

# LEGAL MECHANISMS FOR THE PROTECTION OF DIGITAL RIGHTS (DIGNITY, FREEDOMS, AND PRIVACY)



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### **OBJECTIVE AND JUSTIFICATION**

This manual provides guidance on the legal mechanisms (courts, quasi-judicial bodies) available to journalists and media practitioners from the Southern African Development Community (SADC) countries of South Africa, Lesotho, Eswatini, Botswana, Mozambique, Zimbabwe, Malawi, Zambia, Angola, Democratic Republic of Congo, and Tanzania to protect themselves and their sources from violations of digital rights at the national, regional, and global level. These mechanisms allow individuals and groups to bring claims relating to digital rights, including dignity, privacy, and freedom (expression and media/press).

- Media and journalists are targets of malign technology uses and victims of weaponization of technology tools used by institutions and government in service delivery as e-government expands across Africa (CCTV, cameras, and other tools)
- While technology can bring government services closer to the people and make governing more efficient, these tools also enhance governments capacity to undermine freedoms (e.g., surveillance, spyware). Some tools are undetectable (e.g., Pegasus)
- Journalists in SADC are caught up, like other citizens, in cybercrimes that target personal data (personally identifying, financial, health) sources and property of citizens. Interpol Annual Reports indicate millions of cyber incidents for most countries in the region.
- Some states repurpose cybersecurity laws and policies to undermines digital rights (e.g., through insertion and use of clauses in cyber laws and their use against journalists, media practitioners and activists) [See “Freedom Under Threat Report” by Freedom House].

### **DEFINITION OF KEY TERMS**

- **Digital rights:** Are human rights that exist in the online world. Include dignity and fundamental freedoms (e.g., freedom of expression, association, privacy, and access to information).

- **Freedom of expression** includes the right to seek, impart, express opinion, or acquire knowledge on any topic in public interest.
- **Freedom of association** includes the right to voluntarily form any association (e.g., journalists or media association) to advance group interests under a general law of associations does not allow the state to either restrict or fetter registration in any way or intrude into the operations of associations.
- **Dignity** as the foundation of all rights protects the human worth, autonomy, and self-determination of the individual.
- **Privacy** by design ensures protection of individuals (users, citizens, stakeholders) from privacy harms, including identity theft, discrimination, and economic or financial loss. As a technical domain, privacy means protection of sensitive personal information (personal identifying information [PII], personal health information [PHI], or personal financial information [PFI] ) and communications (all media) including from arbitrary search or seizure.
- **Cybersecurity**: a technical discipline involving management of risks to information and information systems through identification, prevention, detection, protection, and response activities.
- **Cybercrime**: crimes that depend on the Internet (internet-dependent) or are facilitated by the Internet (internet-facilitated). Major international and regional instruments (see list with active links below) define what have become the “core” cybercrimes that are being included in national laws within SADC region:
  - [Budapest Convention on Cybercrime of 2001](#),
  - [SADC Model Law on Computer and Cybercrimes of 2012](#),
  - Draft UN Convention Against Cybercrime [available here](#).

**Resources:**

- <https://unctad.org/page/cybercrime-legislation-worldwide>
- <https://www.combattingcybercrime.org/files/virtual-library/assessment-tool/itu-toolkit-for-cybercrime-legislation-%28draft%29.pdf>
- NIST Computer Security Resource Center: [Glossary of Cyber and Tech Terms](#)

- <https://www.mediadefence.org/resource-hub/cybercrimes-sub-saharan-africa/#:~:text=At%20present%2C%2036%20African%20countries,Nigeria%20and%20Somalia%20in%202023.>

### **WHAT INTERESTS ARE PROTECTED BY DIGITAL RIGHTS?**

Journalists and media practitioners have individual and group interests at play in young but growing democracies in Southern Africa. These interests are indeed protected in legal texts at national and international level. They frame guidance in this manual. The interests are as follows:

- Journalists and media practitioners' right to seek knowledge and to impart or express opinion on any topic in the public interest.
- Right of individual journalists and media practitioners to form associations to advance sector or group interests.
- Protection from arbitrary search and seizure of communications (all media including print, electronic, video).
- Protection of physical integrity of media practitioners from violence from state and private sources.
- Protection from interference with personal spaces including home and office. Note: home enjoys the most privacy protection while privacy in the workplace is weaker but applicable (e.g., as a place where some personal communications or "papers" are often kept).
- Protection of media sources.

### **DIGITAL RIGHTS IN LEGAL INSTRUMENTS**

These interests are protected not only in all SADC country constitutions but also regional and international legal instruments (treaties) that make provision for freedom of expression and the media, privacy, and dignity.

### **1.1. The Right to (human) Dignity**

The preamble of the International Covenant on Civil and Political Rights (ICCPR), the most legally significant instrument at the United Nations (UN) level, recognizes that protection of rights is about dignity, which underpins all protected rights. In this regard, the preamble states that:

*“In accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.”*

Some landmark cases from Africa:

- *Purohit and Moore v. The Gambia* (African Human Rights Commission) holding that that human dignity is an inherent right to which all individuals are entitled, regardless of mental capabilities, and found that the law violated Article 5 by dehumanizing individuals with mental disabilities.
- Human Rights Committee (UN) cases on detention and torture involve dignity concerns, see eg *Njaru v. Cameroon* (2007), *Diergaardt v. Namibia* (2000).

### **1.2. Right to freedom of expression**

Freedom of expression of the media is protected as a right in several treaties that SADC countries are all parties to:

- Article 19 of the The Universal Declaration of Human Rights (UDHR) on freedom of expression and media:  
*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*
- Article 21 International Covenant on Civil and Political Rights (ICCPR) on freedom of expression and media:

*“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”*

- Article 9 (2) of the African Charter:

*“Every individual shall have the right to express and disseminate his opinions within the law.”* This formula—where the enjoyment of a right or freedom is made “subject to the law” (“claw back clauses”) affords states discretion and can be found in most African constitutions.”

There have been many cases exploring the scope of freedom of expression and of the media at the international level (UN, Africa) and national level. Some are cited in relevant sections below.

#### Resources:

- <https://www.globalexpressionreport.org/regions-subsaharan-africa>
- For specific cases brought against each SADC country, see IHRDA’s excellent [Case Law Analyzer](#).

### 1.3. **Right to Privacy**

Privacy is protected as a right in the ICCPR and mirrored in national constitutions.

Article 17 ICCPR:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Criminal laws that penalize trespass, assault and even burglary support privacy interests. However, criminal libel or criminal defamation goes too far in freezing debate on public issues in an open and democratic society and has been shown not to protect dignity as claimed. This

manual cites several cases of criminal defamation brought against journalists in SADC countries.

**Consider some landmark cases:**

- *Mistry v Interim National Medical and Dental Council (1998) of South Africa* invalidating arbitrary drug searches in homes, described as “inner sanctum” of individuals and are an unjustifiable limitation on the right to privacy.
- *Sukati v Ministry of Education, Principal Secretary and Others (2007)*.

The Court emphasized that personal privacy is a fundamental human right, underpinning human dignity and other essential freedoms. It highlighted that any intrusion on an individual's personal privacy and bodily integrity without consent requires reasonable justification authorized by law. The Court drew parallels with international jurisprudence, noting that compulsory blood tests have been considered as searches infringing upon reasonable expectations of privacy in other jurisdictions.

- *Re Section 65 of The Constitution (2006) of Malawi* on illegality of tape recordings

*National Security Services Act Case (2023) of Lesotho*, involving the invalidation by the Constitutional Court of Section 26(2) of the National Security Services Act followed for allowing the National Security Service to seize mobile phones without a court order.

### **LEGAL MECHANISMS OUTLINED**

Legal mechanisms for protecting journalists and media practitioners discussed include prosecution of offenders (state-led or private prosecution), constitutional petitions to protect digital rights, lawsuits against individual offenders under civil law and petitions to regional and international judicial and quasi-judicial bodies. These are outlined in turn:

#### **1.4. Prosecution to Protect Digital Rights**

Protection of media sources, information, and individual journalists through criminal prosecutions of offenders by state prosecutor (Attorney General or Director of Public Prosecutions)

- Prosecution of common crimes involving journalists and media practitioners as victims



- Prosecution of violations of digital rights as cybercrimes falling in one of four categories as below:
  1. Crimes that impact confidentiality, integrity, and availability (i.e., illegal access, interception, interference, misuse of devices),
  2. common crimes committed online (i.e., forgery, fraud, extortion, and theft),
  3. content related crimes (i.e., child porn, grooming, cyber bullying & harassment, cyber stalking)
  4. Copyright infringement.

These crimes are defined in national laws in SADC countries that implement treaty obligations in the following treaties and instruments:

- [Budapest Convention on Cybercrime of 2001](#),
- [SADC Model Law on Computer and Cybercrimes of 2012](#),
- Draft UN Convention Against Cybercrime [available here](#).

State-led prosecutions should be an important, primary mechanism for protecting journalists where violations of digital rights amount to crimes. However, evidence suggests readiness on the part of prosecuting authorities to “go after” journalists and media practitioners rather than those that commit crimes against journalists. This tool requires advocacy and generalizing the issue of freedoms. The following are select cases that illustrate important issues:

- *Malebo v. Mirror Newspaper – Defamation Case of 2003* (Lesotho).
- *Joseph Mapwesera v. Malawi News – Defamation and Press Freedom* (2005) involving criminal defamation.
- *Prosecutor v Sainani Nkhoma – Insulting the President via social media* (2024).
- *Chipenzi v. The People – Unconstitutional Law* (2014) of Zambia, involving invalidation of Section 67 of the Penal Code, which criminalized the publication of false information likely to cause public fear).

- *Carlos Alberto – Defamation and Press Freedom Case* (involving prosecution for criminal defamation linked to reporting in Angola).

**Resources:**

- <https://africanlii.org>

**1.5. Private Prosecutions**

Protection of media sources, information, and individual journalists through criminal prosecutions of offenders through private prosecutions. In all SADC countries, private prosecutions are allowed subject to certain conditions, including permission evidenced by a certificate of non-prosecution or permission from Attorney General or Director of Public Prosecutions. There are other additional conditions, as indicated below:

- The prospective prosecutor must have a substantial and peculiar interest in the issue, arising from personal injury suffered due to the alleged offence (e.g., South Africa, Namibia, Malawi)
- Private party must show personal injury resulting from the offence (several)
- Requirement of security deposit to ensure the prosecution proceeds without undue delay and to cover potential costs incurred by the accused (all countries)

**Legal sources on private prosecutions:**

- Namibia, Criminal Procedure Act, 1977
- South Africa, Criminal Procedure Act 51 of 1977, Sections 7–14
- Lesotho, Criminal Procedure and Evidence Act, 1981, Sections 12–21
- Zimbabwe, Criminal Procedure and Evidence Act [Chapter 9:07], Section 260
- Mozambique, Criminal Procedure Code, Articles 31–33,
- Malawi, Criminal Procedure and Evidence Code, Sections 80–83
- Eswatini, Criminal Procedure and Evidence Act, 1938
- Zambia, Criminal Procedure Act

Private prosecutions or threat of the same can force public authorities to act or bring attention to a case or cause. Even where “personal injury” is required limiting the number of potential beneficiaries, private prosecution can still speak to larger issues even while providing a sense of justice for the victim. The South African case of *Karyn Maughan v. Jacob Zuma (2023)* presents an interesting counterexample of private prosecution. In this case, the court prevented a powerful accused from proceeding with the private prosecution of a journalist in a case claimed by the media association admitted as a friend of the court to be a SLAPP, aimed at deterring investigative journalism.

**Resources:**

- <https://africanlii.org>

**1.6. Constitutional Petitions and Civil Proceedings to Protect Digital Rights**

The most visible and most impactful option for protecting digital rights is constitutional petitions to the competent court. As several SADC country cases demonstrate, courts are a key pillar for protecting human rights in general and freedoms (including from censorship, surveillance, harassment, and violence) in particular. Courts not only clarify what the law is, they also remind all which conduct falls outside what is constitutionally permissible for both media practitioners and regulators. Courts also order payment of damages to victims in addition to re-stating and declaring rights.

Other than constitutional petitions, individual media practitioners can sue or bring misconduct proceedings against individual government officials for violations of digital rights. The challenge is that one must identify the offender and attribute a specific violation(s) to that person, and this option heavily undermined and limited by organizational cultures of impunity where institutions (especially security forces and police) shield individual offenders from scrutiny. Bodies created to receive and address public complaints can become traps for complainants. For effectiveness, even when only a representative case is filed, advocacy around the effort is required. The South African case of *Media24 v. Businessmen (2023)* offers an interesting example where the courts decided in favor of journalists sued by businessmen.

The following is an illustrative list of cases where journalists have sued to protect the media and press freedoms:

- *AmaBhungane Centre for Investigative Journalism v. Mazetti Management Services* (2023) (case involving attempted gagging of media and order to return and not publish documents). The court found that the application constituted a Strategic Lawsuit Against Public Participation (SLAPP) and emphasized the protection of journalistic sources and freedom of expression.
- *AmaBhungane Centre for Investigative Journalism v. Minister of Justice and Correctional Services of 2017* (involving unconstitutional interception of journalist communications under the Regulation of Interception of Communications and Provision of Communication-Related Information Act, RICA).
- *Independent Journalists Association of Zimbabwe (IJAZ) v. Media and Information Commission of 2004* (the court upheld the constitutionality of the Access to Information and Protection of Privacy Act which required journalists to register with the Media and Information Commission).
- *Associated Newspapers of Zimbabwe (ANZ) v. Media and Information Commission of 2006* (involving closure of media house under AIPPA)
- *Zimbabwe Constitutional Court Ruling on Criminal Defamation of 2014* (constitutional court declared criminal defamation unconstitutional)
- *Bheki Makhubu and Thulani Maseko – Contempt of Court Conviction* (2014)
- *Abubacar and Germano Daniel Adriano – Arbitrary Arrests and Detention* (2019)
- *(Lesotho) Decriminalization of Criminal Defamation* (2018)

**Resources:**

- <https://africanlii.org>

### **1.7. Petitions to Regional and International Bodies**

Regional human rights bodies can offer an avenue of recourse for journalists and media practitioners whose digital rights are violated. The following sections outline the options available beyond national institutions.

### **1.7.1. African Commission on Human and Peoples' Rights**

The [African Commission on Human and Peoples' Rights](#) (based in Banjul, the Gambia) is the African regional treaty oversight body established under the [African Charter on Human and Peoples' Rights](#). The Commission is not an organ of the AU (it is not listed in the Constitutive Act) but is a key African continental organ, with responsibility for monitoring compliance with the African Charter on Human and Peoples' Rights (the African Charter).

*Article 45 of the African Charter lays out the mandate/functions of the commission thus:*

1. To promote Human and Peoples' Rights and in particular:
  - to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.
  - to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
  - co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and people's rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the the Organization of African Unity (OAU) or an African Organization recognized by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

As part of its protective mandate, it receives and determines petitions from individuals and states alleging human rights violations. All SADC countries have faced petitions brought against them at the African Commission for violations of human rights. For specific cases

brought against each SADC country, see IHRDA's excellent [Case Law Analyzer](#). It is multilingual and free-to-access collection of human rights decisions (over 900 cases) and laws from mechanisms in the African human rights system.

Article 56 of the African Charter sets the conditions to be met by petitioners. The most important of these are the rule on exhaustion of local remedies and admissibility (various preliminary requirements on whether the commission can receive a petition). On exhaustion, a petitioner must exhaust remedies at the national level before approaching the court. This means that one must try to seek justice in national courts or quasi-judicial bodies like commissions at that level before taking the claim to a regional or international court or body. The commission has a rich and established case law on exhaustion of local remedies and admissibility and checks, on preliminary basis, whether the petitioner exhausted local remedies and whether admissibility requirements are met before proceeding.

**Note:** *you are not required to exhaust local remedies that do not exist, those that have been ousted by laws (common during military regimes), or those that present an undue burden or hardship to petitioner in their pursuit of justice (e.g., where an exile cannot return to their home country to present a claim to a court or quasi-judicial body). See [case law from African Commission and Court on Exhaustion of Local Remedies](#).*

The commissions decisions are "recommendations" and not binding until they have been adopted by African Heads of States and Government when its reports are presented to the AU each year. While states generally respond positively to decisions of the commission, including by adjusting national law or adopting required measures, many states ignore these decisions, and this has impacted the effectiveness of the commission, which nevertheless remains a powerful advocacy tool that brings focus on an issue at a regional and international level.

#### Resources:

- <https://www.mediadefence.org/ereader/publications/advanced-modules-on-digital-rights-and-freedom-of-expression-online/module-6-litigating-digital-rights-cases-in-africa/litigating-at-the-african-commission-on-human-and-peoples-rights/>

### **1.7.2. African Court on Human and Peoples' Rights**

The [African Court on Human and Peoples' Rights](#) based in Arusha Tanzania was established to complement the protective mandate of the commission. Its jurisdiction extends to the African Charter on Human and Peoples' Rights and any other human rights treaty ratified by the state. The African Court issues binding decisions that include reparations. Set up under the [Protocol Establishing the African Court on Human and Peoples' Rights](#), the African Court has heard and decided cases from several SADC countries, including Tanzania. As of 2025, the court had issued over 400 decisions in all matters including contentions cases and advisory opinions.

The rule on exhaustion of local remedies and admissibility apply to the Court as well, but the main constraint to the effectiveness of African Court (see article 34.6 of the Protocol) is that it does not receive and hear petitions from individuals and organizations (NGOs) where the respondent state has not agreed in advance to be sued by depositing a declaration to that effect. As of 2025, only 7 (Burkina Faso, Ghana, Guinea Bissau, The Gambia, Mali, Malawi and Niger) have made this declaration. Five (5) countries (Tunisia, Rwanda, Tanzania, Benin and Cote d'Ivoire) have withdrawn their declaration. This speaks to the fact that the court has teeth when compared to the Commission.

To circumvent this obstacle, the commission can bring cases to court. This requires some advocacy targeting the commission in specific cases.

**Consider:** Pan African Lawyers Union as a key resource and litigation partner.

#### **Resources:**

- IHRDA's excellent Case Law Analyzer.

### **1.7.3. United Nations Human Rights Committee**

The [Human Rights Committee](#) was established under the International Covenant on Civil and Political Rights. It is made up of independent experts charged with monitoring the

implementation of the ICCPR by states parties. It is notable that all SADC countries have ratified the ICCPR. Among the tools available to the experts is consideration of petitions from individuals in member states. Numerous cases have been brought against SADC states before the HRC.

The experts also issue General Comments, which are authoritative interpretations of various rights in the ICCPR. For instance, [General Comment 34](#) interprets the right to freedom of expression and the media. It is essential reading on the scope of the right, including instances when states can legally limit or abridge some of the rights to achieve a defined governmental objective.

**Resources:**

- <https://www.ohchr.org/en/treaty-bodies/ccpr>

**REFLECTIONS**

- Cyber threat actors are sophisticated and skilled while lack of technical expertise afflicts all African states/governments and private sector charged with protecting citizens' data and interests.
- Awareness of cyberthreats remains low both within governments and citizenry, but impacts are staggering with billions of dollars lost annually. Interpol Reports (see Interpol Cyberthreat Report, 2024 with data on 42 countries)
- Criminal justice response is important but is dependent on technical expertise, is ultimately inadequate and currently underutilized or misused to go after wrong targets in some countries. Some of the worst offenders are located outside the continent.
- Multisectoral and international partnerships and cooperation are key to protecting citizen, government, and business data from threats.
- States weaponize cybercrime laws, national security laws, media laws and tax laws to target media. Focus on real cyber threats diverted.
- Journalists and media practitioners can use the language of digital rights to express interests that include protecting themselves and their sources from state and private actions that undermine dignity, privacy, and freedoms (including expression and media).



- Legal mechanisms at the national, regional, and international level can be used in a variety of ways to protect interests:
  - *Advocacy and mobilization,*
  - *Policy and legislative change*
  - *Obtain reparations for violations of digital rights for individual journalists and media practitioners.*

### **RESOURCES**

- “The State of Cybersecurity in Africa: Current Concerns and Challenges” (SSRN, 2019) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4539841](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4539841)
  - “Freedoms Under Threat: The Spread of Anti-NGO Measures in Africa” (Freedom House, 2019) available at: [https://freedomhouse.org/sites/default/files/2020-02/05132019\\_UPDATED\\_FINAL\\_Africa\\_Special\\_Brief\\_Freedoms\\_Under\\_Threat.pdf](https://freedomhouse.org/sites/default/files/2020-02/05132019_UPDATED_FINAL_Africa_Special_Brief_Freedoms_Under_Threat.pdf)
  - Cyber Threats to African Security (video): [Cyber Threats to African Security - Nathaniel Allen](#)
  - NIST Computer Security Resource Center: [Glossary of Cyber and Tech Terms](#)
  - “Enhancing Security Sector Accountability and Professionalism in Africa Through Civilian Oversight: A Review of Legal and Institutional Frameworks” available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3159246](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3159246).
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