

DEMOCRACY AND FAKE NEWS IN AFRICA

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Abstract: It had been assumed that the advances in digital information technology and its increasing availability to ordinary Africans would facilitate broader public participation in decision-making and provide ordinary citizens with an opportunity to hold their leaders accountable. However, the increasing abuse and misuse of the internet and social media through fake news now threatens to reinforce the emerging decline towards authoritarianism on the continent. This paper examines some of the risks posed by the diverse manifestations of fake news and the attempts made by African governments to counter this. Its major contention is that unless urgent measures are taken at the national, regional and international level, the threats posed by fake news to the limited democratic gains made on the continent since the revival of constitutional governance in the 1990s may see the continent return to the dark authoritarian era of repressive and undemocratic rule.

Keywords: *anti-fake news laws, constitutionalism, democracy, fake news, internet, social media*

1. Introduction

Social media has the potential to play an important role in enhancing democracy and constitutionalism in Africa by promoting and facilitating broader public participation in decision-making and providing ordinary citizens with an opportunity to hold their leaders accountable. This has been due to ever-increasing internet penetration on the continent as well as tremendous advances that have made digital information technology reasonably accessible to the average African.¹ However, in spite of its enormous potential, the dangers posed by social media have become a matter of serious concern today in Africa's fledgling democracies.²

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¹ Even if this is still lower than the global average, it shows that Africa is rapidly catching up with the digital revolution. See "Internet penetration in Africa as of December 2020, compared to the global average," <https://www.statista.com/statistics/1176654/internet-penetration-rate-africa-compared-to-global-average/> visited 14 March 2022. In December 2020, the internet penetration rate in Africa stood at 43 per cent, meaning that about four out of 10 individuals in the continent used the web. By contrast, the global average internet penetration rate was more than 60 per cent.

² As Laura Chinchilla, Chair of the Kofi Annan Commission on Elections and Democracy in the Digital Age, put it: "In this digital age, new technologies and social media platforms are profoundly changing democracies – and democratic processes – all over the world. While these provide the unequalled potential to deliver citizens' hopes for democratic governance, they also create new challenges and risks for democratic processes and

When used maliciously, fake news disseminated on social media can distort and harm democratic processes and institutions and has the potential to increase polarisation at a time of democratic backsliding on the continent. In fact, fake news is now reinforcing the steady decline towards authoritarianism, populism, negative ethnicity and narrow nationalism that has become evident in the last few years. Fake news emanates not only from information shared by ordinary citizens but also that shared by states (both democratic and authoritarian) as well as, and worryingly so too, the foreign governments and global multinational companies which own and control the digital platforms on which fake news is spread.

A great deal of work has been done to understand the nature of fake news, how it works, its impact on diverse aspects of social, economic and political development, and what can be done about it.³ The focus of this paper, however, is on the risks posed by the diverse manifestations of fake news to the faltering attempts to entrench a culture of genuine democracy and constitutionalism in Africa. These developments come at a particularly difficult time. Most recent literature has highlighted the global crisis of democracy in the last decade.⁴ This has been particularly acute in Africa, as the insidious signs of an authoritarian mobilisation and resurgence have increased in the last few years.⁵ This raises the question of how the risks posed by fake news in an already deteriorating democratic environment can be addressed.

Due to the complex and borderless nature of the digital environment, and the manner in which it is owned and operated, there are no easy ways of stopping the negative impact it has on political developments in Africa.⁶ Free and fair elections, the cornerstone of democratic legitimacy, are under stress from post-truth movements that abuse the new digital technologies to confuse and mislead citizens. All citizens are entitled to the knowledge and information necessary to make well-informed choices and thus participate meaningfully in electoral processes. However, fake news has found fertile grounds in Africa, where a dangerous information gap has been allowed to develop in many countries because governments still monopolise the state media and control the information it disseminates. Due to the lack of timely and accurate information from government-controlled and -manipulated sources, social media platforms have filled the void by disseminating unverifiable content, much of which is false. In fact, according to a Kofi Annan Report, Africa shows the greatest overall decline in trust in the media.⁷ Unless urgent measures are implemented at the national, regional and

political rights.” See “Protecting electoral integrity in the digital age: The Report of the Kofi Annan Commission on Elections and Democracy in the Digital Age,” https://www.kofiannanfoundation.org/app/uploads/2020/05/85ef4e5d-kaf-kacedda-report_2020_english.pdf at 4, hereafter referred to as the Kofi Annan Report, visited 15 March 2022.

³ See for example, Denise-Marie Ordway, “Fake news and the spread of misinformation: A research roundup,” <https://journalistsresource.org/politics-and-government/fake-news-conspiracy-theories-journalism-research/> visited 15 March 2022.

⁴ See Larry Diamond, “The global crisis of democracy,” <https://www.wsj.com/articles/the-global-crisis-of-democracy-11558105463> visited 15 March 2022.

⁵ See the discussion in Charles M Fombad and Nico Steytler (eds), *Democracy, elections and constitutionalism in Africa* (Oxford: OUP, 2021).

⁶ As the Kofi Annan Report (n. 2) puts it, at 25, “The unique properties of the new information and communication technologies (ICTs) – virality, velocity, anonymity, homophily, and transnational reach – create novel challenges for democracy that have reverberated around the globe.”

⁷ *Ibid.*, 33.

international level, the threats posed by fake news to the limited democratic gains made since the 1990s could return the continent to the dark authoritarian era of repressive and undemocratic rule marked by serious human rights abuses, corruption, unemployment, economic decline and political instability.

In order to provide a general context for the discussion, and to underscore the fact that it is a problem that needs urgent intervention, the paper continues, in section 2, by briefly looking at the crisis of democracy in Africa. An examination of the advent of social media in African politics, with a focus on the conceptualisation of fake news, is undertaken in section 3. Examples of the impact of fake news on democracy on the continent are highlighted in section 4. Some of the ways and challenges posed by measures to regulate fake news are examined in section 5. The last section of the paper ends with some concluding remarks. It is clear that in spite of the numerous benefits of social media, fake news is worsening the deepening democratic recession on the continent.

11. The crisis of democracy in Africa

Across Africa, democracy and constitutionalism is increasingly under siege or in retreat.⁸ Save for a few exceptions where multipartyism cannot be tolerated, such as Eritrea and Eswatini (formerly Swaziland), and a few countries engulfed in conflict, such as Libya and South Sudan, multiparty elections have become the norm among African states. However, after a brief period of free and fair elections during which numerous countries saw peaceful alternations of power, the quality of elections has gone into decline, entering what Larry Diamond characterises as a mild but protracted recession.⁹ Many recent elections, indeed, have degenerated into little more than competitive authoritarianism. This is because democratic reforms and periodic elections of the last two decades have come to be increasingly used as a “survival strategy” by Africa’s autocratic rulers. Elections in particular have come in handy to keep opposition parties in the political game lest the regimes lose their democratic façade whilst incumbents perpetuate their rule.¹⁰ Although most recent studies have shown that the crisis facing constitutional democracy is global,¹¹ it is perhaps more profound in Africa, where the foundations of democracy are weak. In fact, it was only in the early 1990s that serious attempts to establish fully functional democracies were initiated. However, most of these efforts have been short-lived. Studies show

⁸ There is much recent literature that provides evidence of this, but two recent examples suffice. See first, E Gyimah-Boadi, Carolyn Logan and Josephine Sanny, “Africans’ durable demand for democracy,” (2021) 32:3 *Journal of Democracy* 136, and see generally, Charles M Fombad and Nico Steytler (eds), *Democracy, elections and constitutionalism in Africa* (n. 5), particularly the two chapters by Charles M Fombad, “Democracy, elections and constitutionalism in Africa. Setting the scene,” and “Reversing the surging tide towards authoritarian democracy in Africa,” 19–35 and 463–517 respectively.

⁹ Larry Diamond, “Facing up to the Democratic Recession,” (2015) 26:1 *Journal of Democracy* 141.

¹⁰ Tavishi Bhasin and Jennifer Gandhi, ‘Timing and Targeting of State Repression in Authoritarian Elections’ (2013) 32 *Electoral Studies* 620, 621.

¹¹ See, for example, Mark Graber, Sanford Levinson, and Mark Tushnet (eds), *Constitutional Democracy in Crisis* (Oxford: OUP, 2018); Tom Ginsburg and Azziz Huq, *How to Save a Constitutional Democracy* (Chicago: University of Chicago Press, 2018); Steven Levitsky and Daniel Ziblatt, *How Democracies Die: What History Reveals About Our Future* (New York: Crown Publishers, 2018); and David Runciman, *How Democracy Ends* (London: Profile Books, 2018). All these authors paint a bleak picture of the state of global democracy and express doubts whether there is any longer any justification for US and Western exceptionalism when talking about the decline in the quality of democracy around the globe.

that although many of the immediate post-1990 elections (probably from 1990 to 1995), were competitive and led to significant leadership changes, this has seldom been the case with elections in the last two decades.¹² This is due largely to the regular manipulation of the electoral processes and the rigging of elections. Election rigging techniques have become increasingly more sophisticated and hard to detect. As Nic Cheeseman and Brian Klaas note; “[W]henver [election] monitors come up with new strategies to detect tried and true rigging tactics, dictators and despots innovate.”¹³ According to these authors, whilst there are many ways to rig an election as well as many ways to save a democracy, they feel that “right now, the despots are winning the battle.”¹⁴

Signs of authoritarian mobilisation and resurgence are clearly apparent in the decline in the quality of democratic elections and governance in the last two decades. Most international surveys of elections and indicators on democracy amply bear out this decline. For example, research by the Electoral Integrity Project demonstrates that Africa, compared to other regions, scores markedly lower on the Perception of Electoral Integrity (PEI) index, with electoral integrity understood as conformity to international norms governing the conduct of elections. The overall African PEI score of 58 is well below the global average of 64.¹⁵ Indeed, Pippa Norris is able to show that electoral processes in sub-Saharan countries are almost identically distributed among three categories: ‘failed elections’ (29 per cent), ‘flawed elections’ (27 per cent) and ‘acceptable elections’ (27 per cent).¹⁶ Other categorisations tell a similar story.¹⁷

Other surveys confirm the relatively poor state of elections in Africa. In Freedom House’s 2017 overview of freedom in the world, sub-Saharan Africa is introduced with the subtitle ‘entrenched autocrats [and] fragile institutions’.¹⁸ The report indicates that six of the 10 countries in the world that have experienced the largest declines in freedom are found in this region. The most comprehensive indigenous annual assessment of quality of governance –

¹² For a discussion of these early elections, see Michael Bratton and Nicolas van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective* (Cambridge: Cambridge University Press, 1997).

¹³ Nic Cheeseman and Brian Klaas, “How autocrats rig elections to stay in power – and get away with it,” <http://theconversation.com/how-autocrats-rig-elections-to-stay-in-power-and-get-away-with-it-95337> visited 15 March 2022.

¹⁴ *Ibid.*

¹⁵ Max Gromping and Ferran Martinez i Coma, “Electoral Integrity in Africa,” www.electoralintegrityproject.com/-integrity-in-africa/ visited 14 March 2021.

¹⁶ Pippa Norris, *Strengthening Electoral Integrity* (Cambridge: Cambridge University Press, 2017).

¹⁷ See Nic Cheeseman, “The more things change the more they stay the same: BTI Regional Report Sub-Saharan Africa,” (Gütersloh: Bertelsmann Stiftung, 2019) (personal copy shared with author). Using the Bertelsmann Transformation Index (BTI) 2020 index scores, Cheeseman places African countries into five categories. These are (i) consolidating democracies (Botswana and Mauritius); (ii) defective democracies (Ghana, Benin, Namibia, South Africa, Senegal, Gambia, Liberia, Malawi, Guinea-Bissau, Sierra Leone, Burkina Faso, Niger and Tanzania); (iii) highly defective democracies (Guinea, Côte d’Ivoire, Mali, Zambia, Lesotho, Nigeria and Madagascar); (iv) moderate autocracies (Uganda, Togo, Kenya, Gabon, Angola, Mozambique, Zimbabwe, Mauritania and Ethiopia); and (v) hard-line autocracies (Rwanda, Djibouti, Burundi, Eswatini, Cameroon, Central African Republic, DR Congo, Chad, Equatorial Guinea, Republic of Congo, South Sudan, Eritrea and Somalia).

¹⁸ Freedom House, “Freedom in the World 2017. Populists and Autocrats: The Dual Threat to Global Democracy,” <https://freedomhouse.org/report/freedom-world/freedom-world-2017> visited 14 March 2022.

the Ibrahim Index of African Governance – shows a small improvement in overall governance in the period 2006–2015, but notes concern about the quality of democratic governance.¹⁹

Most studies clearly show there is no African country where democracy and constitutionalism can be thought of as firmly consolidated and secure – a conclusion reflected in the opinions of many ordinary citizens too. If we look at the general trend, especially in the last decade, the number of countries which are declining due to failed or flawed electoral processes (such as Burundi, Cameroon, DR Congo, and Republic of Congo), or which show signs of stagnation (such as Botswana and South Africa), far exceed those that have improved to one degree or another (such as The Gambia, Ghana and Nigeria).

The authoritarian resurgence in Africa has been facilitated by the ease with which leaders have taken advantage of real or contrived weaknesses in the post-1990 constitutional and other legal governance reforms to reassert themselves and block democracy's advance. Democratic forms and norms are increasingly being distorted or mimicked to achieve non-democratic ends. Many democracy-enabling institutions have fallen prey to political capture and manipulation. Perhaps what makes recent trends troubling is, as Nancy Bermeo points out, the fact that the de-democratisation process is incremental rather than sudden.²⁰ Because it is a process of gradual erosion and things falling apart piece by piece instead of in one blow, it has not attracted as much attention as it would have if it were a cataclysmic change.

The main features of the shrinkage of political space which is occurring as Africa moves towards authoritarian and/or militarised authoritarian democracy are manifested in a variety of ways, in particular the following:

- the capture and neutralisation of democracy-enhancing institutions;
- the phenomenon of third-termism and the increasing prospect of life presidencies;
- the use of constitutional and soft coups to retain power;
- the increasingly docile attitude of the electorate;
- the negative role of external international actors; and
- the limited political space for women, youths and other marginalised groups.²¹

It is clear from this that the abuse and misuse of the internet and social media to spread fake news is not the cause of the crisis of democracy in Africa. Nevertheless, it is exacerbating and intensifying the crisis. In other words, it is in the context of a deteriorating outlook for

¹⁹ See Mo Ibrahim Foundation, “A Decade of African Governance 2006–2015,” <http://www.slideshare.net/lesechos2/mo-ibrahim-index-report-2016> visited 15 March 2022; Mo Ibrahim Foundation, “Progress in African Governance over last decade held back by deterioration in safety and rule of Law,” <http://mo.ibrahim.foundation/wp-content/uploads/2016/10/2016-IIAG-Global-Release.pdf> visited 14 March 2022 .

²⁰ In Nancy Bermeo, “On democratic Backsliding,” (2016) 27:1 *Journal of Democracy* 14.

²¹ This is discussed in Charles M Fombad, “Reversing the surging tide towards authoritarian democracy in Africa,” in Charles M Fombad and Nico Steytler (eds), *Democracy, elections and constitutionalism in Africa* (n. 5) 463–517.

democracy and constitutionalism that fake news is emerging to complicate an already complex situation.

111. Africa's social media dawn and fake news

In order to appreciate the nature of the threat posed by social media today, it is necessary to briefly look at how it came into the political limelight in Africa, as well as at the very concept of fake news itself.

A. *The dawn of social media in Africa*

Although Africa's level of digitalisation is still far below the global average, the continent is no longer a 'digital backwater'.²² The adoption of national digital strategies in many countries, such as Egypt, Kenya, Nigeria, Mauritius and South Africa, underscores the fact that African countries are closing this divide at an unprecedented speed.²³ Increasing access to the internet on the continent has made social media platforms the main sources of information.

In fact, the advent of new media technology in Africa in the 1990s sparked celebratory, almost utopian, hype about the continent's possibility of 'leapfrogging' some stages of development.²⁴ However, this is not happening, at least insofar as democracy is concerned. Nevertheless, 2011 seems to have been the high-water mark of digital democracy when the extensive use of social media technologies facilitated unprecedented mobilisation of civil society actors and spread like wildfire across the Middle East in what became known as the Arab Spring.²⁵ Social media seems to have come of age then.

However, it is the challenges posed by what has become known as fake news that has exposed social media as a double-edged sword.

B. *Conceptualisation of the idea of fake news*

What exactly do we mean by fake news? Even before the advent of social media, fake news, in the very broad sense of false or misleading news, has always been a feature of the traditional media in Africa. This was particularly so before the 1990s as a result of the general control and manipulation of the state-run media outlets by the then pervasive military or one-party dictatorial regimes. As pointed out earlier, this created an information-credibility gap, one which social media is filling. However, the nature and scope of misleading information has grown exponentially and become even more dangerous in the last few years. The tentative post-

²² See Will Marshall, "Fake news, soft authoritarianism and challenges to digital democracy in Africa," <https://globalriskinsights.com/2021/03/fake-news-soft-authoritarianism-and-challenges-to-digital-democracy-in-africa/> visited 15 March 2022. Currently, the internet penetration rate is about 40 per cent with many countries having more than 50 per cent of their population having access to the internet. See further, The World Bank, "Individuals using the internet (% of population) – Sub-Saharan Africa," <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=ZG> visited 15 March 2022.

²³ *Ibid.*

²⁴ See Fackson Banda, Okoth Mudhai and Wisdom Tettey, "Introduction: New media and democracy in Africa-A critical interjection," in Okoth Mudhai, Wisdom Tettey and Fackson Banda (eds), *African media and the digital public sphere* (New York: Palgrave Macmillan, 2009).

²⁵ See, Marshall, "Fake news" (n. 22).

1990 moves towards competitive multiparty democracy and digital technologies paved the way for the advent of new and even more dangerous avenues for distorting information mainly for political purposes.

Falsity and the concept of fake news are extraordinarily elusive concepts, with no generally agreed upon meaning in law. As a result, it has left governments with excessive discretion in determining what is or is not fake news, or what is a mistake and what is truth. Nevertheless, a wide variety of terms have been used to describe what can be broadly described as fake news. These include disinformation,²⁶ misinformation²⁷ and even malinformation.²⁸ Some authors have even referred to all three as part of a broader category, referred to as information disorder.²⁹ However, for the purposes of this article, it can be said that fake news involves various categories of information offered as news that can be either wholly or partially false, or contains deliberately misleading elements incorporated within its content, or context or information that is intentionally and verifiably false aimed at misleading others.³⁰ This can also include misleading information that is designed to cause confusion, especially in the minds of voters.³¹

There are also many ways in which news is fabricated and spread, and rapid advances in technology are making this more sophisticated by the day.³² This can be through inauthentic actors, who are individuals or organisations working to mislead others about who they are or what they are doing. Additionally, it can be through coordinated actors. Such actors may

²⁶ This is false and misleading information intentionally spread to cause harm or benefit the perpetrator, directed at an individual, groups, institutions or processes. See further, Beata Martin-Rozumilowicz and Rastro Kuzel, “Social media, disinformation and electoral integrity,” IFES working paper, https://www.ifes.org/sites/default/files/ifes_working_paper_social_media_disinformation_and_electoral_integrity_august_2019_0.pdf visited 15 March 2022; and CSIRT, “Fake news, misinformation and disinformation. Same, same or different?” <https://csirt.uct.ac.za/fake-news-misinformation-and-disinformation-same-same-or-different> visited 15 March 2022.

²⁷ This refers to information that is false or misleading, but shared without the intent to cause harm or the realisation that it is incorrect. The actor in such a case may inadvertently perpetuate the spread of disinformation by sharing content with others which they believe to be true. See further, Beata Martin-Rozumilowicz and Rastro Kuzel, “Social media, disinformation and electoral integrity,” (n. 26).

²⁸ This is information that is accurate but is shared with intent to cause harm or benefit the perpetrator, which often occurs when private information is moved into the public sphere. See Beata Martin-Rozumilowicz and Rastro Kuzel, “Social media, disinformation and electoral integrity,” (n. 26).

²⁹ See *ibid.*, but more generally, Claire Wardle, “Understanding information disorder,” <https://firstdraftnews.org/long-form-article/understanding-information-disorder/> visited 14 March 2022, where this concept is described as including satire or parody, false connection, misleading content, false context, impostor content, manipulated content and fabricated content.

³⁰ Also see Herman Wasserman, “Fake news from Africa: Panics, politics and paradigms” (2020) 21:1 *Journalism* 4.

³¹ The extreme form of this, which is punished in most jurisdictions is hate speech which comprises of polarising expression or speech that promotes intolerance, hatred and incitement to violence by explicit or indirect reference to race, national or ethnic origin, religion, gender, sexual orientation, age, disability or other immutable groupings. See, Mohan, Vasu and Barnes “Countering hate speech in elections: Strategies for electoral management bodies,” IFES white paper, <https://aceproject.org/today/feature-articles/countering-hate-speech-in-elections-strategies-for> visited 13 March 2022.

³² For a fuller discussion of this see Beata Martin-Rozumilowicz and Rastro Kuzel, “Social media, disinformation and electoral integrity,” (n. 26) 10–11.

undertake influence campaigns at the behest of the government or organised non-state actors to distort domestic or foreign political sentiment. They usually deploy an array of disinformation tactics aimed at manipulating public opinion and undermining the integrity of the information environment. Another form of this are internet trolls, which can consist of human users or internet platforms who intentionally harass, provoke or intimidate others, often to distract or sow discord. Trolls can also engage in inauthentic behaviour. False news can also be spread through inauthentic content. This can take the form of junk news, which usually includes the publication of propaganda and ideologically extreme, hyperpartisan or conspiratorial political news and information under the guise of providing credible information or presenting verifiably false content or commentary as factual news.

The other fairly common form are deep fakes, which consist of digitally altered images and videos using artificial intelligence to combine real source material with manufactured content to create hyper-realistic portrayals of individuals saying or doing things that they never said or did. Another manner of spreading fake news is through manufactured amplification of information. This may take the form of computational propaganda. This is usually carried out using algorithms, automation, and human curation to purposefully distribute misleading information over social media networks. It involves mimicking real people so as to manipulate public opinion across a wide range of platforms and device networks.³³ The most frequent examples of these are bots. These are simple computer codes that can stimulate human beings and make posts online.³⁴ An equally frequent form of manufactured amplification is content or click farms. These are commercial enterprises that employ individuals to generate fraudulent profiles, posts and likes to promote a specific narrative online.³⁵

It is to the impact that these diverse forms of fake news have on Africa's faltering attempts to entrench a culture of democracy and constitutionalism that we now turn.

1V. The impact of fake news on Africa's fragile democracy

As pointed out earlier, much has been written about fake news, but our focus here is on its impact on democracy in Africa. From this perspective, it can be said that elections, electoral processes and democratic institutions have been one of the main targets of fake news. This has compounded the challenges posed by the increasingly flawed nature of African elections and the weak democratic institutions such as electoral management bodies (EMBs) that are unable to check against the debilitating consequences of disinformation. Perhaps what underscores the serious threat this poses to Africa's fledgling democracy is the nature and extent of the problems caused by fake news.

³³ See Woolley Samuel and Philip Howard, "Computational propaganda worldwide: Executive summary," <https://demotech.oii.ox.ac.uk/wp-content/uploads/sites/89/2017/06/Casestudies-ExecutiveSummary.pdf> 6 visited 15 March 2022.

³⁴ Coordinated efforts of multiple bots are referred to as botnets.

³⁵ This is referred to as troll farms when coordinated efforts to direct the attention of internet trolls is directed towards targets or in promotion of certain messages use the same model as content farms.

One important feature of the African context must be noted. Studies have shown that people are more attracted to news with false information than that with true information. For example, a Michigan Institute of Technology (MIT) Media Lab 2018 study on the spread of news stories on Twitter found that ‘falsehood diffused significantly farther, faster, deeper, and more broadly than the truth in all categories of information’.³⁶ It noted that falsehoods were ‘70 per cent more likely to be retweeted than the truth’.³⁷ Africans, because of the low literacy rates on the continent, are particularly vulnerable to influence by fake news.³⁸ The effect is that, through fake news, Africa’s masses of uninformed voters are being converted into misinformed voters.

The credibility and integrity of many elections and electoral processes in Africa are undermined through fake news published on social media by diverse actors. It has been shown that online disinformation is progressively compromising the quality and credibility of elections in Africa.³⁹ The sources of this disinformation range from state actors, mainly made up of the government officials and some of its institutions, to non-state actors such as private individuals, political parties and other social groups. Other non-state actors such as foreign governments and multinational companies with geopolitical or economic interests also use social media platforms to skew elections to promote their diverse interests. We can do no more than provide a few examples of how these different actors have used disinformation on social media outlets to influence elections and electoral processes in Africa and in this way contribute significantly to the present democratic recession on the continent.

The interactive nature of social media provides ordinary people with an opportunity to ventilate and share their political views on platforms such as Facebook, Twitter and WhatsApp. Unlike in traditional media, ordinary citizens are, as a result of digital technology, as much active producers of information as they are passive consumers. The challenges in regulating the use of these platforms have made them easy means of spreading false news, especially during elections. For example, research conducted between May and June 2021 in Kenya showed that a shadowy group of financiers deployed an army of Twitter influencers to coordinate a disinformation campaign in favour of a government-backed constitutional amendment. They were paid to directly harass and discredit journalists, judges and civil activists on Twitter with messages aimed at tricking people into thinking that the opinions trending were popular, in what the researchers described as equivalent to ‘paying crowds to

³⁶ See Vosoughi et al., “The spread of true and false news online,” <https://pubmed.ncbi.nlm.nih.gov/29590045/> visited 14 March 2022.

³⁷ *Ibid.*

³⁸ Not only are nine of the 10 least literate countries in the world found in Africa, but with a literacy rate of 65.47 per cent as compared to a global literacy level of 86.48 per cent, the continent lags behind the rest of the world. See, “World literacy rate 1976-2021,” <https://www.macrotrends.net/countries/WLD/world/literacy-rate> visited 13 March 2022 and “Sub-Saharan Africa literacy rate 1985-2021,” <https://www.macrotrends.net/countries/SSF/sub-saharan-africa-/literacy-rate> visited 14 March 2022.

³⁹ See Pauline Bax and Leni Prinslow, “Online disinformation campaigns undermine African elections,” <https://www.bloomberg.com/businessweek> visited 15 March 2022.

show up at political rallies'.⁴⁰ Twitter is alleged to have benefited from this by placing adverts within the disinformation campaign.

Political candidates and elected leaders in many African countries now frequently use social media not only to spread disinformation but also to foment hatred and sometimes undermine trust in the electoral process. Just before the 2019 elections in Nigeria, President Muhammadu Buhari was forced to appear on live television to dispel false claims spread via Facebook posts and WhatsApp groups that he had died and had been replaced by a Sudanese named Jubril.⁴¹ There have been numerous other reports of the use of different forms of fake news, such as photoshopping of leaders, to influence the outcome of elections or political developments in many other African countries.⁴²

Manipulation of social media via fake news now provides most African dictators, particularly those who have removed term limits provision from their constitutions, with subtle but effective means of winning elections that make old techniques such as vote-buying, ballot-box-stuffing and double-voting seem positively crude and out-dated.⁴³ However, it is really the meddling in African elections through the internet and social media by foreign actors that poses one of the gravest threats to the integrity of elections on the continent and the future of democratic consolidation. There are at least three forms of this, namely meddling by foreign states, meddling by foreign professional public relations firms posing as consultants, and meddling by foreign interest groups. The first two forms pose the greatest threat and have been largely facilitated by the open, anonymous and borderless nature of modern digital technology. This has given rise to what can only be referred to as an era of digital authoritarianism in Africa.

Whilst the most recent and notorious example of the use of the internet and social media to influence the outcome of elections is Russia's interference in the 2016 US presidential elections,⁴⁴ foreign meddling in African elections, particularly by France in its former colonies, is well documented and pre-dates this.⁴⁵ However, the new digital technologies have merely

⁴⁰ See Emmanuel Onyango, "Kenyan influencers paid to take 'guerrilla warfare' online," <https://www.bbc.com/news/world-africa-58474936> visited 15 March 2022.

⁴¹ See Marshall, "Fake news" (n. 22).

⁴² *Ibid.*, at 8, where he recounts an incident in December 2018 when the Gabonese president, Bongo Ali, narrowly averted being overthrown in a coup after false stories were spread on social media that he had died whilst undergoing medical treatment and his televised addresses to the nation were deepfake falsified videos indistinguishable from real footage.

⁴³ Seventeen of the 54 African leaders have removed the term limits from their constitutions. They include the longest-serving leaders on the continent, namely Teodoro Obiang Nguema of Equatorial Guinea (42 years), Paul Biya of Cameroon (39 years), Denis Sassou Nguess of Republic of Congo (37 years), Yoweri Museveni of Uganda (35 years), Paul Kagame of Rwanda (21 years), Isaias Afwerki of Eritrea (28 years), Ismail Omar Guelleh of Djibouti (22 years) and Faure Gnassingbe of Togo (16 years). The constitutions of five African countries have no term limits, namely Eritrea, Ethiopia, Eswatini, Lesotho and Somalia.

⁴⁴ See, "Senate report shows that Russia interfered in the 2016 U.S. elections," <https://www.pbs.org/newshour/politics/senate-panel-finds-russia-interfered-in-the-2016-us-election> visited 13 March 2022, and "Russian interference in 2016 US elections," <https://www.fbi.gov/wanted/cyber/russian-interference-in-2016-u-s-elections> visited 13 March 2022.

⁴⁵ See, Daniel Bon and Karen Mings, "French intervention in Africa: Dependency or decolonisation," (1980) 27:2 *Africa Today* 5–20; and Guy Martin, "Continuity and change in Franco-African Relations," (1995) 33:1 *Journal of Modern African Studies* 1–20.

made it easier for France, and other foreign countries, such as China and Russia, to manipulate African elections anonymously in pursuit of their own political and economic interests.⁴⁶ For example, in 2020, Facebook said that rival French and Russian disinformation campaigns had been seeking to deceive internet users – and unmask each other – in the Central African Republic (CAR) before the presidential and parliamentary elections of 27 December that year. It pointed out that this was the first time it had seen such a direct battle by the trolls of competing foreign states on its platforms, with the rivals’ fake accounts denouncing each other as fake news.⁴⁷ The battle by foreign states to interfere with elections in Africa, and through this control the different countries for their own selfish ends, is leading to an era of digital colonialism.⁴⁸ This is particularly insidious because it is increasingly difficult to distinguish between normal campaign activities by official arms of domestic political actors and the anti-democratic intervention of foreign governments with ulterior motives hiding behind diplomatic cooperation deals.

Perhaps the most worrying form of foreign digital meddling in African elections has come from a wide range of transnational companies posing as consultancies, political communication agencies or digital marketing firms. Through the manipulation of elections by spreading fake news on the internet and social media, they have professionalised and transformed this practice into a lucrative transnational business. In some instances, they conceal their identity by operating from the comfort of their offices abroad, or take advantage of countries that have cheap digital industries such as India by using troll farms located there. By this means, they are able to manipulate electoral processes in many African countries to ensure victory at all costs for many of the continent's repressive ‘sit-tight’ dictators.

The British consulting firm, Cambridge Analytica, and its parent company, Strategic Communications Laboratories, have gained notoriety in Africa for their dubious campaign practices during elections using social media platforms in Kenya and Nigeria.⁴⁹ In fact, most African presidents now rely on private and secretive professional election manipulating companies such as Cambridge Analytica, at huge cost to the taxpayers, in order to organise sophisticated campaigns to discredit their opponents and mislead voters. It is alleged that Cambridge Analytica was hired by a wealthy Nigerian to support the 2015 re-election bid of

⁴⁶ See “France is flooding Africa with fake news,” <https://newrepublic.com/article/160756/france-operation-barkhane-mali-africa-fake-news-propaganda> visited 13 March 2022; Davey Alba and Sheera Frenkel, “Russia tests new disinformation tactics in Africa to expand influence,” <https://www.nytimes.com/2019/10/30/technology/russia-facebook-disinformation-africa.html> visited 15 March 2022; and Gabriel Delsol and Claire M. Metelits, “A new type of threat: Russia, China and digital authoritarianism in West Africa,” <https://gija.georgetown.edu/2020/12/26/a-new-type-of-threat-russia-china-and-digital-authoritarianism-in-west-africa/> visited 12 March 2022.

⁴⁷ See, “French and Russian Facebook trolls fight it out in CAR elections,” <https://www.aljazeera.com/news/2020/12/15/french-and-russian-trolls-fight-it-out-in-central-africa-election> visited 14 March 2022.

⁴⁸ See Maily Fidler, “Disinformation colonialism and African internet policy,” <https://www.cfr.org/blog/disinformation-colonialism-and-african-internet-policy> visited 14 March 2022.

⁴⁹ See further, Brian Ekdale and Melissa Tully, “Cambridge Analytica in Africa – What we know,” <http://democracyinafrica.org/cambridge-analytica-africa-know/> visited 14 March 2022; Marshall, “Fake news” (n. 22); and Wasserman, “Fake news from Africa” (fn. 30).

then Nigerian president, Goodluck Jonathan.⁵⁰ The company worked with an Israeli intelligence firm, Black Cube, to acquire hacked medical and financial information about Jonathan's opponent, Muhammadu Buhari. It also promoted a graphic anti-Buhari video which suggested that Buhari, if elected, would support the terrorist group Boko Haram and end women's rights. Cambridge Analytica is also said to have worked on both Uhuru Kenyatta's 2013 and 2017 presidential election campaigns. In fact, it is alleged that it was paid as much as USD 6 million for the 2017 campaign.⁵¹

A network of Facebook accounts, engaged in coordinated inauthentic behaviour in Angola, Senegal, Togo and Niger, have been traced to an Israeli-based private intelligence firm, the Archimedes Group.⁵² Oxford's Computational Propaganda Project noted that social media bots, troll armies and other miscellaneous cyber troops were used by at least 13 different African governments to manipulate public opinion in 2020.⁵³ A 2021 online survey in three countries, Kenya, Nigeria and South Africa, tried to find out, inter alia, the extent of the prevalence of fake news in these countries and those who were responsible for spreading it.⁵⁴ It found that almost half the media consumers in these countries were exposed to fake news about politics on a regular basis. What was perhaps disconcerting about this was the fact that the research found that about a third of those who encounter these fabricated stories about politics share it with others. As was pointed out earlier, largely due to misinformation and disinformation there is now a very low level of trust in the media in Africa generally, especially in those countries where the state controls through either ownership or regulation, remains strong.

The third form of external meddling in African elections comes from foreign interest groups. Whilst the activities of some of these interest groups may well be aimed at advancing democracy using the internet and social media in support of local groups campaigning for worthy causes such as civil and political rights, environmental protection, and human rights in general, some may well cross the often-thin line between permissible and impermissible campaign activities. For instance, in a deeply polarised environment where a minority group is campaigning for self-determination, a social media campaign supported by foreign interest groups one way or the other is bound to be seen as controversial.

At the end of the day, Africa's rapid digitalisation is exposing the continent to an era of digital colonialism in which foreign actors are exploiting social media technology to propagate disinformation that helps the continent's strongmen to win elections. In pursuing their selfish economic and sometimes political benefits, there is no regard for the welfare of ordinary citizens. The evidence so far suggests that unless social media is regulated in a manner that

⁵⁰ See, Brian Ekdale and Melissa Tully, "Cambridge Analytica in Africa – What we know," (n.49).

⁵¹ See Cheeseman and Klass, "How autocrats rig elections" (n. 13).

⁵² See Marshall, "Fake news" (n. 22).

⁵³ See Computational Propaganda Research Project, "Industrialised Disinformation 2020 Global Inventory of Organised Social Media Manipulation,"

<file:///G:/My%20Drive/Work%20Documents/Desktop%20Files/DENMARK%20JAN%202022/CyberTroop-Report-2020-v.2.pdf> visited 15 March 2022.

⁵⁴ See Wasserman, "Fake news from Africa" (n. 30).

would stop it being used to spread fake news that misleads voters, especially during elections, the already fragile democratic systems and weak institutions on which it is perilously perched might collapse. The question this poses is: How is this to be done?

V. How to deal with the challenges posed by fake news

Fake news in all its diverse forms threatens to undermine most of the limited gains made since the 1990s to promote a culture of democracy, constitutionalism and respect for the rule of law in Africa. It is a threat that is likely to increase with the rapid advances in the technology of device systems designed to deceive the public that make verification of authentic online content difficult. The fundamental values of democracy, which includes truth-telling and informed decision-making in choosing leaders, are undermined. For example, in Kenya, several members of parliament complained of cyberbullying, with some saying they had been receiving unsolicited nude pictures and others claiming their names had been used to open fake social media accounts.⁵⁵

Unlike misinformation from traditional media, countering fake news requires a new set of policies and actions not only from the state and state institutions but also civil society actors, internet users and the technology companies that create the media platforms. Although the threats posed to democracy require a combination of legislative and non-legislative interventions, it is necessary to appreciate the challenges that introducing such measures pose before considering how these measures can be tailored to deal adequately with these threats.

A. Challenges in regulating the spread of fake news

The movement in favour of regulating social media is global. However, a number of special problems are posed by any measures, whether legal or otherwise, aimed at dealing with disinformation. One of these is the inherently transnational nature of the problem. Many of the propagators of fake news are either invisible actors from other jurisdictions or multinational corporations operating from abroad. They are not easy to regulate in the same manner that traditional media are mainly regulated by national laws.

Unlike traditional media, social media is usually interactive and involves the use of digital online technology that is often audience-created and user-driven. As a result, it is not easy to adopt effective laws that regulate the use of social media platforms by ordinary citizens, trolls and political party candidates or their members in the same way as journalists in audio-visual or print media can be controlled.

Fake news seriously impinges on political rights, such as the right to political participation, and several other fundamental rights, including the right to human dignity, the right to privacy, freedom of religion, belief and opinion, and freedom of expression. However, most relevant and potentially applicable international and national regulatory standards were written to deal with the problems posed by traditional media. These standards did not

⁵⁵ See Dickens Olewe, “Kenya, Uganda and Tanzania in 'anti-fake news campaign,” <https://www.bbc.com/news/world-africa-44137769> visited 15 March 2022.

contemplate fake news spread on social media by ordinary citizens or foreign non-state and state entities.

Perhaps the biggest challenge in regulating the misuse of social media has been finding the right balance between fundamental rights which need to be protected, such as national security, privacy and personal freedom, and the restrictions that are needed to counter the harmful effects of malicious and false news communicated on social media.⁵⁶ This raises the questions of the different regulatory and non-regulatory options that are available and whether adopting these can protect democracy from the wanton abuses of the internet and social media.

B. Legislative options and their challenges

Legislative approaches to dealing with fake news in Africa, especially when it concerns elections, election processes and institutions designed to promote democracy, could be placed under three categories. Most states use one or more of these three approaches. First, some simply apply the current laws to online offences and other violations of the law through disinformation. A second approach is the adoption of specialised laws to deal with fake news, while a third approach is one in which special powers are given to democracy-promoting institutions, such as election management bodies (EMBs), to deal with fake news spread during election campaigns.

(i) Regulating fake news using ordinary laws

Many African countries have regularly used colonial-era criminal libel and defamation laws to suppress what they perceive as fake news. They have used provisions in the criminal codes that criminalise acts such as spreading or initiating false rumours, false accusations or rumours against government or public authorities, such as the president and his ministers, fomenting dissent, hatred, violence or political or racial disturbance through false news. This is a blunt instrument that has regularly been used not just to prosecute ordinary citizens and journalists alleged to have been responsible for disseminating false news, but also to suppress dissent by targeting opponents of the government, especially members of the opposition.

Under the pretext of suppressing fake news, the online activism not only of ordinary citizens, but most significantly, opposition parties and their leaders, is increasingly circumscribed and criminalised. As Kinfé Yilma rightly points out, disinformation in the context of elections can call into play several laws, such as electoral law, data protection law, media law and pieces of legislation governing telemarketing, spam and advertisements.⁵⁷ Rather than crafting specific laws to deal with this, many African countries have opted to use current laws which are not only inadequate to deal with this phenomenon but leave them (the countries) with considerable discretion to abuse these laws.

⁵⁶ See Mark Turnbull, “Tongue control. Africa faces a balancing act on social media regulation,” <https://www.theafricareport.com/20741/africa-faces-a-balancing-act-on-social-media-regulation/> visited 15 March 2022.

⁵⁷ Knife Yilma, “On disinformation, elections and Ethiopian law,” (2021) 65:3 *Journal of African Law* 367.

(ii) *Use of specific anti-fake news laws*

A number of countries have adopted specific laws to deal with the fabrication and spread of fake news online. The loose wording of many of these laws has enabled many dictatorial regimes on the continent to use these to stifle free expression, especially the free discussions on serious political issues during elections. In most countries, the ravages of the COVID-19 pandemic and the desire to stop the spread of fake news that was perceived as frustrating the measures governments were taking to stop the spread of the pandemic by discouraging people from taking vaccinations and disseminating information that causes panic and anxiety, provided a perfect excuse.⁵⁸ A few examples of this will suffice.

A number of laws that were proposed at one stage or another in Kenya, Tanzania and Uganda give some indication of the extent to which some leaders are prepared to go under the pretext of suppressing false news.⁵⁹ A new law in Kenya, the Computer Misuse and Cybercrimes law, criminalises abuse on social media and cyberbullying. Under this law, the spreading of ‘false information’ can result in a lengthy jail term for the offender. It proposes a fine of USD 50,000 and/or up to two years in prison for publishing ‘false’ information. In Tanzania, the government, under the pretext of protecting its citizens from ‘lies’ being spread online, published new regulations which require bloggers to pay USD 920 for the privilege of posting content online. A controversial blogging law contains rules that require all online publishers, including bloggers, vloggers and podcasters, to register and pay USD 480 for a three-year licence, plus an annual fee of USD 440. The law punishes offenders with a fine of not less than USD 2,000 or imprisonment of not less than 12 months, or both.⁶⁰ Uganda’s Computer Misuse Law also contains many vaguely worded provisions that can easily be used to stifle free political discussion. In fact, President Yoweri Museveni’s government had at some stage tried to impose a tax on Facebook and WhatsApp, saying the revenue collected would help the country ‘cope with consequences of Olugambo [gossiping]’.⁶¹ It is clear that these so-called ‘fake news’ laws in Kenya, Uganda and Tanzania are not really meant to prevent the spread of disinformation but rather to muzzle the independent media and suppress information that the governments are not comfortable with.⁶²

In general, in most African countries, safeguarding national security and ensuring social harmony has been proffered as the primary objective of anti-fake news legislation.⁶³ However, a closer look at most of these laws show that they are driven not by a genuine desire to curb ‘fake news’ but by other agendas. The repressive nature of these laws and the manner in which

⁵⁸ In fact, some have argued that as much as there is a need to curb the malicious falsehoods being spread about COVID-19, the best way governments should deal with disinformation about the virus is for them to promptly provide reliable information. See, CSIRT, “South Africa brings law into place to stop the spread of fake COVID-19 news,” <https://csirt.uct.ac.za/south-africa-brings-law-into-place-to-stop-the-spread-of-fake-covid-19-news> visited 15 March 2022.

⁵⁹ See Olewe, “Kenya, Uganda and Tanzania,” (n. 55).

⁶⁰ The High Court however halted the implementation of the regulations after a group of activists and representatives from the media challenged them.

⁶¹ For a full discussion of this, see Olewe, “Kenya, Uganda and Tanzania” (n. 55).

⁶² Other examples include several provisions in Nigeria’s Cybercrimes (Prohibition, Prevention Etc) Act, and the Malawian Electronic Transactions and Cybersecurity Act.

⁶³ See Yilma, “On disinformation” (n. 57).

they are enforced shows that the real objective is to enable incumbent regimes to strengthen their hold on power.

(iii) Countering fake news through democracy-enhancing institutions

In order to protect electoral integrity in the digital age, there is a need to strengthen the capacities of defenders of electoral integrity such as EMBs. They are a critical pillar for fostering democracy and are often a key target of fake news. Such fake news may seek to undermine faith in the value or integrity of elections or the election officials, incite electoral violence or spread suspicions of fraud that may pave the way for post-electoral legal challenges. In order to counter the risks posed by fake news, it may be necessary to enact legislation that confers powers on EMBs to adopt regulations, guidelines and codes of good political practice that enables them to monitor the online activities of political parties, especially during election campaigns. These should also give them the powers to impose sanctions on political actors and political parties that violate these regulations. However, for this to happen, the EMB must be genuinely independent and not subject to partisan manipulation.⁶⁴

One of the most independent EMBs on the continent, the South African Independent Electoral Commission (IEC), provides an example of the role that these bodies can play in countering fake news, especially during elections. Their intervention is based on section 89(2)(c) of the Electoral Act and Item 9(1)(b) of the Electoral Code of Conduct, which prohibits a false statement of fact and not the expression of comments and ideas during electoral campaigns. The application of these laws was tested in the Constitutional Court case of *Democratic Alliance v African National Congress and Another*.⁶⁵ The Court held, inter alia, that a text message sent by a political party to 1.5 million citizens in 2014 about allegations of corruption about then-President Zuma was permitted electoral communication and not prohibited by section 89(2) of the Electoral Act. The IEC established a Directorate of Electoral Offences which investigates any complaints against alleged breaches of the Code of Conduct and prohibited conduct. The IEC also has an online reporting platform for citizens to report instances of alleged digital disinformation. This complements current channels for investigating breaches of the Code of Conduct, such as the Electoral Court. Nigeria's Independent National Election Commission (INEC) has also developed elaborate strategies to counter disinformation particularly during the electoral periods.⁶⁶

In this era of information overload and fake news, it is critical that EMBs are able to play a proactive role in addressing this disinformation epidemic. However, as pointed out above, given the lack of independence of most EMBs in Africa, especially in francophone Africa, these bodies have a very limited ability to effectively monitor and address fake news about elections or electoral processes.

⁶⁴ See Paul Otieno Onyalo, "Election management bodies in Africa: The pity of it all," (2020) 4:6 *International Journal of Humanities and Social Science* 164–171.

⁶⁵ (CCT 76/ 14) [2015] ZACC 1.

⁶⁶ See further, "Strategic communication and voter education to mitigate disinformation threats," <https://counteringdisinformation.org/topics/embs/1-strategic-communication-and-voter-education-mitigate-disinformation-threats> visited 15 March 2022.

C. Informal and other non-regulatory measures to counter fake news

To address some of the negative effects of disinformation, especially when it relates to democracy, democratic processes and democratic institutions, state and non-state actors, both national and international, have adopted a number of informal and other non-regulatory measures. In some instances, these do little to deal with the problem, or more precisely do more harm to the course of democracy than good.

Perhaps the most common extra-legal measures that many African governments have used to counter what they perceive as fake news is social media or internet shutdown or web filtering to block some websites. Another censorship tactic that is commonly used is internet throttling. This restricts internet speeds so severely that anything beyond simple text-based communications become difficult. Ten African countries were subjected to these arbitrary measures in 2021, making the continent the most censorship-intensive region in the world.⁶⁷ The shutdowns usually targeted apps such as WhatsApp, Skype, Facebook Messenger, Viber, and platforms such as Facebook, Twitter, and Instagram. A myriad of reasons, ranging from national security to fear of violence during public demonstrations, are usually given as the rationale for these extreme measures, but hardly any clear legal basis is provided to justify such action. For example, in 2021, all the ten instances of social media shutdown cases were politics-related. In the Republic of Congo, Uganda and Zambia, the shutdown took place during their presidential elections; in Burkina Faso, Senegal and South Sudan, this was done during public protests; and in Chad, Ethiopia, Nigeria and Sudan, this action was provoked by political turmoil.⁶⁸

Generally, most shutdowns of the internet or blocking of access to social media in Africa by governments take place in the immediate election and post-election period. There were 213 documented incidents of full and partial closure in 2019 alone.⁶⁹ The African Commission on Human and Peoples' Rights in 2016 expressed its concern at "the emerging practice of State Parties of interrupting or limiting access to telecommunications services such as the Internet, social media and messaging services, ... during elections."⁷⁰ However, the full extent of governmental interference with social media in Africa is not easy to determine. This is because implementing shutdowns is as easy as flipping a switch, while covert blocking techniques like throttling are sometimes difficult to detect. As a result, many of Africa's autocratic leaders, such as the presidents of the Republic of Congo and Uganda, use such

⁶⁷ See ITNA, "10 African Countries Shutdown Social Media in 2021," <https://www.itnewsafrika.com/2021/12/10-african-countries-shutdown-social-media-in-2021/> visited 15 March 2022.

⁶⁸ *Ibid.*

⁶⁹ See Chrismarsden, Ian Brown and Michael Veale, "Responding to disinformation. Ten recommendations for regulatory action and forbearance," https://discovery.ucl.ac.uk/id/eprint/10113243/8/Veale_Responding_to_DisinformationTen_Recommendations_for_Regulatory_Action_and_Forbearance.pdf at 202 visited 15 March 2022.

⁷⁰ See, African Commission on Human and Peoples' Rights, "362 Resolution on the Right to Freedom of Information and Expression on the Internet in Africa – ACHPR/Res.362(LIX)2016," <https://www.achpr.org/sessions/resolutions?id=374> visited 15 March 2022.

shutdowns to silence dissent and control their populations without attracting the attention of the international community.⁷¹

Given that so many people lead their lives online, the effect of these shutdowns greatly threatens the safety, freedom and well-being of many ordinary citizens. It has also proven very costly to Africa's depressed economies.⁷² As Kinfe Yilma rightly points out, 'most individual internet users increasingly rely very much on news and other forms of information shared through these platforms'.⁷³ From his research, he has noticed that, 'instead of watching television, listening to radio or even directly accessing sites of mainstream media organisations, many people now appear to prefer receiving their daily news through Facebook or webcasts – or amateurish videos uploaded by ordinary users on YouTube.'⁷⁴ The challenge this poses to ordinary citizens is often compounded by the fact that the regulatory authorities in many countries encourage mobile carriers to entice users by offering them 'free access' to specific applications in what is usually referred to as 'zero-rating'.⁷⁵ This is often a more sinister and sophisticated form of disinformation because it limits users, with limited digital literacy, to only use and rely on information from a particular source with no opportunity to verify the credibility of such information.

In view of the threats posed by fake news, not just to democracy but often social cohesion, some of the big technology companies and social media platforms have adopted at least two measures to address the problem. The first of this is the development of sophisticated tools to counter disinformation.⁷⁶ For example, Google has introduced measures to teach digital literacy.⁷⁷ Microsoft is using artificial intelligence to build 'trustworthy algorithms to control fake news'.⁷⁸ Facebook has come up with 'third-party fact checkers, which they use to identify misinformation'.⁷⁹ To limit the spread of misinformation, WhatsApp has limited the 'forward

⁷¹ See ITNA, "10 African Countries" (n.67).

⁷² See Samuel Woodhams and Simon Migliano, "Government internet shutdowns cost \$5.5 billion in 2021," <https://www.top10vpn.com/research/cost-of-internet-shutdowns/> visited 15 March 2022. According to these authors, the 2021 government internet shutdowns cost the African countries huge sums of money. The figures are as follows: Nigeria USD 1.45 billion, Ethiopia USD 164.5 million, Sudan USD 157.4 million, Uganda USD 109.7 million, Burkina Faso, USD 35.9 million, Eswatini USD 2.9 million, Republic of Congo USD 2.5 million, Zambia USD 1.8 million, and Chad USD 1.6 million.

⁷³ Yilma, "On disinformation" (n. 57) 100.

⁷⁴ *Ibid.*

⁷⁵ See Conor Sanchez, "Misinformation is a threat to democracy in the developing world," <https://www.cfr.org/blog/misinformation-threat-democracy-developing-world> visited 16 March 2022.

⁷⁶ See *ibid.*, for a discussion of this.

⁷⁷ See, Danica Radovanovic, "Let me google this for you' – Redefining digital literacy," https://www.standardbank.co.za/southafrica/personal/learn/free-digital-literacy-course?cid=WPS_8hUIr&gclid=CjwKCAiAtouOBhA6EiwA2nLKHwaYsaIViO2_FRHO4Y2jUB2BtCu_PaOlR-LGXZadtykMbDnjllktdhoCw28QAvD_BwE visited 16 March 2022.

⁷⁸ See IAN, "Microsoft working on 'trustworthy AI' to curb fake news," <https://indianexpress.com/article/technology/tech-news-technology/microsoft-working-on-trustworthy-ai-to-curb-fake-news-5173852/> visited 16 March 2022.

⁷⁹ See Meta Journalism project, "Facebook's Third-Party Fact-Checking Program," <https://www.facebook.com/journalismproject/programs/third-party-fact-checking> visited 16 March 2022.

functionality' to five recipients and where a message has been forwarded too many times, it only allows the text to be forwarded to one recipient.

The second measure by social media platforms is a response to pressure, not only from governments, but also from users. Some of them have laid down certain rules that users must comply with, failing which, they impose restrictions on access to their accounts or even close them. For example, Twitter restricted access to Julius Malema, leader of one of South Africa's major parties, the Economic Freedom Party's account, on the grounds that he had violated their rules.⁸⁰

However, there are limitations to such self-regulatory measures, especially when it concerns some of the major abusers of social media, such as Africa's leaders. For example, in June 2021, Twitter deleted a tweet from Nigerian president, Muhammadu Buhari, in which he threatened to punish secessionists because it violated its policy of abusive behaviour. The Nigerian government immediately retaliated by imposing an indefinite suspension of the platform in Nigeria, with the Communication Minister blaming the platform for carrying out activities which he alleged, were capable of undermining Nigeria's corporate existence.⁸¹ Besides the risks of being banned by autocratic leaders in countries subject to a weak respect for the rule of law, some of the restrictions or bans have their limitations. For instance, it took several years of controversy over former President Trump's use of social media to share misleading content and inflame his millions of followers before Facebook and Twitter finally acted. Although Facebook suspended his account indefinitely, and Twitter imposed a permanent ban, he had been able to bypass many of the restrictions that were imposed on him during his presidency by these two social media giants.⁸² As a result of this, he was still able to regularly share content from his campaign on Twitter without using the common retweet or quote tweet.⁸³ In the case of Nigeria, although the ban on Twitter was greeted with widespread public outrage and condemnation, there were still many social media users who were able to access Twitter through virtual private networks.

There are other reasons why bans, especially by the network giants can only have a limited impact.⁸⁴ Besides the fact that several tools could be used to circumvent these bans,⁸⁵ there are many other reasons why banning particular accounts hardly provides an adequate solution. First, whilst most traditional cable news is defined by limited bandwidth, social media

⁸⁰ See Karen Allen, "Social media, riots and consequences," <https://issafrica.org/crimehub/iss-today/social-media-riots-and-consequences> visited 16 March 2022.

⁸¹ See "Nigeria suspends Twitter access after president's tweet was deleted," <https://www.theguardian.com/world/2021/jun/04/nigeria-suspends-twitter-after-presidents-tweet-was-deleted> visited 16 March 2022. The ban was only lifted seven months later on 12 January but, as pointed out above, it cost the Nigerian economy USD 1.45 billion. Was it worth it?

⁸² See Dipayan Ghosh, "Are we entering a new era of social media regulation?" <https://hbr.org/2021/01/are-we-entering-a-new-era-of-social-media-regulation> 16 March 2022.

⁸³ See "Trump's re-shared tweets help shield him from Twitter's bans," <https://www.washingtonpost.com/technology/2020/10/16/trump-twitter-rules/> visited 16 March 2022.

⁸⁴ See the discussion of these by Ghosh, "Are we entering a new era" (n. 82).

⁸⁵ These tools include the Virtual Private Network (VPN), which was widely used in Nigeria after the government banned Twitter, Tor, Signal, Roaming SIM card and sneakernet. These tools are discussed in Woodhams and Migliano, "Government internet shutdowns" (n. 72).

platforms offer essentially infinite bandwidth, with millions of accounts that can each target much narrower audiences. Secondly, traditional news content is produced with editorial oversight by professionals. By contrast, social media platforms are merely conduits for user-generated content subject to far much less moderation or supervision. Thirdly, viewers and readers of traditional news media must proactively choose the content they consume, whether that be a show they choose to watch or a column they choose to subscribe to. By contrast, social media users have almost no control over the content they see. Instead, as noted above, platforms use complex algorithms, sometimes with the complicity of governments, to serve content they think would keep users scrolling, often exposing them to distorted information that they may never have sought out on their own. Finally, it needs to be noted that whatever self-regulatory measures these social media platforms may want to adopt to check against the propagation of fake news, these remain constrained by their overriding goal of maximising profits for their shareholders.

Ultimately, the reality is that the danger posed by disinformation has become a societal problem requiring action not just from governments, technology companies and social media platforms but also civil society, activists and ordinary internet users. Digital literacy and greater civic education of voters, journalists and groups vulnerable to manipulation by fake news, especially during elections, such as the youths, is of the utmost importance. Educating the youth and equipping them with the skills needed to detect extremist propaganda and all other forms of fake news would not only enable them to make informed decisions but also question the legitimacy of extremist content. Ideally, the lead needs to be taken by governments and EMBs but NGOs and INGOs need to play a part. This is likely to be more effective than blocking social media.

Given Africa's authoritarian past and the present threats of an authoritarian revival in many countries, the urgency for digital literacy and voter education cannot be gainsaid. It is of the utmost importance that the African Union (AU) and its Regional Economic Communities (RECs), as part of their strategies to promote democracy, constitutionalism and good governance on the continent, develop guidelines to govern the use of digital and social media in elections within the framework of the African Charter on Democracy, Elections and Governance of 2007. This point is underscored by article 44(2) (A) (a) of the Charter, which states that "the Commission shall shall develop benchmarks for implementation of the commitments and principles of this Charter and evaluate compliance by State Parties."⁸⁶ This provides the basis for the Commission to develop clear and consistent guidelines which will not only enable it to monitor elections but also state the conditions on which it will declare any elections that it monitors as free and fair. In short, the African Charter needs carefully crafted guidelines to facilitate the monitoring of its implementation by those states that have ratified it.⁸⁷

⁸⁶ This requires an intervention similar to the "Policy guidelines on digitizing teaching and learning in Africa," https://au.int/sites/default/files/documents/38788-doc-policy_guidelines_final.pdf visited 15 March 2022, developed by the AU in response to COVID-19 and post-COVID-19 challenges.

⁸⁷ This is particularly so because under chapter 5 of the Charter, state parties to it undertake to develop the necessary legislative and policy framework to establish and promote a culture of democracy and peace.

VI. Conclusion

Fake news and all the risks it poses are set to remain a permanent feature of Africa's political, social and economic landscape, and represent one of the greatest threats to the continent's fledgling democracies. It can only get worse with the rapidly improving technology to deceive and the increasing appetite of Africa's dictators to prolong their tenure. The manner in which this is dealt with will decide the future trajectory of political and constitutional developments on the continent in the next few years. The only positive in this gloomy scenario is that ordinary Africans remain unflinching in their preference for democracy and its core democratic norms and institutions.⁸⁸ Besides this, many of the ills associated with the emergence of the internet and social media, such as political polarisation, use of disinformation and the decline in electoral integrity, predate the emergence of the internet and social media, hence the latter have only accentuated a current problem.

Nevertheless, addressing the increasing threats posed by the misuse of social media in Africa is critical to reversing the surging tide towards authoritarianism on the continent. As we have seen, there are no easy solutions. So far, different African countries have adopted different approaches that combine formal regulatory and informal non-regulatory measures to counter the harmful effects caused by the dissemination of fake news on social media. In most cases, curbing the spread of fake news on social media has been used as a convenient excuse for stifling the free speech which is the lifeblood of democracy and open government.

What is now clear is that a multifaceted and inclusive approach involving collaboration between all the different stakeholders, including governments, democracy-enhancing institutions such as EMBs, NGOs, INGOs, the AU and its RECs, is needed in order to harness the power and opportunities provided by digital and social media and mitigate the risks it poses.⁸⁹ Whilst a combination of formal regulation and informal self-regulation is imperative, there is the need to ensure that a human rights-focused approach is adopted and that none of these measures undermine core democratic principles such as freedom of expression and freedom of association. For example, a new study has recommended a number of ways in which the European Union can build counter-disinformation measures more seamlessly into its global human rights and democracy policies. The main ones consist of supporting local initiatives addressing disinformation, enhancing support to media pluralism within disinformation strategies and empowering small-scale deliberative forums targeting disinformation.⁹⁰

Given the complex and transnational dimensions of fake news, there is the need for a multilevel partnership at national, regional and continental levels to ensure coherence and maximise the benefits of social media and limit the risks it poses. From this perspective, it is necessary that the AU and its RECs take the lead as part of their agenda for promoting

⁸⁸ See the evidence of this in Gyimah-Boadi, Logan and Sanny, "Africans' durable demand for democracy," (n. 8).

⁸⁹ See, "Electoral Commission on risks presented by digital and social media to the integrity of elections," <https://www.gov.za/speeches/partnerships-5-mar-2020-0000> visited 16 March 2022.

⁹⁰ See, Carme Colomina, Hector Margalef and Richard Youngs, "Study: The impact of disinformation on democratic processes and human rights in the world," [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653635/EXPO_STU\(2021\)653635_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653635/EXPO_STU(2021)653635_EN.pdf) visited 16 March 2022.

democracy, constitutionalism and good governance. A policy framework backed by clear guidelines has become imperative.

Perhaps one of the most urgent measures that needs to be taken by all stakeholders is that of educational initiatives aimed at raising awareness of the threats and helping the public to identify fake news. This would lay the foundation for all other measures of a regulatory or non-regulatory nature. If future reforms focus on developing the benefits and opportunities provided by the new digital technologies, this can go some way towards mitigating their harmful effects.