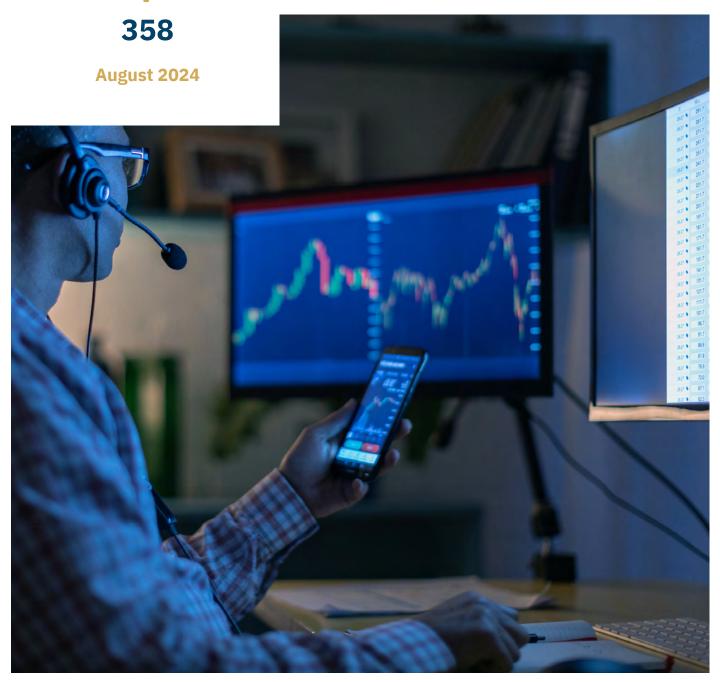# Futures of Digital Rights in SADC: Towards a Common Approach to Digital Protection and Data Justice

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Abstract

SADC member states are building their digital infrastructures, modernising their service delivery systems and creating environments for businesses and individuals to innovate and benefit from the digital economy. The digital development agenda of SADC is primarily articulated in terms of economic objectives instead of a human-rights-based approach. In many instances, this results in the violation and abuse of fundamental human rights such as online privacy, freedom of expression, freedom of speech and the right of access to information. Violations and abuses of digital rights are perpetrated through censorship, the use of digital technologies, such as artificial intelligence (AI) and facial recognition tools for surveillance, state-actioned Internet throttling and shutdowns, the spread of misinformation and disinformation, unregulated data extraction practices, data breaches and cyberattacks. The perpetrators of these abuses vary from governments to businesses, criminal syndicates and private persons from anywhere on the globe, including anonymous perpetrators. This paper maps out and interrogates how 'fit for purpose' current laws of SADC member states are at protecting digital rights in the face of a multiplicity of factors, from changes brought about due to responses to the COVID-19 pandemic, the increasing use of AI and the creation of the African free trade area. The paper discusses how the ambition for an African digital single market presents new frontiers for potential abuses of digital rights within the SADC region. It also analyses the influence of digital geopolitics on the development of digital rights and protection of digital rights within the SADC region. This paper proposes that SADC member states proactively adopt tougher measures to protect the digital rights of the constantly growing number of Internet users. This involves putting in place the right legal and policy frameworks that clearly define and protect digital rights as human rights supported by enforcement mechanisms. The paper recommends that SADC member states adopt a common approach to digital rights protection by recognising new rights, such as the right to Internet access, and incorporating new concepts of data justice when formulating digital policies, strategies and agendas.

Challenges to human and digital rights in SADC

SADC member states are leveraging technology to improve service delivery to their citizens. Amid these e-government service delivery efforts, there is a massive deployment of facial recognition technology in public spaces, airports and border posts. At the same time, most SADC countries are also building biometric databases to keep accurate records of their civil registrations and vital statistics. Malawi recently completed its population registration project, which included the massive collection of biometrics,[1] while South Africa is revamping and modernising its identity management system by introducing a biometric-based digital system. The biometric databases are being used to develop digital identity (digital ID) systems and issue digital ID cards and e-passports to citizens. There is also an emerging trend among SADC countries to make SIM card registrations mandatory, with most of them requesting the collection of biometric data (eg, in Tanzania[2] and Mozambique[3] a person must provide their photograph and fingerprints to register for a SIM card).

All these developments present new challenges to human rights. Some of the technologies could infringe on the privacy of communications while some tools could be used to suspend free speech, to restrict access to certain information or to harm others. As such, protection of human rights online is fundamental in the digital society. The UN realises that protection of human rights starts by affirming that digital rights are also part of human rights.[4] Without protecting digital rights, technology and misuse of technology could pose significant risks for human dignity, autonomy, privacy and the exercise of other human rights.[5]

> Apart from the initiatives at the AU level, SADC has not been very proactive in developing a clear regional strategy on digital rights protection. However, it has been successful in developing several strategic documents and frameworks through the HIPSSA project, which shaped the digital rights discourse

Apart from the initiatives at the AU level, SADC has not been very proactive in developing a clear regional strategy on digital rights protection. However, it has been successful in

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1   Republic of Malawi, *Malawi National Registration Bureau Communication Strategy 2015–2019* (Lilongwe: National Registration Bureau, March 2015).

2   Tanzania, "Electronic and Postal Communications Act (SIM Card Registration) Regulations", *Government Notice 112* (February 2022).

3   James Burton, "Mozambique Implements Biometric SIM Registration in Major Overhaul", Developing Telecoms, April 25, 2023.

4   Office of the UN High Commissioner for Human Rights, *Report of the Human Rights Council* (UN Human Rights Council, 21st session, 10–28 September and 5 November 2012).

5   Human rights are safeguarded by laws at multiple levels, including international conventions like the ICESCR and ICCPR of 1966. African countries also uphold human rights through frameworks such as the ACHPR. However, Botswana and Mozambique have not ratified the ICESCR, and South Sudan has not ratified the ICCPR (OHCHR, "Ratification of 18 International Human Rights Treaties", https://indicators.ohchr.org/).

developing several strategic documents and frameworks through the Harmonisation of ICT Policies in the Sub-Saharan Africa (HIPSSA) project, which shaped the digital rights discourse. The HIPSSA project, through the support of the International Telecommunication Union and the European Commission, promotes regional harmonisation and improved digital rights protection across the region through a number of model laws. The SADC Model Law on Data Protection[6] protects digital rights to privacy and protection of personal data. As discussed below, it creates new forms of digital rights. The SADC Model Law on e-transactions and e-commerce[7] protects the rights of online consumers while the SADC Model Law on Computer Crime and Cybercrime[8] criminalises any unlawful conduct that could interfere with digital rights.

SADC is cognisant of the important role played by technology and has identified information and communications technology (ICT) infrastructure development as a key priority for its 2020–2030 strategy.[9] The framing of the SADC 2020–2030 Regional Indicative Strategic Development Plan (RISDP), however, does not have a strong focus on the importance of digital rights or policy interventions to promote digital rights as part of good governance and rule of law. Digital skills development, access to ICT infrastructure and reforms to existing legal frameworks are some of the areas identified in the SADC 2020–2030 RISPD that promote digital rights to some extent, with recognition of the right to Internet access.

> The 'right to Internet access' facilitates the enjoyment of other fundamental social, cultural, economic, civil and political rights. It is the lifeblood through which other digital rights are enjoyed

The 'right to Internet access' facilitates the enjoyment of other fundamental social, cultural, economic, civil and political rights. It is the lifeblood through which other digital rights are enjoyed. Without access to the Internet, people cannot fully leverage the potential of a digital society and may not be able to use their digital IDs to access e-government services, or participate in the digital economy through accessing digital financial services or conducting electronic transactions. Affordable and meaningful access to the Internet is a basic human right in the digital age and warrants protection by law.

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6   International Telecommunication Union, *Harmonization of ICT Policies in sub-Saharan Africa (HIPSSA): SADC Model Law on Data Protection* (Geneva: ITU, 2013).

7   ITU, *Harmonization of ICT Policies in sub-Saharan Africa (HIPSSA): SADC Model Law on Electronic Transactions and Electronic Commerce* (Geneva: ITU, 2013).

8   ITU, *Harmonization of ICT policies in sub-Saharan Africa (HIPSSA): SADC Model Law on Computer Crime and Cybercrime* (Geneva: ITU, 2013).

9   SADC, "Regional Indicative Strategic Development Plan (RISDP) 2020–2030" (SADC, Gaborone, October 2020).

Regrettably, most legal frameworks across SADC do not recognise the right to Internet access as a clear and standalone right. However, there has been traction at the AU level to protect the right to Internet access. The 2019 African Commission on Human and Peoples' Rights Declaration on Principles of Freedom of Expression and Access to Information (ACHPR Declaration) encourages African states 'to adopt laws, policies, and other measures to provide universal, equitable, affordable, and meaningful access to the Internet without discrimination'.[10]

This occasional paper provides a comprehensive examination of futures of digital rights within the SADC region. The paper explores current challenges, emerging transformations and actionable policy recommendations. Through a structured approach that encompasses stakeholder engagement processes and strategic foresight methods, the paper fosters a deeper understanding of the dynamics shaping the digital rights landscape and empowers stakeholders to collaboratively chart a path towards a more inclusive, ethical and rights-respecting digital future within the SADC community.

The paper offers an in-depth exploration of the current landscape of digital rights within the SADC region. It examines efforts to improve Internet access, identifies threats to Internet freedom and highlights key rights, such as access to information and online privacy. By understanding the existing challenges and opportunities, we lay the groundwork for informed policy interventions aimed at fortifying digital rights.

The paper also explores emerging transformations that are reshaping the digital rights landscape within the SADC region. Using strategic foresight methods like the Three Horizons Framework, we engaged stakeholders to explore future visions of digital rights, identify outdated elements in the SADC digital ecosystem and find innovative solutions. This approach helps us understand how current actions shape future outcomes, enabling collaborative action and transformative innovation.

The third and final section synthesises insights gleaned from our analysis and stakeholder engagements, offering a comprehensive set of policy recommendations to bolster digital rights within the SADC region. These recommendations encompass the development of legal frameworks, the promotion of responsible digital use, the enhancement of institutional capacity, and the fostering of digital literacy and skills. By aligning policy interventions with the principles of inclusivity, ethics and human rights, we aim to pave the way for digital futures that empower and respect the dignity of all citizens within the SADC community.

This structured approach provides a roadmap for policymakers, stakeholders and practitioners to navigate the complexities of the digital rights landscape within the SADC region. The paper seeks to foster dialogue, collaboration and meaningful action towards more inclusive, ethical and rights-respecting digital futures.

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10   African Commission on Human and Peoples' Rights, _African Charter on Human and Peoples' Rights_ (Addis Ababa: Organization of African Unity, 1981), Principle 37(3).

Efforts to improve Internet access across SADC

Despite not clearly articulating the right to Internet access in their domestic laws, some SADC member states have introduced key national and regional strategies that improved Internet access, particularly connectivity and affordability, and also bridged connectivity gaps and digital divides. The SADC Regional Information Infrastructure programme facilitated cross-border transmission links using fibre-optic technology, which led to landlocked SADC countries achieving connectivity via submarine cables. According to the SADC 2020–2030 RISDP,[11]

> Angola, Botswana, Eswatini, Mauritius, Mozambique, Namibia, South Africa and Tanzania established funded national broadband plans or strategies and Botswana, Eswatini, Namibia, South Africa and Tanzania have already achieved the 2025 broadband target of providing 80% of their population with access to broadband services.

The private sector has also supported SADC by investing in submarine cables with landing points in Namibia and South Africa that connect the SADC member states and solve connectivity challenges (2Africa and Equiano projects). The SADC region has received extensive digital infrastructure investment support from development partners such as China and the EU.[12] China's digital foreign policy through the Digital Silk Road led to supporting digital infrastructure and digital connectivity across the SADC region. Europe has supported the region's data governance frameworks through the HIPPSA project, as well as through Team Europe Initiatives in countries such as Botswana and Namibia.[13]

Right of access to the Internet is exercised only if people can afford to be online, and if digital infrastructures have stable, reliable power. In some parts of the SADC region (eg, South Africa and Zimbabwe), unreliable power supply, power outages and load-shedding compromise access to the Internet and other digital rights by limiting the number of people and hours spent online and how people enjoy other digital rights.[14] SADC member states have taken measures to address the expensive cost of data and the problem of Internet exclusion by enforcing data price reduction,[15] adopting community networks,[16]

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11   SADC, "Regional Indicative Strategic Development Plan".
12   Rob Floyd, "Africa and Europe: How to Build a Balanced Partnership for Digital Infrastructure", African Centre for Economic Transformation, May 30, 2023.
13   D4D Hub, "Three Takeaways from Estonia's High-Level Visit to Namibia and Botswana", May 2, 2023.
14   Melody Musoni and Sizwe Snail ka Mtuze, "An Assessment of the Key AI Sovereignty Enablers within the South African Context" in *The Quest for AI Sovereignty, Transparency and Accountability*, Luca Belli and Walter B Gaspar, eds. (Kyoto: UN Internet Governance Forum, 2023), 54.
15   Botswana Communications Regulatory Authority, https://www.bocra.org.bw/; Tshiamo Tabane, "Data: Mobile Companies Slashed Prices 55%", *Weekend Post*, March 16, 2022.
16   A lot of incentives have been offered to promote the adoption of community networks to enable the increased connection of marginalised, unserved, or underserved communities. See Association for Progressive Communications, "Community Networks Newsletter: From Recognition to Action", June 13, 2024.

installing free Internet hotspots in public spaces,[17] providing satellite broadband services[18] and zero-rating government websites and public benefit organisation websites.[19] Although data costs have decreased, there have been reports that the cost of data across the SADC region is still high. Also, there are considerable price differences from country to country, with Namibia and Eswatini having expensive data ($10 per 1GB) and Mozambique having cheaper data ($2 per 1GB).[20] Collective efforts to improve Internet access have led to a higher percentage of mobile phone subscriptions and mobile Internet in Southern Africa at 33%, compared to 17% in Central Africa and 27% in Western Africa.[21]

Threats to Internet access

Despite efforts to increase meaningful and affordable access to the Internet, some SADC member states neglect their obligations and restrict or limit Internet access if it serves their political interests.[22] SADC countries such as the Democratic Republic of Congo (DRC), Zambia[23] and Zimbabwe[24] have experienced state-sanctioned Internet disruptions that were aimed at preventing people from mobilising or protesting and justified as preventing the spread of disinformation during election seasons.[25]

By disrupting the Internet, SADC governments infringe digital rights, contravene human rights law and contradict their commitments to frameworks such as the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. For instance, the ACHPR Declaration prohibits any form of Internet disruption such as the 'removal, blocking or filtering of content, unless such interference is justifiable and compatible with international human rights laws and standards'.[26] This non-interference also extends to condoning any disruption of access to the Internet and other digital technologies for segments of the public or an entire population. To effectively comply with

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17   The government of Angola, through the National Institute for the Promotion of the Information Society, has been installing free Internet hotspots in public spaces to address the digital divide. Guilherme Massala, "Angola Online project with 30 Thousand Connections in the Country", *Angola Online*, July 27, 2020.

18   Malawi Communications Regulatory Authority, https://macra.mw/ Malawi's telecoms regulator MACRA has made strides in addressing the rural-urban digital divide by awarding Starlink's subsidiary entity with an operating licence to provide satellite broadband services. Space in Africa, "SpaceX's Starlink Licensed in Malawi", November 15, 2022.

19   The Independent Communications Authority of South Africa (ICASA) has also made it mandatory for licence holders to zero-rate government websites and public benefit organisations' websites. Tamar Kahn, "Zero-rated Online Content for Public Benefit Bodies Hailed as Breakthrough", *Business Day*, March 30, 2022. South Africa hopes to address the digital divides and exclusion challenge by helping people access online educational and health resources free of charge.

20   S'lindiwe Khumalo and Hunter Murray, *Digital Rights Landscape in Southern Africa*, Report (Pretoria: Centre for Human Rights, University of Pretoria, 2022).

21   Matthew Shanahan and Kalvin Bahia, *The State of Mobile Internet Connectivity 2023*, Report (London: GSMA, October 2023).

22   Access Now, *Internet Shutdowns in 2022: A Global Overview*, February 2023; CIPESA, *Despots and Disruptions: Five Dimensions of Internet Shutdowns in Africa*, Report (Kampala: CIPESA, 2019).

23   During the presidential elections of Zambia in 2021, a 48-hour Internet shutdown resulted in social media platforms such as Facebook, Messenger and Twitter being inaccessible across Zambia. Xynou Maria, "Zambia: Social Media Blocked Amid 2021 General Elections", Open Observatory of Network Interference, August 24, 2021.

24   In 2019, Zimbabwean citizens experienced Internet disruptions for three days after they publicly protested fuel price hikes. Access Now, "Zimbabwe Orders a Three-Day, Country-Wide Internet Shutdown", January 26, 2023.

25   Iginio Gagliardone and Nicole Stremlau, "It's Time to Revisit the Framing of Internet Shutdowns in Africa", Carnegie Endowment for International Peace, November 2022.

26   African Commission on Human and Peoples' Rights, *African Charter on Human.*

these regional and international commitments, SADC member states should prioritise adopting laws and policies that outlaw government-sanctioned Internet shutdowns, unless it is necessary, proportionate and subject to judicial oversight. This also extends to revising any laws that may give governments the powers to shut down the Internet. For instance, the laws of Malawi have been framed in a manner that the government can at any time restrict access to the Internet or shut down the Internet if it is to protect public order and national security or to facilitate technical restriction to conditional access to online communication.[27]

Right to Internet freedom

The rights to freedom of expression, media freedom and freedom of speech are civil and political rights that are inalienable rights protected in the constitutions of SADC member states.[28] For instance, Article 22 of the Constitution of the Republic of Seychelles[29] provides that 'every person has a right to freedom of expression and for the purpose of this article this right includes the freedom to hold opinions and to seek, receive and impart ideas and information without interference' (similarly worded in the Constitution of Mauritius[30]). However, this right is not absolute and there are cases specifically provided for in which the right may be restricted. South Africa's Constitution also protects 'the freedom of expression which includes freedom of the press and other media, freedom to receive and impart information or ideas, freedom of artistic creativity and academic freedom and freedom of scientific research'.[31] Where digital technologies and social media are used to convey different forms of expression or when the press uses the Internet and social media to impart or share information, all these forms of expression must be protected.

The digital right to freedom of expression is protected differently across the SADC region. Some SADC member states, such as Namibia, are exemplary in creating conducive political and legislative environments for the free exercise of journalism and other forms of expression. In other SADC member states, people with different political views or who challenge governments tend to be persecuted for exercising their freedom of expression and political free speech.[32] In December 2022, Zimbabwe had 10 incidents of press freedom violations while the DRC had seven.[33] In the DRC, online media freedoms and online free speech are constantly violated and, in 2022, Reporters Without Borders ranked the DRC, poorly at 125 out of 180 countries.[34] Some SADC governments persecute social

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27   Malawi Electronic Communications and Transactions Act 33 of 2016, Section 24 (2).

28   Constitution of the Democratic Republic of Congo, Article 23; Constitution of the Kingdom of Lesotho, 1998, Section 14; Constitution of Mauritius, 1968.

29   Constitution of the Republic of Seychelles, 1992.

30   Constitution of Mauritius, Section 12.

31   Constitution of the Republic of South Africa, 1996, Section 16.

32   MISA Zimbabwe, "Journalist Charged for Communicating Falsehoods", December 1, 2022.

33   International Press Institute, "IPI Africa Press Freedom Monitoring: Journalists Face Continued Attacks, Pressure in Somalia, Zimbabwe, and DRC", March 28, 2023.

34   Reporters Without Borders, "Democratic Republic of Congo: Index 2024", https://rsf.org/en/index

media users who speak against their ills.[35] In most cases, the governments hide under the guise of security laws and national security interests, which allows them to punish anyone for publishing or communicating false statements prejudicial to the state or 'spreading disinformation'.[36]

Apart from governments threatening Internet freedom, there are other actors who threaten Internet freedom through online harassment and violence. The Internet, especially social media platforms, is being used to spread hate speech (such as xenophobic[37] or homophobic content), to cyberstalk, intimidate, extort and cause harm to others. One of the prevalent challenges is the sharing of revenge pornography[38] and the sharing of child sexual abuse material. The groups most vulnerable to online violence are usually women and girls, including women in positions of influence, such as politicians and journalists.[39] SADC member states are slowly introducing different laws to protect people against online violence. Such laws include those related to cybercrime, harassment and publication of certain material.

Right of access to information

Access to information is an important right that allows individuals to receive information, do research, share or impart information through any means of communication. Through this right, individuals can approach public and private bodies and request access to information that is in the custody of these entities. This right prevents the government from being secretive and promotes transparency to avoid abuse of power and violation of human rights. This right is recognised in the constitutions of various SADC member states and is enacted to give additional protection to this right. For example, section 32 of the Constitution of South Africa is expanded under the Promotion of Access to Information Act (Act 2 of 2000)[40] and section 37 of the Constitution of Malawi is expanded under the Access to Information Act (Act 13 of 2017).[41] The exercise of the access to information right in South Africa has led to the advancement of access to information in politics, which could promote greater accountability.[42]

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35   Nyasha Chingono, "Zimbabwe Opposition Tweet Case Fuels Poll Crackdown Fears", *The Guardian*, April 6, 2023; IPI, "Malawi: Arrest of Investigative Journalist and Hacking of Website Threaten Press Freedom", May 6, 2022.

36   For example, section 31 of the Criminal Law (Codification and Reform) Act of Zimbabwe criminalises the publishing or communication of falsehoods. Article 26 of the State Security Law of Angola also punishes anyone who communicates any information insulting the president or the country. Malawi has been progressive in repealing its sedition laws in the Penal Code, which previously criminalised communication expressing discontent with the government or the president. MISA Malawi, "Members of Parliament in Malawi Remove Sedition as Criminal Offence", November 22, 2022.

37   South Africa has seen the worst instances of xenophobia within the SADC region and social media has been used to spread xenophobic messages, with hashtags like #operationdudula being the trending ones. Paradigm Initiative, *Digital Rights Inclusion in Africa: South Africa*, LONDA Report (Lagos: Paradigm Initiative, April 2023).

38   Melody Musoni, "The Criminalization of Revenge Porn in South Africa", *Obiter Law Journal* 61 (July 9, 2019).

39   Melody Musoni, "Gender and Criminality in Cyberspace", in *Gender and Cyber Rights in Africa* (Cape Town: Juta, forthcoming).

40   South African Department of Justice, Promotion of Access to Information Act 2 of 2000, February 2, 2000.

41   Malawi, Access to Information Act 2016, February 10, 2017.

42   Murray Hunter, *LONDA: South Africa Digital Rights and Inclusion 2021 Report* (Lagos: Paradigm Initiative, May 2022).

Right to online privacy and data protection

Everyone has the right to privacy, including the right to confidentiality of their communications and the protection of their personal information or personal data. This right extends to being able to 'communicate anonymously or use pseudonyms on the Internet and to secure the confidentiality of their communications and personal information from access by third parties through the aid of digital technologies'.[43] The right to privacy is recognised and protected under the constitutions of SADC member states[44] and, recently, data protection laws were promulgated to provide a comprehensive framework on the right to privacy and protection of personal data. The right to privacy is under threat from both governments and businesses. On the one hand, businesses engage in obscure data-processing activities that allow them to gain access into a person's private life and collect vast amounts of personal data. Governments, on the other hand, are increasingly relying on surveillance technologies to spy on citizens, which results in an egregious invasion of the right to privacy.[45] Some of the SADC member states, such as Angola, Botswana, the DRC, Malawi and Zambia, are strong consumers of digital surveillance technology,[46] but the extent of state surveillance capabilities is not clear due to the lack of transparency in the sector as well as the lack of clear regulatory frameworks for the use of surveillance tools.[47] In 2021, there were reports that Botswana had contracted an Israeli company to supply surveillance technology and used it to spy on its citizens.[48] The state has, in the past, monitored the activities of opposition members, government critics and human rights advocates.[49] In recent years, there were reports that Huawei's technicians could track and intercept communications of suspected criminals, opposition members and dissident bloggers on behalf of Zambian authorities.[50] When SIM card registrations were made mandatory in Namibia, some feared that the government would be able to spy on journalists, civil society activists and opposition leaders.[51] Similar concerns were raised in Zimbabwe, that SIM card registration would eradicate the anonymity of communications and could enable location tracking.[52]

Some of the laws within SADC permit governments to carry out surveillance and intercept communications. The government of South Africa used to rely on the Regulation of Interception of Communications and Provision of Communication Related Information Act (RICA) to conduct bulk surveillance. The provisions of RICA were challenged and the

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43   African Commission on Human and Peoples' Rights, "Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019", November 10, 2019.

44   Constitution of Angola, 2010, Article 32; Constitution of Botswana, Article 3 and 9; Constitution of the DRC, Article 31; Constitution of Lesotho, Article 4 and 11; Constitution of Malawi, Section 21; Constitution of Eswatini, Article 14; Constitution of Tanzania, Article 16.

45   Tachilisa Badala Balule, *Surveillance of Digital Communications in Botswana: An Assessment of the Regulatory Legal Framework*, Report (Johannesburg: Media Policy and Democracy Project, November 2021).

46   Connor Wright, "Reports on Communication Surveillance in Botswana, Malawi and the DRC, and the Chinese Digital Infrastructure Surveillance in Zambia", Montreal AI Ethics Institute, March 11, 2022.

47   Khumalo and Hunter, *The Digital Rights Landscape*.

48   Oarabile Mudongo, "Botswana", in Paradigm Initiative, *Digital Rights and Inclusion in Africa: An Analysis of 24 Countries*, LONDA Report (Lagos: Paradigm Initiative, 2022).

49   "Kapinga Moves to Stop 'Criminal Behaviour' of Tapping Phones", *Sunday Standard*, November 10, 2016.

50   "Huawei Technicians Helped African Governments Spy on Political Opponents", *The Wall Street Journal*, August 15, 2019.

51   Frederico Links, "Ripe for Surveillance Abuse: Unpacking Namibia's SIM Card Registration Limbo", The Action Coalition, June 6, 2020.

52   Privacy International, "Zimbabwe Threatening Privacy Rights with New SIM Registration Database", October 2, 2013.

Constitutional Court found that RICA was unlawful and invalid for several reasons.[53] RICA did not provide appropriate safeguards or procedures to be followed when state officials examined, copied, shared, sorted or destroyed stored data obtained from interceptions. There were no procedures to notify affected subjects after their communications had been intercepted.[54] Despite the judgment, the judge responsible for the implementation of RICA expressed concern over unceasing and unlawful interception of communication.[55] Similarly, Botswana's law enforcement agencies, such as the Directorate on Corruption and Economic Crime, the Directorate of Intelligence and Security or the police services, may be required by law to resort to surveillance tactics. Judicial officers may rely on section 20 of the Counter-Terrorism Act to intercept communications when investigating an offence. Intelligence officers may also intercept communications by relying on section 22 of the Intelligence and Security Services Act, 2007. When compared to South Africa, Botswana's weak regulatory environment may not be adequate to guard against unlawful and arbitrary surveillance of communications for law enforcement purposes.[56] The promulgation of the Botswana Data Protection Act may lead to some of these surveillance practices being challenged, based on infringement of the data protection provisions.

While some SADC member states still have questionable practices that infringe on the right to privacy, there have been concerted efforts to improve the legal framework for protection of personal data. Member states adopted the SADC Model Law on Personal Data Protection in 2013, which sets out the general rules on the processing of personal data, provides for the duties of data controllers and processors who will be responsible for processing personal data and explains the rights of data subjects in respect of their personal data. The model law provides a guideline to SADC member states on developing their own data protection legislation. As of October 2023, 12 SADC countries had data protection laws. Namibia and Malawi have draft data protection bills, while Mozambique and Comoros do not yet have any data protection laws in place.[57]

At the AU level, the Convention on Cyber Security and Personal Data Protection[58] (Malabo Convention) recently came into operation. This deals with the protection of personal data, cybercrime and cybersecurity. The SADC member states that ratified the Malabo Convention included Mauritius, Mozambique, Namibia, Zambia and Angola. Apart from passing laws, SADC member states also aim to have in place data protection authorities who can ensure that people's rights are protected. Seven SADC member states[59] have established or appointed fully functional data protection authorities or regulators. South Africa's Information Regulator has been commended for taking decisive action and acting without fear, favour or prejudice. It recently sued the South African Police Service for

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53   John Paul Ongeso, "South Africa: Constitutional Court Upholds Declaration of Invalidity of RICA", Bowmans, February 5, 2021.
54   *Minister of Police v AmaBhungane Centre for Investigative Journalism NPC and Others* 2021 (3) SA 246 (CC).
55   Jan Gerber, "RICA Judge Concerned about 'Unceasing Unlawful Interception of Communication'", *News24*, September 13, 2021.
56   Balule, "Surveillance of Digital Communications".
57   Melody Musoni, Ennatu Domingo and Elvis Ogah, "Digital ID Systems in Africa: Challenges, Risks and Opportunities" (Discussion Paper 360, ECDPM, Brussels, December 1, 2023).
58   AU, "AU Convention on Cyber Security and Personal Data Protection", June 27, 2014.
59   South Africa, Botswana, Angola, Mauritius, Eswatini, Zambia and Zimbabwe.

violating the Protection of Personal Information Act (widely known as POPIA) by sharing personal information of victims of rape violence.[60] African regulators have also created the Network of African Data Protection Authorities (NADPA)[61]

> to bring together privacy and data protection authorities from 19 African countries and facilitate cooperation and the sharing of experience, support states in preparing legislation on privacy and data protection and establishing data protection authorities (DPAs), and promote the adoption and implementation of relevant African legal instruments.

DPAs from Angola, Mauritius and South Africa also actively participate in NADPA[62] and observe Data Protection Week.[63] The DPAs promote digital rights awareness (especially on privacy, access to information and cybersecurity) through various platforms.[64] They also participate at international fora to keep abreast of the developments that may have an impact on privacy rights and the protection of personal data.[65]

Emerging transformations in the digital rights landscape

The digital transformation across the SADC region is also aligned with the continental objective of creating an integrated and inclusive digital society and economy in Africa that improves the quality of life of African citizens. This is set out in the AU Digital Transformation Strategy (DTS).[66] The specific objectives of the DTS address important human and digital rights, such as ensuring meaningful and affordable access to secure Internet; promoting inclusive digital skills; advocating for digital identity; entry into force of the Malabo Convention; and promoting open standards and interoperability for cross-border trust frameworks, personal data protection and privacy. SADC member states are also guided by Agenda 2063: The Africa We Want,[67] which is Africa's blueprint for becoming the global powerhouse of the future. Inclusive and sustainable development are critical elements to achieve the pan-African vision of Agenda 2063. Some of the linchpins of Agenda 2063 include establishing the African Continental Free Trade Area (AfCFTA), the Pan-African E-Network, cyber security, integrated high-speed train network, African passport and free movement of people. Instruments such as the AfCFTA and the Malabo

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60   Information Regulator South Africa, "The Regulator Initiates an Assessment into Possible Violations of POPIA by Members of SAPS", Media Statement, August 5, 2022.

61   DIPLO, "Digital Rights in Africa: Continental and Regional Policies and Initiatives", 2022; Network of African Data Protection Authorities, "Who Are We", https://www.rapdp.org/index.php/en/qui-sommes-nous.

62   NADPA, "Members Directory", https://www.rapdp.org/en/annuaire-des-membres.

63   NADPA, "Data Protection Week", January 2022.

64   South African Government, "Information Regulator and Africa Digital Rights Hub host Data Protection Africa Summit in Johannesburg, 21 to 22 Nov", November 16, 2022.

65   Global Privacy Assembly, "List of Accredited Members", 2023.

66   AU, "Digital Transformation Strategy 2020–2030", May 18, 2020.

67   AU, "Agenda 2063: The Africa We Want", https://au.int/en/agenda2063/overview.

Convention further support the protection of human rights and promotion of sustainable and inclusive development.

The AfCFTA as a new frontier for digital rights

The coming into operation of the AfCFTA sets Africa on another trajectory of economic growth and development. The vision of a single market for goods and services, intertwined with the free movement of persons, opens up the SADC region to intra-African trade and new opportunities. The AfCFTA protects human rights by promoting sustainable and inclusive socio-economic development, gender equality and structural transformation of states parties. Currently, there are negotiations for the adoption of the AfCFTA Digital Protocol on Trade, whose priority is the development of an African digital single market (DSM).

> Opening Africa into a single market presents SADC citizens with new frontiers for human rights violations, particularly from other African governments that disregard their continental and international commitments and obligations

While these developments present quantifiable economic opportunities, there are concerns about potential violation of digital rights. Opening Africa into a single market presents SADC citizens with new frontiers for human rights violations, particularly from other African governments that disregard their continental and international commitments and obligations and that violate human rights to serve their own political interests. In addition, the absence of domestic laws on data protection to support the Malabo Convention exacerbates the challenges for digital rights, especially the right to privacy and protection of personal data. As of October 2023, 18 African countries did not have data protection laws in place, which means that intra-Africa cross-border data flows to these countries may be risky; governments may act with impunity while companies may take advantage of these regulatory lacunae to use exploitative data extraction practices. Similarly, some African countries do not have adequate electronic communications laws and cybersecurity laws to protect the rights of online consumers or to prevent different forms of cyber threats and cyber harms targeted at users of online platforms. Due to differences in the recognition and protection of certain human rights (eg, rights of LGBTQIA+ communities), the African free trade area could present new threats to digital rights. If not carefully regulated, an African DSM could present threats to the LGBTQIA+ community as they could face new forms of online surveillance and censorship, be subjected to constant homophobic content and hate speech online and constantly face discrimination.[68]

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68   EDRi, "The Digital Rights of LGBTQ+ People: When Technology Reinforces Societal Oppressions", July 17, 2019.

This calls for further discussion on the development of clear rules on the protection of all human rights and digital rights in the DSM.

The unintended consequences of digital geopolitics on digital rights

The African digital transformation process is not taking place in a vacuum. Africa finds itself in the middle of an ongoing digital geopolitical competition among global superpowers with a vested interest in a piece of 'the African digital pie'.[69] Africa's young population is an attractive and lucrative market for big tech companies from China (Huawei, Baidu, Alibaba, Tencent, Xiaomi) and the US (Alphabet/Google, Meta/Facebook, Amazon, Microsoft, Apple) that are looking for new business opportunities and are investing in Africa's digital infrastructure. China, the US and the EU are guided by very different forms of digital governance frameworks and their digital foreign policies on Africa also differ. Each superpower offers unique forms of digital governance frameworks that could either promote the protection of digital rights in the SADC region or lead to further limitations and violations of digital rights.

> Africa finds itself in the middle of an ongoing digital geopolitical competition among global superpowers with a vested interest in a piece of 'the African digital pie'

China, through the Digital Silk Road initiative, has invested significantly in the African continent in digital infrastructure, digital products and software. Chinese tech giants Huawei and ZTE are the biggest investors in Africa's network infrastructure, with Huawei having built nearly 50% and ZTE nearly 30% of 3G networks in Africa.[70] Further, several Chinese companies have concluded contracts with different governments in the SADC region to build infrastructure. Some African governments permit Chinese private security companies to get actively involved in their security while importing Chinese technologies to build local capacity for intelligence collection, surveillance, monitoring and response.[71]

The US is concerned about Chinese digital dominance and introduced the CHIPS Act to prevent companies from supplying semiconductors to China. The US is also concerned that China is exporting its techno-authoritarian surveillance technologies to African countries,

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69   Jan Hofmeyr, Ndeapo Wolf and Deon Cloete, "SADC Futures of Digital Geopolitics: Towards African Digital Sovereignty" (Occasional Paper 337, South African Institute of International Affairs, Johannesburg, October 30, 2022).

70   Dipanja Roy Chaudhury, "China's Expanding Cyber Footprints in Africa: CSIS Report Raises Eyebrows", *The Economic Times*, August 27, 2021.

71   Paul Nantulya, "Implications for Africa from China's One Belt Road Strategy", Africa Center for Strategic Studies, March 22, 2019.

such as Zimbabwe, and is influencing illiberal democracies.[72] The launch of the US–Africa Digital Transformation with Africa initiative (DTA)[73] is another way for the US to increase its involvement in Africa's digital economy and compete with China and Europe. The US pledged $800 million in investment to the African digital economy. The DTA has three pillars: 1) digital economy and infrastructure; 2) human capital development; and 3) a digital enabling environment. The US hopes to influence African digital governance by supporting policies and regulations that promote competition, innovation and investment, as well as governance to strengthen and sustain an open, interoperable, reliable and secure digital ecosystem.

Europe's approach is through equal partnerships with African countries while advocating for its human-rights-centred approach to digital transformation. Under the banner of Team Europe Initiatives and the brand Global Gateway, the EU is hoping to win the hearts of African countries and offer them an alternative for partnerships. From providing capacity building and technical assistance, the EU added a financial investment commitment of €150 billion to Africa.[74] The extraterritorial application of the General Data Protection Regulation (GDPR) has resulted in many companies and entities in Africa proactively complying with the GDPR to cater for their EU customers. Consequently, the GDPR has inspired the framing of several data protection laws among SADC member states. For instance, these data protection laws follow a similar approach to the GDPR in creating new digital rights, such as the right to data portability, the right to object to processing of personal data, the right to be informed of use or processing of personal data, or the right to correct records of personal data. Similarly, SADC member states have also adopted the GDPR idea of setting up data regulators with powers to monitor compliance and appoint data protection officers for certain entities.

The digital geopolitical competition in Africa is an indication that its data is in demand and global superpowers have a vested interest in its digital markets. African governments need to be strategic in managing these different investment interests to bring inclusive and sustainable economic development to the continent. SADC member states need to strategically take advantage of the digital geopolitical competition and insist on terms that promote the rights of their people, align with continental developmental objectives and are guided by the DTS.

Data justice as an emerging concept in digital rights discourse

For people to fully enjoy their digital rights, they need to have access to not just the Internet but also digital public goods. The UN recognises that digital public goods are essential to

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72   Jon Bateman, "Denying Support for Chinese and China-Enabled Authoritarianism and Repression", in *US–China Technological "Decoupling": A Strategy and Policy Framework*, Report (Washington DC: Carnegie Endowment for International Peace, April 25, 2022).

73   The White House, "Fact Sheet: New Initiative on Digital Transformation with Africa (DTA)", December 14, 2022.

74   European Commission, "Global Gateway Strategy", https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/stronger-europe-world/global-gateway_en.

achieve inclusive and sustainable development.[75] In addition to providing Internet access, there is a need to develop strategies and policies to promote access to digital public goods such as open-source software, open data, open-AI models, open standards and open content. Access to digital public goods must be aimed at promoting data justice. Data justice is a concept aimed at making sure that input and output data is free from any historical or structural inequalities or bias. It addresses the question of fairness in response to the degree to which people are visible, represented and underrepresented and discriminated against as an outcome of their production of digital data (AU Data Policy Framework).

> Data justice is another component of digital rights that advances inclusion, equality and fairness

Data justice is another component of digital rights that advances inclusion, equality and fairness. The Data Framework elaborates on the value of data as a strategic asset and as integral to policymaking, economic development and enabling innovation. The Data Framework can be a guiding tool for SADC member states to develop a regional approach to data justice and to develop a common strategy on data justice that ensures that there are regulatory frameworks to redress inequalities and enable people to exercise their rights.

Emerging artificial intelligence technologies on digital rights

Due to the rise in youth populations,[76] SADC is poised to witness an accelerated deployment of AI across various sectors. AI, which involves mimicking human intelligence through the creation and application of algorithms, holds a promising future and represents a significant opportunity for Africa. However, discussions surrounding AI and digital rights often overlook the African continent. This omission may stem from Western preconceptions about Africa. The reality is that emerging technologies, including AI-driven innovations, are becoming integral to various aspects of individuals' lives, ranging from smart home devices to social media platforms. Striking a balance between technological progress and safeguarding human rights has become an imperative task. However, Africa faces obstacles in this realm, including insufficient digital literacy, a lack of digital infrastructure, inadequate policies and insufficient funding.

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75   UN, *Report of the Secretary-General Roadmap for Digital Cooperation*, June 2020.
76   Hofmeyr, Wolf and Cloete, "SADC Futures of Digital Geopolitics".

The use of AI on the African continent has been met with heavy criticism at different levels. Firstly, there are concerns that AI is being deployed and used in the absence of appropriate data protection frameworks. A lot of AI technologies collect vast amounts of data, there is no accountability in the collection processes, some of the activities are not transparent and the existing data protection laws are not sufficient to regulate all aspects of AI. However, calls for immediate regulation of AI have been criticised for being premature and stifling innovation. Solutions such as AI regulatory 'sandboxes' have been proposed to allow countries to take a wait-and-see approach regarding the outcome of a regulated AI environment.[77]

> With the 2024 presidential elections in South Africa, Namibia, Mozambique, Mauritius, the DRC and Comoros, there is a sense of urgency for SADC to proactively take steps to deal with risks around AI

Criminals recently used AI and deepfake technology to impersonate the AU Commission's chairperson, Moussa Faki; several European diplomats fell victim to this hoax.[78] This is just a glimpse of the threat that AI technologies could pose, such as spreading misinformation and disinformation, inciting hate speech, tampering with elections, launching cyberattacks and inflicting harm. With the 2024 presidential elections in South Africa, Namibia, Mozambique, Mauritius, the DRC and Comoros, there is a sense of urgency for SADC to proactively take steps to deal with risks around AI. Use of AI technologies has the potential to infringe on people's rights to privacy, freedom of speech, freedom of expression, right of access to information and right of Internet access.

Secondly, there is the concern regarding algorithmic bias, exclusion and discrimination, which mainly impacts Africans but which is likely to be perpetuated due to continued use of products produced from biased data. This exclusion is likely because of the biases about Africa held by the West. Eke et al. correctly note that, '[t]o those who believe that Africa has little to do with high tech and innovation, a title such as "Responsible AI in Africa" sounds almost like an oxymoron, and at best comes across as a marginal topic'.[79]

Thirdly, there is a concern that those with an interest in African data may extract data and exploit African people. Finally, Africa faces challenges such as lack of financial resources to develop AI skills, to fund AI research and development and to build data infrastructures. These factors inhibit how African countries develop AI technologies.

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77   Melody Musoni, "Looking into the Crystal Ball: Artificial Intelligence Policy and Regulation in Africa", ECDPM Commentary, September 18, 2023.
78   "Fraudsters Use AI to Impersonate African Union Chief Moussa Faki", *Africa News*, October 18, 2023.
79   Damian Okaibedi Eke, Kutoma Wakunuma and Simisola Akintoye, *Responsible AI in Africa: Challenges and Opportunities* (London: Palgrave Macmillan, 2023).

SADC has not yet developed a regional strategy or policy framework on AI and most of the SADC member states have not developed any national AI policies or strategies. South Africa has taken the reins to lead the Smart Africa Alliance in the development of AI[80] and has assigned intellectual property rights to AI.[81] The only form of AI regulatory guidance applicable to the SADC region is likely a framework developed at the AU level. The AU previously tasked a team of experts to assess the impacts of AI on human rights (AU Resolution 473) and a new Continental Strategy on AI will be published soon.[82] It is hoped that the Continental Strategy on AI will protect digital rights through addressing different layers of bias and discriminatory practices, providing guidance on the use of AI, especially high-risk AI and implications for human rights, and promoting the rule of law through AI.

The futures of digital rights: Engagement with digital rights experts

This section includes emerging insights drawn from a stakeholder engagement process we conducted in which the stakeholders imagined their desired futures of digital rights in SADC. They mapped what was no longer fit for purpose within the SADC digital ecosystem and identified viable innovations to both sustain and transform these problems. The Three Horizons Framework[83] was employed as a strategic foresight method. This facilitated transformative conversations over multiple time horizons, which sparked innovative long-term visions of the future.

The framework facilitates engagement and awareness of how our individual and collective intentions and behaviours actively shape the future today. Using this framework, digital experts were guided through the three ways of thinking about the future in a generative way. This fostered understanding and future consciousness as the basis for collaborative action and transformative innovation.

Sustained and transformative innovations

Innovations are categorised as sustained innovations, which prolong the current system, while transformative innovations pave the way for radically different Horizon 3 (H3) systems. H3 highlights the innovations needed to achieve the preferred future for digital rights, as put forth by workshop participants. These innovative advancements embody a transition zone (Horizon 2) characterised by an entrepreneurial and culturally creative environment.

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80   Musoni, "Looking into the Crystal Ball".

81   Luke Daniel, "SA Becomes the First Country in the World to Award a Patent to an AI-Generated Invention", *News24*, August 3, 2021.

82   AUDA-NEPAD, "Artificial Intelligence Is at the Core of Discussions in Rwanda as the AU High-Level Panel on Emerging Technologies Convenes Experts to Draft the AU-AI Continental Strategy", March 29, 2023.

83   Bill Sharpe et al., "Three Horizons: A Pathways Practice for Transformation", *Ecology and Society* 21, no. 2 (2016).

In this zone, feasible technological, economic and cultural innovations can potentially disrupt and transform the existing system (Horizon 1) to different extents. The stakeholders mapped these as follows:

TABLE 1	THREE HORIZONS SUSTAINED AND TRANSFORMATIVE INNOVATIONS
Sustained innovations	**Transformative innovations**
Free Internet access devices to those who cannot afford it, so that they can access information and commercial services (to pay for the devices).	Improved governance systems that are more collaborative.
Use of digital ID to engage in all transactions … move away from cash payments.	Citizens have more say (rights) about how their data are used.
Citizens become automatic shareholders if companies use and benefit from their personal data.	Universal, free, meaningful access to the Internet for the remaining half of the SADC population.
Update the SADC Model Law on Data Protection to include the human rights approach in line with international human rights standards.	Free Internet access devices to those who cannot afford it, so that they can access information and commercial services (to pay for the devices).
Minor cuts to high data costs via virtual operators.	Increased availability and adoption of encryption such as Signal that is resistant to surveillance.
Having foreign investment such as Amazon, without it destroying local businesses.	Innovative pathways to qualify with cybersecurity skills to ensure that privacy is a reality – it is not a reality without cybersecurity.
E-learning options, with some AI.	Offer people a benefit to take credible online courses in AI/digital/data/platform/rights literacy.
Being more assertive about our needs and wants when negotiating with big tech companies. Leverage the user base of the continent.	Teach law students and policy students about technology so that when they advise policymakers, they understand how it works.
Formulating comprehensive tech adoption and tech development strategies, especially in the field of AI	Governments move from keeping documents to keeping information.
	Transparent tech to tackle current cumbersome/ formulaic public contracting rules (which still enable cronyism).
	Support research institutions financially and otherwise to create evidence-based policy interventions.

Source: Compiled by authors

Preferred futures of digital rights by 2035

As a part of the Three Horizons Framework activities, the digital governance experts articulated preferable (desirable) visions of the future for digital rights by 2035. These visions represent aspirations for a better world to eventually replace the current failing system (Horizon 1). Importantly, generating these visions offered a collective understanding of

long-term goals; they helped identify areas that need urgent intervention and guided goal setting and strategic planning. The digital experts mapped these as follows:

Safeguarding fundamental rights from corporate influence

In the pursuit of a robust digital rights future, SADC commits to ensuring that corporations cannot acquire fundamental rights outlined in national constitutions. This involves creating a regulatory framework that delineates the boundaries between corporate interests and individual rights, preventing undue influence and ensuring that the digital landscape respects and upholds human rights. SADC challenges prevailing notions of personal data ownership by corporations. Rejecting the idea that companies can claim personal data as property, the region aims to develop laws that recognise personal data rights as intrinsic to human autonomy rather than being mere property rights.

Universal, meaningful Internet access

By 2035, SADC aims to achieve universal and meaningful Internet access, recognising the Internet as a tool for exercising information rights. Efforts will focus on improving Internet speeds and last-mile coverage, addressing disparities in access and empowering all citizens to participate in the digital realm. To foster competition and enhance access, SADC endeavours to reduce legislative barriers that hinder the entry of new Internet service providers into the market. It is anticipated that a more competitive environment will lead to improved access to, innovation in and affordability of digital services.

Promoting digital literacies

SADC recognises the importance of critical digital literacies in promoting and safeguarding online rights. Efforts will be directed towards enhancing public awareness of digital rights. Such efforts will include understanding the political and economic dimensions of digital services as empowered individuals are better equipped to navigate the digital landscape and advocate their rights. A key goal is to bring data extraction under control. SADC will develop and enforce regulations that restrict the unfettered collection and use of personal data, ensuring that individuals have agency and control over their information. Internet shutdowns will become a relic of the past as SADC commits to protecting digital rights. Measures will be implemented to prevent arbitrary Internet shutdowns, ensuring that online communication remains an integral part of civic life.

Implementing data policy frameworks

SADC member states commit to implementing data policy framework recommendations domestically. This includes harmonising data laws and building a trusted data environment, fostering regional cooperation and data governance standards. To combat misinformation, SADC will establish a clear and agreed-upon definition of false news. This definition will guide efforts to address misinformation without compromising freedom of expression. A robust SADC Model Law on e-commerce will be established to protect consumers in the

digital marketplace. This framework aims to foster trust in online transactions, addressing issues such as fraud, privacy and consumer rights.

The pockets of the future in the present

The following section of the workshop focused on pockets of the future in the present (also termed seeds) with respect to digital rights in the SADC region. These pockets or seeds represent fringe activity in the present system that introduces novel ways of doing things and can – over time – coalesce to shift the dominant system[84] and become the more viable or preferred future. The seeds that were mapped include the following:

· Various broadband policies, such as the Botswana National Broadband Strategy, consider widespread access as the ideal goal, although it has not yet been fully achieved.

· The AU Data Policy Framework represents an ideal kind of digital rights futures for SADC, although it does not deal with all issues but focuses on data.

· Open social media protocols such as those used by Mastodon software offer a future that is not dominated by a handful of Western social media platforms.

· The UN is engaged with social media platform governance and AI governance, as well as cyber security issues.

· Deals are needed, such as the Western Cape Broadband Implementation Plan, between fibre Internet providers, corporates and municipalities for the right to provide commercial Internet access in return for providing free/low-cost Wi-Fi in low-income areas.

Emerging vision for the futures of digital rights by 2035

The collective narrative that emerged from the workshop was not a prediction or forecast of what could or would happen. Instead, it highlighted a combination of assumptions, trends and drivers of change that illustrated possible, probable, plausible and preferred futures. The intention of the 'emerging vision' was to imagine alternative futures and then describe how those futures might develop. The benefit was that it allowed participants to think about uncertainty in a structured way that built and informed strategic conversations.[85] Visions about the preferred future help leaders frame their fundamental understanding of the future and assert what needs to be done to achieve it.

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84   Laura Pereira et al., "Seeds of the Future in the Present: Exploring Pathways for Navigating Towards Good Anthropocenes" in *Urban Planet: Knowledge towards Sustainable Cities*, Thomas Elmqvist et al., eds (Cambridge: Cambridge University Press, 2018).
85   Andrew Curry and Anthony Hodgson, "Seeing in Multiple Horizons: Connecting Futures to Strategy", *Journal of Futures Studies* 13, no. 1 (2008): 1–20.

The Digital Renaissance: Navigating challenges, cultivating seeds of progress

In the turbulent landscape of 2023, society grappled with a myriad of challenges stemming from the intersection of technology and governance. Issues such as disinformation, hate, privacy violations, social divides and the spectre of authoritarianism loomed large, casting a shadow over the evolving digital era. Within this context, the emergent norms designed by the UN to uphold rights-based technology were routinely disregarded by both corporate entities and governments alike. Despite a theoretical entitlement to digital rights, individuals found their use of digital technology in their daily lives frequently violated by powerful forces. Amid these challenges, however, seeds of progress were sown and nurtured. One significant development was the collaborative effort between fibre Internet providers, corporations and municipalities, such as the Western Cape Broadband Implementation Plan. Public–private agreements allowed commercial Internet access in exchange for the provision of free or low-cost Wi-Fi in low-income areas. This innovative approach sought to bridge the digital divide and address social inequities through strategic partnerships.

Furthermore, UNESCO established guidelines aimed at regulating digital platforms, acknowledging the need for a structured approach to managing the ever-expanding digital realm. Simultaneously, the AU introduced a continental Data Policy Framework, signalling a commitment to shaping the digital landscape in a way that promotes inclusivity and protects the rights of its citizens. In response to these initiatives, a wave of innovation began to sweep through society. Financial and logistical support flowed into research institutions, empowering them to generate evidence-based policy interventions. Some African governments, recognising the importance of privacy and security, took the initiative and embraced open-source, secure and privacy-focused technologies, which fostered the development of local solutions.

The adoption of encryption tools, such as Signal, gained traction to resist pervasive surveillance. These technological advancements not only safeguarded individual privacy but also fortified the broader principles of data sovereignty and public opinion against doxing. As these innovations gained traction, SADC underwent a transformative shift. This shift was marked by the adoption of new values and norms within the society. The integration of these technological advancements not only revolutionised the economic landscape but also reshaped the cultural and social fabric of the region. The society that emerged was one in which all individuals could freely exercise their information, business, educational, social and political rights online. Governments that adhered to the revised ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa ensured the comprehensive protection of these rights.

Policy recommendations

Develop legal frameworks that promote digital rights

The SADC Secretariat and SADC national committees should initiate discussions about the development of a SADC Strategy or Policy on Digital Rights. This strategy or policy can be supported by encouraging SADC member states to promulgate laws that promote Internet freedom, online safety, access to information and protection of personal data. Member states should be encouraged to amend existing laws to align with democratic values, protect human rights, both offline and online, and promote the rule of law. SADC member states should revise laws that have a chilling effect on freedom of expression and that empower state entities to implement censorship and surveillance. Member states should relax any punitive legislation and unwarranted regulatory mechanisms that infringe on people's freedoms.[86] For instance, cybersecurity laws and surveillance laws need to be amended to align with regional and international standards and instruments on human rights. Where it is necessary to conduct surveillance, the law should ensure that adequate safeguards, oversight and transparency measures are in place, such as making it a legal requirement to obtain prior authorisation from a judge to intercept communications.

Develop a manifesto for responsible digital use

The SADC Secretariat should establish a multi-stakeholder committee to draft a manifesto for responsible digital use in collaboration with governments, civil society, academia and industry representatives. This should include principles such as digital literacy promotion, cybersecurity awareness, respect for privacy and responsible online behaviour to guide individuals and organisations in the SADC region. The manifesto should be accompanied by national and regional initiatives to raise awareness of cybersecurity threats, encourage best practices and facilitate collaboration between governments and private entities to enhance cyber resilience.

Create legal frameworks that recognise new digital rights

SADC member states should proactively legislate new laws that recognise new digital rights, such as the right to Internet access, in line with the ACHPR Declaration. This can be done either through constitutional amendments by including the right of Internet access as one of the fundamental human rights or through passing a law with a set of obligations on what the state should do to ensure the progressive realisation of this right, the state's obligations in protecting and upholding this right and restrictions on unlawful infringement of this right. Similarly, SADC member states should adopt a common

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86   Mziwandile Ndlovu, "Media Censorship Deepens in Africa, Further Aggravating the State of Press Freedom", African Institute for Development Policy, May 3, 2023.

approach to data justice and develop a policy framework that guides how the region can realise data justice collectively.

Establish institutional capacity

SADC member states should identify relevant custodians responsible for ensuring that digital rights are protected and who can take action against any abuses and violations of digital rights. Depending on the capacity of each country, there could be different regulators, from data protection regulators (monitoring and enforcing compliance with data protection laws) to AI regulators (responsible for providing guidance on the use of AI technologies) and human rights commissions (responsible for monitoring observance of all digital rights in general). Governments could assign certain responsibilities to existing authorities, such as assigning communications regulators the responsibility of ensuring compliance with the right of Internet access.

Consult with different stakeholders prior to starting digital projects

SADC member states should prioritise meaningful engagement with different stakeholders prior to embarking on any digital transformation projects or adopting certain technologies. Multi-stakeholder engagements give states a better understanding of how technology impacts on digital rights as well as its implications on other sectors. Stakeholder engagements should be meaningful in the sense that different groups are represented, including women, youth, businesses, civil society and academia. All consultations should give reasonable time for stakeholders to evaluate how a project impacts on them or other sectors.

Embed a human-rights-centred approach to development

SADC should adopt a human-rights-based approach in the SADC RISDP. The next RISDP 2030–2040 should be centred more on human rights. SADC member states should actively ensure that human rights are protected and upheld in all digital developments or digital projects. This would require conducting different impact assessments, such as privacy impact assessments and human rights impact assessments. Such assessments should focus on identifying any potential for discrimination, the exclusion of vulnerable groups, threats to security and privacy as well as additional safeguards to protect children. When adopting any technologies, an assessment of the implications of the technology on the rights of people should be conducted. Any technologies that can result in certain sections of the population being excluded should be avoided. This means that any technology must benefit vulnerable groups of people, such as persons with disabilities, elderly people, women, children and marginalised people. SADC member states should also ensure that discriminatory practices are not embedded in digital technologies and that responsible and ethical AI tools are used. They should promote the use of privacy-enhancing technologies and the application of privacy-by-default and privacy-by-design principles.

Build trust in digital platforms by promoting freedom and safety

SADC member states should take steps to build trust in digital systems. They should allow for open and free democratic participation on different online platforms and support citizen engagement. This is done by making sure that online political discussions are not unreasonably censored and that people are free to express themselves, their opinions and political views to the extent permitted by law. At the same time, member states must work together with platform operators and social media companies to take steps to prevent the spread of disinformation, to take down content that spreads hate speech or incites racism, xenophobia and homophobia, and to make sure that digital products are safe, secure and protect people's privacy. Adequate cybersecurity systems are needed to prevent unauthorised access and data breaches and robust laws on cybersecurity and cybercrime to prosecute criminals must be introduced.

Spearhead digital rights awareness campaigns

SADC member states need to take a proactive approach and spearhead awareness programmes on how digital rights are impacted by the use of technology, what needs to be done to protect digital rights, which laws are in place to protect the interests and rights of individuals and what individuals can do when their digital rights are threatened. Each member state can collaborate with regulators, the private sector and civil society organisations that are actively working on promoting digital rights and human rights to develop and deploy awareness programmes across its territory.

Introduce programmes to promote digital literacy and skills

SADC member states need to introduce their citizens to digital skills programmes. SADC can develop a harmonised and standardised policy on digital skills programmes in line with the SADC Protocol on Education and Training that can be replicated across the region. The programmes and initiatives must be designed to improve people's digital literacy, equip them with new digital skills relevant to the digital economy, bridge the digital skills gap and empower women and youth. The SADC Women in Science, Engineering and Technology Organisation can play a critical role in identifying important digital skills programmes, mobilising people to undertake these programmes and supporting SADC member states on programme roll-out. Such programmes should have specific offline functionalities for people living in disconnected remote areas and should be designed to meet the needs of people with disabilities.

Conclusion

In the ever-evolving digital landscape, safeguarding human rights online is not just a necessity but a moral imperative. As echoed by the UN, digital rights are integral to the broader spectrum of human rights, underscoring the imperative to shield individuals from the potential perils of technological misuse. With SADC placing a strategic emphasis on ICT infrastructure development in its 2020–2030 agenda, a unique window of opportunity presents itself to fortify the safeguarding of digital rights through precise policy interventions. These interventions should encompass the nurturing of digital skills, the enhancement of access to ICT and the revision of legal frameworks to ensure relevance and efficacy in the digital age.

As we navigate the intersection of technological progress and human dignity, striking a delicate balance is paramount. The SADC region's digital transformation must be not only technologically robust but also socially inclusive and ethically grounded. By aligning advancements with a steadfast commitment to human rights, we can pave the way for digital futures that are both innovative and respect the autonomy and dignity of every citizen.

The journey towards realising this vision begins with acknowledging the multifaceted dimensions of digital rights, as delineated in this research paper. From efforts to enhance Internet accessibility to grappling with the complexities of online privacy and data protection, each aspect requires nuanced attention and concerted action. Moreover, our approach must be agile and forward-thinking, as illustrated in the exploration of emerging transformations in the digital rights landscape, such as the implications of the AfCFTA and the burgeoning concept of data justice.

The policy recommendations outlined herein serve as a blueprint for action. They delineate concrete steps to foster a rights-respecting digital ecosystem within the SADC region. From the development of robust legal frameworks to the promotion of digital literacy and the cultivation of stakeholder engagement, each recommendation is designed to fortify the foundations of digital rights protection.

As we stand at the precipice of a digital renaissance, the choices we make today will reverberate for generations to come. Let us seize this moment to chart a course towards a future where technology serves as a catalyst for empowerment, where rights are upheld in the digital realm with the same vigour as they are in the physical world. In doing so, we honour not only the potential of technology but also, and more importantly, the inherent dignity and rights of every individual within the SADC community and beyond.

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