

The Africa ICT Policy Manual

Mapping the Landscape of ICT Legal Publishing
In Sub Saharan Africa

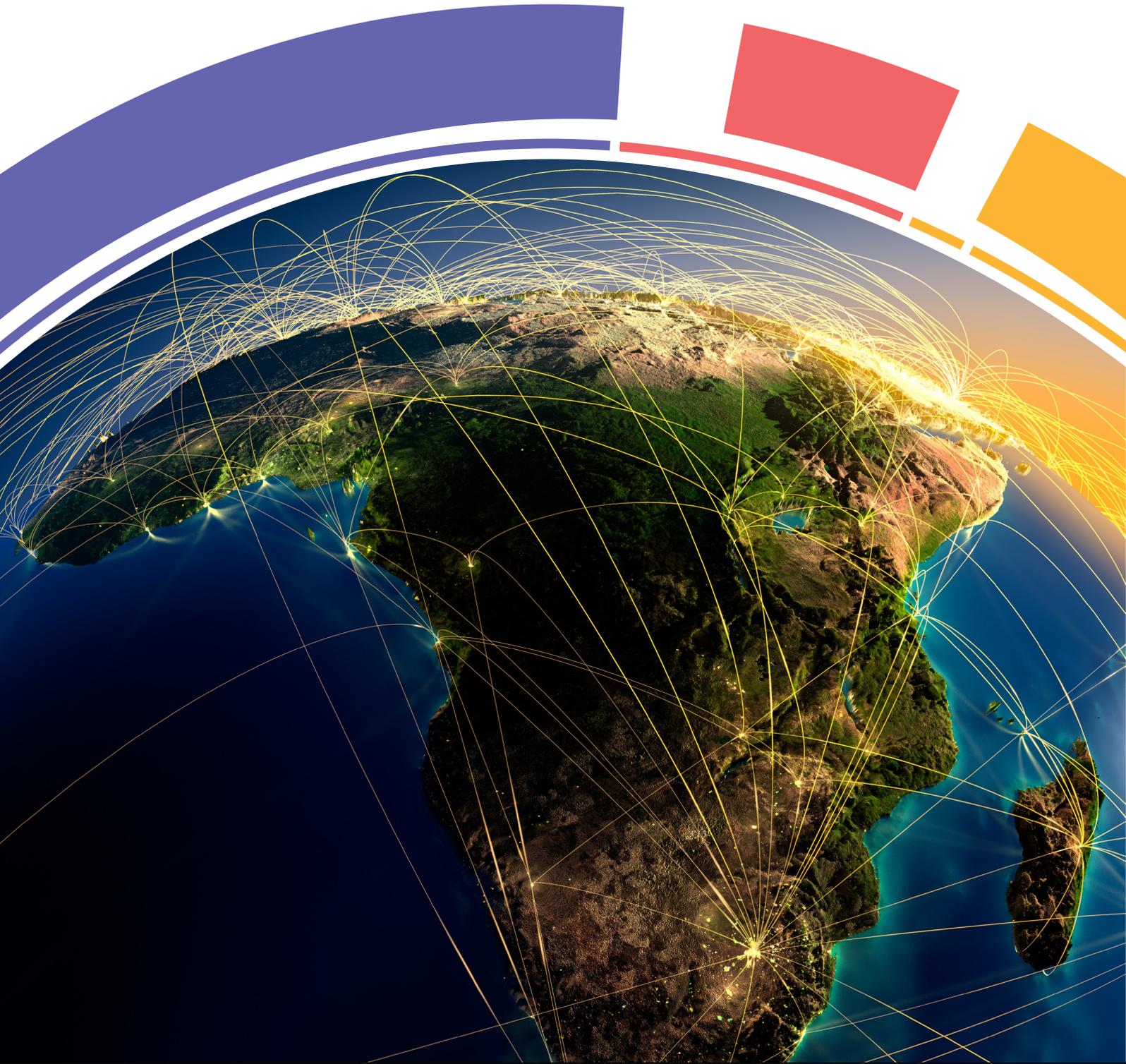


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The CYRILLA Collaborative

The CYRILLA Collaborative¹ is a global initiative that seeks to address an increasingly urgent need for comprehensive databases that aggregate legislation and case law across a variety of jurisdictions; a need expressed by digital rights researchers, journalists, civil society advocates, human rights defenders, legal professionals, and others seeking to shape the rapidly evolving legal frameworks for digital rights worldwide.

Central to the Collaborative is its digital rights database [<https://cyrilla.org/>]² which enables users to access digital rights legislation, cases, and analyses concerning human rights in digitally-networked spaces.

CIPIT's Role in the Collaborative

The Center for Intellectual Property and Information Technology Law (CIPIT) is a think tank established under Strathmore University Law School, Nairobi, Kenya. It was launched in 2012, and its scope of work includes evidence-based research and training in intellectual property, information technology law, and policy, especially as they contribute to African law and human rights.

In this Collaborative, CIPIT is the relevant partner in sub-Saharan Africa. Sub-Saharan Africa is the area of the African continent that lies to the south of the Sahara consisting of 46 out of Africa's 54 countries. This is excluding Algeria, Djibouti, Egypt, Libya, Morocco, Somalia, Sudan and Tunisia who are part of SMEX's Middle East and North Africa (MENA) ambit.

Scope of work

CIPIT's tasks include collating digital rights legal resources i.e. laws, bills, policies, regulations, and case law from across this region and in the process building a network and community of practice in this space to assist with updating the database as well as advocating its benefits across the region.

1. 'About CYRILLA • CYRILLA: Global Digital Rights Law' <<https://cyrilla.org/en/page/jy0cpvu41mxklyye34joiggb9>> accessed 16 July 2020

2. 'Homepage • CYRILLA: Global Digital Rights Law' <<https://cyrilla.org/>> accessed 16 July 2020

1. Introduction

1.1 Background

The advent of the internet and its rapidly expanding use, have made digital technologies central to the enjoyment of digital rights, or “human rights as they are invoked in digitally-networked spaces.” The internet has created an enabling space and resource for the realization of digital rights, including the right to freedom of expression and information, the right to freedom of assembly and association, the right to freedom of thought, and the right to privacy.³

Consequently, it has enabled people to engage actively in public discourse on political issues, governance, social and economic development, among others, at the local, national, regional, and international level.⁴ However, these liberties, in some instances, have not been embraced by governments across sub-Saharan Africa which have adopted measures that undermine internet freedoms due to fear of criticism and dissent.⁵

Many governments have begun to adopt repressive laws, policies, regulations, and practices that enable them to monitor, regulate, and dis-

rupt communication on the internet and digital platforms.⁶ These include: internet shutdowns and throttling during important events, such as elections;⁷ introduction of provisions in laws that legitimize digital rights infringing-actions;⁸ and interception of private communication.

It appears that some African countries are now implementing repressive models of information controls borrowed from international authoritarian regimes such as Russia and China.⁹ The central thesis of these models of information controls is that the control of the information space is synonymous with the control of the political space. The information space is therefore perceived as a legitimate theatre of conflict - much the same way as land, air and the sea are established theatres of conflict.¹⁰

Some examples of measures taken by African governments include the following.¹¹

- In Benin, the day before their legislative poll (on 28th April 2019), citizens reported mobile data instability and disruption of social media networks like Facebook

3. 'African Declaration on Internet Rights and Freedoms | The African Declaration on Internet Rights and Freedoms' <<https://africaninternetrights.org/articles/>> accessed 16 July 2020

4. (AFEX 2017) Internet Freedom in Africa: Baseline Report of Eight Countries in Internet Freedom in Africa Baseline Report of Eight Countries rep

5. (CIPESA 2019) rep State of Internet Freedom in Africa 2019: Mapping Trends in Government Internet Controls, 1999-2019, Pg. 5 <https://cipesa.org/?wpfb_dl=307> accessed July 15, 2020

6. Ibid 2

7. Ibid 3

8. Ibid 3

9. Team C, 'Paradigm Initiative Releases Digital Rights in Africa Report 2019' (Paradigm Initiative, 26 March 2020) <<http://paradigmhq.org/dra2019/>> accessed 16 July 2020

10. Team C, 'Paradigm Initiative Releases Digital Rights in Africa Report 2019' (Paradigm Initiative, 26 March 2020) <<http://paradigmhq.org/dra2019/>> accessed 16 July 2020

11. Ibid 7

and Twitter, and messaging apps such as WhatsApp and Telegram.

- In Cameroon, Law No. 2010/012 of 21st December 2010 on cybersecurity and cybercrime has been used in recent years to impose heavy sanctions against the freedom of expression including arrests of journalists and activists.
- In the Democratic Republic of Congo, during the elections in the country on 1st January 2019, the government ordered an internet shutdown for political reasons stating that this was undertaken to stop the publishing of “false results” on social media.

These are an abrogation of citizens’ digital rights, and have raised concerns across the continent. Civil society organizations, academia and other private organizations have begun to investigate, comment, and push back against these concerning developments.

One distinct way to counter this is to have an informed African society that is able to identify, advocate and challenge violations of digital rights. Access to information therefore plays a key role in educating, proliferating and upholding the digital rights of citizens, to ensure they are aware of the laws that govern this space and how they affect them.

Information allows interested parties to take remedial measures against violations to digital rights such as through litigation in court. Recently, courts in the region have set precedents, often citing international cases, upholding digital rights. For example, in 2020 the High Court of Kenya delivered a [landmark judgment](#) on the constitutional validity of Kenya’s biometric identification system (the National Integrated Identity Management System (NIIMS)/Huduma Namba). Importantly, in this case, the petitioners cited the Indian Supreme Court’s Aadhaar Judgment as an illustration of the problems likely to be encountered with NIIMS.

CIPIT¹² has joined the CYRILLA Collaborative to foster and advocate for digital rights legal literacy across Africa and to educate the public on the relationship between the law and their digital rights.

The Collaborative has produced an online database [<https://cyrilla.org/>] on digital rights law that provides access to global digital rights-related legal data, including legislation and case law. The database affords a wide range of actors an opportunity to: assess legal trends as they shape and impact digitally networked spaces, highlight threats to human rights, and foster advocacy drives for legal reform. CIPIT’s contribution in this space is through its arm of the database [<https://ictpolicyafrica.org/>] that centers on content from sub-Saharan Africa.

12. ‘Home’ (Centre for Intellectual Property and Information Technology law) <<https://cipit.strathmore.edu/>> accessed 16 July 2020

2. Challenges to Digital Rights in Africa

Digital rights have been defined as human rights protected offline, guaranteed online.¹³ Whilst Africa has a lower internet penetration rate and use of ICT than other regions, this has not impeded the use of digital technologies to drive great improvements in the socio–economic lives of Africans. Unfortunately, as mentioned earlier, many African governments see the increased use of these technologies (e.g. the use of social media to drive freedom of expression) as a threat. As such, many governments have taken steps to violate digital rights of their citizens for their benefit. These include arrests, censorship, internet throttling, and enacting restrictive laws. Therefore, the protection of these rights is imperative. The section below elaborates on some of the challenges faced in Africa.

2.1 The Right to Privacy and Data Protection

The right to privacy is a fundamental human right under the United Nations Declarations of Human Rights (UDHR) and the International Convention of Civil and Political Rights (ICCPR).¹⁴ Regionally, the African Union adopted the Convention on Cyber Security and Personal Data Protection in 2014.¹⁵ However, despite the international and regional legal instruments recognizing the right to privacy, there have been grave infringements on the right to privacy by states in Africa. For example, in Uganda, there has been a deliberate action by the state through the Uganda Communications Commission to monitor all mobile phones since 2018, justified by the state’s ambition to fight cybercrime and detect fake hand-sets.¹⁶

2.2 The Rights to Freedom of Expression and Association

Internationally, freedom of expression has been recognized by both the UDHR and ICCPR. Regionally, in 2002, the African Commission on Human and Peoples’ Rights adopted the Declaration of Principles on Freedom of Expression in Africa. This Declaration also asserted freedom of association for all Africans. In April 2019, the Commission issued a new Declaration replacing the 2002 version, aimed at further affirming the importance of the freedom of expression and access to information in the internet age.

Despite the great push to recognize the freedom of expression and association on a regional front, there has been infringement on this freedom by various countries. In 2018, Kenya had 60 bloggers arrested for expressing themselves online.¹⁷ Further, in Zambia and Benin, the introduction and imposition of a tax on VoIP calls, has infringed on the freedom of expression and association by making it more expensive and more difficult for those seeking to express or associate themselves.¹⁸

13. ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development’ <<https://primarysources.brillonline.com/browse/human-rights-documents-online/promotion-and-protection-of-all-human-rights-civil-political-economic-social-and-cultural-rights-including-the-right-to-development;hrdhrd99702016149>> accessed 8 July 2020

14. ‘Privacy and Human Rights - Overview’ <<https://www.gilc.nl/privacy/survey/intro.html>> accessed 8 July 2020

15. African Union, Convention on Cyber Security and Personal Data Protection <https://au.int/sites/default/files/treaties/29560-treaty-0048_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf> accessed 8 July 2020

16. Muhangi K, ‘The Right to Privacy as a Fundamental Human Right’ (KTA Advocates | East African Intellectual Property & Technology Law Firm, 13 May 2018) <<https://www.ktaadvocates.com/the-right-to-privacy-as-a-fundamental-human-right/>> accessed 8 July 2020

17. CIPESA, Digital Rights in Africa: Challenges and Policy Options <https://cipesa.org/?wpfb_dl=287> accessed 8 July 2020

18. CIPESA, Digital Rights in Africa: Challenges and Policy Options <https://cipesa.org/?wpfb_dl=287> accessed 8 July 2020

Censorship in Africa is mostly carried out by the state for political reasons, often resulting in the infringement on the freedom of expression. Censorship of various online media is a tool used frequently in countries throughout Africa, such as Mali in their 2018 presidential elections,¹⁹ or by Uganda in the 2016 general elections.²⁰

2.3 The Right to Identification

Under the UDHR, the ICCPR, and the African Charter on Human and Peoples' Rights (ACHPR), the right to identification has been recognized as a right guaranteed for all, and it is to be applied without discrimination.²¹ Due to the advancement of technology and the digitization of governments all across the world, there has been a need to provide digital identification to all persons, usually through their national citizenship.

The same has been provided for in African states. In 2019, the Kenyan government initiated a digital identification drive popularly known as "Huduma Namba." Shortly after, a case was filed in the High Court of Kenya at Nairobi which questioned the types of data being collected, such as DNA and GPS, and the purposes for this data collection.²² The court found the collection of these kinds of data in contravention of the newly-enacted Data Protection Act 2019.²³

In Tanzania, Ghana, Nigeria, and Sierra Leone, the issuance of digital IDs has been marred by concerns of political manipulation and inadequate safeguards against discrimination.²⁴ Meanwhile, in Zimbabwe, Rwanda, and Egypt, deployment and use of biometric technology has greatly increased, raising concerns over the legal and regulatory frameworks enabling their use.²⁵

2.4 The Right to Information

Despite the right to information having been enshrined in the UHDR, ICCPR, ACHPR, and other key international legal documents, as of 2014, only 16 countries in Africa had provided for the right to information in their constitutions.²⁶ As of 2017, only 22 countries had Right to Information laws enacted.²⁷

19. Welle (www.dw.com) D, 'Internet Censorship in Africa Threatens Democracy, Economy | DW | 04.08.2018' (DW.COM) <<https://www.dw.com/en/internet-censorship-in-africa-threatens-democracy-economy/a-44956169>> accessed 9 July 2020

20. Welle (www.dw.com) D, 'Internet Censorship in Africa Threatens Democracy, Economy | DW | 04.08.2018' (DW.COM) <<https://www.dw.com/en/internet-censorship-in-africa-threatens-democracy-economy/a-44956169>> accessed 9 July 2020

21. Beduschi A, 'Digital Identity: Contemporary Challenges for Data Protection, Privacy and Non-Discrimination Rights' (2019) 6 Big Data & Society 2053951719855091 <<https://doi.org/10.1177/2053951719855091>> accessed 8 July 2020

22. 'Kenya Creates Africa's First National Digital ID Scheme – Government & Civil Service News' <<https://www.globalgovernmentforum.com/kenya-creates-africas-first-national-digital-id-scheme/>> accessed 8 July 2020

23. 'Petition 56, 58 & 59 of 2019 (Consolidated) - Kenya Law' <<http://kenyalaw.org/caselaw/cases/view/189189/>> accessed 8 July 2020

24. Mar 1 and Hersey 2020 | Frank, 'Biometrics and Digital ID across Africa This Week: Savings and Costs in Nigeria, Divisions in Tanzania, Ghana' (Biometric Update, 1 March 2020) <<https://www.biometricupdate.com/202003/biometrics-and-digital-id-across-africa-this-week-savings-and-costs-in-nigeria-divisions-in-tanzania-and-ghana>> accessed 8 July 2020

25. Apr 12 and Hersey 2020 | Frank, 'Biometrics and Digital ID in Africa This Week: Data Protection Trailblazers and New Offerings' (Biometric Update, 12 April 2020) <<https://www.biometricupdate.com/202004/biometrics-and-digital-id-in-africa-this-week-data-protection-trailblazers-and-new-offerings>> accessed 8 July 2020

26. Article 19 (Organization), Kenya: Realising the Right to Information. (2014)

27. '22 African Countries Have Passed Access to Information Laws' (African Freedom of Expression Exchange, 25 March 2017) <<https://www.africafex.org/access-to-information/22-african-countries-that-have-passed-access-to-information-laws>> accessed 9 July 2020

In Nigeria, there have been various denials of access to information, such as the denial of access to information on fuel imports by the Nigerian National Petroleum Corporation, despite there being an Act in place providing that such information shall be availed to the public upon request.²⁸ Similarly, access to information from the Power Holding Company of Nigeria, the Electricity Distribution Company PLC, and the Nigerian National Petroleum Corporation was initially denied upon request by the Nigerian Contract Monitoring Coalition.²⁹ There is clear infringement of the right and the enabling legal documents.

2.5 Data Retention

A key principle in data protection is the purpose limitation principle where a data controller³⁰ or data processor³¹ should only collect personal data for a specific purpose, clearly state what that purpose is, and only collect data for as long as necessary to complete that purpose.

Organisations need to delete personal data when it is no longer necessary i.e. data controllers should only process data for the time needed to execute the purpose for which this specific information was collected.

In Africa, mandatory retention of data by Internet Service Providers (ISPs), through action of law results in the infringement of digital rights by these states and cooperation retaining the data either by action or inaction of law.³² In South Africa, the High Court held that such action by ISPs or State is illegal.³³

2.6 Lack of Digital Rights Legal Resources Online

Research conducted by CIPIT indicated that a large portion of sub-Saharan countries lacked digital rights and broader ICT/IP legislation, policies, regulations, and jurisprudence published online. (See Annexure A)

Access to information is key in promulgating human, including digital, rights in any region. Without this visibility online, it is difficult for anyone outside these countries to establish whether these laws actually exist. This cohort of countries forms a key target area for contact and advocacy through this project for the purpose of enhancing digital rights literacy. (See Annexure A)

2.7 Lack of Regulative and Legislative Framework in Countries

In addition to countries which fail to publish their digital rights-related legal resources online, some

28. 'How Nigeria and Uganda Are Faring on the Right to Information' <<https://cipesa.org/2018/11/how-nigeria-and-uganda-are-faring-on-the-right-to-information/>> accessed 9 July 2020

29. 'How Nigeria and Uganda Are Faring on the Right to Information' <<https://cipesa.org/2018/11/how-nigeria-and-uganda-are-faring-on-the-right-to-information/>> accessed 9 July 2020

30. A natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purpose and means of processing of personal data".

31. A natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller.

32. 'Mandatory Data Retention' (Electronic Frontier Foundation) <<https://www.eff.org/issues/mandatory-data-retention>> accessed 9 July 2020

33. 'Bulk Surveillance Is Unlawful, Says the High Court of South Africa' (Privacy International) <<http://privacyinternational.org/news-analysis/3212/bulk-surveillance-unlawful-says-high-court-south-africa>> accessed 9 July 2020

countries have yet to enact a legal framework to govern developments in this space at all. Certain areas of ICT such as E-commerce, Cyber Security, and Freedom of Information, remain unregulated by many sub-Saharan African countries, thus leaving a vacuum in terms of digital rights which can be exploited by malevolent actors.

A further challenge as mentioned above, is that a large number of sub-Saharan African countries do not publish their ICT related legislative and regulatory instruments online. Without direct contact for confirmation, it is difficult to determine whether these instruments have been enacted (and simply aren't published online) or actually haven't been enacted at all.

2.8 Conclusion

It is important to note that none of these digital rights are more important than the others: they are inter-related and interdependent, and adequate protection and advancement of them requires a full appreciation of how they manifest and interact in practice. However, research to support sound policymaking and effective advocacy is limited because of governments' opaque practices and legal maneuvering. Civil society, journalists and academics are restrained by both oppressive legal frameworks and their ability to change them. By organizing and documenting these frameworks and their impact on digital rights in sub-Saharan Africa, the ICT Policy Africa database opens up this space for affecting positive changes to the digital rights landscape.

3.0 The ICT Policy Africa database

In culmination, the Collaborative provides a central database that contains all the legal resources that one could need in the form of the ICT Policy Africa database.

3.1 ICT Policy Africa

CIPIT has developed the [ICT Policy Africa database](#) using the CYRILLA data model and taxonomy to publish, and advocate for the publication of ICT legal resources by African countries. This will ultimately allow for more comparative analysis of sub-Saharan ICT laws, visualizations, timelines and automated expansion of the database.

Through the use of the ICT Policy Africa Database, CIPIT intends to enable users of the database to:

- gain free access to digital rights-related laws, cases and analyses;
- visualize legal frameworks for digital rights by country or issue;
- monitor emerging draft laws and ongoing cases;
- analyze legal language used in the context of digital rights;
- identify and characterize regional and global legal trends;
- conduct comparative analyses;
- evaluate legislation for compliance with international human rights law and norms; and
- upload legal data to highlight emerging digital rights issues.

Consequently, the database will afford users an opportunity to:

- identify problematic provisions and initiate rapid-response advocacy campaigns or shape model legislation;
- track how law translates from one jurisdiction to another;
- conduct country-level legal threat assessments (for instance, before hosting a digital security training session, publishing an article, or establishing an online business);
- evaluate legal trends in the context of a given issue, such as cybercrime, fake news, or terrorism, and their effects on digital rights;
- locate key targets for campaigns and legal action by cataloguing the agencies and actors involved in digital rights law and assessing potential for successful legal advocacy;
- identify proper cause of action in strategic litigation cases;
- incorporate analysis into teaching/training for law students and professionals on digital rights; and
- propose standards for the open publication of digital rights legal information.

The database uses HURIDCOS' Uwazi platform. Uwazi is a web-based, open-source solution for organizing, analyzing and publishing documents. It was designed and developed by HURIDCOS to make human rights information more open and accessible. Most of the resources published in the sub-Saharan Africa region are in .pdf format, thus making Uwazi an ideal platform to organize these collections.

As at 14th July, 2020 the ICT Policy Africa database currently holds 1189 resources.

- 904 laws;
- 77 analysis; and
- 148 case law.

A blog outlining the functionality and how to use the database can be found [here](#).

4 CYRILLA Methodology

One of the foremost goals of the CYRILLA project is to support digital rights research and advocacy by providing access to digital rights-related legal resources. To facilitate this, we devised a methodology for cataloguing the resources on our database that points users to the content they need. Our research, interview and testing process for refining this methodology can be read in full [here](#).

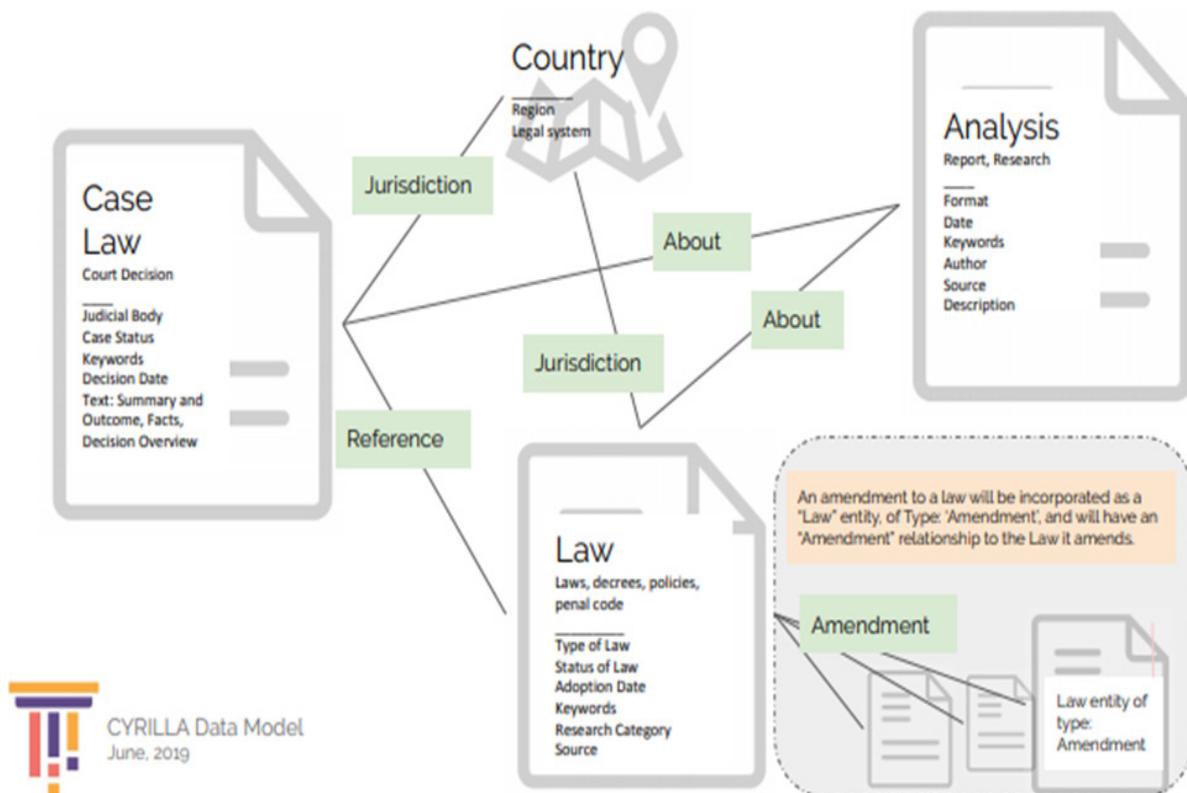
4.1 What are digital rights?

CYRILLA's working definition of digital rights is: "human rights as they are invoked in digitally-networked spaces."

"Human rights" includes those rights established by the Universal Declaration of Human Rights, UN resolutions, international conventions, regional charters, domestic laws, and human rights case law.

"Digitally-networked spaces" refers to spaces that are both physically and virtually constructed. Examples of physical digitally-networked spaces include infrastructure, protocols and devices. Examples of virtual digitally-networked spaces include online platforms and communities, and the use of other forms of digital tools and expression.

These spaces include, but are not necessarily limited to, the internet, mobile networks, and related devices and practices. This is because our definition of digital rights recognizes that individuals or groups who are not directly connected to the internet nevertheless experience its impact in society.



The above definition of digital rights is the foundation on which the database is built.

ENTITIES

Digital rights-related legal resources are divided into three entities: the “laws” which outline the regulatory framework, the “cases” which interpret and apply the laws, and the “analyses” which assess the impact of laws and cases on digital rights even when the text or decision appear unrelated to our traditional conception of digitally-networked spaces.

All three entities are essential to understanding any area of digital rights law, and our keywords allow users to filter all resources according to their area of interest.

Because users have different points of entry to the database, each entity is further categorized. You can find the full list of properties for each entity and examples in Annexure B.

a) Laws

“Laws” includes constitutions, legislation, regulations, amendments, and draft bills. We subdivided them into five research categories.

- i) Legal Foundations: Laws that form the basis of the legal system, including constitutions, penal codes and procedural codes.
- ii) Fundamental Rights and Freedoms: Laws that establish norms for, enable, or limit the exercise of fundamental rights. For example, press laws, access to information laws, or anti-discrimination laws.
- iii) Governance of Online and Networked Spaces: Newer laws or regulations that apply specifically to the digital sphere which have been enacted to mitigate any potential harm digital technologies may cause. This includes anti-cybercrime laws, data privacy laws, net neutrality laws, and laws against online harassment and non-consensual sharing of intimate images.
- iv) Sectoral Laws: Laws that regulate the use and impact of digital technologies in an otherwise traditionally ‘offline’ sphere, such as healthcare or banking. Examples include doctor-patient confidentiality on social networks, and consumer protection.
- v) Other Laws: This category includes laws which do not fall into the other categories, but nevertheless impact digital rights because they’re applied, often counterintuitively, by the courts. This often arises when authorities try to repress freedom of expression or press freedom online by applying anti-terror laws, copyright laws, and other punitive, but seemingly unrelated, regulations.

b) Cases

CYRILLA’s collection of case law includes decisions by both judicial and quasi-judicial bodies, such as military tribunals. Drawing on Columbia University’s Global Freedom of Expression database, a partner of CYRILLA, we also categorize cases by their status, and substantive and procedural outcomes. Since we currently only host national-level decisions, we don’t categorize cases by jurisdiction, but tag the precedential value of the decision in the “Case Significance” category.

c) Analysis

We categorize the analyses on our database primarily by their format: report, statement, policy, directive, resolution, newspaper article, social media post, or blogpost.

4.2 Adoption of the CYRILLA Methodology

The CYRILLA Methodology - formerly the CASEDATA Methodology - has been modified as the project has progressed, and we expect it to undergo further changes as we grow the databases and cater to our users' needs. For example, as we expect to add more state and municipal-level statutes and cases, it will be necessary to categorize these resources by jurisdiction, which will require conversations about how this category will operate across different countries with different divisions of authority.

Our current model accounts for these variances in legal landscapes, and, with further refinement, will allow users to precisely locate the digital rights legal resources relevant to their work.

5 Sourcing Legal Data across Africa

The data and information that initially informed the foundation of this project was sourced from an analysis of CIPIT's original ICT Policy Database. The Africa ICT Policy Database (<https://www.ictpolicy.org/>) is an online database of ICT policy data spanning the African continent, built around the principle of access to legal information as a central requirement for citizen participation in public policy processes.

CIPIT's first step was to analyze the information currently held in this repository. Subsequently, given the CYRILLA mandate, the second step was to expand on the information currently held in the ICTPolicy.org website and facilitate coordination and interoperability with our CYRILLA partners' repositories using the agreed upon data model and taxonomy framework.

The analysis allowed the researchers to identify gaps that existed on the current database. It involved the creation of a catalogue of all the current data held on the ICT policy database including laws that deal with; e-commerce, cybersecurity, data processing, intellectual property, freedom of information and telecommunication within Sub-Saharan Africa.

Having identified the gaps that exist on the ICT policy website, including any dated information, the second step involved undertaking research (primarily online) for this missing data. This consisted of reviewing:

- I. any and all country government/court websites, for legislation, regulations, policy and white papers e.g.:
 - state corporations
 - law reform commissions
 - government legal websites like Attorney General's Departments'
- II. academic institution websites e.g. the University of Capetown's Africanlii.org website (<https://africanlii.org/>)

- III. searching for relevant news articles that document the progress of bills and prospective laws
- IV. International and regional organizations websites focused on like data e.g. utilizing the United Nations Conference on Trade and Development database of legislation on Data Protection, Cyber Security and Electronic Transactions.
- V. Think tanks and non–governmental organizations that advocate for digital rights

Subsequently, to supplement the above work, CIPIT had to recruit regional consultants with the requisite knowledge in digital rights law. CIPIT recruited 5 regional consultants for the sub-Saharan Africa region – Lusophone Africa, Francophone Africa, Central Africa, Western Africa, and Southern Africa.

The Consultants play a critical role in collating the following:

1. Digital copies of ICT and IP-related legislation, policy and case law within their respective regions. For example, in; E-Commerce, Data Protection, Cyber Security, Freedom of Information, and Telecommunications.
2. Digital copies of ICT/IP-related bills that have recently been passed and those pending in Parliament.
3. Digital copies of ICT/IP-related subject matter that may not have been legislated on but is being considered through policy papers/ proposals and academic writing.
4. Relevant law repositories, institutions and contacts within their respective regions that may hold the required information

Their activities in this project include the following;

1. Undertaking research and sourcing relevant material on the above mentioned subject matter in their respective regions.
2. Providing updates of relevant material to the database, for example amendments to legislation, bills that have been enacted into law.
3. Establishing a community of contacts across their respective regions working within ICT and IP law and policy for the purpose of advocating to them the relevance of this project and encouraging them to incentivize their respective governments to adopt the open standard in publishing ICT legal resources.

6 CYRILLA Consultants

CIPIT recruited 5 Consultants for the projects as below.

Name	Country	Region
1. Ababakar Diop	Dakar- Senegal	Western Africa Region
2. Many Orok Tambe	Cameroon	Francophone Consultant
3. Sherilyn Naidoo	South Africa	Southern Africa Region
4. Mbunzama Narcisse	Democratic Republic of Congo	Central Africa Region
5. Dercio Tsandzana	Mozambique	Lusophone Consultant

6.1 Challenges encountered by the consultants

As the consultants have been reviewing and collecting the necessary data, it became apparent that their experiences mirrored CIPIT's in terms of the challenges they experienced, including:

- some countries have practically no online presence for the publishing of digital rights information;
- other countries don't have up-to-date information or easily accessible information in the correct format;
- difficulty identifying actors that can assist in the provision of this information; and
- language barriers, such as legal resources from Equatorial Guinea which are published online entirely in Spanish. Whilst we have a Portuguese-speaking consultant, there are no Spanish-speaking consultants in the cohort.

7. Conclusion

The current state of digital rights violations in Africa is a concerning issue and actions must be taken to address these challenges. Some of the suggested actions in this space include the following.³⁴

- African Governments should take positive actions to enact, publish and implement legal frameworks to govern developments in Digital Rights in their jurisdictions.
 - o Important digital rights areas such as data protection, digital ID, e-commerce, cyber security, and freedom of information remain unregulated by many sub-Saharan Africa countries, thus leaving a regulatory vacuum in terms of digital rights.
 - o Where enacted, in some instances, governments have not taken positive measures to implement these instruments. Implementation is therefore as important as the enactment of these legal frameworks.
 - o Awareness of the enactment of these instruments is just as important. This allows citizenry to hold government accountable for their implementation
 - o Where enacted it is important that these legal frameworks, whilst nuanced for their specific environment, also adhere to regional and international human rights standards regarding digital rights.

34. CIPESA, Digital Rights in Africa: Challenges and Policy Options < https://cipesa.org/?wpfb_dl=287 > accessed 8 July 2020

- Private sector actors, particularly in the ICT industry, play a greater role in:
 - Using the economic and social muscle private sector actors have, to lobby government to support and create a regulatory environment that supports and upholds digital rights principles.
 - Using their resources in corporate social responsibility programs to increase awareness around digital rights and support initiatives that promote digital rights;
 - Being an example to government, by implementing and judiciously following policies that adhere to digital rights; and
 - Issuing periodic transparency reports on digital rights violations on government requests for content takedown, data breaches, and other digital rights issues that might affect customers.
- Pursuing litigation for digital rights.
 - Promoters of internet freedom should actively challenge laws and practices that stifle digital rights through courts of law. For example, there has been litigation against internet shut-downs in such countries as Cameroon, Chad, Gambia, Togo, Uganda, and Zimbabwe.
- Supporting current advocacy work in this space, particularly work that fights for policy change.
 - It is crucial to grow awareness about digital rights and the importance of observing them. This awareness is needed among both non-state actors (citizens, media, private sector, civil society groups) and state agencies (law enforcement, the judiciary, legislature, and communications regulators).
 - Collaboration is key in this space. In sub Saharan Africa there are various disparate groups undertaking work in this space that could benefit from increased information and resource sharing. Awareness of the existence of these various advocacy initiatives is therefore very important; as such the online publication and presence of these organizations is important, as is the development of centralized repositories that allows easy access to this information.
 - Beyond raising awareness about these issues, CSO's and academia should build a community of practice that allows for easy information sharing in this space that digital rights advocates, programs, and initiatives like CYRILLA can easily plug into.
 - Currently, there is limited citizens' participation in making laws and regulations around the use of the internet and associated technologies. This could be attributed to weak consultative mechanisms by policy makers who often give limited time for feedback on the draft laws and, where feedback is offered, it is often disregarded. Civil society should push policymakers to engage citizens on these issues.
- Increasing digital safety and digital literacy in the continent.
 - Governments' should publish and increase the availability of online resources in this space including through publishing digital rights regulatory instruments and related material online.
 - They should also ensure that regulatory bodies provide easily digestible materials (including in relevant languages) to the populace, both online and offline that educate them on measures that impact their digital rights.
- Educating state actors on the importance of digital rights.
 - Educating state actors and building awareness of digital rights in the region is very important. Decision makers need to be made aware of digital rights, their benefit and application locally, regionally and internationally. In some countries, easier access to this information, for example online, will increase the likelihood of decision makers considering digital rights in their deliberations.

The ICT Policy Africa database is an instrumental tool in advancing many of the above measures including advocacy through growing awareness of digital rights and increasing digital literacy and citizen's roles in promoting digital rights.

The ICT Policy Africa database provides a unique platform that provides resources and a point of reference for actors to access, review, and undertake comparative studies of the digital rights laws in this region. This is pivotal to the protection of digital rights as it provides actors with the much-needed opportunity to; assess legal trends and their impact on digital rights, highlight human rights violations based on national law and international law, and to challenge digital rights infringing laws.

The database provides a platform for checks and balances by allowing actors to identify issues and initiate rapid advocacy campaigns against any concerns. It enables evaluation of legal trends in the context of issues such as internet shutdowns, surveillance, data protection, and cybercrime among others. It also enables actors to identify proper causes of action in strategic litigation in response to such practices.

The importance of this project is that it compliments other initiatives in this space given the aforementioned challenges facing digital rights in sub-Saharan Africa. While the open database is the most visible part of CYRILLA, as a whole, the aim of the tools developed in this collaborative are aimed at organizing and making accessible the world digital rights–related laws at large so that a wide range of actors can more readily and confidently assess legal trends as they shape and impact digitally networked spaces.

Annexures

Annexure A - Status of Online Publishing of ICT Legal Resources

Research conducted by CIPIT indicated that a large portion of sub-Saharan African countries lack ICT/IP legislation, policies, regulations and jurisprudence published online. This cohort of countries formed a key target for contact to determine the reasons why and encourage them to avail their laws for purposes of enhancing digital rights literacy.

The table below illustrates a summary of the results of CIPIT's research as at the needs assessment phase of the project. *

Country	Status of online publishing of ICT legal resources
1. Angola	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. Laws on the following areas are available. <ul style="list-style-type: none"> o Cyber Security o Data Protection o Freedom of Information o Communication - Regulations are also available online. - The following ICT laws exist, however, they cannot be traced online. <ul style="list-style-type: none"> o The Data Protection Act (Law No.22/11) o The Information Society Technologies and Services Regulations. - Case law and current bills cannot be traced online.
2. Benin	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. Laws on the following areas are available. <ul style="list-style-type: none"> o Data Protection o Freedom of Information o E-Commerce o Cyber Security - ICT Regulations, case law and current bills cannot be traced online.
3. Botswana	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. Laws on the following areas are available. <ul style="list-style-type: none"> o E-Commerce o Cyber Security o Data Protection o Communication o Regulations - Case law and current bills on ICT and IP cannot be traced online. - Despite a Freedom of Information Bill being in progress as indicated online, there is no information as to whether the Bill has been passed or not.

Country	Status of online publishing of ICT legal resources
4. Burkina Faso	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. Laws on the following areas are available online. <ul style="list-style-type: none"> o E-Commerce o Cyber Security o Data Protection o Freedom of Information o Communication/Telecommunication - Case law and current ICT/IP bills cannot be traced online.
5. Burundi	<ul style="list-style-type: none"> - Intellectual Property laws are the only laws available online. - ICT areas such as Cyber security and Freedom of Information have not been legislated on. - The draft bill on e-commerce was not available online. No information as to whether it has been passed or not. - There is no law available on the internet that regulates Communication/Telecommunications in Burundi. - Case law and current bills on ICT/IP cannot be traced online.
6. Cameroon	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. ICT laws on the following areas are available. <ul style="list-style-type: none"> o E-Commerce o Cyber security o Intellectual Property o Communication o Freedom of Information - Regulations are not available online. - Data Protection has not been legislated on. - Case law and current bills on ICT/IP cannot be traced online.
7. Cape Verde	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. ICT laws on the following areas are available. <ul style="list-style-type: none"> o E-Commerce o Data Protection - Despite a draft law on cybercrime being in progress as indicated online, a copy of the said draft cannot be traced online. - Data Protection Act also not available online. - Case law, regulations and current bills on ICT/IP not available online.
8. Central African Republic	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. ICT laws on the following areas were not available online. <ul style="list-style-type: none"> o E-Commerce o Cyber security o Data protection o Freedom of information o Communication/Telecommunication - ICT/IP Case law, regulations and current bills cannot be traced online.

Country	Status of online publishing of ICT legal resources
9. Chad	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas available online. <ul style="list-style-type: none"> o Communication o Data Protection - ICT laws on the following areas not available online. <ul style="list-style-type: none"> o Cyber security o E-Commerce o Communication/ Telecommunication - ICT/IP case law, regulations and current bills not available online.
10. Comoros	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws not available online. - Few regulations available online. - Cyber security and Freedom of Information have not been legislated on. - ICT/IP case law, regulations and current bills not available online.
11. Congo Brazzaville	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT legislations are not available online. - ICT/IP case law, regulations and bills cannot be traced online.
12. Congo Democratic Republic	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws are not available online. - ICT/IP case law, regulations and bills not available online.
13. Cote d'Ivoire	<ul style="list-style-type: none"> - Most ICT/IP laws available online. - ICT laws are available online. ICT laws on the following areas are available online. <ul style="list-style-type: none"> o E-Commerce o Cyber security o Data Protection o Freedom of Information o Communication - ICT/IP regulations, case law and bills are not available.
14. Djibouti	<ul style="list-style-type: none"> - Intellectual Property, ICT/IP regulations available online. - ICT laws in the following areas are not available online. <ul style="list-style-type: none"> o Communication/ Telecommunication o Freedom of Information law - Despite a draft law on cyber security being in progress as indicated online, a copy of the same cannot be traced online. - Case law, regulations and current bills not available online.
15. Equatorial Guinea	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on Data Protection, such as the Data Protection Act enacted in 2016 is not available online. Other areas of ICT such as E-Commerce, Cyber security and Freedom of Information have not been legislated on. - Case law, regulations and bills not available online.

Country	Status of online publishing of ICT legal resources
16. Eritrea	<ul style="list-style-type: none"> - Intellectual Property and Telecommunication law available online. - ICT areas such as E-Commerce, Cyber Security and Data Protection have not been legislated on. - Other ICT laws are not available online. - Case law, regulations and bills not available online.
17. Ethiopia	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws Cyber security, Intellectual Property, Freedom of Information and Communication/ Telecommunications are available online. An area such as E-Commerce has not been legislated on. - Data Protection is governed by the Constitution. - Regulations, case law and bills are not available online.
18. Gabon	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online except E-Commerce and Cyber security laws. - ICT/IP case law, regulations and bills cannot be traced online.
19. Gambia	<ul style="list-style-type: none"> - Intellectual Property Laws available online. - ICT laws on areas such as Communication/ Telecommunication, E-Commerce, and Data Protection and Cyber security available online. - Freedom of Information has not been legislated on. - Regulations, case law and bills cannot be traced online.
20. Ghana	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. - Regulations, case law and bills cannot be traced online.
21. Guinea	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas are available. <ul style="list-style-type: none"> o Freedom of Information o Cyber Security o E-Commerce o Communication - Guinea has no law governing Data Protection. - Case law, regulation ad bills cannot be traced online.
22. Guinea Bissau	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas available online. <ul style="list-style-type: none"> o Cyber Security o Data Protection o E-Commerce o Freedom of Information o Communication - E-Commerce law not available online. - Case law, regulations and current bills cannot be traced online.
23. Kenya	<ul style="list-style-type: none"> - ICT/IP laws, regulations, case law and bills readily available online.

Country	Status of online publishing of ICT legal resources
24. Lesotho	<ul style="list-style-type: none"> - Intellectual Property law available online. - ICT laws on the following areas are available online; <ul style="list-style-type: none"> o Data Protection o Communication/Telecommunication - The Computer Crime and Cybercrime Bill is not available online and its current status is unknown. - There's no information on whether the Electronic Transactions Bill of 2013 has been passed or not. - Case law, regulations and current bills cannot be traced online.
25. Liberia	<ul style="list-style-type: none"> - ICT/IP laws available online, except regulations, case law and current bills.
26. Madagascar	<ul style="list-style-type: none"> - ICT/IP laws available online. - Case law and current bills cannot be traced online.
27. Malawi	<ul style="list-style-type: none"> - ICT/IP laws available online. - Case law and current bills cannot be traced online.
28. Mali	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas available online. <ul style="list-style-type: none"> o E-Commerce o Intellectual Property o Data Protection o Communication o Cyber Security - Draft law on Cyber security not available. - Case law and current bills cannot be traced online.
29. Mauritania	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. - Case law, current bills and regulations cannot be traced online.
30. Mauritius	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. - Case law and current bills cannot be traced online.
31. Mozambique	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. - Case law and current bills cannot be traced online.
32. Namibia	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. - Case law and current bills cannot be traced online.
33. Niger	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas available online. <ul style="list-style-type: none"> o Data Processing o Freedom of Information - ICT laws on the following areas are not available online; <ul style="list-style-type: none"> o E-Commerce o Cyber Security o Freedom of Information o Communication - Draft law on Electronic Transactions is not available online. - Regulations, case law and current bills cannot be traced online.

Country	Status of online publishing of ICT legal resources
34. Nigeria	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas are available online. <ul style="list-style-type: none"> o Cyber security o E-Commerce o Data Protection o Freedom of Information o Communication/ Telecommunication - Regulations, case law and current bills cannot be traced online.
35. Reunion	<ul style="list-style-type: none"> - ICT/IP legal resources for this country are not available online.
36. Rwanda	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. - Case law and current bills cannot be traced online.
37. Sao Tome and Principe	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas available online. <ul style="list-style-type: none"> o Cyber Security o Freedom of Information - ICT laws on the following areas not available online. <ul style="list-style-type: none"> o E-Commerce o Data Protection o Communication/ Telecommunication - Case law and current bills cannot be traced online.
38. Senegal	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas available. <ul style="list-style-type: none"> o Cyber security o Data Protection o E-Commerce o Freedom of Information o Communication/ Telecommunication - ICT laws governing Telecommunication/ Communication are not available online. - Case law, regulations and current bills cannot be traced online.
39. Seychelles	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. - Case law, regulations and current bills cannot be traced online.
40. Sierra Leone	<ul style="list-style-type: none"> - Intellectual Property laws available. - ICT laws on the following areas available online. <ul style="list-style-type: none"> o Cyber Security - ICT laws on the following areas were not available. <ul style="list-style-type: none"> o E-Commerce law o Data Protection o Communication/ Telecommunication o Freedom of Information - Regulations, case law and current bills cannot be traced online.

Country	Status of online publishing of ICT legal resources
41. Somalia	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas are not available online. <ul style="list-style-type: none"> o E-Commerce o Cyber Security o Data Protection - ICT laws available online are. <ul style="list-style-type: none"> o The Somali Communication Act of 2012 (the law governing communication) o The media law of Somalia (the law governing Freedom of Information) - Case law, current bills and regulations cannot be traced online.
42. South Africa	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. - Case law and current bills cannot be traced online.
43. Sudan	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas available online. <ul style="list-style-type: none"> o Data Protection o Cyber security o E-Commerce o Communication/Telecommunication - Freedom of Information law cannot be found online. - Most ICT laws are available online except the Freedom of Access to Information Law. - Case law, regulations and current bills cannot be traced online.
44. Swaziland	<ul style="list-style-type: none"> - Intellectual Property laws available online. - Most ICT laws are not available online except the Cyber security law. - Case law, regulations and current bills cannot be traced online.
45. Tanzania	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws available online. - Case law and current bills cannot be traced online.
46. Togo	<ul style="list-style-type: none"> - Intellectual Property laws available online. - Most ICT laws are not available online. Particularly on the following areas. <ul style="list-style-type: none"> o Cyber security o Data Protection o Freedom of Information. - Case law and current bills cannot be traced online.
47. Uganda	<ul style="list-style-type: none"> - Intellectual Property laws available online. - ICT laws on the following areas available online. <ul style="list-style-type: none"> o Data Protection o Cyber security o E-Commerce o Freedom of Information o Communication - Case law, regulations and current bills cannot be traced online.

* The information above is based on CIPIT's online research at the needs assessment phase of the project. Given the dynamic state of the subject matter it is likely that this may change with time.

Annexure B – Properties for each Entity

LAW

Title
Is this the official copy?
Status of Law
Adoption date
Type of law
Keywords
Institution that established this law
Institution established by this law
Country
Research Category
Date of Most Recent Amendment
Source
Collection
Notes
Related Law
Related Case Law
Related Analyses
Date Updated

CASE

Case Name
Case Status
Case Outcome (Disposition)
Case Outcome (Procedural)
Keywords
Case Number
Decision date
County
Judicial Body
Court Name
Source
Collection
Case Summary
Case Significance

Notes
Relevant Law
Related Articles
Related Analysis
Date Updated
Related Court Documents

ANALYSIS

Analysis format
Date
Keywords
Country
Author
Source
Collection
Description
Notes
Related Law
Related Case Law
Date Added
Date Updated

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CIPIT is a research and training centre at Strathmore University. Please contact us if you have any questions about this Manual, or visit our website for more resources. More information on the CYRILLA Collaborative can be found at <https://cyrilla.org/>



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