

In August, the Tanzania Human Rights Defenders Coalition (THRDC), a leading human rights organisation, was forced to suspend its operations after its bank accounts were frozen by Tanzanian authorities without prior notice.[138] The Coalition's National coordinator, Onesmo Olengurumwa, was summoned by authorities and later released on USD 86,206 police bond, after being interrogated on allegations of failure to submit the coalition's donor contracts to the Treasury and the Registrar of Non-Governmental Organisations, which the coalition said it had done.[139] In June, police arbitrarily cancelled a workshop organised by THRDC, and arrested and later released two of its employees for contravening "the laws of the land".[140] Weeks before, the coalition was disqualified by the National Electoral Commission (NEC) from the list of organisations authorised to provide voter education and monitor the October general elections.[141]

In March, Kenyan blogger Cyprian Nyakundi was detained for claiming on Twitter that a senior Kenya Revenue Authority official had travelled out of the country and failed to self-quarantine after returning home.[142] This arrest was unnecessary and disproportionate as there was no evidence of an intention to cause harm, or of harm being caused.

Peter Wainaina, a journalist with leading television station NTV Kenya, was assaulted on March 27, 2020, the first day of Kenya's curfew.[143] The attack happened in Mombasa as he reported on how police were using excessive force against people who were boarding a ferry back home before the curfew. On March 29, George Muriithi, a local television camera person based in Embu County, was assaulted by police as he filmed government administrators beating up women in the market to enforce social distancing rules.[144]

136 *In a post-COVID-19 world, "fake news" laws, a new blow to freedom of expression in Algeria and Morocco/Western Sahara?*
   https://www.amnesty.org/en/latest/news/2020/05/in-a-post-COVID19-world-fake-news-laws-a-new-blow-to-freedom-of-expression-in-algeria-and-morocco-western-sahara/

137 *Coronavirus: Morocco's Interior Ministry Warns Against Fake News,*
   https://www.moroccoworldnews.com/2020/03/295276/coronavirus-moroccos-interior-ministry-warns-against-fake-news/

138 *THRD Coalition https://twitter.com/THRDCOALITION/status/1295662249751830530/photo/1*

139 *Tanzania: Freedoms Threatened Ahead of Elections, https://www.hrw.org/news/2020/09/02/tanzania-freedoms-threatened-ahead-elections*

140 *Tanzania: Respect the right to freedom of association, https://defenddefenders.org/tanzania-respect-the-right-to-freedom-of-association/*

141 *Tanzania human rights group suspends operations, https://www.aa.com.tr/en/africa/tanzania-human-rights-group-suspends-operations/1945400*

142 *Police hold blogger Nyakundi over COVID-19 post, https://www.nation.co.ke/kenya/news/police-hold-blogger-nyakundi-over-COVID-19-twitter-post-281064*

143 *Police beat up NTV journalist in the line of duty, https://www.kenyans.co.ke/news/51345-police-clobber-ntv-journalist-line-duty-video*

144 *Why journalists feel neglected in the fight against coronavirus,   https://www.pd.co.ke/news/why-journalists-feel-neglected-in-the-fight-against-coronavirus-50007/*

The same day, two other journalists, John Wanyama and Charles Kerecha of Citizen TV, were arrested for holding interviews past the curfew hours in Uasin Gishu county.[145] This was despite a government exemption of journalists from the curfew, classifying them as essential service providers.[146] Moreover, on April 2, Mukoya Aywah, a journalist and activist, was assaulted, arrested and his camera confiscated by security guards from the County Government of Kiambu as he covered county law enforcement officials beating people at a marketplace.[147]

In Zimbabwe, two freelance journalists were charged in May 2020 for violating the coronavirus lockdown regulations after they attempted to interview three women activists from the opposition who had reportedly been abducted while in detention.[148] In August 2020, Tawanda Muchehiwa, a 22-year-old journalism student, was abducted by Zimbabwe state security agents on the eve of #July31 protest.[149] It is alleged that he was abducted and tortured before being released two days later. He reportedly suffered acute renal failure as a result of the torture.[150] Tawanda who occasionally shared his opinions on social media, is a nephew of Mduduzi Mathuthu, a journalist who went into hiding fearing arrest, and had his home raided in July 2020 following his publication of a series of articles in collaboration with prominent investigative journalist, Hopewell Chin'ono, implicating senior government officials and the president's sons in alleged corruption in COVID-19 procurement.[151]

Chin'ono, on the other hand, was, according to his lawyers, abducted and detained for 44 days after having been denied bail at least three times during this period. He was accused of "incitement to participate in public violence", allegedly for promoting planned protests against corruption in government on July 31, which police said would turn violent.[152] As part of his bail conditions, Chin'ono is required to stop using his Twitter account to "incite the holding of mass demonstrations". According to Amnesty International, the arrests were "designed to intimidate and send a chilling message to journalists, whistle-blowers and activists who draw attention to matters of public interest in Zimbabwe."[153]

In Uganda, police in April detained Samson Kasumba, a TV anchor, over investigations into alleged subversive activities, which police stated were not connected to his journalistic work.[154] Days before the arrest, the anchor had, on a Facebook post, stated that recoveries in the country had surpassed active cases and asked if Uganda was the first country to accomplish this.

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145 *2 Citizen TV Journalists Arrested In Curfew Clash With Police, https://www.kenyans.co.ke/news/51431-2-citizen-tv-journalists-arrested-curfew-clash-police*

146 *List of sectors classified as providing essential services, https://www.the-star.co.ke/business/kenya/2020-03-25-list-of-sectors-classified-as-providing-essential-services/*

147 *Journalist's Camera Seized in Violent Arrest, https://www.kenyans.co.ke/news/51610-journalists-camera-seized-violent-arrest*

148 *Zimbabwe police charge activists, journalists with violating COVID-19 rules,*
https://www.theeastafrican.co.ke/tea/news/rest-of-africa/zimbabwe-police-charge-activists-journalists-with-violating-COVID-19-rules-1442122; Abduction, torture of activists: Are Zimbabwe's dark days back?
https://www.theeastafrican.co.ke/news/africa/Abduction-torture-of-activists-Zimbabwe-dark-days-back/4552902-5561658-pv99lt/index.html

149 *Zimbabwe Locks Down Capital, Thwarting Planned Protests, https://www.nytimes.com/2020/07/31/world/africa/zimbabwe-coronavirus-protest.html*

150 *Zim journalist tells of nephew's abduction, torture by law enforcement,*
https://citizen.co.za/news/news-africa/2334879/zim-journalist-tells-of-nephews-abduction-torture-by-law-enforcement/

151 *Journalism has been criminalised': Zimbabwean reporter denied bail,*
https://www.theguardian.com/world/2020/jul/24/zimbabwean-journalist-calls-for-fight-against-corruption-to-continue

152 *Journalist Hopewell Chin'ono arrested, charged with incitement in Zimbabwe,*
https://cpj.org/2020/07/journalist-hopewell-chinono-arrested-charged-with-incitement-in-zimbabwe/

153 *Zimbabwe court denies journalist bail for third time over anti-government protests*
https://www.jurist.org/news/2020/08/zimbabwe-court-denies-journalist-bail-for-third-time-over-anti-government-protests/

154 *Ugandan Security Forces Arrest Writer, TV Anchor After Coronavirus Posts,*
https://www.voanews.com/africa/ugandan-security-forces-arrest-writer-tv-anchor-after-coronavirus-posts

In Rwanda, police in April arrested several bloggers and journalists for breaching COVID-19 regulations and guidelines.[155] Those arrested included Théoneste Nsengimana, a director of Umubavu TV online TV, who was accused of attempting to bribe residents with 20,000 Rwandan Francs (USD 21) to give false testimony on social assistance they had received from abroad.[156] Others were Ivan Mugisha, a correspondent for Agence France-Presse, Saul Butera of Bloomberg, and John Gahamanyi of The New Times. Ivan and Saul were charged with drunk driving but were released after five days in detention.

Rwandan authorities also arrested Dieudonné Niyonsenga, a journalist who runs the YouTube news channel Ishema TV, and Fidèle Komezusenge, a driver with the channel.[157] The two were arrested for violating the lockdown, and subsequently denied bail and remanded for 30 days. They are accused of resisting orders to go back home, forgery of a media identification card, and for impersonation of a journalist, yet they were carrying company identification cards, and not government issued cards.[158] One of the journalist had days before the arrest posted on his channel two reports of alleged abuses by security personnel during the lockdown.[159] Rwanda's COVID-19 movement restrictions do not explicitly exempt journalists as essential services, and it was announced that people running YouTue channels did not qualify as journalists.[160]

In June, Meinpamo Onitsha, the founder of Naija Live TV news website, was accused of violating section 21(1)(b) of the Nigeria's 2015 Cybercrime Act, which criminalises fake news.[161] According to Onitsha, the arrest and detention was linked to a report he did in May, on the alleged collapse of a COVID-19 isolation center in Nigeria's northern Kogi State. He was granted strict bail terms which included, a bond of 2 million naira (USD 5,163), which he was unable to raise, thus remained in detention.

In March 2020, Chadian police assaulted and detained Aly Mahamat Bello, a reporter for state-owned Télé Tchad, his cameraman, Abakar Mahamad Seid, and their driver as they covered the enforcement of government measures to combat COVID-19.[162] The journalists were interrogated for three hours by the Police Mobile Intervention Unit (GMIP) in the capital N'Djamena before being released. In the Democratic Republic of Congo, police run down Tholi Totali Glody, a reporter with Alfajiri TV, while covering compliance with the government lockdown.[163] Yaya Djillo Djerou Betchi, the representative to the Economic and Monetary Commission of Central Africa (CEMAC) in Chad, was suspended in May after posting a live video on Facebook criticising the management of pandemic in the country.[164]

Andjouza Abouheir, a journalist with *La Gazette des Comores*, an independent daily in Comoros, was in April threatened by Comorian authorities with prosecution for spreading fake news and asked to reveal her sources.[165] She had written a story exposing flaws in the government's handling of the crisis, which detailed how samples taken from the first suspected six cases of coronavirus were never taken for analysis.

155   Confinement in Rwanda: arrest of several bloggers and journalists, https://www.rfi.fr/fr/afrique/20200415-confinement-rwanda-arrestation-plusieurs-blogueurs-et-journalistes

156   Rwanda: wave of arrests and abuse linked to confinement, https://www.hrw.org/fr/news/2020/04/24/rwanda-vague-darrestations-et-dabus-lies-au-confinement

157   Rwandan journalist, media worker detained since mid-April, https://cpj.org/2020/05/rwandan-journalist-media-worker-detained-since-mid/

158   Rwanda Investigation Bureau https://twitter.com/RIB_Rw/status/1250480771229499392?s=20

159   Ukuri Kugiye AhagaragaraIAbasirikare Basambanyije Kungufu Ba Bagore 4 Banasahura ibintu by'Abaturage https://www.youtube.com/watch?v=BiXFW03yijc; Kigali Abantu Bitwaje Intwaro Basambanyije Abagore 4 Kungufu Basahura n'Ibikoresho by'Abaturage https://www.youtube.com/watch?v=HVz3cuZGNTg

160   Rwanda Media Commission https://twitter.com/RMC_Rwanda/status/1249730987703009280?s=20

161   Nigerian journalist held under cybercrime act for COVID-19 coverage https://cpj.org/2020/06/nigerian-journalist-held-under-cybercrime-act-for-covid-19-coverage/

162   Chadian police attack TV crew covering coronavirus measures, https://rsf.org/en/news/chadian-police-attack-tv-crew-covering-coronavirus-measures

163   DRC police run down TV reporter Tholi Totali Glody covering COVID-19 lockdown https://ifex.org/drc-police-run-down-tv-reporter-tholi-totali-glody-covering-covid-19-lockdown/

164   Cemac: the representative in Chad suspended from his functions, https://tchadinfos.com/politique/cemac-le-representant-au-tchad-suspendu-de-ses-fonctions/

165   Comoros: Journalist threatened for exposing flaws in handling of coronavirus crisis, https://rsf.org/en/news/comoros-journalist-threatened-exposing-flaws-handling-coronavirus-crisis

Also in April 2020, soldiers from the Ghanaian military were reported to have attacked and briefly detained Yussif Abdul Ganiyu, a reporter with Deutsche Welle and Zuria FM radio station.[166] Ganiyu was reporting on ditch cleaning efforts to combat COVID-19 when soldiers enforcing lockdown measures slapped him and asked him why he had criticised the military, despite having been warned by a military officer to stop publishing critical stories. While in detention, he was questioned for three hours, forced to delete his footage, threatened with violence, and thereafter released without charge.

Somali police in April assaulted and briefly detained Abdullahi Mohamed Sheikhdon, a journalist with SBC TV, as he covered a COVID-19 awareness campaign in Mogadishu.[167] This followed a similar incident in March where Abdullahi Farah Nur (aka Yariisow), Somali Cable TV reporter, was assaulted, briefly detained and harassed for covering a story on the shortage of masks and gloves at a local market.[168] Later in May, police raided the premises of Somali Cable TV and assaulted a journalist, and threatened to shoot journalists who were covering COVID-19 impact on local businesses.[169]

2.3 Privacy and Personal Data Protection Breaches

In responding to the COVID-19 pandemic, countries across the continent adopted a series of COVID-19 regulations and practices, including deploying surveillance technologies and untested applications, to enable them conduct lawful collection and processing of personal data for purposes of tracing, contacting, isolating and treating those found to be positive or their contacts. These measures were quickly adopted and the collection of personal information continues, and in some cases without adequate regulation or oversight. According to the UN, the use of emergency powers and tools of surveillance technology to track the spread of COVID-19 must be non-intrusive, limited in time and purpose and abide to the strictest protections and international human rights standards governing privacy and personal data.[170]

2.3.1 Adoption of Contact Tracing Legislation

In Kenya, the government in April 2020 issued the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 that provided for contact tracing, testing, isolation, and quarantine of suspected COVID-19 patients. The Rules empower medical officers or public health workers to, among other things, transfer the patient to the nearest health facility.[171] Under section 3(2), the medical or public health official is required to immediately inform the head of the household, or the occupier of the premises, or any person who has been in contact with the deceased person, of the infectious nature of COVID-19 and of the precautions to be taken to prevent its transmission to other persons.

In Uganda, the government passed several statutory instruments that can be interpreted to be the legal basis for contact tracing. These included the Public Health (Control of COVID-19) Rules, 2020 under the Public Health Act, which gave powers to a medical officer or a health inspector to enter any premises in order to search for any cases of COVID-19 or inquire whether there is or has been on the premises, any cases of COVID-19.[172] Additionally, section 5 of the rules empowers the medical officer to order the quarantine or isolation of all contacts of the suspected COVID-19 patients.

166 *In Ghana, soldiers enforcing COVID-19 restrictions attack 2 journalists, https://cpj.org/2020/04/in-ghana-soldiers-enforcing-COVID-19-restrictions/*

167 *Somali police officer assaults TV journalist during Covid-19 assignment in Mogadishu,*
https://hornobserver.com/articles/384/Somali-police-officer-assaults-TV-journalist-during-Covid-19-assignment-in-Mogadishu

168 *Journalists face threats of intimidation and censorship for reporting Covid-19 in Mogadishu and Hargeisa*
https://sjsyndicate.org/2020/04/03/journalists-face-threats-of-intimidation-and-censorship-for-reporting-covid-19-in-mogadishu-and-hargeisa/

169 *Somali Cable https://www.facebook.com/102752216734255/posts/1191380077871458/?d=n*

170 *Socio-economic impacts of COVID-19 https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_COVID19.pdf*

171 *Ministry of Health (2020) Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020;*
https://www.kenyachamber.or.ke/wp-content/uploads/2020/04/COVID-19RULES.pdf

172 *Section 6(1) of the Public Health (Control of COVID-19) Rules of 2020 https://ulii.org/ug/legislation/statutory-instrument/2020/52*

The other regulation was the Public Health (Prevention of COVID - 19) (Requirements and Conditions of Entry into Uganda) Order, 2020 that allows a medical officer to examine for COVID–19, any person arriving in Uganda and to board any vehicle, aircraft or vessel arriving in Uganda and examine any person on board.[173]

In South Africa, the government in April 2020 issued the Regulations to address, prevent and combat the spread of COVID-19,[174] providing for contact tracing. Specifically, under section 11H (2), the National Department of Health shall develop and maintain a national database to enable the tracing of persons who are known or reasonably suspected to have come into contact with any person known or reasonably suspected to have contracted COVID-19.

The COVID-19 Tracing Database shall include all information considered necessary for the contact tracing process to be effective, including (a) the first name and surname, identity or passport numbers, residential address and other address where such person could be located, and cellular phone numbers of all persons who have been tested for COVID-19; (b) the COVID-19 test results of all such persons; and (c) the details of the known or suspected contacts of any person who tested positive for COVID-19.

Unlike Uganda and Kenya, the South African regulations are explicit in providing for the confidentiality of personal data (section 11H4), as well as the time-frame when the said data should be de-identified (section 11H17).

Under section 11H (10) of South Africa's regulations, the Director-General of Health may, in writing and without prior notice to the person concerned, direct an electronic communications service provider licensed under the Electronic Communications Act, 2005 to provide the director, for inclusion in the COVID-19 Tracing Database, with information that the service provider has. The information is related to (a) the location or movements of any person known or reasonably suspected to have contracted COVID-19; and (b) the location or movements of any person known or reasonably suspected to have come into contact, during the period March 5, 2020 to the date on which the national state of disaster has lapsed or has been terminated. The communications service provider must promptly comply with the health director's directive.

Chad passed Decree No. 379/PR/2020 which permitted military authorities and administrators to carry out home searches during the day and night.[175] Ethiopia's Regulation No. 3 of 2020 on the Implementation of the State of Emergency Declaration[176] suspended rights during the period of its application. Further, in regulations developed thereunder, transport operators were required to inform the head of the nearest entry port or the COVID-19 screening team about any passenger suspected of being infected with COVID-19.[177]

Liberia's Declaration of National Health Emergency required members of the public in communities to report people who showed signs and symptoms of the coronavirus to relevant health and security authorities.[178]

While some countries adopted specific legislation on contact tracing, others did not. Nonetheless, they engaged in contact tracing as indicated in the next section.

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173   Section 2 of The Public Health (Prevention of COVID - 19) (Requirements and Conditions of Entry into Uganda) Order, 2020;
      https://ulii.org/ug/legislation/statutory-instrument/2020/46

174   Disaster Management Act: Regulations to address, prevent and combat the spread of Coronavirus COVID-19: Amendment
      https://www.gov.za/documents/disaster-management-act-regulations-address-prevent-and-combat-spread-coronavirus-COVID-19

175   Decree No. 379/PR/2020, https://www.presidence.td/fr-decrets.html

176   State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact Proclamation, https://tinyurl.com/y5e4lapp

177   Regulations https://www.adisabeba.embaixadaportugal.mne.pt/images/COVID_State_of_Emergency_Implementation_Regulation_v1-after_CM.pdf

178   Rachael Akidi, BBC, https://twitter.com/rakidi/status/1241662270452781056/photo/2

2.3.2 Contact Tracing Applications

The development and use of various unproven technologies and mobile applications to support contact tracing is problematic. This is because they increase the potential for abuse and present a risk for repurposing the technologies for mass surveillance after the pandemic.

In July 2020, Burundi commenced the use of a contact tracing application called "CARP", developed by MediaBox SA.[179] The application allows contact tracing and enables the tracking of an infected person through their contacts and locations. Burundi is yet to enact a data protection law despite having a draft in place since 2017.

In Rwanda, the government in May 2020 deployed digital tools to facilitate contact tracing. The application used phone data profiles to trace people who had been in contact with COVID-19 patients. The system could monitor and geo-fence the people in localised isolation centres to ensure they did not leave their areas of confinement. The system was implemented by communications regulator, Rwanda Utilities Regulatory Authority (RURA), and the statutory Rwanda Biomedical Centre. It was reported that when a person tested positive for COVID-19, "phone data profiles are used to retrieve data provided by the closest transmission towers to track their movement."[180] The government also issued a directive in May 2020 requiring all hospitality establishments to register customers entering their premises.[181]

In March, the South African Communication Minister stated that telecommunications operators had agreed to provide the government with location data to identify people who had been infected in a particular area.[182] In April 2020, the South African government partnered with the University of Cape Town to develop Covi-ID,[183] a smartphone app to facilitate contact tracing by the government.[184] The application uses bluetooth and geo-location through Global Positioning System (GPS), cell phone tower signals, and WiFi.[185] People without smartphones can also use the app by obtaining a unique QR code, which allows notification of their designated contact information about their exposure. The application enables the tracking of people who are unaware that they have COVID-19, those who have tested positive, and those they have been in contact with. The use of the Covi-ID application is by voluntary consent and the app adopts a privacy policy based on the European Union's General Data Protection Regulation (GDPR).[186] It also allows governments and organisations to track check-ins in public places and their premises.

In May, South Africa's Department of Health launched a Whatsapp-based symptom reporting process, whose details and privacy controls are unclear.[187] There are no terms and conditions regarding the use of the WhatsApp platform.

179   *AKEZA Burundi, https://twitter.com/akezanet/status/1281558208415436801?s=20*

180   *Rwanda opts for digital tools in COVID-19 contact tracing,*

        https://rwandatoday.africa/news/Rwanda-opts-for-digital-tools-in-COVID-19-contact-tracing/4383214-5540306-nyjej8z/index.html

181   *COVID-19: Rwanda issues directive for restaurants to register customers for service,*

        https://www.cnbcafrica.com/videos/2020/05/12/COVID-19-rwanda-issues-directive-for-restaurants-to-register-customers-for-service/

182   *South Africa: Telecommunications companies agree to provide location data,*

        https://privacyinternational.org/examples/3580/south-africa-telecommunications-companies-agree-provide-location-data

183   *COVI-ID https://www.coviid.me/*

184   *Contact tracing apps: A new world for data privacy,*

        https://www.nortonrosefulbright.com/en-af/knowledge/publications/d7a9a296/contact-tracing-apps-a-new-world-for-data-privacy

185   *South Africa develops contact tracing app, https://privacyinternational.org/examples/3782/south-africa-develops-contact-tracing-app*

186   *Covi-ID: Privacy-Preserving COVID-19 Status Verification,   https://medium.com/coviid/covi-id-privacy-preserving-COVID-19-status-verification-c11d59ec92f6*

187   *Key contact points, https://sacoronavirus.co.za/contact/*

Another application in use in South Africa is COVID Alert South Africa, launched in September 2020.[188] The application is part of the COVIDConnect, the National Department of Health's digital response platform. The application is built on Apple and Google's exposure notification framework, and was developed in partnership with Discovery Health, Apple and Google.[189] It is powered by bluetooth, through which signals are used to exchange random codes with other smartphone application users of the app, when they come into proximity with each other. The codes are stored in the smartphone log for 14 days. People who have tested positive get a unique six-digit PIN sent on SMS with their results, and they can share the PIN together with their date of birth in the application anonymously to a central server. Those who come in proximity in an area where a person who has tested positive for COVID-19 has been, are notified and advised on steps to take. The application does not use GPS or track location, and does not collect any personally identifiable information.[190]

Chapter 3 of South Africa's regulations on contact tracing[191] requires the Department of Health to develop and maintain a coronavirus Tracing Database. Upon being tested for COVID-19, personal information such as first name and surname, identity number, passport number, residential address, and any other address where such person could be located, and mobile phone numbers, are collected. The information is then immediately submitted to the Director General of Health for inclusion in the database.[192]

Kenya was reported to be monitoring the mobile phones of individuals who were under self-isolation, and arresting those who violated the restrictions imposed on their movements.[193] The government had enlisted the National Intelligence Service (NIS) to facilitate access to patients' phone location data to trace their last movements. Further, the government announced in March that it would launch a contact tracing app christened mSafari for public transport to provide critical contact data that will help trace back the movements of confirmed or suspected cases.[194] All public service vehicle operators would be required to enroll on the platform using their vehicle registration numbers. Further, they would be required to collect contact details of every passenger, which would automatically be registered on the mSafari platform. The service would be free across all networks through user code *483*42#, would track the GPS location of the vehicle. The application has less than 100 downloads on Google's PlayStore.[195]

There were other independent initiatives to develop contact tracing applications in Kenya. In May, the Jomo Kenyatta University of Agriculture and Technology (JKUAT) developed a contact tracing and case management web and mobile application to help identify who, where and when someone gets into contact with a COVID-19 patient.[196] Another contact tracing application tracing system dubbed 'KoviTrace' was developed by Mount Kenya University.[197] The application provides access to all the persons that a person came into close contact with in the last 14 days. The identified contacts are then immediately contacted via push message. Another application, Myride Africa, was developed for use by both private and public service vehicles. The application allowed the collection of personal information of passengers, such as identity card and phone numbers, so that they could be traced if there was virus exposure reported in a vehicle they had boarded.[198]

188 *COVID Alert South Africa, https://play.google.com/store/apps/details?id=za.gov.health.COVIDconnect&hl=en*

189 *South Africa: Health Launches COVID-19 Contact Tracing App, https://allafrica.com/stories/202009020778.html*

190 *COVID Alert SA app, https://sacoronavirus.co.za/COVIDalert/*

191 *Disaster Management Act, 2002: Amendment of Regulations Issued in Terms of Section 27(2),*
     https://www.gov.za/sites/default/files/gcis_document/202004/43199rg11078-gon446.pdf

192 *Melody Musoni, Contact tracing and data protection during COVID-19 pandemic in South Africa, https://tinyurl.com/y6dhkobd*

193 *State taps phones of isolated cases, https://www.standardmedia.co.ke/nairobi/article/2001365401/state-taps-phones-of-isolated-cases*

194 *Government to launch contact tracing application, https://www.standardmedia.co.ke/health/article/2001365263/app-uses-passenger-data-to-trace-virus-path*

195 *mSafari https://play.google.com/store/apps/details?id=com.keypadsys.msafariapp&hl=en*

196 *Kenyan university launches contact tracing app, http://www.xinhuanet.com/english/2020-05/07/c_139035989.htm*

197 *MKU Researchers develop COVID-19 contact tracing App, https://www.mku.ac.ke/index.php/mku-latest-news/1566-mku-researchers-develop-COVID-19-contact-tracing-app*

198 *Kenyan youth develop a contact tracing app, https://www.capitalfm.co.ke/business/2020/05/kenyan-youths-develop-a-contact-tracing-app-in-psvs/*

In July, the East African Community commenced a partnership with Switzerland-based The Commons Project, to develop a digital health passport app called CommonPass.[199] The app would allow travellers to share their recent COVID-19 test results while ensuring the authenticity of the results and preserving their personal privacy. Travellers using CommonPass would be expected to take tests at accredited laboratories which could share the results to their mobile phone. The application would be similar to the "Yellow Card" international certificate of vaccination, and the test results could be authenticated by authorised healthcare, airlines or immigration authorities.[200] The CommonPass initiative builds on the CommonHealth Map,[201] which tracks COVID-19 cases across the region, and the coronavirus check risk assessment tool, which is available in Swahili, Kinyarwanda, English, French and other languages.

In April 2020, Uganda's ICT ministry issued an emergency call for proposals for digital solutions to fight COVID-19.[202] The digital solutions proposed to be supported included public health surveillance and contact tracing, digital education platforms and solutions, security and monitoring systems or guideline enforcement solutions, and collaborative tools for online engagement and meetings.[203]

In April, the Ghana government launched a contact tracing application known as COVID-19 Tracker App. The country's vice president said the app provided a common platform through which mobile networks would be utilised to trace contacts of persons infected by the virus and show where they have been in recent times, through various telephone related data. It would also be able to report contacts that had recently been to COVID-19 hit countries, as well as track whether individuals who were required to self-quarantine were indeed doing so.[204]

In May, Tunisian Ministry of Health partnered with Wizzlabs to launch a contact-tracing mobile phone app called E7mi.[205] The application uses Bluetooth and GPS location data to detect and alert users who may have had contact with others infected with the virus.[206] It also collects personal information such as the phone numbers of users, which is required for registration. While it was reported that application complied with Tunisia's outdated 2004 data protection law, it does not have a sunset clause nor does it set a limit for the use of the data once its use is no longer necessary. The country also deployed surveillance robots called PGuards, in parts of the capital, Tunis, to enforce lockdown orders, which approached individuals and required them to present their ID and papers to the robots camera for remote police verification.[207]

In June, Morocco launched its contact tracing app dubbed Wiqaytna, developed by the Ministry of Interior.[208] The application uses bluetooth signals for contact tracing, and records unique random and anonymous codes which are kept in the phone for 21 days, as well as personal information such as age, gender and province of residence. Where a contact is confirmed positive, the codes are retrieved and contacts are automatically notified of their exposure. The application has been downloaded by at least 5.7 million people from the Google PlayStore.[209] Moroccan civil society had objected to deployment of the app over allegations that it used Israeli surveillance technology. However, the Moroccan data protection authority (CNDP) issued a statement stating that the app complied with Law No. 09-08 on the Protection of Individuals with Regard to Processing of Personal Data.[210] The said law has been criticised for not providing sufficient protection to personal data.

199   *East African Community develops CommonPass health passport app,*
       https://privacyinternational.org/examples/4077/east-african-community-develops-commonpass-health-passport-app

200   *Digital technology re-opening Africa, https://www.newtimes.co.rw/opinions/digital-technology-re-opening-africa*

201   *Coronavirus (COVID-19) - East African Community, https://www.eac.int/coronavirus*

202   *Ministry on Twitter https://twitter.com/OgwangOgwang/status/1250683363750481921/photo/1*

203   *Emergency call: Digital Solutions to support the fight against the Coronavirus (COVID-19) Pandemic,*
       https://uccinfo.blog/2020/04/16/press-release-support-to-innovators-call-iii-2019-20/

204   *Launch of GH COVID-19 Tracker App, https://www.moc.gov.gh/launch-gh-covid-19-tracker-app*

205   *COVID-19 contact-tracing apps in MENA: a privacy nightmare https://www.accessnow.org/COVID-19-contact-tracing-apps-in-mena-a-privacy-nightmare/*

206   *E7mi, https://e7mi.tn/index.html*

207   *Coronavirus: Tunisia deploys police robot on lockdown patrol https://www.bbc.com/news/world-africa-52148639*

208   *Wiqaytna https://www.wiqaytna.ma/Default_Fr.aspx*

209   *Wiqaytna (انتياقو), https://play.google.com/store/apps/details?id=COVID.trace.morocco&hl=fr*

210   *COVID-19 contact-tracing apps in MENA: a privacy nightmare, https://www.accessnow.org/COVID-19-contact-tracing-apps-in-mena-a-privacy-nightmare/*

Botswana launched a BSafe contact tracing application in June 2020, donated to the government by a local company, Brastorne Enterprises.[211] The application enables businesses and individuals to register, upon which they are assigned a QR code. Individuals can create a "digital register" indicating where they have been by scanning QR codes displayed at shops, shopping malls or offices, while businesses can scan their visitors' QR codes to check whether they are infected. The government updates the database, and QR codes of persons found positive for the virus do not work.

Ethiopia launched a COVID-19 monitoring platform in March 2020.[212] The platform was designed to update people on COVID-19 cases, but also to enable self-reporting of people with symptoms or those who had been incontact with confirmed cases.[213] It also allows users to report illegal or unauthorised activities such as public gatherings. It is not clear on the limits of usage, processing or retention of the personal information collected after the pandemic.

In Nigeria, the Surveillance, Outbreak Response Management and Analysis System (SORMAS) platform for digital surveillance was used for contact tracing.[214] The SORMAS, which grew directly out of the experience of tackling Ebola, provides comprehensive disease surveillance and outbreak management in a single digital platform. The integrated system keeps track of new cases and also enables the identification and follow up with their contacts. Health workers are required to enter details of suspected or confirmed cases and the system automatically notifies different actors in the national surveillance and response system in real time. They are then able to generate early warnings of potential outbreaks and response to manage and control outbreaks.

In Egypt, officials urged the public to use an application that was sending alerts to people about areas with potential COVID-19 cases.[215] In April 2020, the government was urged by a parliamentarian to create an application to track the location of confirmed and suspected coronavirus cases.[216] The proposed application would provide daily updates on the spread of the virus and the full names and locations of infected persons to enable others avoid close contact.

Whereas many of the contact tracing apps were locally developed, some had the participation of multinational actors. For instance, in April 2020, Apple and Google launched their joint effort to track the spread of the virus.[217] The approach of the companies includes an exposure notification API[218] to help public health authorities contain the spread of Coronavirus by quickly identifying people who might have been exposed to new cases. The scheme uses Bluetooth signals from smartphones, which would anonymously keep track of other phones, which, if the owner was diagnosed with COVID-19, alerts would be sent to others who had recently been nearby. The companies promised to provide the technical framework of 'exposure notification' while States would be required to build the applications to integrate to the platform. In September 2020, the companies introduced 'Exposure Notification Express' which will be introduced as updates to Apple iOS and Google's latest android operating system. The change was necessitated by the challenge public health authorities had in building their own applications. The afore-mentioned COVID Alert South Africa, which launched in September 2020, is built upon the framework established by Apple and Google.

211 *Arican countries growing App-etite for Coronavirus Apps gets mixed results,*
     https://thecorrespondent.com/598/african-countries-growing-app-etite-for-coronavirus-apps-gets-mixed-results/78359490924-b6a9fec3

212 *COVID19! http://www.COVID19.et/COVID-19/*

213 *Mobile Location Data and COVID-19: Q&A, https://www.hrw.org/news/2020/05/13/mobile-location-data-and-COVID-19-qa*

214 *Slowing spread of COVID-19 with contact tracing apps, https://guardian.ng/features/slowing-spread-of-COVID-19-with-contact-tracing-apps-2/*

215 *Virus tracing apps: Which countries are doing what, https://medicalxpress.com/news/2020-05-virus-apps-countries.html*

216 *Will Egyptians get a coronavirus app? https://www.al-monitor.com/pulse/originals/2020/04/egypt-application-coronavirus-track-health-law.html*

217 *Apple And Google Launch First Phase Of COVID-19 Contact Tracing. Will Americans Use It?*
     https://www.forbes.com/sites/rebeccabellan/2020/04/30/apple-and-google-launch-first-phase-of-COVID-19-contact-tracing-will-americans-use-it/#7fdf856960ae

218 *Exposure Notifications https://COVID19-static.cdn-apple.com/applications/COVID19/current/static/contact-tracing/pdf/ExposureNotification-FAQv1.2.pdf*

In April 2020, Israeli cybersecurity company NSO Group was reported to be marketing to governments around the world its software that uses mobile phone data to monitor and predict the spread of the coronavirus.[219] The software captures two weeks of mobile-phone tracking information from the infected person and then matches with location data collected by national mobile phone companies that pinpoints citizens who were in the patient's vicinity for more than 15 minutes and are vulnerable to contagion.[220] The NSO Group indicated that about a dozen governments around the world were piloting the system, but would not reveal their identity or whether any of them had started using it in the field. The company, which has a history fraught with privacy and human rights controversy, was in 2019 sued by WhatsApp for allegedly sending malware to the phones of 1,400 users, including 100 human rights activists and journalists in India, Spain and Morocco, allegations which it denied.[221]

In June, a British cybersecurity company, VST Enterprises Ltd, in partnership with several tech firms, started rolling out COVI-PASS, now Tento Authenticator,[222] a "digital health passport" which would contain a person's COVID-19 test history, confirm that the test results belong to the person presenting it, and other "relevant health information."[223] The passport had been rolled out to 15 countries, including South Africa.

In July, the Bill Gates-backed GAVI vaccine alliance, Mastercard, and the AI identity authentication company Trust Stamp announced a public-private partnership programme in West Africa to introduce a biometric identity platform in low-income remote communities.[224] The programme would integrate Trust Stamp's digital identity platform into the GAVI-Mastercards "Wellness Pass", a digital vaccination record and identity system that is also linked to Mastercard's click-to-play system powered by its AI and machine learning technology, NuData. In June GAVI announced that Mastercard's Wellness Pass program would be adapted in response to the coronavirus (COVID-19) pandemic. The Wellness Program would also be coupled with a COVID-19 vaccination programme once a vaccine became available.

Some of the applications were putting the privacy of people at risk. The use of GPS tracking as proposed by some, potentially allowed for real-time tracking of users of the applications. Other problematic applications were those that were centralised and logged data captured on the phone to a centralised government database.

2.3.3 Weak Data Protection Safeguards

The contact tracing measures deployed in some countries remained questionable and potentially violated privacy rights. Also, they lacked clear or any legal oversight, and there were no documented safeguards in case of any breaches. Further, there is widespread ignorance about the application of the law to the governments' contact tracing programmes. While COVID-19 was declared a pandemic, the nature of the emergency and the desire to track infections did not automatically mean that privacy did not matter any more. Yet in most instances it was not clear how personal data from contact tracing was collected, stored, and shared.

Currently, at least 29 African countries have a privacy and data protection law. These include Angola, Algeria, Benin, Botswana, Burkina Faso, Chad, Côte d'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Niger, Nigeria, Senegal, Seychelles, South Africa, Swaziland, Togo, Tunisia, Uganda, Zambia, and Zimbabwe.[225] Despite having these laws, there have been challenges implementing them,

219   *Coronavirus: Israeli spyware firm pitches to be COVID-19 saviour https://www.bbc.com/news/health-52134452*

220   *Israeli Spyware Firm Wants to Track Data to Stop Coronavirus Spreading*

      https://www.bloomberg.com/news/articles/2020-03-17/surveillance-company-nso-supplying-data-analysis-to-stop-virus

221   *US Judge: WhatsApp lawsuit against Israeli spyware firm NSO can proceed*

      https://www.theguardian.com/technology/2020/jul/17/us-judge-whatsapp-lawsuit-against-israeli-spyware-firm-nso-can-proceed

222   *Tento Health https://tentohealth.com/*

223   *Mass-Tracking COVI-PASS Immunity Passports Slated to Roll Out in 15 Countries*

      https://www.mintpressnews.com/mass-tracking-covi-pass-immunity-passports-slated-roll-15-countries/269006/

224   *Africa to Become Testing Ground for "Trust Stamp" Vaccine Record and Payment System*

      https://www.mintpressnews.com/africa-trust-stamp-covid-19-vaccine-record-payment-system/269346/

225   *Data Protection and Privacy Legislation Worldwide, https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Data-Protection-Laws.aspx*

including the delay to gazette the relevant regulations as well as appointment of data protection officers or commissioners. Whereas Kenya has enshrined the right to privacy under Article 31 of the Constitution, and adopted a Data Protection Act in November 2019,[226] the Data Commissioner is yet to be appointed. Uganda's data protection law, which was enacted in February 2019, lacks enabling regulations.

South Africa adopted the Protection of Personal Information Act, 4 of 2013, which gives effect to section 14 of the Constitution on the right to privacy.[227] However, the law had only been operationalised incrementally since 2014. However, in July 2020, the government, in a quick turnaround, and perhaps in a bid to ensure privacy given its implementation of several contact tracing programmes, took a positive step and started implementing the law, which could be an example to other countries where privacy laws are yet to be enacted, or if available, not yet enforced. The President announced[228] the commencement of several sections of the Act such as sections 2 to 38; sections 55 to 109; section 111; and section 114 (1), (2) and (3). These relate to aspects such as the conditions for the lawful processing of personal information; the regulation of the processing of special personal information; Codes of Conduct issued by the Information Regulator; procedures for dealing with complaints; provisions regulating direct marketing by means of unsolicited electronic communication, and general enforcement of the Act. The government further delayed commencement of sections 110 and 114(4) to June 30, 2021, citing the need to amend laws, and transfer functions from the South African Human Rights Commission to the Information Regulator.

Moreover, in a number of countries, governments have enacted laws that allow for the interception of individuals' communications including in Burundi, [229] Kenya,[230] Niger, Uganda,[231] South Africa[232] and Zimbabwe. These laws have in the past enabled and continue to facilitate governments' access to individuals' data. Further, most of these laws require tech companies to cooperate with governments in facilitating easy interception.

Governments are also in the habit of accessing metadata of individuals from tech companies. For instance, Tanzania embarked on sole control over all data about the country in 2018.[233] In the East African region, Tanzania has been at the forefront of making consistent requests to tech companies especially Vodacom for metadata.[234] Similar government requests for data have been witnessed in Chad and Rwanda.[235]

The private sector can play a critical role in ensuring privacy and data protection, as suppliers of technology products and services to governments. However, data protection safeguards remain largely absent in technology products and services supplied to governments despite the human rights principles laid down in the UN Guiding Principles on Business and Human Rights.[236] These principles require transnational corporations and other business enterprises to integrate human rights in their dealings, and moreover, in a non-discriminatory manner. The situation has been worsened by the failure of technology companies handling massive personal data to regularly produce transparency reports detailing requests from governments and the responses to these requests. Hence, as the COVID-19 pandemic still subsists, unauthorised access to personal data using the facilitating laws amidst the weak data protection safeguards remains a clear threat to privacy.

226   Data protection Act http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct__No24of2019.pdf

227   Text of the Act https://www.justice.gov.za/inforeg/docs/InfoRegSA-act-2013-004.pdf

228   Commencement of certain sections of the Protection of Personal Information Act, 2013
      http://www.thepresidency.gov.za/press-statements/commencement-certain-sections-protection-personal-information-act%2C-2013

229   Law No 1/09 of May 11 2018, http://www.assemblee.bi/IMG/pdf/9%20du%2011%20mai%202018.pdf

230   Kenya Information and Communications Act
      https://www.unodc.org/res/cld/document/ken/1930/information-and-communications-act_html/Kenya_Information_and_Communications_Act_2_of_1998.pdf

211   Regulation of Interception of Communication Act, 2010,
      https://www.ulrc.go.ug/system/files_force/ulrc_resources/regulation-interception-communications-act-2010.pdf?download=1

232   Communication-Related Information Act 70 of 2002 (RICA), https://www.justice.gov.za/legislation/acts/2002-070.pdf

233   Abdi Latif Dahir, "Tanzania's government is casting itself as the nation's sole custodian of data," Quartz Africa, September 13, 2018,
      https://qz.com/africa/1389147/tanzanias-magufuli-bans-data-publication-without-government-ok/

234   Makulilo, Alex Boniface. "Analysis of the regime of systematic government access to private sector data in Tanzania." Information & Communications Technology Law 29, no. 2
      (2020): 250-278.

235   CIPESA, "Privacy and data protection in the Digital Era: Challenges and Trends in Africa, 2018," (Kampala, 2018): 43, https://cipesa.org/?wpfb_dl=278

236   UN Guiding Principles on Business and Human Rights, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

2.4 Digital Exclusion, Access, and Affordability

As the COVID-19 pandemic spread, several government agencies across the continent embraced the use of multimedia communication channels, including radio, television, and social media to disseminate COVID-19-related information and to create public health awareness.[237] However, concern is growing that a large section of the population, including persons with disabilities, women, and older persons particularly in rural communities, are being left behind in accessing information on COVID-19. This is because, despite the recent expansion in the usage of ICT on the continent, a large portion of these populations faces digital exclusion due to lack of access and affordability of the requisite ICT tools.

According to the International Telecommunications Union (ITU), an estimated 4.1 billion people are now online, but 3.6 billion people remain offline, with the majority of the unconnected living in the least developed countries.[238] In Sub-Saharan Africa, 239 million people were connected to the mobile internet in 2018, an increase of 35 million in the previous year.[239] However, more than 800 million people in the region do not use the internet. Also, internet usage in Africa is the lowest in the globe at 28.2%, while Europe has the highest internet use at 82.5%.

For persons with disabilities, there has been failure by several broadcasters and telecom operators to provide COVID-19-related information and services in disability-friendly formats.[240] The different measures adopted by governments, including travel, movement and dusk-to-dawn curfews, meant that a big segment of the workforce was restricted to working from home, creating an increased demand for the internet. And because more peoples' access to the internet is limited to the workplace, this meant that many were for the better part left unconnected.[241]

According to the ITU, affordability and lack of digital skills remain the key barriers to the uptake and effective use of the internet, especially in the world's least developed countries.[242] According to the United Nations, digital technology has facilitated business continuity, connected people and helped them maintain good mental health. Yet inequality of access to broadband connectivity and inaccessibility of ICT continues to hinder effective remote participation and access to remote schooling arrangements, health information and telemedicine by all.[243]

2.4.1 Restrictions on Internet Access: Network Disruptions and Website Blockages

As the majority remained unconnected due to the high costs of internet access, some countries on the continent disrupted access to the internet.

Ethiopia imposed an internet shutdown on June 30, 2020,[244] that lasted for more than four weeks, costing the country an estimated USD 100 million.[245] The shutdown was in response to unrest following the shooting of prominent Oromo singer and activist, Haacaaluu Hundeessaa.[246] The June shutdown was imposed a few months after the lifting in March

237 *How Technology is Aiding the COVID-19 Fight in Africa, https://cipesa.org/2020/03/how-technology-is-aiding-the-COVID-19-fight-in-africa/*

238 *Measuring digital development Facts and figures, 2019,https://www.itu.int/en/ITU-D/Statistics/Documents/facts/FactsFigures2019.pdf*

239 *GSMA Mobile Economy 2020, https://www.gsma.com/mobileeconomy/wp-content/uploads/2020/03/GSMA_MobileEconomy2020_SSA_Eng.pdf*

240 *Why Access to Information on COVID-19 is Crucial to Persons with Disabilities in Africa,*
     https://cipesa.org/2020/04/why-access-to-information-on-COVID-19-is-crucial-to-persons-with-disabilities-in-africa/

241 *How the internet is making stay-at-home difficult for Africans, https://www.dw.com/en/how-the-internet-is-making-stay-at-home-difficult-for-africans/a-53048013*

242 *New ITU data reveal growing Internet uptake but a widening digital gender divide,*
     https://www.itu.int/en/mediacentre/Pages/2019-PR19.aspx#:~:text=However%2C%20an%20estimated%203.6%20billion,every%20ten%20people%20are%20online.&text=Internet%20use%20in%20developed%20countries,per%20cent%20of%20individuals%20online.

243 *Socio-economic impacts of COVID-19, https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_COVID19.pdf*

244 *Internet cut in Ethiopia amid unrest following killing of singer, https://netblocks.org/reports/internet-cut-in-ethiopia-amid-unrest-following-killing-of-singer-pA25Z28b*

245 *Month-long internet shutdown cost Ethiopia over $100m: NetBlocks,*
     https://www.theeastafrican.co.ke/tea/business/-internet-shutdown-cost-ethiopia-over-100m-netblocks-1906706

246 *Internet cut in Ethiopia amid unrest following killing of singer, https://netblocks.org/reports/internet-cut-in-ethiopia-amid-unrest-following-killing-of-singer-pA25Z28b*

2020 of a three-month ban on phone and internet services to Wollega in the country's Oromia region.[247] The government drew widespread criticism for the shutdown, which had left millions in Oromia in the dark about the health risks posed by the virus.[248]

Meanwhile in Chad, the WhatsApp messaging application through major mobile networks was blocked from July 22, and remained blocked as of September 5, 2020.[249] Authorities did not offer any explanation for the blockage but it was suspected to be connected to a deadly altercation captured on video and shared on social media, showing an army officer firing point blank at two mechanics before being attacked with knives at a market in the capital N'Djamena on July 14. In August, the Minister of Communication confirmed that a "temporary measure" was taken to prevent the "dissemination of messages of incitement to hatred and division," which would be "lifted any moment".[250]

In Mali, social media and messaging were partially blocked between July 10 and July 15, 2020 on Orange Mali, the country's leading operator.[251] There was targeted and total blocking of major social platforms on national telco Malitel's cellular network. These restrictions were in response to protests in the capital Bamako calling for political reforms and the resignation of President Ibrahim Boubacar Keïta. The protestors occupied the national broadcaster in Bamako, sending transmissions off air as a constitutional crisis developed.

In May 2020, social media such as Facebook, WhatsApp and Twitter were disrupted in Burundi and remained unavailable for two days on multiple leading internet providers, including Econet, Lumitel and Onatel.[252] YouTube and Google video servers were also restricted and were intermittently available during the period. The disruption coincided with the May 20 elections conducted amidst the pandemic, in which long-serving president Pierre Nkurunziza was stepping down after 15 years in power.[253] Authorities did not provide official reasons for the disruption. However, Willy Nyamitwe, a senior advisor to President Nkurunziza, denied in a tweet that the internet had been cut.

In Zimbabwe, internet access was disrupted between July 30 and August 1, 2020, which coincided with the #July31 protests.[254] Many users experienced a slowdown or 'throttling' of connectivity speeds on state-owned network TelOne, but privately owned operators were unaffected.

In Togo, social media platforms were disrupted in February 2020 on the country's leading operator, Togo Telecom, impacting services on Facebook, Telegram, and WhatsApp. The disruptions occurred as the country went to the polls on February 22.[254] The country had experienced a similar outage on January 22, when telecom operator Togocom went offline for a day.

Similarly, in Guinea, social media applications such as Twitter, Facebook and Instagram were blocked, while messaging application WhatsApp servers were partially restricted between March 21 and 22, 2020.[256] The disruptions affected leading internet providers Orange and MTN, and occurred on the eve of the country's parliamentary elections and a referendum, and were only restored after the close of the polls.

247   Ethiopia vows to end communications blackout as virus cases rise, https://guardian.ng/news/ethiopia-vows-to-end-communications-blackout-as-virus-cases-rise/

248   Millions of Ethiopians Can't Get COVID-19 News, https://www.hrw.org/news/2020/03/20/millions-ethiopians-cant-get-COVID-19-news

249   WhatsApp messaging service blocked in Chad, https://netblocks.org/reports/whatsapp-messaging-service-blocked-in-chad-aAwk7QAM

250   Chad limits internet to curb "hate messages", https://www.lefigaro.fr/flash-actu/le-tchad-limite-internet-pour-endiguer-les-messages-haineux-20200803

251   Social media restricted in Mali amid protests against president, https://netblocks.org/reports/social-media-restricted-in-mali-amid-protests-against-president-QyKpdX8D

252   Social media disrupted in Burundi on election day, https://netblocks.org/reports/social-media-disrupted-in-burundi-on-election-day-JBZLPY86

253   Burundi election: Facebook, Twitter, WhatsApp blocked, https://www.bbc.com/news/world-africa-52737081

254   Zimbabwe internet disruption limits coverage of planned protests, https://netblocks.org/reports/zimbabwe-internet-disruption-limits-coverage-of-protests-7yNV70yq

255   Togo: Instant messaging apps blocked amid 2020 presidential election, https://ooni.org/post/2020-togo-blocks-instant-messaging-apps/

256   Guinea blocks social media on eve of elections, https://netblocks.org/reports/guinea-blocks-social-media-on-eve-of-elections-ryb3rn87

Besides the network disruptions, there were also instances of blockage of websites. Egypt's media regulator, the Supreme Council for Media Regulation (SCMR), announced in March that it had blocked and limited access to a dozen news websites and social media accounts for spreading "rumours" about the pandemic.[257] The websites blocked for six months included Huna Aden, a news website, and El Gomhoria El Youm, the website of a daily newspaper, reportedly for running articles critical of the government's handling of the pandemic. Six Facebook and Twitter accounts were also blocked without any reasons being given. Days later, the SCMR blocked access to four Facebook and Instagram pages, including an account belonging to a female journalist working for a news site, accusing them of spreading rumours and lies about the virus.[258]

In Algeria, authorities in April 2020 arbitrarily blocked[259] the privately owned news website Maghreb Emergent,[260] its partner radio website Radiom,[261] and a local news website Interlignes.[262] The websites were not accessible within Algeria without using a virtual private network (VPN). The websites had covered the COVID-19 pandemic and the anti-government protests that had been taking place in the country since February 2019.[263] The authorities did not provide reasons for the censorship. However, Algerian Minister of Communications Ammar Belhimer stated in an interview that Maghreb Emergent and Radio M were run by a journalist who had slandered the person of the president. Hence, the suspension was a precautionary measure pending the completion of judicial procedures.[264]

In March, Universal TV was asked by a Somali Ministry of Health official to remove an online article of an interview with Dr. Fawsiya Abikar, the Minister of Health, relating to four suspected coronavirus patients in quarantine.[265] The station declined the demand and both the article and the interview remained online.

In Uganda, the refusal by the government to suspend the implementation of the Over-The-Top (OTT) tax, despite several appeals from different stakeholders,[266] has continued to undermine the efforts to increase access to and affordability of ICT for a large proportion of the population, thus denying them access to critical COVID-19-related information that is being disseminated through social media platforms.

In June 2020, the Economic Community of West African States (ECOWAS) Community Court of Justice found that the internet shutdown ordered by the Togolese government in September 2017 during protests was illegal and an affront to the applicants' right to freedom of expression.[267] Following the decision, the court ordered the government of Togo to pay the plaintiffs two million CAF (USD 3,561) as compensation, and to take all the necessary measures to guarantee the implementation of safeguards with respect to the right to freedom of expression of the Togolese people. The decision reinforced the position that digital rights are human rights, and therefore, governments in the region will need to take steps to ensure the protection of human rights online and offline.

257 *Egypt blocks online "fake news" about coronavirus, https://rsf.org/en/news/egypt-blocks-online-fake-news-about-coronavirus*

258 *Today .. "The Supreme Media" discusses a 12-page position on Facebook that spreads rumours, https://tinyurl.com/y37xp33v*

259 *The Maghreb Emergent and Radiom.Info news sites blocked by the authorities (Press Release),*
      https://maghrebemergent.info/les-sites-dinformation-maghreb-emergent-et-radiom-info-bloques-par-les-autorites-communique/

260 *Maghreb Emergent, http://maghrebergent.info/*

261 *Radiom, http://radiom.info/*

262 *INTERLINES again censored in Algeria, https://tinyurl.com/y3axbf6r*

263 *Algeria blocks 3 news websites and criminalizes false news, https://cpj.org/2020/04/algeria-blocks-3-news-websites-and-criminalizes-fa/*

264 *"We fight the rumor by spreading the truth daily and regularly, https://tinyurl.com/y3s29z48*

265 *Journalists face threats of intimidation and censorship for reporting Covid-19 in Mogadishu and Hargeisa,*
      https://sjsyndicate.org/2020/04/03/journalists-face-threats-of-intimidation-and-censorship-for-reporting-covid-19-in-mogadishu-and-hargeisa/

266 *Gov't asked to suspend OTT, https://www.independent.co.ug/govt-asked-to-suspend-ott/*

267 *ECOWAS Court upholds digital rights, rules 2017 internet shutdowns in Togo illegal https://www.accessnow.org/internet-shutdowns-in-togo-illegal/*

2.4.2 Increased Cyber Attacks

Working and studying online also means that the public is at a higher risk of cyber incidents. Many employees across the continent are resuming work, and organisations are embracing hybrid models of online and onsite working.[268] As such there are increasing concerns over the security of data, shadow IT, and the financial implications of a security breach. Internet users can be exposed to hacking on online meeting tools, online banking fraud, surveillance, phishing and other email scams.

Indeed, the threat of attack on digital infrastructure owned by Africa-based enterprises has increased during the COVID-19 pandemic.[269] Organizations experienced sustained malware attacks as cybercriminals took advantage of the disruption to stage attacks on small and large business entities as remote work became the norm. According to Mimecast, the monthly volume of cyber attacks had increased by 33 percent between January and March 2020.[270] In a survey commissioned by Liquid Telecom conducted in August 2020, 57 percent of network managers in Africa reported a spike in cyberthreats during the period.

According to Kaspersky, there were 2.03 million phishing attacks in Africa in the second quarter of 2020.[271] South Africa led with 616,666 phishing attacks, followed by Kenya (514,361), Egypt (492,532), Nigeria (299,426), Rwanda (68,931) and Ethiopia (31,585). The report noted that following the pandemic, there were increased excuses that fraudsters used to ask for personal information from unsuspecting internet users.

2.4.3 Boosting Connectivity and Access to the Internet

There were, however, some positive steps taken by governments and the private sector to increase access and affordability of the ICT and, consequently, access to COVID-19-related information by the population.

In Kenya, Loon teamed up with Telkom Kenya to launch its Loon balloons in July 2020.[272] The project was fast-tracked during the pandemic to improve communications and offer internet connectivity to people living in remote, underserved and totally underserved regions in the country. The 35 solar powered balloons offer download speeds of 18.9 Mbps (megabits per second) and upload speeds of 4.7 Mbps. In May 2020, Loon signed a new deal with Vodacom to expand its internet infrastructure offering to Mozambique.[273] The project will cover the Cabo Delgado and Niassa provinces of Mozambique, which have not been covered due to their vast and logistically challenging geographies.

South Africa's ICT COVID-19 National Disaster Regulations[274] required all Electronic Communication Services and Electronic Communications Network Services licensees to zero-rate access to all government approved educational sites to promote remote learning and virtual classrooms, and also to COVID-19 websites approved by the country's Department of Health.

268   *Liquid Telecom Revolutionises Cybersecurity With New Offering, https://www.cio.co.ke/liquid-telecom-revolutionises-cyber-security-with-new-offering/*

269   *African executives say cyber threats rise during COVID-19 era, https://africa.cgtn.com/2020/09/10/african-executives-say-cyber-threats-rise-during-COVID-19-era-2/*

270   *COVID-19 brings new cyber-security threats to universities, https://www.universityworldnews.com/post.php?story=20200607084916387*

271   *Africa records two million phishing attacks in second quarter of 2020, Kaspersky report,*
      https://africabusinesscommunities.com/tech/tech-news/africa-records-two-million-phishing-attacks-in-second-quarter-of-2020-kaspersky-report/

272   *4G internet balloons take off over Kenya, https://www.bbc.com/news/technology-53321007*

273   *Bringing Loon to Mozambique, https://medium.com/loon-for-all/bringing-loon-to-mozambique-1a0aea489b74*

274   *Electronic Communications Act: Information and Communications Technology (ICT) Coronavirus COVID-19 National Disaster Regulations: Amendments,*
      https://www.gov.za/sites/default/files/gcis_document/202009/43707gen500.pdf

Further, the Independent Communications Authority of South Africa (ICASA) in April released additional spectrum to mobile operators MTN Group, Vodacom and Telkom, while internet service providers Liquid Telecom and Rain Networks were granted additional spectrum for their fixed wireless access products.[275] The additional spectrum was allocated on a temporary basis for the duration of the national disaster, to address the spike in data demand. Vodacom also committed to spend USD 27 million to bolster its network to meet the increased demand.[276]

Also, Ghana's telecommunications regulator, the National Communications Authority (NCA), in April granted the nation's largest operators, Vodafone and MTN Ghana, additional spectrum.[277] The allocation was for a temporary period of three months at no additional cost to the operators to enable them cope with the increased internet traffic during the country's lockdown.

Similarly in May, the Postal and Telecommunication Regulatory Authority of Zimbabwe (POTRAZ) allocated the nation's three mobile network operators NetOne, Telecel and Econet free spectrum until December 2020.[278] The Zimbabwe Research and Education Network (ZIMREN) was also granted a licence to enable it source and distribute internet connectivity. The goal was part of the measures to increase their capacities and ensure affordable data to the consumers. Prior to the announcement, Econet Wireless had increased its data prices by 225 percent, a move which the regulator found to be within the USD 0.30 per Megabyte threshold.

In August, the Nigerian Communications Commission (NCC) approved and encouraged resource sharing among network operators and secured Right of Passage (RoP) for all telecommunications companies and suppliers for easy movement during the lockdown.[279] The measures were to enable the operators to service their base stations to ensure seamless services for telecom consumers who were increasingly relying on the networks during the pandemic.

Reduction of Tariffs by Telecommunications Service Providers

There were commendable initiatives by telecommunication service providers in some countries to reduce internet access costs, or to develop new and affordable packages for their customers.

In Ethiopia, telecom monopoly Ethio Telecom introduced discounts to the public of 50 to 57 percent of the price of SMS, voice and data bundles under the Stay Safe Package.[280] The company also provided four websites for free to convey valuable information to the public during the corona pandemic. In addition, it provided free Wi-Fi and two fixed line telephone services at two coronavirus quarantine and recovery centres.[281] Further, it disseminated to mobile voice users through IVR (Integrated Voice Record) in five languages. Further, it replaced its cellphone ringtone with COVID-19 prevention messages, besides sending more than 200 million short messages to the public.

275   *South African regulator releases emergency spectrum to ease lockdown congestion,*
   https://www.commsmea.com/business/regulation/21730-south-african-regulator-releases-emergency-spectrum-to-ease-lockdown-congestion

276   *South Africa's mobile operators granted emergency lockdown spectrum to meet data demand,*
   https://in.reuters.com/article/health-coronavirus-safrica-spectrum/south-africas-mobile-operators-granted-emergency-lockdown-spectrum-to-meet-data-demand-idINKBN21Z17G
   ?rpc=401&

277   *Ghana's largest operators get additional temporary spectrum, https://www.africanwirelesscomms.com/news-details?itemid=3149*

278   *Zimbabwe: Regulator Grants Free Temporary Spectrum To Telcos To Boost Data Capacity – Reports,*
   https://extensia-ltd.com/2020/05/12/zimbabwe-regulator-grants-free-temporary-spectrum-to-telcos-to-boost-data-capacity-reports/

279   *Press Statement: COVID-19: Danbatta Lists Measures to Mitigate Impact on QoS Delivery,*
   https://www.ncc.gov.ng/media-centre/news-headlines/858-press-statement-covid-19-danbatta-lists-measures-to-mitigate-impact-on-qos-delivery

280   *Stay at home, https://www.ethiotelecom.et/stay-at-home/*

281   *COVID-19 response, https://www.ethiotelecom.et/COVID-19-response/*

A similar initiative was noted in Cape Verde where in March two mobile telecommunications operators, CV Móvel and Unitel T+, announced a joint campaign to offer their customers a free package of 2,000 MB of internet data to encourage citizens to stay at home.[282] The package also included 15 minutes of calls for all national operators to be used up until April 30. In Mozambique, state-owned TmCel offered discounted packages ranging from 1 to 5 GB, costing 25 to 100 Mozambican meticais (USD 0.37 to 1.50).

In Senegal, telecoms company Sonatel reduced by 50 percent the woyofal recharging costs, allowed the free payment for water (Sen'Eau), electricity (Senelec) and telephone bills by Orange Money for 30 days.[283] It also suspended charges on all merchant payments by Orange Money. Other measures included providing technical support at the Call Center housing the COVID-19 toll-free number, providing communication support to the state's health communication and awareness services, and creating a waiting ringtone (Dalal Tones) to raise awareness on preventative measures.

In Kenya, Safaricom, the largest telecom, doubled the bandwidth allocation to its Home Fibre subscribers as a measure during the period.[284] In Uganda, telecom giants MTN Uganda and Airtel introduced promotional services such as the 'work from home'[285] data bundles, zero-rating information from the health ministry website and free text messaging services to keep the public connected.[286]

In Cameroon, all communication providers – Camtel, MTN, Orange and Viettel – offered subsidised data bundles to facilitate remote work and citizens' access to information via the internet.[287] Camtel also introduced a 150 GB family package for 10,000 CFA (USD 17.75), while Yoomee Mobile introduced a 128 package at a similar price. Further, MTN and Orange Cameroon gave free access to several e-learning platforms including those from national universities.[288] Additionally, the MTN Foundation supported the awareness campaign of the National Plan to fight against COVID-19.[289]

In Chad, the Electronic Communications and Postal Regulatory Authority (ARCEP) in March urged mobile operators Tigo, Airtel and Sorel-Tchad, to implement measures ranging from free mobile money transactions, and reduction of mobile communication rates for voice, SMS, data, and to implement social network packs that could be used over a given period, of at least a month.[290]

The challenge noted with some of these offerings is that they revealed another face of social inequalities, since, given the low internet penetration in some countries, some of the packages only benefited those who had access to the internet, or could afford the internet packages. Moreover, many of the waivers and promotions offered by the operators have since ended.

282   *Mozambique and Cape Verde's telcos offer affordable mobile internet as citizens urged to stay home,*
      https://globalvoices.org/2020/04/03/mozambique-and-cape-verdes-telcos-offer-affordable-mobile-internet-as-citizens-urged-to-stay-home/

283   *Payment of invoices via Orange Money: Sonatel offers free fees for 30 days,*
      https://www.socialnetlink.org/2020/03/19/paiement-de-facture-via-orange-money-sonatel-offre-la-gratuite-pendant-30-jours/

284   *Sector Statistics Q3 2019 - 2020, https://ca.go.ke/wp-content/uploads/2020/07/Sector-Statistics-Report-Q3-2019-2020-.pdf*

285   *COVID-19: MTN Uganda introduces work from home data bundles, https://www.dignited.com/59266/mtn-work-from-home-data-bundles-uganda/*

286   *Airtel Uganda https://twitter.com/Airtel_Ug/status/1242050107727654912?s=20*

287   *How Technology is Aiding the COVID-19 Fight in Africa,*
      https://cipesa.org/2020/03/how-technology-is-aiding-the-COVID-19-fight-in-africa/

288   *How Mobile Operators Support the Fight Against COVID-19 in Cameroon,*
      https://lemobileaukamer.com/comment-les-operateurs-mobiles-soutiennent-la-lutte-contre-le-covid-19-au-cameroun

289   *The MTN Foundation supports the National Plan to fight against Coronavirus # COVID19,*
      https://mtn.cm/fr/2020/03/20/mtn-foundation-supports-the-national-plan-to-fight-against-coronavirus-COVID19/

290   *Chad - COVID-19: towards a drop in the cost of the Internet? https://www.alwihdainfo.com/Tchad-COVID-19-vers-une-baisse-du-cout-d-Internet_a84783.html*

Removal of Communications Services Taxes

In Malawi, the pandemic offered an opportunity for people to call for access to affordable internet. In August 2020, Malawi Communication Regulatory Authority (MACRA) commenced the roll out of the Universal Service Fund (USF) to improve communication services especially in rural areas.[291] Further, there were calls by various civil society groups for the government to lower the prohibitively high taxes affecting ICT growth. Since 2015, the Malawian government has levied 17.5 percent value added tax (VAT) on mobile phones, 16.5 percent on internet services and an additional 10 percent excise duty on text messages and internet data transfers.[292]

In Ghana, the government in July 2020 reduced the Communication Service Tax (CST) from nine to five percent for a period of six months from July 2020.[293] The tax had been increased in 2019 from six to nine percent. In Chad, the government in January 2020 dropped the 18 percent excise duty applied to internet access, which resulted in a reduction of internet access costs.[294]

2.5 Restrictions on Freedom of Assembly and Association _____

In several countries, governments adopted measures that restricted freedom of assembly and association in a bid to contain the virus. These included the closure of institutions of learning, imposition of curfews, travel bans and compulsory quarantines, mandatory wearing of face masks, and restrictions on public gatherings and other social distancing measures.[295] In instituting these measures, some states invoked "state of emergency" provisions in their laws to suspend rights, while in others, security agencies used unreasonable, unnecessary and excessive force to compel members of the public to enforce laws and directives. There were also issuance of threats to individuals by government agencies if they used digital platforms to violate COVID-19 contrrol measures.[296]

These two aspects are not only worrying, but are significant for digital rights as they demonstrate the ease with which laws can be used to vacate rights indefinitely. At the same time, they illustrate the lack of accountability of states and their security agencies for human rights violations and abuses such as torture, breach of privacy through realtime surveillance and and hacking.

2.5.1 Suspension of Rights through Emergency Declarations

Many of the emergency measures were declared under public health and national disaster laws, for initial periods of one month, which were subsequently increased as the virus spread. However, some countries opted to invoke the "state of emergency" provisions in their laws, which, depending on the country, led to further suspension of rights, or were put in place for longer periods, or without time limits. The longest specified period was noted in Sierra Leone where the "state of emergency" was declared for a period of one year.[297] In Botswana the "state of emergency" was to remain in force "until further notice,"[298] while in Niger[299] and Cote d'Ivoire[300] the periods were not specified.

291   Malawi: citizens demand reduced mobile, internet fees Macra sets up system to reach out to rural Malawi on access to ICT,
       https://www.nyasatimes.com/macra-sets-up-system-to-reach-out-to-rural-malawi-on-access-to-ict/

292   Government reduces talk tax from 9% to 5%, https://itweb.africa/content/o1Jr5qx9b89vKdWL

293   Government reduces talk tax from 9% to 5%, https://citinewsroom.com/2020/07/government-reduces-talk-tax-from-9-to-5/

294   Chad drops internet excise duty to help reduce access costs,
       https://www.globenewswire.com/news-release/2020/07/20/2064408/0/en/Chad-drops-internet-excise-duty-to-help-reduce-access-costs.html

295   Daniel Mumbere, "African govts using a similar COVID-19 containment rule book," Africanews, April 2, 2020,
       https://www.africanews.com/2020/04/02/african-govts-adopt-copy-and-paste-approach-to-combat-covid-19/

296   CIPESA, "Restrictions to Freedom of Assembly and Association in Africa in the wake of COVID-19: Submission to the UN Special Rapporteur on Freedom of Assembly and
       Association by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) April 2020," https://cipesa.org/?wpfb_dl=330

297   Sierra Leone: National state of emergency declared March 25 /update 3,
       https://www.garda.com/crisis24/news-alerts/326706/sierra-leone-national-state-of-emergency-declared-march-25-update-3

298   Botswana Government, https://www.facebook.com/BotswanaGovernment/posts/2867383003344339

299   Communique 12/CM/2020, https://tinyurl.com/y2cljz7p

300   L'etat d'urgence declare sur tout le terrotoire national http://www.gouv.ci/doc/1585002313la-bonne-info-numero-17-23-mars-2020.jpg

In Zimbabwe, nationwide restrictions were to remain in place "for an indefinite period".[301] Egypt, on the other hand, declared a "state of emergency" for three months under Article 154 of Egypt's Constitution, despite already being a near continuous state of emergency since 2017.[302]

Togo declared a "health emergency" for three months, and provided for a six month period of law making authority by the government with authorisation from the National Assembly.[303] In Angola, the declaration of a national "state of exception" through a presidential decree also granted the government power to limit individuals' freedom of movement and assembly, requisition private property, and forcibly confine people deemed likely to transmit COVID-19.[304] In Ethiopia, the declaration of the state of emergency permitted the suspension of rights in line with Article 93(4) (a) and (b) of the national constitution.[305]

While some of the measures such as travel restrictions and bans on religious gatherings have been eased in some countries like Uganda, Kenya, Tanzania, South Africa, others continue to be used as preventive measures against COVID-19, or as in the case of Zimbabwe and Egypt, to continue clamping down on civic rights.

2.5.2 Use of Excessive Force to Enforce Curfews

Governments also clamped down on freedom of association and assembly by restricting movement and mass gatherings. The measures introduced included declarations of states of emergency, dusk-to-dawn curfews, lockdowns, restrictions on movement, and limitations on public gatherings. In the implementation of these measures, a number of violations were noted.

In March 2020, the Egyptian government detained and later released the mother, sister and two supporters of a prominent activist, Alaa Abdel Fattah,[306] after they live-streamed a video of their protest at a sidewalk outside the cabinet building in Cairo, demanding the release of prisoners over concerns that the spread of the virus in prison.[307] They faced charges of spreading false news and violating the country's protest ban.

Police brutality, including the use of excessive force to enforce the dawn to dusk curfews was witnessed in several countries, including Kenya[308] and Zimbabwe[309] where police assaulted, beat up, and tear-gassed crowds of people on their way home from work. Police in South Africa fired rubber bullets on people found defying the stay at home orders,[310] while in the Democratic Republic of Congo police fired live rounds to disperse demonstrators, and assaulted others for violating social distancing measures.[311] Police in Uganda shot and injured two construction workers for defying

301   *Coronavirus: Fears of rights abuses in Zimbabwe's indefinite lockdown*
      https://www.irishtimes.com/news/world/africa/coronavirus-fears-of-rights-abuses-in-zimbabwe-s-indefinite-lockdown-1.4259476

302   *Egypt's president expands powers, citing virus outbreak https://apnews.com/article/63abe33c947e857505ef351f3558a744*

303   *President Faure Essozimna Gnassingbé's address on the national response against COVID-19, https://tinyurl.com/y4uj8bo8*

304   *Quinta-feira, 26 de Março de 2020 I Série – N.º 36, https://tinyurl.com/yypw3bu2*

305   *Proclamation 3/2020, https://tinyurl.com/y3rfqpau*

306   *Abdel Fattah became a figurehead of the pro-democracy protest movement on social media during the 2011 uprising that removed longtime President Hosni Mubarak. He served*
      a five-year prison sentence for violating Egypt's protest ban, and was re-arrested in September 2019 despite not participating in the protests.

307   *Egypt holds activists who urged prisoner releases amid virus https://apnews.com/e84490cafb5c5f68c6164409fbbfbf5c*

308   *Kenya Police Abuses Could Undermine Coronavirus Fight, https://www.hrw.org/news/2020/03/31/kenya-police-abuses-could-undermine-coronavirus-fight*

309   *Zimbabwe sharpens crackdown ahead of anti-corruption protest,*
      https://www.theglobeandmail.com/world/article-zimbabwe-sharpens-crackdown-ahead-of-anti-corruption-protest/

310   *South Africa security forces fire rubber bullets at people defying coronavirus stay-at-home orders,*
      https://www.cbsnews.com/news/south-africa-coronavirus-security-forces-rubber-bullets-stay-at-home-orders/

311   *DR Congo: Respecting Rights Key Amid COVID-19, https://www.hrw.org/news/2020/04/03/dr-congo-respecting-rights-key-amid-COVID-19*

the presidential directive,[312] shot at a group of people to disperse a meeting,[313] and raided a sexual minorities' shelter where they assaulted, arrested, detained and charged 23 people in court for committing "negligent acts likely to spread infection of disease"' and "disobedience of lawful orders".[314]

Kenyan police teargassed demonstrators commemorating the 30-year anniversary of the Saba Saba movement,[315] and arrested at least 50 people.[316] Zimbabwean police charged three members of the opposition MDC Alliance over an illegal protest against food shortage for "gathering with intent to promote public violence and breach of peace".[316]

In addition to police, some countries such Uganda,[318] Rwanda, Zimbabwe and South Africa deployed the military to enforce curfews. These security forces used excessive force, including beating, shooting, and arbitrarily detaining people across the country in an apparent attempt to punish non-compliance with government measures to close non-food markets.

Members of South African National Defence Force (SANDF) soldiers are alleged to have tortured Collins Khosa to death after finding him with alcohol at his home.[319] In Rwanda, five soldiers were accused of extortion, assault, and the rape of at least three women as they enforced the nationwide curfew in a Kigali slum.[320] Further, people arrested for violating the curfew were detained in stadiums, where they were subjected to all-night long lectures on the dangers of the coronavirus.[321] At least 70,000 people had by mid-July 2020 attended the lectures conducted under the watch of armed security personnel.[322] An option to avoid public admonishment was the payment of a fine of 25,000 Rwandan francs (USD 26), which is out of reach for many.

312   *COVID-19: Two shot for defying presidential directives,*
      https://www.monitor.co.ug/News/National/Two-shot-Mukono-defying-presidential-directives/688334-5505644-aro68b/index.html

313   *Officer Arrested For Opening Fire While Dispersing Bar Goers, https://thetowerpost.com/2020/03/30/officer-arrested-for-opening-fire-while-dispersing-bar-goers/*

314   *Statement On The Raid Of The Children Of The Sun Foundation Shelter For LGBT Youths In Uganda,*
      https://www.kuchutimes.com/2020/04/statement-on-the-raid-of-the-children-of-the-sun-foundation-shelter-for-lgbt-youths-in-uganda/

315   *Saba Saba Day: A Kenyan story of an African movement, https://www.nation.co.ke/kenya/blogs-opinion/opinion/saba-saba-day-kenyan-story-african-moment-1447374*

316   *More than 50 activists arrested as police break Saba Saba march in Nairobi,*
      https://www.capitalfm.co.ke/news/2020/07/more-than-50-activists-arrested-as-police-break-saba-saba-march-in-nairobi/

317   *Zimbabwe police charge activists, journalists with violating COVID-19 rules,*
      https://www.theeastafrican.co.ke/tea/news/rest-of-africa/zimbabwe-police-charge-activists-journalists-with-violating-COVID-19-rules-1442122

318   *Uganda: Respect Rights in COVID-19 Response, https://www.hrw.org/news/2020/04/02/uganda-respect-rights-COVID-19-response*

319   *S Africa court issues orders to end police abuse during lockdown,*
      https://www.aljazeera.com/news/2020/05/africa-court-issues-orders-police-abuse-lockdown-200516105512595.html

320   *Rwandan soldiers accused of raping women during lockdown , https://clubofmozambique.com/news/rwandan-soldiers-accused-of-raping-women-during-lockdown-156928/*

321   *Rwanda: wave of arrests and abuse linked to confinement, https://www.hrw.org/fr/news/2020/04/24/rwanda-vague-darrestations-et-dabus-lies-au-confinement*

322   *Rwandans sent to all-night lectures as punishment for breaking COVID rules,*
      https://www.deccanchronicle.com/world/africa/070820/rwandans-sent-to-all-night-lectures-as-punishment-for-breaking-COVID-r.html

3

Impacts of COVID-19 Measures on Digital Rights

On a continent where digital authoritarianism is rising,[323] the legitimisation of surveillance, censorship, and breaches in the rule of law during the coronavirus crisis could create a new normal that erodes digital rights for years to come. In several African countries, there are inadequate safeguards and limited oversight to guard against potential violations of digital rights arising out of the implementation of laws, regulations, systems, and practices imposed to fight COVID-19.

This study has investigated the measures invoked by various African governments in fighting COVID-19 and found that many of them have a direct and negative impact on the enjoyment of various rights and freedoms. Notably, the study took an interest in understanding the implications of these measures on digital rights and democratic governance. As this section explains, the measures have had a profoundly regressive effect that is likely to persist for years. Identifying these harms - those that have occurred and others that are likely to occur post-coronavirus - is critical to drawing up remedial and mitigation actions.

3.1 Erosion of Civil Liberties

In many countries, the measures have eroded civil liberties online and offline. The rights that have been directly impacted include freedoms of expression, assembly, association, and opinion, as well as the rights to privacy, to information and, to equal treatment before the law and due process. As a Senegalese jurist put it, "The government and law enforcement actions have severely curtailed freedom of opinion. Everyone has the right to freely express his or her opinion, including the right not to believe. If one can disbelieve in God, one can disbelieve in the Coronavirus. It is just the expression of an opinion [yet] the government wants to hunt down anyone who expresses themselves on the internet to say that the Coronavirus does not exist."

During and prior to the pandemic period, several countries in the region enacted retrogressive laws and implemented oppressive measures that served to strengthen the state's repressive hand at the expense of citizens' rights. This rising repression has been primarily characterised by the proliferation of retrogressive laws, procedures and practices such as the systematic criminalisation of online communication and dissent, the arbitrary arrest, illegal detention, flawed prosecution and excessive punishment of government critics.

While emergency measures in times of a health crisis serve a legitimate purpose, they should not be abused. Governments have the responsibility to promote, protect and respect public freedoms at all times, and to provide remedies in case of their breach. As shown in this section, the various measures imposed by many governments exceeded their purpose, unnecessarily interfered with rights, and in other cases, fell short of the states' obligations with respect to the rights under international human rights law.

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[323] *The Rise of Digital Authoritarianism* https://freedomhouse.org/report/freedom-net/2018/rise-digital-authoritarianism

3.1.1 Onslaught on Freedom of Expression and Information

Efforts to combat misinformation and disinformation related to COVID-19 had a direct effect on the enjoyment of the rights to freedom of expression and information. Whereas there were some bright spots, these were overshadowed by the negative. Some governments were proactive in providing information on COVID-19 such as cases diagnosed, number of deaths, and ways of preventing COVID-19 infection. This openness aided the fight against the pandemic, creating public trust in the measures instituted by governments and giving citizens the agency to take actions to avoid catching and spreading the virus. Indeed, during times of such health crises, freedom of expression and information should be strengthened, not curtailed.

The graver reality was that several countries adopted retrogressive measures that were not in line with international human rights law. Given their need to maintain control of the COVID-19 narrative, several governments enacted vague and overly broad laws and implemented repressive practices that curtailed freedom of expression and restricted access to information through censorship, filtering of content, closure of media houses, threats, arbitrary arrests, illegal detentions, prosecution, intimidation and harassment of journalists, online activists and bloggers. These retrogressive measures have continued to haunt the continent despite important rulings by national and regional courts such as the ECOWAS ruling that internet shutdown is illegal and an affront to the right to freedom of expression.

Notably, punitive sanctions such fines, bans, criminalisation of the work of media houses and journalists in countries such as Tanzania, Chad, Uganda, Nigeria, Niger, and Ethiopia, in effect gagged the media, and restricted the flow, quality and quantity of information available to journalists and the general public. Further, social media users, online activists, bloggers and journalists faced intimidation, threats, arbitrary arrests, illegal detention and prosecution for publication of information or opinions on COVID-19. Those who sought transparency and accountability, particularly around government's statistics, preparedness, handling or spending on COVID-19-related issues, often faced severe retribution. The availability of information was restricted by logistical considerations such as curfews, remote working by many private and government officials, low operating budgets for media houses, and travel restrictions within countries, which had already made it harder for journalists to operate.

Some countries like Burundi, the Ivory Coast and Tanzania,[324] opted to maintain a shroud of secrecy and opaqueness with respect to information on COVID-19. This left the public to mostly rely on rumours and falsehoods, as the governments under the pretext of tackling misinformation, cracked down on those providing information, muzzled whistleblowers and critics, and designated specific government agencies as the only sources of COVID-19 information. As a result, many citizens came to consider most information from public authorities as unreliable.

This onslaught on the media and other online users has had the net effect of undermining citizens' right to freely express themselves, as well as to have access to a variety of vital COVID-19 related news and information. As United Nations experts noted in July with regard to Tanzania, COVID-19 had compounded pre-existing human rights concerns in that country, notably regarding the right to freedom of expression, including freedom to seek, receive and impart information.[325] In most countries there was no specified time scope or duration for the legislative and policy measures.[326] Accordingly, there is no guarantee that the adopted measures will terminate or lapse with the end of COVID-19. Consequently, it is foreseeable that freedom of expression and information will potentially face continued curtailment.

Viewed in their totality, these questionable measures have proved counter-intuitive, coming at a time when the public needed the greatest access to a range of credible and diverse information and insights on COVID-19, so as to avoid consuming misinformation and falsehoods. The need to deal with the spread of falsehoods during the pandemic should be buttressed by the implementation of international human rights standards and principles to protect and promote freedom of expression, media and information. These should be coupled with open and timely communication by governments, promotion of independent media and media literacy, civic education, due diligence on the part of social media companies to combat fake news, and a halt to resorting to criminalisation of speech and attacks on the media and social media users as solutions.

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324   *Amnesty International, Tanzania: Authorities must end crackdown on journalists reporting on COVID-19, April 21, 2020,*
      https://www.amnesty.org/en/latest/news/2020/04/tanzania-authorities-must-end-crackdown-on-journalists-reporting-on-covid19/
325   *OHCHR, UN experts call on Tanzania to end crackdown on civic space, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26117&LangID=E*
326   *United Nations, COVID-19 and Human Rights: We are all in this together, April 2020,*
      https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf

3.1.2 Invasion of Privacy and Breaches of Personal Data

The fight against COVID-19 has been characterised by an assortment of measures that led to the violation of privacy in numerous countries. The International Covenant on Civil and Political Rights, which has been ratified by several African countries, provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence. However, in practice, the new COVID-19 legislation as well as pre-existing laws that were cited in implementing pandemic-related emergency measures such as in Chad, Mauritius, Kenya, Uganda, South Africa and Zambia authorised the searching of homes and individuals, and required the reporting of individuals suspected to be carrying the virus.

Further, the laws required the collection of personal information of individuals, contact tracing and surveillance activity in countries like Burundi, Kenya, Nigeria, South Africa, and Tunisia, as well as mandatory testing in Zimbabwe. These measures mostly had the effect of undermining individuals' data rights. Some of them amounted to involuntary surrender of personal data yet measures to ensure the security of data collection, storage and processing were not clear, or not guaranteed in a number of countries, notably those that lacked robust laws to guarantee the right to privacy and personal data protection. Privacy in the digital age has become the most important human rights issue, given its intricate connection with, and its being a foundation for the realisation of rights such as human dignity, freedom of expression, information, assembly and association. Without adequate safeguards, the assaults on the rights to privacy due to COVID-19-related personal data collection also pose a key threat to these rights.

Prior to COVID-19, governments in the region were already ramping up surveillance capability and activity, aided by cheaper imports of technology and expertise from more technologically developed countries including China. While surveillance is permitted in the legislation of various African countries, the risk expressed before COVID-19 was that the practice could increasingly go unchecked as the technologies become more sophisticated, harder to detect and widespread.[327] This surveillance activity has often been undertaken with limited oversight and often to target those legitimately expressing opinions critical of their leaders. A clear fear is that in the aftermath of the pandemic, some governments could shift the COVID-19 surveillance apparatus and lessons learnt to undermine digital rights, by surveilling and silencing critics and opponents.

Indeed, United Nations experts cautioned that it was crucial that the use of surveillance technology to track the spread of the Coronavirus be limited in terms of purpose and time, and that individual rights to privacy, non-discrimination, the protection of journalistic sources, and other freedoms, be rigorously protected.[328] They added that the use of such technology should "abide by the strictest protections and only be available according to domestic law that is consistent with international human rights standards."

As has been argued by EndCode, the transparency and accountability stance of African countries would have been aided by the establishment of a designated COVID-19 judicial authority that could independently enforce due process safeguards during the pandemic and for a reasonable period of time after, to ensure all violations and notifications are addressed.[329] Notable exceptions are regulations in South Africa, as they place notification and reporting obligations (to respective authorities) concerning the processing of health status and other personally identifiable information of potentially infected persons. Similarly, the public announcement by South Africa of the appointment of a respected judge to provide oversight so that privacy is not compromised in combating COVID-19, is an example of needed transparency and oversight.[330]

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327   CIPESA, State of Internet Freedom in Africa 2019, https://cipesa.org/?wpfb_dl=307

328   OSCE, COVID-19: Governments must promote and protect access to and free flow of information during pandemic, say international media freedom experts, March 19, 2020, https://www.osce.org/representative-on-freedom-of-media/448849

329   Select African countries COVID-19 regulations and impact on digital rights, https://africaninternetrights.org/pt/node/2451

330   O'Regan appointed as COVID-19 Designated Judge, https://www.sanews.gov.za/south-africa/o%E2%80%99regan-appointed-covid-19-designated-judge

There is therefore a need to push for dismantling of the surveillance apparatus constituted to combat COVID-19's spread and provide for expiry of rights to process personal data collected by these systems. Moreover, authorities should issue transparency reports detailing the COVID-related surveillance activity, such as the tools and technologies used, state agencies and private entities involved, number of persons whose data were tracked, types of data collected, entities that accessed the data, and safeguards instituted to guard against misuse of the data and the surveillance apparatus.

Therefore in the future, stronger safeguards to ensure privacy and data protection such as independent data protection authorities should be put in place to ensure robust protection and respect for citizens' rights even during pandemics. These measures should not be intrusive and should specify duties and obligations of data collectors and processors and the rights of individuals whose data is collected or processed during such emergency situations so as to balance privacy vis-à-vis control and prevention.[331] Further, they should specify the duration for which the collected personal data will be retained and the disposal mechanism once this time elapses. Moreover, such data should only be used for the purpose for which it was collected.

3.1.3 Limitations on Freedom of Assembly and Association Online

The right of individuals to peaceful assembly and association is linked to their ability to freely express their opinions, and to share and have access to information, both offline and online. However, in response to the pandemic several countries quickly suspended constitutional guarantees without reasonable justification or meaningful stakeholder consultation, and imposed measures including declarations of states of emergency, curfews and lockdowns, bans and limitations on public and religious gatherings, travel bans and movement restrictions, all of which have restricted the rights of the public to peacefully assemble and associate.

Particularly worrying are cases in which state security agencies used excessive and unreasonable force to enforce the restrictions and disperse peaceful assemblies and public gatherings. In the Democratic Republic of Congo, Egypt, Kenya, Rwanda, Uganda and Zimbabwe, security agencies brutalised, harassed, tortured, detained, tear-gassed, shot at, injured and in some cases killed innocent members of the public as part of their enforcement of state curfews. These excesses were exacerbated in South Africa, Rwanda and Uganda by the deployment of the military to aid the responses.

Further, Tanzania introduced repressive legislation that restricted the work of civil society organisations, including freezing the bank accounts of a leading human rights coalition in the country, weeks to the country's October 2020 general election. In addition, Burundi and Malawi proceeded with elections, exposing the lives of the citizens to health risks while in Tanzania, Ghana and Uganda planned elections remain scheduled. Ethiopia suspended its August election indefinitely due to COVID-19 amidst growing discontent with Prime Minister Abiy Ahmed's government.[332]

With the implementation of these restrictions, the internet became critical as it was the only space for people to assemble and associate. This was enabled through online spaces such as social media platforms such as YouTube, Instagram, Facebook, and WhatsApp which enabled people to gather and connect on ideas including through the use of hashtags, to create online actions, and to share and spread messages. As individuals, companies and government agencies tried to cope with the new restrictions, they embraced video conferencing, online meetings and webinars to continue engaging.[333]

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331 *See for instance, COVID-19's impact on data privacy, protection and security, https://www.episerver.com/guides/covid-19-privacy-considerations*

332 *Crisis looms in Ethiopia as elections are postponed, https://www.dw.com/en/crisis-looms-in-ethiopia-as-elections-are-postponed/a-53829389*

CIPESA, "Restrictions to Freedom of Assembly and Association in Africa in the wake of COVID-19: Submission to the UN Special Rapporteur on Freedom of Assembly and Association
333 *by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) April 2020," supra.*

However, in resorting to the internet, the public in Algeria, Botswana, Chad, Egypt, Ethiopia Kenya, Liberia, Lesotho, Morocco, Rwanda, Tanzania, Tunisia, Uganda and Zimbabwe, were met with restrictions. These included state-led surveillance, mass personal data collection, networks and internet disruptions, censorship, criminalisation of speech, threats to online activity, coupled with barriers to internet access such as internet taxes, exorbitant cost of internet data, and poor infrastructure. These measures curtailed the ability of the public to freely express their opinions, access information, and mobilise online.

Government approaches to restrict offline spaces have since been extended to, and replicated to online spaces. For example, the excessive use of force to disperse assemblies mimics internet disruptions, while censorship of offline publications has since been extended to online publications, websites and social media posts. This should send a warning to the public and human rights defenders that state repression has acquired a new online character, and presents a significant threat to digital rights. It is therefore imperative that such measures are reviewed to ensure compliance with international human rights standards, including respect of the rights to privacy, expression, and information.

However, given recent trends, there is likelihood of continued use of the draconian legislation and repressive measures in some countries, to continue limiting freedom of association and assembly after the pandemic. It is therefore vital that governments incorporate sunset clauses in laws passed during the crisis, systematically remove the restrictions, and automatically restore the rights as the COVID-19 pandemic ends. Moreover, civil society and human rights defenders need to be alive to this growing threat, and respond effectively.

3.2 Lack of Accountability and Transparency of Governments

Accountability and transparency of governments and their agencies were put to the test during the COVID-19 pandemic - in procurement, the conduct of surveillance, and implementation of other measures in the fight against the virus. Whereas the lack of transparency in procurement processes and around COVID-19 rules-making and judicial processes was worrying, the lack of transparency in the surveillance processes was particularly concerning. This is because there was widespread absence of transparency, accountability, and legal oversight over the surveillance measures, many of which were disproportionate and fell short of international human rights standards.

Another area of concern is the lack of government accountability for the continued violation of human rights of the public, and in particular, select groups such as the media and civil society organisations, and individuals such as government critics, journalists, and bloggers consistently seeking and demanding transparency and accountability from government. Moreover, states have continued with impunity to weaponise laws, instrumentalise prosecutorial agencies, weaken judicial independence, silence national human rights institutions, and exercise control over national parliaments. These actions have limited the oversight over executive authority, enabled executive arms of governments to be untouchable, and allowed them to consolidate and exercise executive power with impunity.

Hence, judicial and parliamentary oversight should be strengthened and regularly activated to avoid and check the arbitrary exercise of broad and excessive executive authority. These should be in addition to legislative and policy reforms to promote openness, transparency and accountability; a vibrant and robust civil society; a free and independent media; and an active and empowered citizenry to hold their governments accountable.

3.3 Deepening the Democracy Deficit _____

The ultimate effect of the COVID-19 measures is that they have deepened the democracy deficit in several African countries. Increasingly, more states in the region have fallen short of living up to their citizens' democratic expectations, thanks in big part to the measures instituted in fighting the pandemic.

Prior to the COVID-19 pandemic, Sub-Saharan Africa was faring badly in its democratic credentials, fighting for bottom position with the Middle East and North Africa (MENA) region. For example, of the 44 African countries that were included in the Economist Intelligence Unit Democracy Index for 2019, half were characterised as authoritarian regimes and many of the others were semi-authoritarian.[334] The region's overall score on the Index for last year was, in fact, its lowest since 2010. As is shown throughout this report, a plethora of regressive measures have been introduced in fighting the pandemic, and they have starkly undermined democracy. As is evident from the foregoing, respect for rights to expression, information, assembly, privacy, and opinion has dwindled. Likewise, the level of stakeholder engagement in public affairs and governments' transparency and accountability has declined.

The democratic regression in a number of countries in the region could persist beyond the COVID-19 crisis, unless the measures imposed are reversed and deliberate efforts are taken to promote greater respect for fundamental rights and freedoms. Worryingly, the current stance of some governments, notably those with the most dubious democratic credentials, suggests that, left on their own devices, they would be unwilling to press the reset button to fundamentally restore digital and other rights to pre-COVID levels, and indeed to take them to a higher level.

Indeed, while the Arab Spring was a turning point on digital rights in the region, COVID-19 could be another profoundly negative watershed moment. The Arab Spring, during which social media aided organising against autocratic regimes, some of which were overthrown, opened the eyes of many African authoritarian regimes to the power of digital technologies, and they went ahead to make laws to prescribe cyber crimes, to enable interception of communications, to control use of online platforms, and they started instituting measures such as website blockages, censorship of short messaging services, and disruption of networks.

3.3.1 Undermining Citizen Participation

One of the hallmarks of a democratic society is the ability by citizens to participate in civic matters and the conduct of public affairs. This must also include the ability to express dissent, support parties opposed to the government, and hold those in power accountable. However, there are prerequisites to citizens' meaningful participation, such as safe and trusted mediums for participation, confidence that their participation will be taken seriously, and that there shall be no sanctions or reprisals for expressing their opinions and choices. As is demonstrated in this report, COVID-19 control measures have chipped away at many of these prerequisites, with the sum effect that the ability and proclivity of citizens to participate is lower today than at the start of the year.

In the countries where civil liberties have been eroded the most, growing hostility of governments to dissenting opinions, including on their handling of COVID-19, has contributed to the enactment and enforcement of repressive laws on surveillance, fake news and criminal defamation and practices such as legal threats, intimidation, arrests, detentions, prosecutions, and state surveillance. These measures have, in turn, forced human rights defenders, journalists, activists, the political opposition, and ordinary citizens to self-censor, disengage from participating in public affairs, and refrain from exercising their rights to participate.[335] This has been the case in countries such as Zimbabwe, Tanzania, Uganda, Burundi, Egypt, Rwanda, Ethiopia, Morocco, Kenya, and Alegria, to cite just a few examples.

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334   Economist Intelligence Unit, Democracy Index 2019, https://www.eiu.com/topic/democracy-index

335   Amnesty International, "Laws Designed to Silence: The Global Crackdown on Civil Society Organizations,"
         https://reliefweb.int/sites/reliefweb.int/files/resources/ACT3096472019ENGLISH.PDF ; Likhita Banerji, "A Dangerous Alliance: Governments Collaborate with Surveillance
         Companies to Shrink the Space for Human Rights Work," Amnesty International, August 16, 2019,
         https://www.amnesty.org/en/latest/research/2019/08/a-dangerous-alliance-governments-collaborate-with-surveillance-companies-to-shrink-the-space-for-human-rights-work/

These high-handed measures by governments have cowed citizens, activists, and the media for fear of attracting reprisals. Yet, in the absence of engaged citizens, the respect for human rights, including the rule of law, suffers. Such a trend, if left unchecked, could persist well beyond the coronavirus crisis. Nonetheless, the emergence of Coronavirus dashboards and platforms in South Africa, Burkina Faso, Nigeria, and Kenya, which were created by various stakeholders, could create potential avenues for accessing and retrieving crucial information to enable citizen participation and engagement across the continent.

3.3.2 Accelerating Digital Exclusion

The use of ICT is necessary for the realisation of rights and freedoms by all persons irrespective of age, sex, disability, social, economic and political status. It also promotes civic participation, public health and safety, and education.[336] Africa continues to face access challenges with ICT being unaffordable to the majority, while the necessary ICT literacy and consumer safety remain low, and communities especially in rural areas lack the necessary facilities and infrastructure.[337]

Even before the COVID-19 pandemic, women, persons with disabilities, the elderly and those in rural communities were already facing digital exclusion. Only one quarter of Africa's total population uses the internet, with the key issues underpinning digital exclusion including poor network coverage, the affordability challenge, and lack of skills and awareness.[338]

While COVID-19 has illuminated the centrality of technology in the lives of individuals and communities, it has also brought to the fore the glaring digital divide in the region, and indeed deepened the digital exclusion. Several individuals have been locked out of active participation in the digital society, with the exclusion being manifested in accessing education, remote work, and participating in democratic processes, among others. Only 28.2% of Africa's population uses the internet, according to the International Telecommunications Union (ITU).[339] Indeed, whereas the Sustainable Development Goals (SDGs) in September 2015 called for universal, affordable internet access by 2020, this remains a dream too far for several countries in the region. The majority of African citizens lack "meaningful connectivity", that is, the ability to use the internet every day using an appropriate device with enough data and a fast connection. [340]

According to the UN, 166 countries have implemented country-wide school and university closures. Further, more than 1.52 billion children and youth are currently out of school or university, representing 87 percent of the world enrolled school and university student population. Moreover, nearly 60.2 million teachers are no longer in the classroom.[341]

The high and often double taxation on ICT, including on data, and in countries like Uganda, on social media, coupled with ineffective regulatory oversight over the ICT sector, poor and slow networks, all contribute to the low access to digital technologies. Poor women, rural populations, and persons with disabilities face particularly acute digital exclusion.[342] It is therefore important that African countries take steps towards attaining universal access to digital technologies as an enabler of access to information in education, employment, health, and democracy.

336   Web Junction, "Digital Inclusion,"
        https://www.webjunction.org/explore-topics/digital-inclusion.html#:~:text=Access%20and%20use%20of%20information,the%20community%20as%20a%20whole.&text=A%20digi
        tally%20inclusive%20community%20is,why%20digital%20inclusion%20is%20essential.

337   Digital Inclusion Survey, "What is Digital Inclusion?," https://digitalinclusion.umd.edu/content/what-digital-inclusion

338   Appsafrica, "4 barriers to digital inclusion across Africa," July 26, 2016, https://www.appsafrica.com/barriers-digital-inclusion-across-africa/

339   ITU, Measuring digital development: Facts and figures 2019, https://www.itu.int/en/ITU-D/Statistics/Documents/facts/FactsFigures2019.pdf

340   See Alliance for Affordable Internet (A4AI), Meaningful Connectivity — unlocking the full power of internet access, https://a4ai.org/meaningful-connectivity/

341   Shared responsibility, global solidarity: Responding to the socio-economic impacts of COVID-19,
        https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_COVID19.pdf

342   Paul Kimumwe, Why Access to Information on Covid-19 is Crucial to Persons with Disabilities in Africa,
        https://cipesa.org/2020/04/why-access-to-information-on-covid-19-is-crucial-to-persons-with-disabilities-in-africa/

Governments and key players such as the telecommunications sector[343] should ensure that access to ICT is enabled through provision of incentives such as low taxes, establishing modern ICT infrastructure and developing policies that promote digital literacy.[344] These measures should aim, among others, to narrow the digital divide, remove barriers, and address differences and disparities.[345]

343 Rachel Sibande, Cross-Post: Digital Inclusion: The Role of the Mobile Network Operator in Africa,
     https://digitalimpactalliance.org/cross-post-digital-inclusion-the-role-of-the-mobile-network-operator-in-africa/

344 Ibid.

345 Media Wire, What is Digital Inclusion and Why is it Important?, http://mediawiremobile.com/news/what-is-digital-inclusion-and-why-is-it-important/

4

Conclusion and Recommendations

4.1 Conclusions

The fight against COVID-19 has had a fundamental impact on digital rights and freedoms including freedom of expression, access to information, privacy, assembly and association. It has also undermined civic participation and, in many countries, deepened the democracy deficit. These effects are likely to persist even after the pandemic is contained. The region has witnessed enactment of draconian legislation, enforcement of repressive laws, intimidation and arrests of media practitioners, human rights defenders and other individuals. The highhandedness of governments has been manifest in the enforcement of COVID-19 preventive measures, the suspension of rights through emergency declarations and the gagging of critical voices calling for transparency and accountability. The wide-ranging and corrosive effects of these measures are articulated at length in this report, most notably in chapter 3.

Whereas there are some pointers towards improving access and use of ICT in Africa, COVID-19 could widen the digital divide on the continent, yet for the most part the actions of many governments have undermined, rather than promoted, greater access and affordability of digital technologies.

The developments reviewed in this report, including the COVID-19-related surveillance activity, often transpired in the absence of clear, accountable and transparent oversight mechanisms. That fact aided the erosion of rights, undermined the rule of law, entrenched impunity, and diminished state accountability. It could also imply that the effects of these measures could persist for years to come, unless remedial actions are taken by all relevant stakeholders.

Notably, this study has not been an audit of the privacy credentials of the systems that were deployed by governments and private actors. That still needs to be done. Indeed, the whole range of measures which governments deployed and employed is not fully known, and the push for transparency in this regard, including on how the systems worked and handled data, needs to continue. Documenting the systems and other measures introduced to fight COVID-19 must continue beyond the current report and well after the pandemic subsides. Ultimately, the full extent of the effects of the anti-COVID-19 measures on digital rights can not be exhausted at this point, but shall be known in the fullness of time.

4.2 Recommendations

The following are recommended priority actions by Government, ICT Companies, Media, and Civil Society.

Governments

- Review and revise the broad and vague COVID-19 related legislation and other laws that restrict freedom of expression, especially those on fake news, disinformation and misinformation, to ensure they are either repealed or amended to respectively meet the internationally acceptable three-part test of being lawful, necessary and proportionate.
- Proactively, provide credible and factual information to clarify misconceptions that could be held by the public.
- Educate and engage the public about how to discern fake news online and how to fact-check, as opposed to using broad and vague criminal laws against the public as the only solution.
- Respect and promote the role of the media and journalists as a critical source of information and engagement for the public.
- End abuse of cybercrime laws to target government critics, journalists and social media users, through arrests, threats, harassment, and intimidation.
- Implement programmes, including under the universal service and access funds, to expand public access to the internet, particularly to enhance digital inclusion for marginalised and underserved groups, communities and areas.
- Adopt laws, policies and practices to promote digital inclusion, including the zero-rating or reduction of costs of internet-enabled devices, removal of internet taxes, promotion and establishment of internet infrastructure development and digital literacy programmes.
- Establish, legal and policy measures that ensure accountability and transparency in data collection, storage and processing. In this regard, governments should also put in place mechanisms to ensure personal data is secured and not misused by unscrupulous individuals during the crisis to violate human rights or implement systems for mass surveillance.[346]
- Promote proactive disclosure and dissemination of information on COVID-19 to allow citizens to be aware of the strategic approach of the government and its extent of public funds expenditure in confronting COVID-19.
- Sign and ratify the African Union Convention on Cybersecurity and Personal Data Protection.
- Issue transparency reports detailing the COVID-19 related surveillance activity, such as the tools and technologies used, state agencies and private entities involved, number of persons whose data were tracked, types of data collected, entities that accessed the data, and safeguards instituted to guard against misuse of the data and the surveillance apparatus.
- Reform state surveillance programmes and publicly designate judicial authority to independently enforce due process safeguards at all times, given current limited judicial oversight over surveillance.

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[346] *Shared Responsibility, Global Solidarity: Responding to the socio-economic impacts of COVID-19*
https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_COVID19.pdf

ICT Companies

- Take measures to reduce the barriers to internet access, such as cost, by developing cheaper internet access packages, selling low-cost devices, to make internet access affordable to most citizens especially the poor and sustain these affordable offerings beyond the COVID-19 pandemic.
- Put in place stringent measures to protect the privacy of data subjects and integrate 'privacy by design' and data collection projects in any applications they develop, including those that may have contact tracing functionalities.
- Ensure their policies, practices and procedures incorporate and respect the UN Principles on Business and Human Rights, and issue periodic transparency reports.
- Provide mechanisms on social media platforms, including tools for users to identify fake news, misinformation and disinformation online.
- Refrain from developing invasive surveillance technology that violates privacy of users.
- Collaborate and partner with other stakeholders to promote digital rights.

Civil Society Organisations

- Continuously monitor and document digital rights violations arising from policy, regulatory and practical measures implemented by governments and the private sector as part of their measures to combat COVID-19.
- Highlight ongoing digital rights violations and share them with the media, the public and treaty body monitoring institutions at regional and international levels.
- Advocate and conduct public interest litigation to ensure that governments are held to account for the implementation of emergency and COVID-19 related laws, and that they comply with constitutional standards.
- Push for repeal of all laws, regulations, guidelines, and decrees that limit digital rights in the wake of COVID-19, through multi-actor, multi-pronged advocacy and strategic litigation.
- Call for respect, protection and promotion of digital rights including for practitioners such as journalists, activists and human rights defenders.
- Provide digital security training to journalists, activists and human rights defenders to build and enhance their capacity to confront issues that gag digital rights and freedoms.
- Petition for the incorporation of sunset clauses into COVID-19 laws, and monitor their implementation and the removal of all restrictions upon the end of COVID-19 pandemic.
- Push for dismantling of the surveillance apparatus constituted to combat COVID-19's spread and destroy all the data collected during the tracking exercise as it would have served the purpose for which it was collected.

Media

- Continuously highlight and report digital rights violations arising from policy, regulatory and practical measures implemented by governments and the private sector as part of their measures to combat COVID-19.
- Build the capacity of their journalists to effectively and ethically report on digital rights.
- Build partnerships and collaborate with other stakeholders to document, and report on human rights
- violations.
- Strengthen solidarity with bloggers and online activists to resist clamp downs on digital rights and media freedom.