

# Digital Rights in Namibia

Freedom of Expression and Opinion  
Freedom of Information  
Right to Equal Access and Opportunity  
Right to Privacy

## Submission to the 38th session of the Universal Periodic Review, Namibia.

### SUBMITTING ORGANISATIONS



#### CIPESA

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CIPESA was established in 2004 under the Catalysing Access to Information and Communications Technology in Africa (CATIA) initiative, which was mainly funded by the UK's Department for International Development (DfID). CIPESA works to enable policy makers in the region to understand ICT policy issues, and for various stakeholders to use ICT to improve governance and livelihoods.

Established in 2011, Small Media is a London-based organisation that works to support freedom of expression and access to information globally. Small Media works with their global partners to develop strategies and tools that can support human rights defenders, activists and journalists to work safely and effectively in the digital age. They support their network of partners to develop data-driven advocacy strategies that bring about meaningful change.



#### ISOC Namibia

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Launched in Namibia in 2017, the Internet Society (ISOC) Namibia chapter is a multi stakeholder organization that works for open, globally connected and secure internet for everyone. Our mission is to promote the development of policy of the internet as a global technical infrastructure, a resource to enrich people's lives and a force for good in society. ISOC Namibia is a chapter member of the internet society global founded in 1992 with over 130 chapters around the world.

## Introduction

1. Human rights online, especially the right to privacy, freedom of expression, opinion and the right to access information, are important issues in Namibia and must be reflected in the recommendations made during the third cycle of the UPR in April-May 2021.
2. In the second cycle of the UPR, Namibia received 218 recommendations from 88 countries, with only one referencing freedom of expression and the press.
3. The latest data from the International Telecommunications Union (ITU) indicates that as of June 2018, the percentage of individuals using the internet in Namibia is 36.8%,<sup>1</sup> in comparison to 14.8% in 2014.<sup>2</sup> With growing digitisation, it's even more important for UPR recommendations to explicitly reflect the need for fundamental freedoms to be protected online as well as offline, in line with Namibia's obligations under Articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 9 of the African Charter and Article 21 of the Constitution.

## Updates since the previous review

4. According to ITU data, in 2014, 35.5 in every 100 inhabitants had a mobile broadband subscription<sup>3</sup>. By 2018 (the most recent year ITU data is available for) the figure had risen to 59.3 in every 100<sup>4</sup>.
5. Article 21 of the Constitution of the Republic of Namibia<sup>5</sup> guarantees “freedom of expression, the press and other media,” providing for legitimate restrictions under 21(2) including on grounds of “national security, public order, decency or morality, contempt of court, defamation or incitement to an offence”. For the past three years, Namibia has been the highest ranked country in Africa on the global press freedom index - with an improvement in ranking from 26th in 2018 to 23rd in 2019 and 2020 out of 180 countries assessed.<sup>6</sup> The courts have also upheld freedom of expression rights as seen in the April 2019 landmark ruling which dismissed an appeal by the Namibia Central Intelligence Service (NCIS) seeking to stop the publication of an article about corruption.<sup>7</sup>

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<sup>1</sup> ITU, ‘Measuring the Information Society Report 2018’, <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2018/MISR-2018-Vol-2-E.pdf>, Last Accessed 12 October 2020

<sup>2</sup> ITU, ‘Measuring the Information Society Report 2015’, <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>, Last Accessed 12 October 2020

<sup>3</sup> ITU, ‘Measuring the Information Society Report 2015’, <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>, Last Accessed 12 October 2020

<sup>4</sup> ITU, ‘Measuring the Information Society Report 2018’, <https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2018/MISR-2018-Vol-2-E.pdf>, Last Accessed 12 October 2020

<sup>5</sup> ‘Constitution of the Republic of Namibia’, [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf](https://www.constituteproject.org/constitution/Namibia_2010.pdf), Last Accessed 12 October 2020

<sup>6</sup> RSF, <https://rsf.org/en/namibia>, Last Accessed 12 October 2020

<sup>7</sup> <https://allafrica.com/stories/201904130069.html>, Last Accessed 12 October 2020

6. Nonetheless, other laws restrict freedom of expression in Namibia, amongst them is the Protection of Information Act 84 of 1982 and the Namibia Central Intelligence Service Act 10 of 1997 (NCISA) which have been used by authorities to silence the media.<sup>8</sup> Meanwhile, in 2016, the cabinet issued a directive<sup>9</sup> giving preferential treatment to state-owned media over the dissemination of government information and advertisements.<sup>10</sup>
7. State officials have frequently issued harsh criticisms<sup>11</sup> and even threats against the independence of the press<sup>12</sup>. Freedom of expression online has not been spared with politicians threatening<sup>13</sup> to gag social media<sup>14</sup> engagements and interactions<sup>15</sup>.
8. In June 2020, the Namibia access to information bill<sup>16</sup> was tabled before the National Assembly and is under consultation. The bill is aimed at providing for citizens' right of access to information held by public and private entities, and facilitating transparency, accountability and good governance. However, there are concerns over exemptions in the bill, including blanket confidentiality of cabinet proceedings, judicial functions and the nomination, selection and appointment of judicial officers. The proposed exemptions defeat the purpose of access to information in public interest and open justice.
9. Restrictions and exemptions to access to information have in the past been used by the government to gag and deny investigative<sup>17</sup> journalists access to state information, on grounds of "national

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<sup>8</sup> 'NMT Condemns Spy Agency for Gagging Patriot', <https://www.namibian.com.na/176448/archive-read/NMT-condemns-spy-agency-for-gagging-Patriot>, Last Accessed 12 October 2020

<sup>9</sup> The Namibian, 'Government prefers NBC, New Era' <https://www.namibian.com.na/157910/archive-read/Government-prefers-NBC-New-Era>, Last Accessed 12 October 2020

<sup>10</sup> New Era, 'Government Prefers NBC', <https://www.namibian.com.na/157910/archive-read/Government-prefers-NBC-New-Era>, Last Accessed 12 October 2020

<sup>11</sup> Namibian Sun, <https://www.namibiansun.com/news/tweya-calls-journalists-bad-namibians2019-11-13>, Last Accessed 12 October 2020

<sup>12</sup> The Namibian, 'Geingob claims media sabotage', <https://www.namibian.com.na/195528/archive-read/Geingob-claims-media-sabotage>, Last Accessed 12 October 2020

<sup>13</sup> Kundana, 'Govt warns against irresponsible use of social media', <https://kundana.com.na/posts/govt-warns-against-irresponsible-use-of-social-media>, Last Accessed 12 October 2020

<sup>14</sup> The Namibian, 'Govt warns on social media posts' <https://www.namibian.com.na/165733/archive-read/Govt-warns-on-social-media-posts>, Last Accessed 12 October 2020

<sup>15</sup> Namibian Sun, 'Govt warns on social media posts' <https://www.namibiansun.com/news/social-media-endangers-lives>, Last Accessed 12 October 2020

<sup>16</sup> 'Namibia ACCESS TO INFORMATION BILL', <https://www.parliament.na/index.php/archive/category/197-bills-2020?download=8797:access-to-information-bill>, Last Accessed 12 October 2020

<sup>17</sup> The Namibian, 'Govt to regulate, punish media', <https://www.namibian.com.na/155025/archive-read/Govt-to-regulate-punish-media>, Last Accessed 12 October 2020

security”<sup>18</sup>. Sections 3 and 4 of the Protection of Information Act, 1982<sup>19</sup> prohibits obtaining and disclosing state information relating to, or obtained from a “prohibited place”, regarding national defense, the military, or the prevention or combating of terrorism. Non compliance is punishable by a fine not exceeding 10,000 Namibian Dollars (USD 577) or to imprisonment for a period not exceeding 10 years or both. It is on the basis of the 1983 law that the Namibia Central Intelligence Service (NCIS) went to court to stop a newspaper<sup>20</sup> from publishing information that it deemed to be endangering “national security” in 2018. The information related to misappropriation of state funds and assets by the NCIS.

10. Section 57 of the Communications Act, 2009 (Act No. 8 of 2009) provides for the establishment of a Universal Service Fund, under the implementation of Communications Regulatory Authority and funded by a levy<sup>21</sup> on licensed operators’ turnover. However the fund has never become operational and in 2018, the Supreme Court ruled that collection of the levy was unconstitutional<sup>22</sup>.
11. As social media is increasingly being used to express dissent, politicians have been calling for its regulation<sup>23</sup> as a means of fighting misinformation and cybercrime<sup>24</sup>. A proposal to regulate social media<sup>25</sup> is said to have divided members of parliament in mid-2019, however, in February 2020, the Ministry of Information and Communication Technology confirmed plans to regulate it<sup>26</sup>. Such regulations, if vaguely framed and passed without stakeholder input implemented may amount to unnecessary restriction on online expression.

<sup>18</sup> The Namibian, ‘International organisation backs Nam journalists’, <https://www.namibian.com.na/203202/archive-read/International-organisation-backs-Nam-journalists>, Last Accessed 12 October 2020

<sup>19</sup> ‘Protection of Information Act 84 of 1982 (RSA)’, [https://laws.parliament.na/cms\\_documents/protection-of-information-77ac09a8f9.pdf](https://laws.parliament.na/cms_documents/protection-of-information-77ac09a8f9.pdf), Last Accessed 12 October 2020

<sup>20</sup> New Era, ‘NCIS appeal judgment....Supreme Court dismisses Intelligence appeal’, <https://neweralive.na/posts/ncis-appeal-judgmentsupreme-court-dismisses-intelligence-appeal>, Last Accessed 12 October 2020

<sup>21</sup> Government Gazette 8 June 2015, ‘COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA’, [https://www.cran.na/wp-content/uploads/2019/12/Regulations\\_to\\_Impose\\_Universal\\_Service\\_Levy\\_on\\_Telecommunications\\_Service\\_Providers.pdf](https://www.cran.na/wp-content/uploads/2019/12/Regulations_to_Impose_Universal_Service_Levy_on_Telecommunications_Service_Providers.pdf), Last Accessed 12 October 2020

<sup>22</sup> The Namibian, ‘Supreme Court rules against Cran levy’, <https://www.namibian.com.na/68353/read/Supreme-Court-rules-against-Cran-levy>, Last Accessed 12 October 2020

<sup>23</sup> Namibian Sun, ‘Vice president wants to censor social media’, <https://www.namibiansun.com/news/vice-president-wants-to-censor-social-media>, Last Accessed 12 October 2020

<sup>24</sup> Namibian Sun, ‘Social media endangers lives’, <https://www.namibiansun.com/news/social-media-endangers-lives/>, Last Accessed 12 October 2020

<sup>25</sup> The Namibian, ‘MPs divided on social media gagging’, <https://www.namibian.com.na/190767/archive-read/MPs-divided-on-social-media-gagging>, Last Accessed 12 October 2020

<sup>26</sup> The Namibian, ‘Govt mulls social media protection’, <https://www.namibian.com.na/197767/archive-read/Govt-mulls-social-media-protection>, Last Accessed 12 October 2020

## Freedom of Expression and Opinion

- 12.** Although there are no reports of journalists killed, imprisoned or reported missing<sup>27</sup>, harassment, assault and threats to practitioners are not uncommon. In June 2020, two journalists were assaulted<sup>28</sup> by a Presidential Security Unit during the opening of a COVID-19 isolation facility. While the State House issued an apology<sup>29</sup>, one of the journalists involved opened an assault case against the security services. During the 2019 elections, government officials launched verbal attacks<sup>30</sup> against the media. During this period the government also warned the public against bullying on social media<sup>31</sup>.
- 13.** For the past few years, politicians and government officials<sup>32</sup> have issued stern warnings<sup>33</sup> and threats citing the “irresponsible” use<sup>34</sup> of social media, claiming it endangers lives<sup>35</sup>. In April 2020, as part of regulations to curb the spread of the COVID-19, Namibia outlawed the publication of false or misleading statements related to the virus including on social media. The offense is punishable with a fine of up to 2,000 Namibian Dollars (USD 134) or imprisonment of up to six months.<sup>36</sup> A man was arrested and fined under the regulations in June 2020.<sup>37</sup>

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<sup>27</sup> ‘Committee to Protect Journalists (CPJ) Statistics Namibia’, <https://cpj.org/africa/namibia/>, Last Accessed 12 October 2020

<sup>28</sup> The Namibian, ‘Presidency security unit charged with assault’, <https://www.namibian.com.na/201403/archive-read/Presidency-security-unit-charged-with-assault>, Last Accessed 12 October 2020

<sup>29</sup> AllAfrica, ‘Presidency Apologizes After Journalists Barred From Covering Launch of COVID-19 Facility’, <https://allafrica.com/stories/202006030808.html>, Last Accessed 12 October 2020

<sup>30</sup> Reporters Without Borders, ‘Concern about verbal attacks on journalists during Namibian election campaign’, <https://rsf.org/en/news/concern-about-verbal-attacks-journalists-during-namibian-election-campaign>, Last Accessed 12 October 2020

<sup>31</sup> The Namibian, ‘Govt warns against social media bullying’, <https://www.namibian.com.na/188284/archive-read/Govt-warns-against-social-media-bullying>, Last Accessed 12 October 2020

<sup>32</sup> IFex, ‘Government slaps advertising ban on the Namibian newspaper’, <https://ifex.org/government-slaps-advertising-ban-on-the-namibian-newspaper/>, Last Accessed 12 October 2020

<sup>33</sup> Quartz Africa, ‘Colonial apartheid era laws southern African press freedom’, <https://qz.com/africa/1487311/colonial-apartheid-era-laws-hur-southern-africas-press-freedom/>, Last Accessed 12 October 2020

<sup>34</sup> Kundana, ‘Government warns against irresponsible use of social media’, <https://kundana.com.na/posts/govt-warns-against-irresponsible-use-of-social-media>, Last Accessed 12 October 2020

<sup>35</sup> Namibian Sun, ‘Social media endangers lives’, <https://www.namibiansun.com/news/social-media-endangers-lives/>, Last Accessed 12 October 2020

<sup>36</sup> The Namibian, ‘Covid-19 ‘fake news’ now a crime’, <https://www.namibian.com.na/200224/archive-read/Covid-19-fake-news-now-a-crime>, Last Accessed 12 October 2020

<sup>37</sup> The Namibian, ‘Man arrested for spreading fake Covid-19 news’, <https://www.namibian.com.na/91561/read/Man-arrested-for-spreading-fake-Covid-19-news>, Last Accessed 12 October 2020

14. Following an earlier ban on government advertising in *The Namibian* newspaper in 2011, in 2016 the Cabinet announced a decision that gives preferential treatment to state-owned media<sup>38</sup> for event coverage and state advertising. Media reports hinted that this decision was designed to prioritise the allocation of government funding for the benefit of state-owned media houses.

### Freedom of information and censorship of content

15. The 2019 elections were marked by tensions between politicians and the media, with President Hage Geingob citing media sabotage<sup>39</sup> in its coverage of political parties. The presidential spokesperson also alleged that the media was trying to influence elections<sup>40</sup> with its reporting.
16. Despite its high position in press freedom rankings, journalists in Namibia are reportedly subject to political pressure<sup>41</sup>, and pressure from employers which restricts their work in public interest. A recent incident was that of a Namibia Press Agency journalist who had a confrontational encounter with President Hage Geingob<sup>42</sup> during which he freely, and with permission asked questions which were in the public interest and needed to be addressed. This resulted in a leaked communique in which the Namibia Press Agency's management distanced itself from the journalist's conduct. This case was condemned by the media and opposition political party.<sup>43</sup>
17. In 2018, the NCIS filed a court cases against the Patriot Newspaper citing infringement of national security<sup>44</sup> and protection of the agency's information, when the newspaper planned to publish a story about land deals involving former NCIS members. The NCIS based its case on the 1982 Protection of Information Act. This attempt to gag the media attracted fierce condemnation<sup>45</sup> from civil society organisations and the wider public. Courts dismissed the case in April 2019.

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<sup>38</sup> The Namibian, 'Government prefers NBC, New Era', <https://www.namibian.com.na/157910/archive-read/Government-prefers-NBC-New-Era>, Last Accessed 12 October 2020

<sup>39</sup> The Namibian, 'Geingob claims media sabotage', <https://www.namibian.com.na/195528/archive-read/Geingob-claims-media-sabotage>, Last Accessed 12 October 2020

<sup>40</sup> The Patriot, 'Media trying to influence elections- Hengari', <https://thepatriot.com.na/index.php/2019/11/21/media-trying-to-influence-elections-hengari/>, Last Accessed 12 October 2020

<sup>41</sup> IFJ, 'Journalists take a stand against growing political pressure', <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/namibia-journalists-take-a-stand-against-growing-political-pressure.html>, Last Accessed 12 October 2020

<sup>42</sup> Namibian Sun, 'Journalist lands in trouble for fishrot question to Geingob', <https://www.namibiansun.com/news/journalist-lands-in-trouble-for-fishrot-question-to-geingob2020-08-03>, Last Accessed 12 October 2020

<sup>43</sup> Namibia Daily News, 'PDMYL to lay a complaint against Nampa for the censorship and victimisation of Journalist', <https://namibiadailynews.info/pdmyl-to-lay-a-complaint-against-nampa-for-the-censorship-and-victimisation-of-journalist-edward-mumbuu-at-the-media-ombudsman/>, Last Accessed 12 October 2020

<sup>44</sup> Quartz Africa, 'Colonial apartheid era laws hur African press freedom', <https://qz.com/africa/1487311/colonial-apartheid-era-laws-hur-southern-africas-press-freedom/>, Last Accessed 12 October 2020

<sup>45</sup> GGA, 'History repeats itself', <https://gga.org/tag/namibia-media-trust-nmt/>, Last Accessed 12 October 2020

## Right to Equal Access and Opportunity

18. Namibia has one of the highest rates of income inequality in the world<sup>46</sup>. The technology sector is hindered by a lack of affordable access, and poor quality service<sup>47</sup>. The 2020 Inclusive Internet Index, which assesses internet availability, affordability, relevance of content and readiness ranks Namibia 84th out of 100 countries, while the ITU's 2017 ICT Development Index ranked it 118th out of 176 countries accessed.<sup>48</sup> A National Broadband Policy (2020)<sup>49</sup> was recently launched with the aim of achieving reliable and affordable broadband access services for all. While the policy lacks precision with regard to target groups or regions, its five-year implementation action plan seeks to ensure 95% broadband coverage by 2024 as well as operationalise the Universal Access and Service Fund.<sup>50</sup>
19. The 2020 Women's Rights Online Report Card on Namibia<sup>51</sup> scores the country 29% based on assessment of internet access and women's empowerment; relevance of content and services; online safety; affordability; and digital skills and education. The report card indicates that only 47% of Namibian women have access to the internet and that there is no national policy recognising technology as a tool for fighting gender inequalities. On affordability, the report found that 1GB of data costs over 8% of average monthly income<sup>52</sup>, leaving it out of reach for many Namibians.

## Right to data protection and privacy on the internet

20. The right to privacy is provided for under Article 13 of the Namibian Constitution<sup>53</sup>, which states "No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others".

<sup>46</sup> The World Bank, 'Namibia Overview', <https://www.worldbank.org/en/country/namibia/overview>, Last Accessed 12 October 2020

<sup>47</sup> Namibian Sun, 'Namibia's internet costs are too high', <https://www.namibiansun.com/news/namibias-internet-costs-are-too-high2019-03-05>, Last Accessed 12 October 2020

<sup>48</sup> ICT Development Index 2017, 'internet availability, affordability, relevance of content and readiness ranks

<sup>49</sup> Southern Time Africa, <https://southerntimesafrica.com/site/news/mict-namibia-launches-national-broadband-policy>, Last Accessed 12 October 2020

<sup>50</sup> New Era, 'Govt targets 95% broadband coverage by 2024', <https://neweralive.na/posts/govt-targets-95-broadband-coverage-by-2024#:~:text=WINDHOEK%20%2D%20Government%20aims%20to%20achieve,Plan%20in%20the%20National%20Assembly>, Last Accessed 12 October 2020

<sup>51</sup> 'Internet Society Namibia chapter, Women's rights online report', <http://webfoundation.org/docs/2020/08/GenderReport-Namibia.pdf>, Last Accessed 12 October 2020

<sup>52</sup> Alliance for Affordable Internet, '2019 Affordability Report', <https://a4ai.org/affordability-report/report/2019/>, Last Accessed 12 October 2020

<sup>53</sup> Namibian Constitution, <https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf>, Last Accessed 12 October 2020

21. Namibia does not have a data protection and privacy law. However, there are some indications of progress. In February 2020, a multi-stakeholder consultation<sup>54</sup> on the data protection bill was hosted, reportedly engaging with 85 participants including representatives from the offices of the President, Vice-President, and Prime Minister; Parliament; the Ministry of ICT; criminal justice authorities; ministries of education, gender equality and child welfare; ministries of agriculture and land reform; internet and telecommunications service providers as well as civil society groups. In the absence of a data protection law, incidents of data breaches have been reported from the corporate<sup>55</sup> to the individual level. Further stakeholder consultations on the Bill were conducted between September to mid-October via online platforms by the Ministry of ICT with the support from the Council of Europe.
  
22. In 2017, the Communications Regulatory Authority of Namibia (CRAN) enforced a provision within the Communications Act requiring mandatory SIM card registration<sup>56</sup> through telecommunications operators. The registration exercise was later abandoned as civil society and media raised concerns<sup>57</sup>. There are reports that SIM card regulations are under review as part of the ongoing review<sup>58</sup> of the Communications Act.
  
23. Part 6 of the 2009 Communications Act<sup>59</sup> provides for interception of communications by establishing an interception centre for the purposes of combating crime and national security. Article 70, (8) reads: “Where any law authorises any person or institution to intercept or monitor electronic communications or to perform similar activities, that person or institution may forward a request together with any warrant that may be required under the law in question to the head of an interception centre.” The Act further empowers staff members of the interception centre to “do anything necessary in order to perform the interception or monitoring concerned (as well as any decoding or decryption necessary to make the information in question intelligible).”
  
24. In June 2019, the Ministry of Information and Communications Technology tabled<sup>60</sup> the Electronic Transaction Bill before the National Assembly. When it was first published in 2017 as the

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<sup>54</sup> ‘GLACY+: Stakeholders’ Consultation Workshop on the Data Protection Bill in Namibia’, <https://www.coe.int/en/web/cybercrime/-/glacy-stakeholders-consultation-workshop-on-the-data-protection-bill-in-namibia>, Last Accessed 12 October 2020

<sup>55</sup> The Namibian, ‘SSC leak exposes personal info online’, <https://www.namibian.com.na/178310/archive-read/SSC-leak-exposes-personal-info-online>, Last Accessed 12 October 2020

<sup>56</sup> The Namibian, ‘Spy agency wants SIM cards registered’, <https://www.namibian.com.na/163120/archive-read/Spy-agency-wants-SIM-cards-registered>, Last Accessed 12 October 2020

<sup>57</sup> Action Access to Information, ‘Ripe for surveillance abuse – Unpacking Namibia’s SIM card registration limbo’, <https://action-namibia.org/ripe-for-surveillance-abuse-unpacking-namibias-sim-card-registration-limbo/>, Last Accessed 12 October 2020

<sup>58</sup> Comms Update, ‘Namibia undertakes review of communications law’, <https://www.commsupdate.com/articles/2019/10/11/namibia-undertakes-review-of-communications-law/>, Last Accessed 12 October 2020

<sup>59</sup> Communications Act, 2009, [https://www.nbc.na/sites/default/files/pdf/Namibia%20Communications%20Act%208%20of%202009\\_0.pdf](https://www.nbc.na/sites/default/files/pdf/Namibia%20Communications%20Act%208%20of%202009_0.pdf), Last Accessed 12 October 2020

<sup>60</sup> NBC, ‘Simataa tables bill to regulate electronic transactions’, <https://www.nbc.na/news/simataa-tables-bill-regulate-electronic-transactions.21153>, Last Accessed 12 October 2020



Electronic Transactions and Cybercrime Bill, civil society raised concerns stating that various sections provided for “warrantless search and seizure operations”, while other sections allowed for “a system of secret warrants and unauthorised access by state agents”.<sup>61</sup> The Bill was later split, with the Electronic Transaction Act being passed by parliament<sup>62</sup> but pending ministerial gazette. The Act empowers law enforcement officials to conduct interception and surveillance of communications as part of their investigations (Chapter 8), with the assistance of telecommunications companies and internet service providers.

25. There is a high perception of state sponsored surveillance among civil society and the media, particularly by the Central Intelligence Service<sup>63</sup> as reported by *The Namibian* newspaper in a detailed three-edition report.<sup>64 65 66</sup> Civil society and the media believe that the state, particularly the Central Intelligence Service, is highly engaged in arbitrary interception and surveillance of citizens, in disregard of their privacy rights.
  
26. On the other hand, online violence against women remains a challenge.<sup>67</sup> A report by the World Web Foundation<sup>68</sup> revealed that the lack of cybercrime and data protection legislation in Namibia puts women at risk of violence, and in vulnerable positions in the cases of non-consensual image sharing (also known as revenge pornography), as well as with regard to online blackmail and sexualised hate speech.

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<sup>61</sup> Cyber Crime Bill Flawed, <https://www.namibian.com.na/166071/archive-read/Cybercrime-Bill-flawed-%E2%80%93-civil-society>, Last Accessed 12 October 2020

<sup>62</sup> Electronic Transactions Act 4 of 2019, [https://laws.parliament.na/cms\\_documents/electronic-transactions-e6007fa08d.pdf](https://laws.parliament.na/cms_documents/electronic-transactions-e6007fa08d.pdf), Last Accessed 12 October 2020

<sup>63</sup> Action Access to Internet, ‘The rise of the Namibian surveillance state (Part I)’, <https://action-namibia.org/rise-namibian-surveillance-state/>, Last Accessed 12 October 2020

<sup>64</sup> The Namibian, ‘The Rise of the Namibian Surveillance State: Part 2’, <https://www.namibian.com.na/174788/archive-read/The-Rise-of-the-Namibian-Surveillance-State-Part-2>, Last Accessed 12 October 2020

<sup>65</sup> The Namibian, ‘The rise of the Namibian surveillance state: Part 3’, <https://www.namibian.com.na/175475/archive-read/The-rise-of-the-Namibian-surveillance-state>, Last Accessed 12 October 2020

<sup>66</sup> ‘UPR Stakeholder Submission on the right to privacy in Namibia’, [https://privacyinternational.org/sites/default/files/2017-12/Namibia%20UPR\\_PI\\_submission\\_FINAL.pdf](https://privacyinternational.org/sites/default/files/2017-12/Namibia%20UPR_PI_submission_FINAL.pdf), Last Accessed 12 October 2020

<sup>67</sup> Oxford Human Rights Hub, ‘Addressing ‘Revenge Porn’ in Namibia’, <https://ohrh.law.ox.ac.uk/addressing-revenge-porn-in-namibia/>, Last Accessed 12 October 2020

<sup>68</sup> Internet Society, ‘Women’s rights online report’, <http://internetsociety.na/wp-content/uploads/2020/07/GenderReport-Namibia-FINAL-ONLINE-VERSION.pdf>, Last Accessed 12 October 2020

27. Namibia is referred to as “a safe haven for cybercrime”<sup>69</sup> and without a cybercrime law<sup>70</sup>, many citizens have fallen victim to online fraud<sup>71</sup> One the other hand, data protection remains a concern<sup>72</sup>

## Proposed Recommendations

28. In light of Namibia’s existing record on freedom of opinion and expression, freedom of the press, and the right to privacy online, the submitting organisations call on states to propose the following recommendations to Namibia:

- a. Amend Article 21 of the Namibian Constitution to remove restrictions on freedom of expression on the undefined grounds of “decency or morality” “defamation” or “incitement.” and desist from criticism and harassment of journalists and the media.
- b. Repeal the Protection of Information Act no. 84 of 1982, especially in light of the Access to Information Bill.
- c. Amend the Namibia Central Intelligence Services Act 10, 1997, by repealing section 4 which blanketly prohibits persons from accessing information on grounds of “national security”.
- d. Amend Part 6 of the Communications Act, by repealing section 9, and criminalizing unauthorized interceptions and surveillance of citizens.
- e. Operationalise the Universal Service Fund and the National Broadband Policy (2020) to promote affordable, equal and equitable access to the internet and related technologies among women and underserved communities.
- f. Enact Cybercrime, Data Protection and Privacy legislation in compliance with Article 21 of the Constitution and international human rights standards and obligations.

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<sup>69</sup> New Era Live, ‘Namibia a safe haven for cybercriminals’, <https://neweralive.na/posts/namibia-a-safe-haven-for-cybercriminals>, Last Accessed 12 October 2020

<sup>70</sup> The Namibian, ‘Cybercrime in Namibia’, <https://www.namibian.com.na/165301/archive-read/Cybercrime-in-Namibia>, Last Accessed 12 October 2020

<sup>71</sup> NBC, ‘Many Namibians fall victim to online fraud’, <https://www.nbc.na/news/many-namibians-fall-victim-online-fraud.20124>, Last Accessed 12 October 2020

<sup>72</sup> The Namibian, ‘Data Protection Increasingly A Namibian Concern’, <https://www.namibian.com.na/178986/archive-read/Data-Protection-Increasingly-A-Namibian-Concern>,