

Laws restricting disinformation in Sub-Saharan Africa

The state of play in 2023

Policy Brief



Summary

For the last several years, a consortium of civil society organisationsⁱ has been tracking and analysing government responses to online disinformation in Sub-Saharan Africa. While it is important to find ways of addressing the harms posed by the proliferation of disinformation online, the research has shown that many laws and policies intended to tackle disinformation actually pose significant risks to individuals' human rights, particularly their right to freedom of expression. These laws are inconsistent with international and regional human rights law and standards, and are being applied in ways which restrict legitimate forms of expression, with consequences for other associated rights such as freedom of association and assembly.

This brief explores the state of play in the region regarding laws and policies that place restrictions on sharing disinformation online. It draws out three key themes, based on examples from LEXOTAⁱⁱ:

- 1. The majority of restrictions on disinformation are not found in disinformation-specific laws and policies;**
- 2. Emergency powers create new opportunities for governments to force through restrictions on disinformation;**
- 3. Advocacy against problematic laws and provisions has proven effective.**

These themes illustrate a challenging but dynamic and evolving regulatory environment with respect to laws that restrict disinformation, or other forms of "false" or "misleading" information. This brief examines each theme in detail, setting out conclusions and recommendations for states in the region to advance and promote rights-respecting responses to disinformation.

Background

While disinformation poses threats to individuals' rights such as the right to health, life, and participation in public affairs, poorly designed legislative responses to disinformation can in themselves pose serious risks to human rights—particularly the right to freedom of expression. LEXOTA has tracked and analysed government actions on disinformation across Sub-Saharan Africa in recent years.

Each law and enforcement action on LEXOTA is analysed against a frameworkⁱⁱⁱ based on international human rights law, notably the International Covenant on Civil and Political Rights (ICCPR), as well as regional instruments such as the African Charter on Human and Peoples' Rights (The Banjul Charter), the Declaration of Principles on Freedom of Expression and Access to Information in Africa and other relevant standards. The framework's questions assess whether there is sufficient legal clarity around the law or action and whether restrictions on expression are made in pursuit of a legitimate aim. It

also assesses whether restrictions are necessary and proportionate, which means that they must be the least restrictive measures to achieve the legitimate aim and requires an evaluation of the nexus between the speech and the harm.

This brief draws on the nearly 90 laws or proposed laws analysed on LEXOTA across 48 countries in Sub-Saharan Africa. In total, 43 countries in the region have laws in force which include restrictions on disinformation^{iv}. These laws take a variety of forms, but the majority are content-based restrictions on “false” or “misleading” information. In nearly every case, the laws fail to align with international and regional human rights law and standards. They are often vague and broad in scope, meaning that they can be interpreted as prohibiting a wide range of speech. They pursue aims which would not be permissible under international and regional human rights law and standards, and they carry disproportionate penalties.

Theme 1: The majority of restrictions on disinformation are not found in disinformation-specific laws and policies

Between 2019 and 2020, several disinformation-specific laws were proposed and enacted across the region. Notable examples include Ethiopia’s Hate Speech and Disinformation Prevention and Suppression Proclamation (2020), Mauritania’s Law on the Fight against the Manipulation of Information (2020), and Nigeria’s Protection from Internet Falsehoods and Manipulation and Other Related Matters Bill (2019)^v. These laws and proposals were notable for their unique focus on disinformation or other types of false or misleading information.

However, governments across the region appear to have since abandoned such efforts to enact disinformation-specific legislation. This is reflective of a broader **trend of governments addressing disinformation through laws that are not disinformation-specific**. Many of the restrictions on disinformation in the region are found within colonial criminal and penal codes, which are now being applied to the online environment. Governments have similarly resorted to prohibitions on illegal or harmful content within distinct forms of criminal law, including cybercrime or cybersecurity legislation, in which disinformation or the dissemination of false information is prohibited within individual provisions. There are also more stringent rules around the sharing of false information by certain actors, such as press actors or media outlets, and laws on communications or information communication technologies (ICTs). There is some evidence that alternative regulatory approaches to disinformation, particularly those that do not solely involve strict content-based restrictions, are impacting government thinking on disinformation in Sub-Saharan Africa, but more holistic or risk-focused approaches remain uncommon across the region.

LEXOTA indicates nearly 90 laws in force that include restrictions on disinformation. Yet only 2 of these are targeted specifically at disinformation and can be interpreted as “disinformation-specific legislation”, whereas 29 are penal codes, 14 are cybersecurity or cybercrime legislation, 14 are laws about communications or ICTs, and 12 are press laws. The rest are laws relating to terrorism or national security, emergency powers legislation, or relate to expression and electoral regulations.

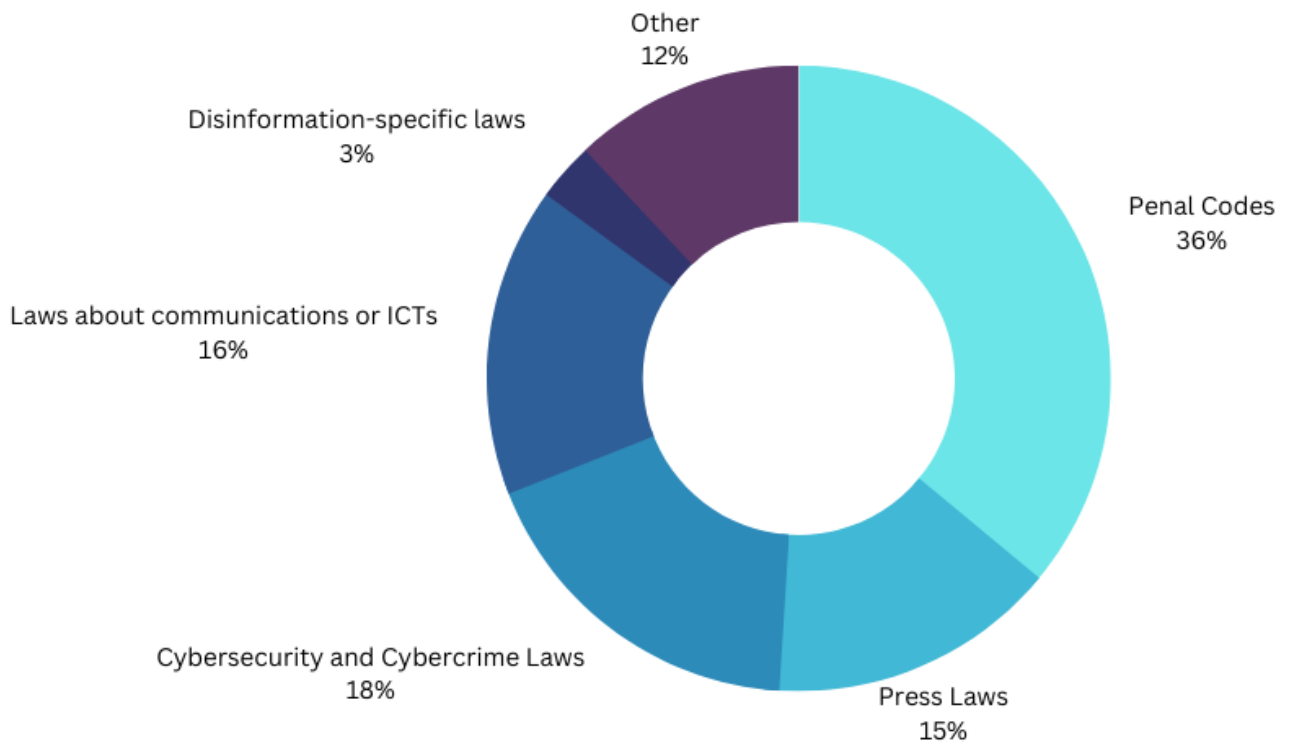


Figure 1: Types of laws currently in force in Sub-Saharan Africa that include restrictions on sharing disinformation.

Examples of these diverse types of legislation:

- Article 255 of **Senegal’s** Penal Code criminalises the publication, dissemination, disclosure or reproduction of false news when it causes, or is likely to cause disobedience of the country’s laws, damage to the morale of the population or discredits public institutions^{vi}.
- Section 16 of **Tanzania’s** Cybercrimes Act, 2015 creates a criminal offence of publishing information or data in a computer system, knowing that it is false, deceptive, misleading or inaccurate, and where someone has an intention to defame, threaten, abuse, insult or otherwise deceive or mislead the public^{vii}.
- Article 21 of **Burundi’s** Press Law, 2018 requires the media to “convey information honestly and faithfully”. Additional provisions require them to be guided by facts, and not distort texts and documents, as well as prohibiting the media from

publishing content that is contrary to morality or could threaten public order. Article 77 enables the National Council for Communications to suspend or prohibit press passes, the distribution of newspapers, periodicals, or any other information medium when they do not comply with the law^{viii}.

- **Nigeria's** draft Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries, proposed in 2022, sets out potential obligations for online platforms to combat harmful content (including disinformation) through transparency requirements, user reporting and complaint mechanisms, terms of service, and takedowns^{ix}.

Theme 2: Emergency powers create new opportunities for governments to force through restrictions on disinformation

The COVID-19 pandemic prompted a wave of concern about online health-based misinformation and disinformation. This resulted in a number of governments in the region passing emergency legislation that contained restrictions on the dissemination of false information related to the pandemic, including in the digital environment. In some cases, these restrictions were strictly limited to health-based misinformation that was harmful to individuals' and public health, but in many instances they were broadly worded, poorly defined and included disproportionate penalties. Furthermore, while some laws were limited in duration and naturally lapsed, many remained in force long after the onset of the pandemic, posing questions around their legitimacy and necessity.

LEXOTA identifies 6 countries—all within southern Africa—that passed COVID-19 emergency regulations containing restrictions on disinformation (see figure 2). This suggests a sub-regional approach that stands in contrast with other countries that relied more on public announcements or applied existing restrictions contained within their national frameworks to tackle health-related mis- and disinformation during the pandemic.



Figure 2: Countries in Sub Saharan Africa that passed COVID-19 emergency regulations containing restrictions on disinformation: Botswana, Lesotho, eSwatini, Namibia, Zimbabwe and South Africa.

For example:

- **Botswana’s** Emergency Powers (COVID-19) Regulations, 2020, criminalised the publication of any statement with the intention of deceiving another person about COVID-19, the infection status of a person, or measures taken by the government^x. It was used to arrest a number of individuals in 2020, including government opposition figures. The broad scope and application of this law is emblematic of others in the region, but—positively—the provision lapsed when the state of emergency ended in 2021.
- **Zimbabwe’s** Statutory Instrument 83 of 2020, Public Health (COVID-19 Prevention, Containment, and Treatment Regulations) criminalises the publishing of “false news” about any public official involved with enforcing or implementing the national lockdown—or about any private individual “that has the effect of prejudicing the State’s enforcement of the national lockdown”^{xi}. This provision is broad in its scope and was also enforced even as most COVID-19 requirements were relaxed in 2021. The maximum penalties for violation, which included a prison sentence of up to 20 years, would be disproportionate in nearly all cases.

Theme 3: Advocacy against problematic laws and provisions on disinformation has proven effective

There have been a number of successful attempts by civil society organisations and activists to challenge laws and proposals that pose risks to human rights. In several countries, strategic litigation and targeted campaigns have resulted in positive outcomes, including the modification or repealing of laws and proposals.

LEXOTA highlights 14 instances where restrictions on disinformation were proposed or passed by governments but later struck down or repealed (see Figure 3). In three of these cases, restrictions on disinformation were found within proposals, but were then removed from the final version of the law or never passed. In three other cases, the restriction on disinformation was passed into law but later repealed or amended. A further five restrictions on disinformation were passed and in force, but later struck down by domestic courts; and, in two cases, regional courts sided with advocates in challenging restrictive provisions and supported freedom of expression.

Never passed	Nigeria: Protection from Internet Falsehoods and Manipulation and Other Related Matters Bill, 2019	South Africa: Cybercrimes and Cybersecurity Bill, 2017 (former Clause 17(2)(d))	eSwatini: Computer and Cyber Crime Bill, 2020 (former Section 19)			
Passed then amended	Sierra Leone: Public Order Act, 1965 (Section 32)	Angola: Press Law, 2006 (Articles 73–6)	Zimbabwe: Access to Information and Protection of Privacy Act, 2003 (Sections 64 and 80)			
Struck down (domestic court)	Gambia: Internet and Communications Act, 2009 (former Section 173A)	Uganda: Computer Misuse Act 2011 (former Section 25)	Kenya: Penal Code (former Section 66)	Kenya: Information and Communications Act, 1998 (former Section 29)	Zimbabwe: Criminal Law (Codification and Reform Act (former Section 31(a)(iii)	Zimbabwe: Law and Order (Maintenance) Act, 1980 (Section 50(2)(a)) [no longer in force]
Struck down (regional court)	Nigeria: Cybercrime Act, 2015 (Section 24) [ECOWAS Court of Justice]	Tanzania: Media Service Act, 2019 [East Africa Court of Justice]				

Figure 3: Laws or proposals in Sub-Saharan Africa which included restrictions on disinformation that were not signed into law, or were later amended or struck down by national or regional courts.

One example of effective advocacy at the national level comes from Kenya. Section 66 of **Kenya's** Penal Code previously criminalised the dissemination of disinformation in a now void section on "alarming publications". It provided that "any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb public peace is guilty of a misdemeanour". The penalty upon conviction included a fine or imprisonment for a term not exceeding three years, or both. The law was invalidated by the Kenyan High Court when challenged by activist Cyprian Andama, who was previously charged under the law for his social media posts. Civil society organisation Article 19 East Africa was named as an interested party and supported the petition through submissions. In 2021, the High Court ultimately determined that the provision violated individuals' right to freedom of speech as enshrined under the constitution^{xii}.

In terms of regional checks and balances, one example comes from **Nigeria's** Cybercrime (Prohibition and Prevention, etc.) Act, introduced in 2015. Section 24 of this law prohibited the dissemination of various forms of online messages, including a message that a person "knows to be false, for the purposes of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety". The penalty for this offence included a fine of up to 7,000,000 Nigerian Naira^{xiii} or imprisonment for a term of up to three years, or both.

Section 24 was used to stifle expression and legitimate criticism by journalists and activists within the country in at least three cases. After a protracted advocacy campaign by local actors, Section 24 was eventually challenged at the regional level and brought before the Economic Community of West African States (ECOWAS) Court of Justice by the Incorporated Trustees of Laws and Rights Awareness Initiatives, a non-governmental organisation. The court held that the provision violated the right to freedom of expression under regional and international human rights law, ordering the Nigerian government to either repeal or amend it^{xiv}. In March 2022, the Court again ordered the Nigerian government to amend this same section, ruling that it "is not in conformity with Articles 9 of the African Charter on Human and Peoples' Rights and the ICCPR"^{xv}.

These experiences demonstrate the power of stakeholders to challenge problematic provisions at the national and regional level, including with the judiciary or directly to parliamentarians and other policymakers. However, it is important to note that both examples took place in countries that are relatively open to public advocacy and challenging policy decisions. These strategies are not necessarily available in more authoritarian regimes where the activities and advocacy of local actors are limited or repressed by the state.

Conclusion and Recommendations

Conclusions

- Most governments across Sub-Saharan Africa have resorted to content-based restrictions on disinformation and other kinds of “false” or “misleading information”. While these laws appear in a variety of formats, they all pose similar risks to freedom of expression and fail to align with relevant international and regional human rights law and standards.
- Times of crisis—including states of emergency and pandemics—may prompt governments to introduce new restrictions on disinformation. These provisions often fail to align with relevant standards and pose risks to individuals’ ability to receive and impart information during critical moments. A nuanced, transparent and systems-based approach to mis- and disinformation is more crucial than ever at such times.
- Disinformation requires a multistakeholder and multidimensional response that addresses the harms it poses without resorting to regulatory responses that have adverse effects for human rights. Alternative approaches, particularly those focused on systems and processes, transparency, empowering individuals and other holistic and nuanced approaches, are preferable. However, it is important to consider local contexts and evaluate the unique needs of the country in question.
- There is strong evidence that advocacy efforts by stakeholders, including civil society organisations, can successfully challenge problematic laws and proposals. Constructive engagement with parliamentarians and policymakers at the national level can result in more rights-respecting outcomes, as well as through strategic litigation at the national and regional levels. These efforts should be encouraged while acknowledging the limitations of advocacy approaches in restrictive contexts.

Recommendations

- States should review and revise laws on disinformation that are not aligned with international and regional human rights law and standards. This includes removing general prohibitions on the dissemination of information based on vague and ambiguous ideas, including false or non-objective information.
- States should develop and implement laws on disinformation in an open, inclusive and transparent fashion, consulting with affected stakeholders and monitoring the impact and implementation of a law over time. This includes:
 - Training members of the judiciary, law enforcement, government regulators and other authorities involved in addressing disinformation on how

- regulations should be applied in a way which does not pose additional risks to the enjoyment of human rights;
- Ensuring that penalties are clearly communicated, with justification given for detention or denial of bail on grounds of genuine risk of public harm;
 - Building appropriate safeguards to ensure that government actors cannot use disinformation laws for illegitimate aims, including by requiring that determinations are made by an independent judicial authority and that individuals have the right to appeal.
- States should take steps to address the multifaceted problem of disinformation through multistakeholder and multi-disciplinary solutions, including media literacy training, focusing on systems and processes, and empowering fact-checkers and local journalists.

ⁱ Article 19 West Africa; the Collaboration on International ICT Policy for East and Southern Africa (CIPEA); Centre for Human Rights, University Pretoria; PROTEGE QV; Global Partners Digital (GPD)

ⁱⁱ LEXOTA, www.lexota.org, accessed July 2023

ⁱⁱⁱ See Global Partners Digital, [A framework for analysing disinformation laws and policies from a human rights perspective](#)

^{iv} This brief is reflective of anti-disinformation legislation in the region as of mid-2023

^v Nigeria's Bill was subsequently withdrawn after being proposed

^{vi} [Penal Code of Senegal](#)

^{vii} [Cybercrime Act of Tanzania, 2015](#)

^{viii} [Press Law of Burundi, 2018](#)

^{ix} [Draft Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries of Nigeria, 2022](#)

^x [Emergency Powers \(COVID-19\) Regulations of Botswana, 2020](#)

^{xi} [Statutory Instrument 83 of 2020, Public Health \(COVID-19 Prevention, Containment, and Treatment Regulations\) of Zimbabwe](#)

^{xii} [Petition No. 3 of 2019](#), High Court of Kenya

^{xiii} Approximately 5,000 USD

^{xiv} ECOWAS Court of Justice, *The Incorporated Trustees of Laws and Rights Awareness Initiatives v. the Federal Republic of Nigeria*, Judgement No [ECW/CCJ/JUD/16/20](#) (10 July 2020)

^{xv} ["Obey ECOWAS Judgement"](#), *SERAP Nigeria*