

## Human Rights and Regulation of the ICT sector

- This policy brief examines human rights practices of businesses in the digital communications sector in Lesotho, highlights privacy and freedom of expression risks for users and makes policy recommendations to the sector regulator, the Lesotho Communications Authority.
- Lesotho has a small but growing digital services ecosystem dominated by digital communication services and financial services, regulated by the Lesotho Communications Authority (LCA) and the Central Bank of Lesotho, respectively.
- Existing legal and regulatory instruments provide for the protection of the right to privacy, freedom of expression and information of consumers of communications services, but there is a need for LCA to strengthen enforcement.
- LCA should monitor adherence to the provisions of the Communications Act 2012, Section 4(e) and Section 41(2)(c) of the Administrative Rules of 2016, and the Communications Sector Consumer Complaint Procedure<sup>1</sup>.
- LCA should encourage regulated entities to adopt corporate governance practices that promote human rights in line with the United Nations Guiding Principles on Business and Human Rights.

### Introduction

To ensure that businesses play their role, the United Nations created the [UN Guiding Principles on Business and Human Rights to guide business practices](#)<sup>2</sup>. This policy brief builds on the report [Digital Rights in Lesotho: An analysis of practices in the financial and ICT sectors](#)<sup>3</sup>, which evaluates the human rights practices of four technology companies in the country – Econet Telecom Lesotho, Express Credit Lesotho, Standard Lesotho Bank and Vodacom Lesotho. This policy brief focuses on policy issues that researchers identified in the digital communications sector and presents recommendations for the Lesotho Communications Authority (LCA) as sector regulator.

### Background

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<sup>1</sup> See LCA [Consumer Complaint Procedure](#)

<sup>2</sup> See United Nations Guiding Principles on Business and Human Rights available at [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>3</sup> See Pule, N. Digital Rights in Lesotho: An analysis of practices in the financial and ICT sectors available at [Digital-Rights-in-Lesotho.pdf \(rankingdigitalrights.org\)](#)

In line with the rest of the world, Lesotho is embracing digitization as a way to improve the quality of life. However, digitization has also brought with it new human rights risks. In this policy brief we focus on the practices of the major digital communication services provider to assess the privacy and freedom of expression for users. According to the International Telecommunication Union's 2021 data, the latest at the time of writing, 80%<sup>4</sup> of the population were mobile cellular subscribers, and 43%<sup>5</sup> used the internet (World Bank, 2023). Together Econet and Vodacom control the mobile voice and internet services in Lesotho and their human rights practices could impact the majority of citizens. Human rights practices of businesses in Lesotho are subject to domestic and international law, and they should be guided by the UN Guiding Principles on Business and Human rights.

Lesotho has ratified international human rights conventions such as the United Nations Universal Declaration of Human Rights and the African Union's African Charter on Human and Peoples' Rights. The 1993 constitution provides for the protection of human rights, including the right to privacy and the right to freedom of expression and information. In addition, the Data Protection Act of 2011 protects the privacy of consumers by obligating service providers that collect personally identifiable information to protect personal data. The Communications Act of 2012, the Lesotho Communications Authority (Administrative) Rules of 2016 and the Communications (Subscriber Identity Module and Mobile Device Registration) Regulations, 2021 have provisions for the protection privacy.

Despite the existing legal and regulatory instruments that protect the right to privacy and the right to freedom of expression and information as articulated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international human rights instruments, the report identified several areas of concern in the two main service providers' practices.

### **Findings and Policy Implications**

The *Digital Rights in Lesotho: An analysis of practices in the financial and ICT sectors* report evaluates the human rights practices of four key players in the ICT ecosystem using an adaptation of Ranking Digital Rights (RDR)<sup>6</sup> methodology<sup>7</sup>.

Findings from the study indicate that there is a low adherence to human rights practices in Lesotho. Majority of companies in Lesotho do not publish their human rights policies on their websites or on other publicly accessible online sources, which may suggest that they do not have one in place. Some of the key findings of the report on the two dominant digital service providers, Econet and Vodacom Lesotho, are as follows:

- i. **Access to terms and conditions:** both companies did not always offer terms and conditions that are clear and written in at least both of the country's official

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<sup>4</sup> See World Bank <https://data.worldbank.org/indicator/IT.CEL.SETS.P2>

<sup>5</sup> See World Bank <https://data.worldbank.org/indicator/IT.NET.USER.ZS>

<sup>6</sup> See RDR indicators <https://rankingdigitalrights.org/2020-indicators/>

<sup>7</sup> . The companies were evaluated on the following RDR indicators: G1 - policy commitment, F1(a) - access to terms of service, F2(a) - changes to terms of service, F5(a) - process for responding to government demands to restrict content or accounts, F6 - data about government demands to restrict content and accounts, F9 - Network management, F10 - network shutdown, F11 - identity policy, P1(a) - Access to privacy policies, P2(a) - Changes to privacy policies, P3(a) - Collection of user information, P10(a) - Process of responding to government demands for user information, and P11(a) - Data about government demands for user information.

languages, Sesotho and English. Vodacom's general terms and conditions (*Ts'ebeletso ea customer care, melao, litataiso le litsamaiso tsa Vodacom Lesotho*)<sup>8</sup> are available in Sesotho only. These terms and conditions apply to both prepaid and post-paid contract customers. All other terms and conditions on Vodacom's website are in English. The terms of service for prepaid services were not available on Econet Lesotho's website and we could not locate them from any online sources. Econet's *Mobile Contracts Terms & Conditions*<sup>9</sup>, published on its website, are for post-paid contracts and they were difficult to understand.

Researchers found that consumers were not provided with enough information for informed consent despite the fact that Section 4(e) of the Communications Act of 2012, mandates LCA "to protect the interests of consumers of communications services" and Section 41(2)(c) of the Administrative Rules of 2016 which provide for LCA to require licensed service providers to "publish information regarding the prices, terms and conditions for its standard public communication service offerings".

- ii. **Changes to terms and conditions:** Both companies had not published a policy to notify users about changes to terms and conditions of service prior to such changes coming into effect. These companies also do not publish a record that shows the specific changes to the terms of service for customers to see how the terms and conditions have been modified.
- iii. **Access to privacy policies:** The study found the network operators policy practices involving the collection and use of user's information, especially personally identifiable information, inadequate. While Vodacom has published its privacy statement, the privacy statement was available in English only. Researchers did not find a privacy statement by Econet.
- iv. **Dealing with government demands for user information or to restrict content:** None of the companies explain the processes they follow for responding to government demands (including judicial orders) for user information or government demands to restrict content or effect internet shutdowns. The lack of policy disclosure on how companies process government demands for user data, including judicial orders, has led to public complaints that the service providers do not always protect the privacy, right to freedom of expression and information of users. According to Friedrich-Ebert- Stiftung et al., (2015) and Boloetse (2019), interception of telephone calls and other communications is deemed common in Lesotho. Law enforcement agencies rely on laws such as the Prevention of Corruption and Economic Offences Act of 1999 (section 8), the Criminal Procedure and Evidence Act 1981 (sections 46 to 49) and the National Security Services Act of 1998 (section 26) to obtain data from service providers; these laws lack judicial safeguards. Therefore, network operators should make disclosures on processes they follow to respond to government demands for user data.

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<sup>8</sup> See Vodacom's *Ts'ebeletso ea customer care, melao, litataiso le litsamaiso tsa Vodacom Lesotho* - Archived copy, [https://web.archive.org/web/20211206143030/https://www.vodacom.co.ls/?page\\_id=1981](https://web.archive.org/web/20211206143030/https://www.vodacom.co.ls/?page_id=1981)

<sup>9</sup> See Econet's *Mobile Contracts Terms and Conditions* – archived copy, <https://web.archive.org/web/20211212153834/https://www.etl.co.ls/mobile-contracts-terms/>

## Policy Recommendations

With the view to safeguard the right to privacy and right to freedom of expression and information, we make the following recommendations to LCA:

*1. Ensure that service providers offer terms of service that are easy to find, easy to understand.*

LCA should monitor adherence to and enforce compliance with the provisions of the Communications Act of 2012 and the Administrative Rules of 2016 to ensure that the regulated companies provide information so that customers can make an informed choice when they take up a service and when the terms and conditions change.

*2. Ensure service providers adhere to their privacy policies*

LCA should require compliance with existing regulations and institute corrective actions where service providers fail to protect the privacy of consumers by, for example, sharing call records without a judicial authorisation or other legal means. Section 5(m) of the Communications Act of 2012 grants LCA the power to "require licensees to protect the privacy and integrity of user-provided information". LCA should also ensure that service providers' policies are easy to find and easy to understand.

*3. Protect consumers' right of freedom of expression and right to information.*

As in the past, LCA should

- discourage the government from directing internet shutdowns in response to public dissent on social media platforms;
- encourage the network operators to publish their own network shutdown policies for transparency;
- lead by example in promoting human rights through regulatory transparency, for example, by publishing consumer protection compliance audits/monitoring reports; and
- encourage network operators to disclose the policies and processes they follow for responding to government demands for customer data.

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