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Freedom on the Net 2018 - South Africa

Key Developments:

June 1, 2017 - May 31, 2018

- Proactive government initiatives has helped expand access to the internet across the country (see Availability and Ease of Access).
- The Electronic Communications Amendment (ECA) Bill has been criticized for granting extensive powers to the Ministry of Telecommunications and Postal Services at the expense of regulatory body's independence (see Regulatory Bodies).
- The Films and Publications Amendment Bill, which aims to protect children from racist, harmful, and violent content online, may give the FBP sweeping powers to censor internet content if passed (see Content Removals).
- Digital activism has led to regulatory outcomes that benefit consumers (see Digital Activism).
- Actively under review, the draft Cybercrimes and Cyber Security Bill includes provisions that may threaten freedom of expression and privacy rights (see Legal Environment).

Obstacles to Access

Violations of User Rights

Introduction:

Internet freedom in South Africa remained free and open in the past year with access to the internet available to nearly two-thirds of the population. There were no internet freedom issues documented surrounding the resignation of President Jacob Zuma and the subsequent election of Cyril Ramaphosa to the presidency in February 2018.

The policy and legal environment in South Africa continued to swing between progressive inclinations and regressive reactions to changes in the ICT sector. Consequently, mechanisms to regulate the sector and bodies established to implement key policy directives have been caught in bureaucratic limbo and unable to effectively fulfill their mandate. Key among these inconsistencies is the introduction of a draft Electronic Communications Amendment Bill, which seeks to implement the policy objectives set out in the National Integrated ICT Policy White Paper. While the white paper attempts to map out a vision for ICTs in South Africa, it also introduces a host of proposals that have the potential to expand the influence of government, undermine the independence of regulators, and stifle competition and innovation the sector.

Other legislative initiatives have the potential of compromising internet freedom for South Africans. In the past year, the Film and Publications Board (FPB) pushed for the adoption of the Film and Publications Amendment Bill, which may impose intermediary liability and reintroduce a new censorship regime for South Africa's online content in pursuit of protecting children from racist, harmful, and violent content online. On other fronts, the Department of Justice and Constitutional Development forged ahead with plans to introduce the problematic Cybercrimes and Cyber Security Bill that includes a vague provision could be interpreted to censor political speech as well as problematic provisions that may enhance the state's surveillance powers.

Obstacles to Access:

Access to the internet continued to expand across the country. The Electronic Communications Amendment (ECA) Bill has been criticized for granting extensive powers to the Ministry of Telecommunications and Postal Services at the expense of regulatory body's independence.

Availability and Ease of Access

Internet penetration has expanded rapidly in South Africa. According to the latest data from the International Telecommunication Union (ITU), internet penetration reached 54 percent of the South African population in 2016. More recent access rates have been reported by Statistics South Africa, the national statistics agency, in the 2017 General Household Survey, which noted that nearly 62 percent of South African households have at least one member who can access the internet at home, work, school, or internet cafes,¹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote1sym>) up from 53 percent in 2015.² (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote2sym>)

However, this figure is significantly biased towards urban users; more than half of households in metropolitan areas such as Gauteng (74 percent) and Western Cape (71 percent) have access to the internet by any means (at home, work, school, etc.).³ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote3sym>) In contrast, only 44 percent of households in Limpopo, a predominantly rural province, have access to the internet.

Mobile phone penetration is much more extensive than internet penetration, reaching 65 percent in 2017.⁴ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote4sym>) The majority of internet users (60 percent) access the internet through their mobile devices.⁵ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote5sym>) Nevertheless, the high cost to access remain a primary obstacle to access. Recent market trends show that users are spending a greater proportion of income, at the individual and household level, on data, and less on voice or SMS services.⁶ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote6sym>)

The government has prioritized access to free public Wi-Fi through the SA Connect program. SA Connect aims to provide an alternative means to broadband access, particularly among underserved communities. Although the program has not yet significantly increased connectivity

in the poorest communities, several other initiatives in metropolitan areas have enjoyed modest success, including the cities of Tshwane, Johannesburg, Cape Town, and the Ekurhuleni municipality.⁷ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote7sym>) Similar projects are expected to be rolled out in other provinces and towns across the country.⁸ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote8sym>)

Restrictions on Connectivity

The South African government does not have direct control over the country's internet backbone or its connection to the international internet. International internet connectivity is facilitated via five undersea cables—SAT-3, SAFE, WACS, EASSy, and SEACOM—all of which are owned and operated by a consortium of private companies.⁹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote9sym>) Several operators oversee South Africa's national fiber networks, including partly state-owned Telkom and privately-owned MTN, Vodacom, Cell-C, Neotel-Liquid, and Broadband Infraco, among others. Internet traffic between different networks is exchanged at internet exchange points (IXPs) located in Johannesburg, Cape Town, and Durban, which are operated by South Africa's nonprofit Internet Service Providers' Association (ISPA) and NapAfrica.¹⁰ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote10sym>) The three internet exchange points are hosted in vendor neutral data center facilities owned by Teraco.¹¹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote11sym>)

ICT Market

ISPA currently has 178 members in South Africa made up of mostly privately own enterprises.¹² (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote12sym>) However, the fixed-line connectivity market is dominated by Telkom, a partly state-owned company, of which the government has a 40 percent share and an additional 12 percent share through the state-owned Public Investment Corporation.¹³ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote13sym>) Telkom effectively possesses a monopoly, despite the introduction of a second national operator, Neotel, in 2006.¹⁴ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote14sym>) In the mobile market, there are four major mobile phone companies—Vodacom, MTN, Cell-C and Telkom Mobile—all of which are privately-owned except for Telkom Mobile.

The fiber market in South Africa has grown at an exponential rate. Most suburban areas of the major urban centers (including Pretoria, Cape Town and Johannesburg, Durban, and Port Elisabeth) are already covered with fiber-optic cables, and new “last mile” providers of fiber have begun to wire homes by connecting to competitive internet backbones run by larger operators. The model that most of these providers have adopted is open access: they provide FTTH (fiber to the home) or FTTB (fiber to the building), and the customer can select an ISP from a large number of competitive options.

Access providers and other internet-related groups are active in lobbying for better legislation and policy affecting the sector. In 2009, ISPA was recognized as a self-regulatory body by the Department of Communications, and exercises authority over its members through transparent processes.¹⁵ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote15sym>)

Regulatory Bodies

The autonomy of the regulatory body, the Independent Communications Authority of South Africa (ICASA), is protected by the constitution. However, ICASA's independence has been compromised due to encroachments on its mandate by a number of entities. In addition to ICASA, the Ministry of

Telecommunications and Postal Services, .zaDNA, and the Universal Service and Access Agency of South Africa (USAASA) have regulatory power over ICTs. The proliferation of regulatory bodies has led to redundancy and poor coordination, and contributes to the perception that the country lacks a comprehensive approach to the regulation of ICTs.

In October 2016, the cabinet approved the National Integrated ICT Policy White Paper,¹⁶ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote16sym>) which outlines the overarching policy framework aimed at transforming South Africa into an inclusive and innovative digital and knowledge society.¹⁷ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote17sym>) The white paper also details the government's approach to supply-side interventions relating to infrastructure rollout, fair competition, facilitating innovation, and policies to protect the open internet, as well as demand-side interventions to facilitate inclusive digital transformation.

In order to enable the full implementation of the white paper, new legislation and amendments to existing legislation are required. One of the bills proposed in the white paper is the ICT Sector Commission and Tribunal Bill. This bill is expected to consolidate regulation of the ICT sector through the introduction of an ICT Sector Commission and Tribunal.¹⁸ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote18sym>) The bill will necessitate an amendment to existing laws, including the ICASA Act. The authority of the tribunal is expected to include regulation of the electronic communications sector; internet governance; and the licensing and regulation of electronic communications networks and services, spectrum and other scarce resources, and postal services.

Another key bill emanating from the white paper that will significantly impact supply-side aspects of the ICT sector is the Electronic Communications Amendment (ECA) Bill, which was published in November 2017 for public comment. The bill has been widely criticized for granting extensive powers to the Ministry of Telecommunications and Postal Services, which would have a greater role in oversight of the sector, raising concerns that it will erode the independence of ICASA.¹⁹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote19sym>) The ECA Bill would also facilitate the implementation of a wholesale open access network (WOAN) as a model for spectrum allocation.²⁰ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote20sym>) This aspect of the legislation has drawn further criticism for undermining the role of ICASA, which is currently central to the allocation and management of spectrum.²¹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote21sym>) At the end of May 2018, the bill was still under review and various stakeholders were engaged to provide recommendations for revision.

Evidence of the government's interest in the allocation of spectrum has already been seen in its effort to halt ICASA's proposed auctioning of spectrum in the 700MHz, 800MHz, and 2,600MHz bands.²² (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote22sym>) This followed a successful interdict by Minister of Telecommunications and Postal Services Siyabonga Cwele, preventing ICASA from proceeding with the auction.²³ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote23sym>) This move was widely criticized as an impediment to competition and investment.²⁴ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote24sym>) The Ministry justified its position by asserting that auctioning spectrum to private companies would result in the duplication of infrastructure; shared infrastructure would ultimately drive down the cost of communication through competition among services.²⁵ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote25sym>)

Another key actor in the regulation of ICTs is the Film and Publications Board (FPB), which traditionally regulates the distribution of films, games, and other publications. However, recent proposals to amend the Film and Publications Act, 1996 (see Content Removal) may extend its

authority to regulate internet content. In March 2016, the FPB signed a memorandum of understanding with ICASA to address regulatory overlaps created by the proposed amendments, which will effectively create co-jurisdiction over online content.²⁶ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote26sym>) These proposals further complicate the regulation of online content. However, as of May 2018, it remains unclear how the two bodies will implement the agreement.

Limits on Content:

The Films and Publications Amendment Bill, which aims to protect children from racist, harmful, and violent content online, has drawn criticism for giving the FBP sweeping powers to censor internet content.

Blocking and Filtering

Under the current legal and regulatory framework, neither the state nor other actors block or filter internet and other ICT content, and there is no blocking or content filtering on mobile phones. However, government officials have increasingly pronounced the need for social media regulation, leading to concerns about online censorship. In March 2017, Minister of State Security David Mahlobo reiterated calls to regulate social media, stating that it was being abused to, among other things, peddle false information.²⁷ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote27sym>) Media freedom advocacy groups sounded alarms over the potential political agenda behind the government's repeated fear-mongering tactics around fake news.²⁸ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote28sym>)

Content Removal

In July 2017, a controversial case of content removal made headlines when the news website *Black Opinion* was taken down by its web host after ISPA received a complaint that the site was inciting racial hatred.²⁹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote29sym>) Linked to a land rights lobby group called Black First Land First, the news site had published articles criticizing "white monopoly" over capital.³⁰ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote30sym>) The website was restored two weeks later.³¹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote31sym>)

In March 2018, the National Assembly passed the Films and Publications Amendment Bill, which will be sent to the National Council of Provinces for concurrence before it can be signed into law by the president.³² (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote32sym>) The bill, which was ostensibly drafted to protect children from racist, harmful, and violent content online, has drawn sharp criticism for giving the FBP sweeping powers to censor internet content, including the ability to regulate content on platforms such as YouTube and block websites.³³ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote33sym>)

Section 77 of the Electronic Communications Act of 2002 (ECTA) requires ISPs to respond to takedown notices regarding illegal content such as child pornography, defamatory material, or copyright violations. Members of the ISPA—the industry's representative body—are not held liable for third-party content that they do not create or select, though they can lose their protection from liability if they do not respond to takedown requests.³⁴ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote34sym>) As a result, ISPs often err on the side of caution by taking down content upon receipt of a notice to avoid litigation, and there is no incentive for providers to defend the rights of the original content creator if they believe the takedown notice was requested in bad faith. Meanwhile, any member of the public can submit a takedown notice, and there are no existing or proposed appeal mechanisms for content creators or providers.

Takedown notices (TDNs) lodged with ISPA increased from 355 in 2016 to 464 in 2017; of those, 210 were accepted (down from 220 in 2016), 229 rejected, and 25 were either withdrawn or duplicate requests. Of the 464 notices accepted, 203 requests resulted in content being removed; 7 TDNs were rejected. The main reasons for removals included copyright or trademark infringements, fraud, malware or phishing, defamation, hate speech, harassment, and invasion of privacy.³⁵ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote35sym>)

Media, Diversity, and Content Manipulation

Online media in South Africa is vibrant, representing a wide range of viewpoints and perspectives. Web-only news platforms, such as the *Daily Maverick*, have become particularly popular in recent years, with key news stories often broken online before print or broadcast outlets, illustrating how online media is growing as a primary news source. In line with this development, recent anecdotal evidence suggests that South African youth are increasingly reliant on the internet and radio for information, and are less dependent on television and print news for current affairs.³⁶ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote36sym>) Similarly, there are indications that in rural areas with internet access, the online versions of community newspapers are being accessed ahead of their print versions.³⁷ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote37sym>) Nevertheless, while both English- and Afrikaans-language content is well represented online, 9 of South Africa's 11 official languages are underrepresented, including on government websites.

In September 2017, the FPB proposed revisions to the tariff structure that will require online content distributors with more titles to pay the licensing fee per film and per series season that they offer.³⁸ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote38sym>) If adopted, these revisions would benefit content distributors with fewer titles, while those with more content would pay significantly more than the initially prescribed fee of ZAR 795,000. In March 2016, the FPB directed video streaming services, including Netflix, to pay a ZAR 795,000 (approximately US \$50,000) registration fee to distribute content under the self-classification criterion imposed on online distributors by the FPB.³⁹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote39sym>) The size of the fee was criticized by industry stakeholders as unjustifiable (in relation to the actual cost of classification) and prohibitive for smaller competitors providing content streaming services.⁴⁰ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote40sym>) Although some major content distributors such as Google, Apple, and MultiChoice had paid the license fees by the end of 2017, other major players such as Netflix and Microsoft had not yet paid. Netflix continues to lobby the FPB for continued self-regulation of content on their platforms.⁴¹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote41sym>)

In October 2017, the Department of Communications announced plans to introduce a Draft White Paper on Audio-Visual and Digital Content Policy.⁴² (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote42sym>) The white paper is intended to revise the Broadcasting Act (1999) and align it with the changes in technology, convergence of traditional and new media platforms, and the recent trends in media consumption. As of May 2018, the mooted white paper had not yet been released for public comment.

Although the government does not limit or manipulate online discussions, online self-censorship is a growing concern in South Africa. In line with the growing trend of online manipulation disrupting democratic processes in countries around the world, news reports in July 2017 revealed the existence of hundreds of automated bots on Twitter that harassed journalists who reported critically about the wealthy Gupta family and their influential ties to former president Zuma.⁴³

(<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote43sym>) The harassment may have the effect of increasing self-censorship among critical reporters and distorting the online information landscape with misleading narratives and false information.

Digital Activism

The internet has become a successful tool for online mobilization and democratic debate in South Africa, and the use of the internet and other ICTs for social mobilization has been uninhibited by government restrictions.

In September 2016, civil society groups advocated to bring down the high cost of digital communications, using the hashtag #DataMustFall.⁴⁴ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote44sym>) Eliciting a positive response, parliament's portfolio committee on telecommunications and postal services convened a hearing with submissions presented by the communications department, the regulator (ICASA), civil society organizations, telecom operators, and the public on the cost to communicate and on mobile data in particular.⁴⁵ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote45sym>) In March 2017, the minister of telecommunications issued a policy directive to ICASA to hold an inquiry, which would finalize regulations to ensure effective competition within broadband markets.⁴⁶ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote46sym>) Through ICASA, the Competition Commission launched this inquiry in August 2017 with the aim of understanding critical elements within the market and value chain that lead to high prices for data services, and ultimately to make recommendations that would result in lower prices for data services.⁴⁷ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote47sym>) The Competition Commission is expected to conclude its inquiry by August 2018.

The pressure by advocacy groups has had an impact. ICASA announced the final End-User and Service Subscriber Charter Regulations in April 2018. The regulations are intended to protect the rights of consumers by requiring that mobile network operators (MNOs) provide sufficient information on usage and allow the opportunity for redress when user rights are infringed. Among other stipulations, the charter requires that MNOs provide usage notifications on data bundle depletion levels, rollover unused data, allow the transfer of data on the same network, and allow end users to opt out of bundle data billing.⁴⁸ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote48sym>)

Violations of User Rights:

Actively under review, the draft Cybercrimes and Cyber Security Bill includes provisions that may threaten freedom of expression and privacy rights.

Legal Environment

The constitution provides for freedom of the press and other media, freedom of information, and freedom of expression, among other guarantees. It also includes constraints on "propaganda for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender, or religion and that constitutes incitement to cause harm."⁴⁹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote49sym>) Libel is not a criminal offense, though civil laws can be applied to online content, and criminal law has been invoked on at least one occasion to prosecute against injurious material.⁵⁰ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote50sym>) The judiciary in South Africa is generally regarded as independent.

In a worrisome development for internet freedom, South Africa voted against the UN Resolution for "the Promotion, Protection and Enjoyment of Human Rights on the Internet" in July 2016, siding with repressive countries such as China, Russia, and Saudi Arabia among the few objectors. In its opposition, South Africa's deputy permanent representative to the UN noted concerns that the resolution failed to take into account hate speech and incitement, which pose unique challenges to freedom of expression in South Africa's post-apartheid society.⁵¹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote51sym>)

Meanwhile, the draft Cybercrimes and Cyber Security Bill—first published in August 2015 for public comment—has been criticized by civil society for its ambiguous language that has the potential to infringe on freedom of expression.⁵² (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote52sym>) In the 2017 version of the bill introduced in February 2017, a chapter on "Malicious Communications" penalizes the dissemination of a "data message which is harmful," the definition of which includes content that is "inherently false," without further specifications.⁵³ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote53sym>) Human rights advocates worry that the vague provision could be interpreted to censor political speech.⁵⁴ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote54sym>) The bill also includes problematic provisions that may enhance the state's surveillance powers (see Surveillance, Privacy, and Anonymity). Public hearings were convened by the Portfolio Committee on Justice and Correctional Services in September 2017 and responses to the submissions presented by various stakeholders were published in November 2017.⁵⁵ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote55sym>) A revised version of the bill is expected to be released for further deliberation and adoption by the committee before it can be tabled in parliament.

Prosecutions and Detentions for Online Activities

Individuals were not prosecuted, detained, or sanctioned by law enforcement agencies for political, social, or religious speech online during the coverage period.

Surveillance, Privacy, and Anonymity

Concerns over the potentially unchecked government surveillance powers over online activity remain, but were addressed when Dr. Setlhomamaru Isaac Dintwe was appointed as the new inspector-general of intelligence in March 2017. The position had previously been vacant for an extended period due to challenges in the recruitment process.⁵⁶ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote56sym>) As an independent actor accountable to parliament through the Joint Standing Committee on Intelligence,⁵⁷ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote57sym>) the inspector-general of intelligence is expected to strengthen oversight mechanisms of the activities of the South African Intelligence Services and determine their compliance with the legislative framework and constitution.⁵⁸ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote58sym>) However, since assuming office, Dr. Dintwe has had difficulty fulfilling his mandate due to interference by leadership in the intelligence community. In April 2018, Dr. Dintwe filed an urgent court application to prohibit Arthur Fraser, the director general of the State Security Agency (SSA), from intervening in his office's activities.⁵⁹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote59sym>)

The Regulation of Interception of Communications and Provision of Communication-Related Information Act of 2002 (RICA) regulates the surveillance of domestic communications. Among its provisions, RICA requires ISPs to retain customer data for an undetermined period of time and bans any communications system that cannot be monitored, placing the onus and financial responsibility on service providers to ensure their systems have the capacity and technical requirements for interception.⁶⁰ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote60sym>)

africa#sdfootnote60sym) While RICA requires a court order for the interception of domestic communications, the General Intelligence Laws Amendment Act (known locally as the "Spy Bill") passed in July 2013 enables security agencies to monitor and intercept foreign signals (electronic communications stemming from abroad) without any judicial oversight.⁶¹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote61sym>)

RICA also compromises users' rights to anonymous communication by requiring mobile subscribers to provide national identification numbers, copies of national identification documents, and proof of a physical address to service providers.⁶² (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote62sym>) An identification number is legally required for any SIM card purchase, and registration requires proof of residence and an identity document.⁶³ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote63sym>) For the many South Africans who live in informal settlements, this can be an obstacle to mobile phone usage. Meanwhile, users are not explicitly prohibited from using encryption, and internet cafes are not required to register users or monitor customer communications.

Persistent concerns over government surveillance grew further after reports in 2015 found that state security organizations possess stingray (or "grabber") technology that can mimic cell phone towers and capture cell phone metadata within a certain vicinity. In September 2015, Hangwani Malaudzi, a spokesperson for the government investigation bureau known as the Hawks,⁶⁴ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote64sym>) confirmed that South African security officials have access to grabber technology but noted that the technology was used specifically for national security matters only.⁶⁵ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote65sym>) Nonetheless, consistent weaknesses in oversight mechanisms within the state security departments leave surveillance open to abuse.

The proposed Cybercrimes and Cyber Security Bill revised in February 2017 includes a provision that may enhance the state's interception powers. According to the Centre for Constitutional Rights, section 38 of the bill, which provides for the interception of "indirect communication, obtaining of real-time communication-related information and archived related information," both conflicts with and echoes the problematic aspects of RICA, potentially infringing on privacy rights (see Legal Environment).⁶⁶ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote66sym>)

As a positive measure, the Protection of Personal Information (POPI) Act, signed into law in November 2013, provides measures to protect users' online security, privacy, and data. No law ensuring the constitutional right to privacy existed before POPI, which allows an individual to bring civil claims against those who contravene the act.⁶⁷ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote67sym>) Penalties for contravening the law are stiff, including prison terms and fines of up to ZAR 10 million (approximately US\$650,000).

To further strengthen the right to privacy enshrined in POPI, former president Jacob Zuma appointed Pansy Tlakula as information regulator in October 2016.⁶⁸ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote68sym>) Known for her independence, Tlakula had previously served as the chairperson of the Independent Electoral Commission Advocate and as the special rapporteur on freedom of expression and access to information at the African Commission on Human and People's Rights. Primarily tasked with monitoring, enforcing compliance, and handling complaints related to POPI,⁶⁹ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote69sym>) the Office of the Information Regulator is expected to give effect to the constitutional right to privacy by introducing measures that ensure personal information is processed legally by responsible parties.⁷⁰ (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote70sym>)

Intimidation and Violence

There were no cases of extralegal intimidation or violence reported against bloggers, journalists, or online users during the coverage period.

Technical Attacks

South Africa is highly vulnerable to cybersecurity threats on many fronts, though independent news outlets and opposition voices were not subject to targeted technical attacks during the coverage period. Government websites are often hacked. Most of the hacks are perpetrated by amateur hackers with no apparent political motivations other than to advertise their skills.

Notes:

1 (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote1anc>) "General Household Survey, 2017," Statistics South Africa, June 2018, <http://www.statssa.gov.za/publications/P0318/P03182017.pdf> (<http://www.statssa.gov.za/publications/P0318/P03182017.pdf>)

2 (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote2anc>) "General Household Survey, 2015," Statistics South Africa, June 2016, <http://www.statssa.gov.za/publications/P0318/P03182015.pdf> (<http://www.statssa.gov.za/publications/P0318/P03182015.pdf>)

3 (<https://freedomhouse.org/report/freedom-net/2018/south-africa#sdfootnote3anc>) "General Household Survey, 2017," Statistics South Africa, June 2018.

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