

Digital Rights in Lesotho

AN ANALYSIS OF PRACTICES IN THE FINANCIAL AND ICT SECTORS.



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Table of contents

Contents

List of abbreviations and acronyms	1
Executive Summary	2
Introduction	4
Policy and legal framework.....	5
The role of regulators in protecting the digital rights of users	9
The digital rights culture in Lesotho	12
Methodology and Findings	14
Methodology.....	14
Findings.....	19
Express Credit	22
Standard Lesotho Bank.....	23
Econet Telecom Lesotho	25
Vodacom Lesotho	27
Comparison Between Digital Wallets	29
Comparison between Mobile Services	30
Conclusion and Recommendations.....	34
Bibliography	36
ANNEXURES	41
ANNEX – 1 – RDR – QUESTIONS USED.....	42

List of abbreviations and acronyms

2G	Second-generation cellular network
3G	Third-generation cellular network
4G LTE	Fourth-generation long-term evolution
ICNL	International Center for Not-for-Profit Law
LCA	Lesotho Communications Authority
MISA	Media Institute of Southern Africa
RDR	Ranking Digital Rights
UNCTAD	United Nations Conference on Trade and Development

Executive Summary

Using the 2020 Ranking Digital Rights (RDR) Index Methodology, this Report evaluates the human rights practices of four Lesotho companies – Econet Telecom Lesotho, Express Credit Lesotho, Standard Lesotho Bank and Vodacom Lesotho. The aim of the Report is to highlight gaps in the protection of digital rights of users of mobile, fixed network and digital financial services in Lesotho.

With digital communication and financial services growing in Lesotho, so have the inherent human rights risks for users of these services, such as unlawful surveillance, identity theft and content restrictions or internet shutdowns. This Report will benefit Lesotho's users, service providers, policymakers, and human rights defenders. It will also be useful in sensitising internet users about their digital rights at a time when Lesotho is entering an electioneering period, with elections scheduled for September 2022.

The policy, legal and institutional frameworks for the protection of the right to privacy, freedom of expression and information are unstable in Lesotho. The Constitution provides for the right to privacy and freedom of expression. However, the government frequently uses the exclusion clause to punish dissenting voices. To oversee the protection of human rights in the country, the Constitution provides for the establishment of a human rights commission. However, 30 years later, such a commission is yet to be established. In 2012, the Data Protection Act of 2011 came into effect. The Act provides for the establishment of a data protection commission whose mandate would be to create user awareness and provide oversight. However, a decade later the commission is yet to be established as dictated by law. The law on the right of access to information was drafted in 2000 but it is yet to be promulgated. According to Friedrich-Ebert-Stiftung et al. (2015) and Boloetse (2019), among others, interception of telephone calls and other communications is deemed common in Lesotho. The government has also attempted to impose restrictions on network operators to limit access to Facebook and Twitter.

For this Report, the researcher in partnership with Ranking Digital Rights adopted the 2020 RDR Index methodology¹ for localised research to evaluate some technology companies and digital services in Lesotho. This was done using a range of indicators such as privacy, freedom of expression and access to information. The technology and digital services companies used for this research are Econet Telecom Lesotho, Express Credit Lesotho, Standard Lesotho Bank and Vodacom Lesotho. Econet Telecom Lesotho and Vodacom Lesotho are telecommunications and digital wallet service providers. Standard Lesotho Bank is the largest

¹ Details of the 2020 RDR Index methodology are available at: <https://rankingdigitalrights.org/2020-indicators/>

commercial bank in the country. Express Credit Lesotho is a microfinance business. In total, eight services are evaluated: Express Credit loans, Econet's EcoCash, Econet mobile, Standard Lesotho's internet banking, Vodacom's M-Pesa and Vodacom mobile.

The findings suggest that the companies do not demonstrate a high level of commitment to the users' privacy, freedom of expression and information rights. While most companies have easy-to-access terms of service and privacy policies, they do not commit to informing users before changes come into effect. They also do not inform users about the processes they follow to respond to government demands for user information. This is critical due to users' concerns regarding illegal interception and disclosure of user communication information by some of the companies. The companies also do not provide information about the processes they follow when responding to government demands to remove, filter, or restrict content or accounts, including network shutdowns in the case of telecommunications services. Furthermore, the companies do not provide data on government demands to restrict content and accounts.

The Report recommends that civil society organisations should advocate for the adoption of human rights policies by companies and raise awareness on digital rights among users. Companies should adopt good human rights practices as articulated in the Guide for Integrating Human Rights into Business Management. Similarly, as sector regulators, the Central Bank of Lesotho and the Lesotho Communications Authority should integrate the Guiding Principles on Business and Human Rights in their regulatory regime and encourage regulated entities to adhere to them. The policymakers should ensure that the Data Protection Act of 2011 is reviewed and implemented. They should also establish a human rights commission, for which the Constitution of Lesotho has already provided.

Introduction

There are no known studies on digital rights in Lesotho. The area of digital rights is broad, but this Report focuses on freedom of expression and privacy, as articulated in the Universal Declaration of Human Rights² and other international instruments. The Report uses the 2020 RDR Index methodology to evaluate the practices of four companies: Express Credit Lesotho, Econet Telecom Lesotho (Econet), Standard Lesotho Bank and Vodacom Lesotho (Vodacom). Express Credit Lesotho is a credit-only microfinance institution and Standard Bank Lesotho is the largest bank in Lesotho. Econet and Vodacom are telecommunications companies that also provide digital wallet services.

Lesotho's budding digital ecosystem is limited in size and scope for impact (Genesis, 2021). The country is underdeveloped across all the five foundational elements of a digital ecosystem: digital infrastructure, digital platforms, digital financial services and digital entrepreneurship and digital skills (Work Bank Group, 2020). Digital financial services are available online in Lesotho. The Central Bank of Lesotho, which regulates the financial sector, lists five banks, two asset managers, 10 insurance companies and 117 microfinance institutions on its website. The Central Bank also regulates mobile money and other fintech companies (Central Bank, 2022).

The uptake of internet services depends on access, affordability, content, and applications as well as digital literacy. Internet access is provided by four companies: Leo³, Comnet⁴, Vodacom⁵ and Econet⁶. However, the market is dominated by prepaid mobile internet services provided by Vodacom and Econet. Fixed broadband is available in urban areas, but its penetration remains low at 0.236% (about 5,060 subscriptions), according to the International Telecommunication Union's 2020 data⁷. Over 90% of residential areas are covered by 2G, 3G and 4G mobile coverage. In 2020, the mobile market recorded approximately 1.5 million⁸ active subscriptions, accounting for 72.9% of the population with access⁹. Mobile internet is

² The United Nations Universal Declaration of Human Rights <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³ More information about the company can be found here: <https://leo.co.ls/>

⁴ More information about the company can be found here: <https://comnet.co.ls/>

⁵ More information about the company can be found here: <https://www.vodacom.co.ls/>

⁶ More information about the company can be found here: <https://www.etl.co.ls/>

⁷ Fixed broadband subscriptions – Lesotho.

<https://data.worldbank.org/indicator/IT.NET.BBND?locations=LS>

⁸ Mobile cellular subscriptions – Lesotho:

<https://data.worldbank.org/indicator/IT.CEL.SETS?locations=LS>

⁹ Mobile cellular subscriptions (per 100 people) – Lesotho:

<https://data.worldbank.org/indicator/IT.CEL.SETS.P2?locations=LS>

the means through which most people access the internet; it is estimated that 47.9% of the population were using the internet at the beginning of 2021¹⁰. Lesotho ranks below average on the United Nations key measures for the digitisation of government processes and the engagement of citizenry in governance through digital channels (e-participation). On the e-government development index 2020, Lesotho is ranked 135 and, on the e-participation development index, the country is ranked at 146 out of 193 countries¹¹.

The following section presents the objectives of the Report, followed by a discussion of the legal, policy and cultural context of digital rights in Lesotho. Next is the methodology used and the findings, followed by the conclusion and recommendations.

Policy and legal framework

Organisational practices concerning human rights, freedom of expression, the right to information and privacy are governed by the laws of the state. The policy and legal framework for protection of human rights and freedoms in the digital space in Lesotho consists of several laws.

The 1993 Constitution of Lesotho is the supreme law of the country. Sections 4 – 24 provide for a range of fundamental human rights and freedoms as well as exemptions. Section 133F provides for the establishment of a Human Rights Commission to monitor and promote human rights in the country. However, the commission has not yet been established. Section 118 (2)-(3) provides for judicial independence, which several reports have found to be lacking in recent years (Rickard, 2018; Shale, 2018; Amnesty International, 2021). The problem is mainly that the Constitution does not prescribe a meritocratic procedure for the appointment of judicial leaders, leaving that as a prerogative of the prime minister and thus entangling the judiciary in politics (Nyane, 2021).

While the Constitution provides for the freedom of expression, it does not expressly guarantee the right of privacy to personal data (Mudavanhu et al, 2021). Furthermore, freedom of expression is limited by clause 14(2). While the limitations are to be expected to protect the rights of others, the government frequently uses clause 14(2) to silence its critics (Friedrich-Ebert-Stiftung et. al 2015). Clause 14(2) reads as follows:

¹⁰ See Internet users in Lesotho. <https://datareportal.com/reports/digital-2021-lesotho>

¹¹ See United Nation. (2020). E-government development index: <https://publicadministration.un.org/egovkb/en-us/Data/Country-Information/id/95-Lesotho/dataYear/2020>

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

a. in the interests of defence, public safety, public order, public morality, or public health; or

b. for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, or television; or

*c. for the purpose of imposing restrictions upon public officers."*¹²

Lesotho needs laws for the protection of human rights in the digital environment. The Computer Crime and Cybersecurity Bill 2021 was an attempt to do that. The stated purpose was to combat computer crimes and ensure cybersecurity by 1) establishing the National Cybersecurity Advisory Council and the National Cybersecurity Incident Response Team, 2) providing a comprehensive list of offences committed through the misuse of electronic devices, 3) prescribing procedural standards relating to search and seizure of data and a) limiting the criminal liability of service providers for cybercrimes. However, the government did not conduct a human rights impact assessment, and the stakeholder consultation period in late August 2021 did not allow time for stakeholders to comment.

The main criticisms of the Computer Crime and Cybersecurity Bill (2021) were that 1) it criminalised false information; 2) some of the offences, such as "cyberterrorism", were too vaguely defined; and 3) it could prohibit legitimate forms of expression (ICNL, 2021). The Portfolio Committee on the Prime Minister's Ministries and Departments, Governance, Foreign Relations, and Information Cluster, which is a parliamentary committee with a remit on communications, reviewed the Bill and recommended that the National Assembly should reject it on the basis that stakeholders had not been consulted and that the Bill conflated two issues: cybercrime and cybersecurity, which ought to be presented as two separate Bills. (National Assembly, 2021). Following consultations, Bill was revised and on May 9, 2022, the National

¹² See Clause 14 (2) of the Constitution of Lesotho: <https://constituteproject.org/topics/express>

Assembly passed the Computer Crime and Cyber Security Bill (2022) (National Assembly, 2022). At the time of the creation of this Report, the Bill was awaiting Senate approval.

The Data Protection Act of 2011 came into effect in February 2012. The stated objectives of the Act are 1) to establish the Data Protection Commission and 2) to provide for the principles that reflect international best practice for the regulation of the processing of personal information by defining the rights of data subjects and the obligations of data controllers. The Act is designed to be compatible with the *European Union's Data Protection Directive 95/46 EC* to enable commercial data flows between the European Union and Lesotho and facilitate other trans-border flows of personal data for trade, economic and social development. At the time of this Report, the Data Protection Commission had not been established.

Section 8 of the Data Protection Act of 2011 lists several regulatory functions of the Data Protection Commission. They include promoting public education and awareness on the data protection principles, monitoring and enforcing compliance as well as assessment of the effectiveness of existing personal data protection policies and legislation and reporting to parliament. These regulatory functions remain unperformed. However, the Act also provides that for the purpose of safeguarding personal data, sector regulators may use their own rules. Section 5(2) of the Data Protection Act states that, "Where sector-specific legislation provides for the protection of personal information and such safeguards are more extensive than those set out under this Act, the extensive safeguards shall prevail".

The Communications Act of 2012 deals with the licensing and operations of licensed network services. It also defines offences. Of particular importance is Section 20, which provides for continued and unimpeded operations unless a licence is revoked, or the Minister imposes an emergency suspension order for the licence. This section may be used to limit internet services or impose internet shutdowns. The government of Lesotho has in the past threatened to close access to Facebook, even though that threat was never carried out.

The Communications Act of 2012, in section 44(1) (e) makes it an offence to "intentionally modify or interfere with the contents of any message sent by means of a communication service". Section 44(1) (f) makes it an offence to intercept or trace the communication of a network user without the authorisation of a court of competent jurisdiction. Yet, according to the *African Media Barometer Lesotho 2015 Report*, interception of telephone calls and other communications is deemed common (Friedrich-Ebert-Stiftung et al., 2015). A 2017 murder case involving a former prime minister of Lesotho has raised questions about the privacy of mobile network data users. This was after the police revealed that they had evidence that the former prime minister's mobile phone had been used to call a mobile phone at the scene of

the assassination of his estranged wife Lipolelo Thabane around the time of the assassination (Boloetse, 2019). According to Boloetse, neither Vodacom nor the police ever revealed how the call data was obtained, but it was speculated that Vodacom Lesotho passed over the data to the police.

However, several other laws allow for data interception without a court order. For example, Section 8 of The Prevention of Corruption and Economic Offences Act of 1999 states that "the Director of Prevention of Corruption and Economic Offences may, by notice in writing, require any person to furnish, notwithstanding the provisions of any other enactment to the contrary, all information in his or her possession relating to the affairs of any suspected person, and to produce or furnish any document or certified true copy of any document relating to such suspected person, which is in the possession or the control of the person required to furnish the information."

Also in contradiction to the Communications Act of 2012 is Section 26 of the National Security Services Act 1998, which states that "The Minister may, on an application made by a member of or above the rank of Higher Intelligence Officer, issue a warrant authorising the taking of such action in respect of any property specified in the warrant as the minister thinks is necessary to be taken in order to obtain information which: (a) is likely to be of substantial value in assisting national security services in discharging any of their function; and (b) cannot be reasonably obtained by any other means".

The law governing the identification of citizens has implications for privacy and inclusion. Section 16 of the National Identity Cards Act of 2011, as amended, requires every eligible person to use the identity card issued in terms of this Act whenever they need to identify themselves. It states, "No person who is eligible to have an identity card shall access all services unless the person produces his or her identity card issued in accordance with this Act." The implication is that citizens are not given other options for identification. In terms of data privacy, firstly, Sections 4 and 12 require the capture of basic identifying information such as name and surname, as well as biometric data. Section 6 states that the Director may, with approval of the Minister, authorise the provision of information in the Register "... b) to a government department, statutory body or private entity in the interests of public order, public safety and public health."

In 2021, the government produced three sets of legislation for regulating the digital space that drew the ire of the media and human rights defenders. First, the government published the Communications (Subscriber Identity Module and Mobile Device Registration) Regulations of 2021 in the Government Gazette in May 2021 but subsequently withdrew them when

parliament rejected them for lack of stakeholder consultations (Mohloboli, 2021). The LCA ran the consultation process again in August 2021¹³. In June 2021, the LCA put the equally intrusive Compliance Monitoring and Revenue Assurance Regulations of 2021¹⁴ up for public consultation. In September 2021, the National Assembly rejected these regulations, following a recommendation by the Portfolio Committee on the Prime Minister's Ministries and Departments, Governance, Foreign Relations, and Information Cluster. In its report, the committee argued that key stakeholders had not been consulted. A follow-up report of the committee, which endorsed the revised Communications (Subscriber Identity Module and Mobile Device Registration) Regulations, 2021, was to be tabled in parliament again in January 2022¹⁵. The revised regulations were published in the Government Gazette of 24 December 2021 and should come into operation on 24th June, 2022 (Velaphi, 2022).

There is no law to facilitate access to information held by public authorities (MISA, 2021). The government has not promulgated the Receipt and Access to Information Bill¹⁶, which was drafted by the Lesotho Law Reform Commission in 2000 (Freedom House, 2014). The access to information law fosters respect for freedom of expression and right to information, which is an integral part of human rights (Access Info Europe, 2006).

Lesotho has ratified the United Nations Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights. However, the country has not ratified international data protection and cybersecurity treaties such as the Malabo Convention and the Budapest Convention on protection of citizens' digital rights and combating cybercrime.

Lack of institutionalised protection of digital rights means that the laws are not implemented because there is no oversight.

The role of regulators in protecting the digital rights of users

Lesotho lacks overarching consumer protection legislation. The Consumer Protection Bill of 2021 was yet to be passed into law at the time of writing this Report¹⁷. Consumers are also

¹³ See <https://www.lca.org.ls/public-consultation-communications-subscriber-identity-module-and-mobile-device-registration-regulations-2021/>

¹⁴ See <https://www.lca.org.ls/press-statement-on-communications-compliance-monitoring-and-revenue-assurance-regulations-2021/>

¹⁵ See <https://nationalassembly.parliament.ls/wp-content/uploads/2022/01/Order-Paper-for-Thursday-20th-January-2022.pdf>

¹⁶ See <https://osall.org.za/docs/2011/03/Lesotho-Access-and-Receipt-of-Information-Bill-2000.pdf>

¹⁷ See <https://nationalassembly.parliament.ls/wp-content/uploads/2022/05/ORDER-PAPER-FOR-WEDNESDAY-27TH-APRIL-2022.pdf>

not informed of their rights. The Consumer Protection Association's executive director, in an interview with the *Sunday Express*, a newspaper based in Maseru, stated that "a significant number of Basotho do not know their consumer rights and in the past 14 years, the association has been raising consumer awareness to help them understand that they should demand the kind of service and quality of goods they want" (*Sunday Express*, 2018). Regulators such as the Central Bank of Lesotho and the LCA have consumer protection units to address sector-specific consumer issues in relation to regulated entities. The Central Bank regulates financial services, including digital financial services or FinTechs. The LCA regulates the communications sector, which includes fixed and mobile communications network service providers and broadcasting services.

Disclosure and transparency, and privacy protection of consumers are two of the principles outlined in the United Nations Guidelines for Consumer Protection (United Nations, 2016). The principle of disclosure and transparency includes the requirement for businesses to ensure easy access to terms of service to enable customers to make informed decisions. It is a critical area for regulatory oversight. However, without domestic legislation and enforcement, Lesotho's consumers remain unprotected.

In the communications sector, clause 4(e) of the Communications Act of 2012 states that the regulator has a duty to "protect the interests of consumers of communication services". To operationalise the consumer protection requirement, the LCA promulgated the Lesotho Communications Authority (Administrative) Rules of 2016. Clause 41(2)(c) of the Rules provides for LCA to require a licensed service provider to "publish information regarding the prices as well as terms and conditions for its standard public communication service offerings". The researchers could not establish whether the LCA has issued directives for licensed service providers to publish terms and conditions on their websites and other easily accessible channels. The researchers could also not find evidence of a requirement for service providers in the financial sector to publish their terms of service on their websites or other channels that are easily accessible to users.

On privacy, the Communications Act (2012), in Section 5(1)(n), states that the regulator has the power to "require licensees to protect the privacy and integrity of user-provided information". Section 43 of the Lesotho Communications Authority (Administrative) Rules 2016 elaborates on the obligations of every licensed service provider to protect the privacy of the users' personal data. And while the rules are in line with the provisions of the Data Protection Act 2011, they do not include data minimisation obligations. The research could not find evidence of filed complaints or compliance checks pertaining to these rules. Among the five

licensed communications service providers, only one had a privacy statement that was accessible from the home page of their website.

In the financial sector, there is a requirement for secrecy. For example, Section 29 of the Financial Institutions Act 2012¹⁸ requires secrecy of customer data, among other things. The Central Bank has listed the Data Protection Act of 2011 under the principal legislation menu on its website¹⁹, which implies that the Data Protection Act of 2011 and the Central Bank Act of 2000 constitute the principal legislations for the bank. Each of the four commercial banks has a privacy statement that is easily accessible from its website.

¹⁸ See Financial Institutions Act 2012, s. 29:
https://www.centralbank.org.ls/images/Legislation/Supervision/Acts/Insurance/Financial_Institutions_Act_2012.pdf

¹⁹ See Central Bank Acts menu: <https://www.centralbank.org.ls/index.php/legislation/121-principal/538-central-bank-act>

The digital rights culture in Lesotho

While information and communication technologies have improved the quality of life for users globally, they have given businesses and governments unprecedented capabilities for mass surveillance, which is both untargeted and without suspicion, in their endeavour to fight serious crime and terrorism (Korff et al., 2017). These risks have a chilling effect on freedom of expression and trade and may impede creativity and the human progress made possible by digitisation, as argued by Korff et al (2017). The recognition of certain rights is determined by cultural aspects, among other things (Hunt, 2007). Therefore, a human rights culture in a country determines the extent to which digital rights may also be recognised and protected.

Promotion of a culture of human rights, including digital rights, is primarily the responsibility of the State through policy and laws. Due to geographical proximity, the human rights culture in other countries on the African continent has an influence on the human rights culture of Lesotho. The concept of human rights on the continent is a contentious one (Sutherland 2018; Goggin et al., 2017).

Law-and-order policies in Africa comprise of a colonial legacy combined with practices and values influenced by traditional religious beliefs that predate colonialism (Sutherland, 2018). To illustrate Sutherland's point, Lesotho uses a dual legal system consisting of customary law codified in the Laws of Lerotholi, and the Roman-Dutch law imported from the Cape when Lesotho became a colony.

A human rights culture depends on the rule of law doctrine. The Constitution provides the basis for the rule of law. However, the rule of law is often not observed in African countries (Sutherland, 2018). Lesotho is known for a culture of impunity (Fabricius, 2017; Amnesty International, 2017). The country has been plagued by incessant violent conflict since independence in 1966 (Matlosa, 2021). The conflict has led to intractable instability and the State's failure to develop effective institutions and cultivate a culture of the rule of law. The country also has limited capacity to promote human rights (United Nations Lesotho, n.d.).

The weak human rights culture has resulted in a poor digital rights culture. The subject of digital rights often arises whenever the government intends to pass legislation that human rights defenders have described as oppressive. In October 2018, the LCA embarked on a consultation process over the draft Lesotho Communications Authority (Internet Broadcasting) Rules, 2020, which aims at regulating speech on social media. The LCA has not published the outcome of the consultation process, which points to administrative secrecy and lack of transparency.

Organisations are beginning to recognise the importance of human rights as part of corporate social responsibility (Business Leaders Initiative on Human Rights, n.d.). In addition to existing laws, the human rights practices of enterprises are guided by their corporate governance codes. In 2011, United Nations Human Rights Council unanimously endorsed the United Nations Guiding Principles on Business and Human Rights. The guiding principles set out the expectations for businesses "... to exercise human rights due diligence to identify, prevent, mitigate, and account for potential and actual adverse impacts" (Relinger, 2014, p.3).

In Lesotho, the largest enterprises are mainly subsidiaries of international companies. The human rights culture and corporate governance in these companies mainly reflect the culture of the holding company. The second-largest organisations are parastatals, which tend to borrow their human rights culture from corporate governance codes. For example, the King Code²⁰ is adopted by some boards in Lesotho. The code, among other principles, recommends that governing bodies should exercise oversight on the protection of privacy of personal information (Institute of Directors Southern Africa, 2016). However, the level of adherence to corporate governance principles is not clear.

Lesotho has an administrative culture of secrecy, which prevails in both government and private enterprises (Friedrich-Ebert-Stiftung et al., 2015). Digital rights are a relevant issue for organisations that provide services using digital channels. However, few businesses provide digital channels for customers. Lesotho is ranked 118 in the 2019 UNCTAD Business-to-Consumer eCommerce Index.²¹

²⁰ See King IV Report on Corporate Governance:
https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf

²¹ See UNCTAD Business-to-consumer eCommerce Index 2019:
https://unctad.org/system/files/official-document/tn_unctad_ict4d17_en.pdf

Methodology and Findings

Methodology

Using the 2020 Ranking Digital Rights (RDR) Index Methodology²², this Report evaluates the Human Rights practices of 4 Lesotho companies – Econet Telecom Lesotho, Express Credit Lesotho, Standard Lesotho Bank and Vodacom Lesotho. Ranking Digital Rights (RDR) is a non-profit organisation that works to promote freedom of expression and privacy on the internet. RDR has developed a comprehensive set of standards that are used to evaluate a company's commitment to human rights and policy disclosures. The RDR standard comprises 58 indicators across three categories: governance, freedom of expression as well as information and privacy. Thirteen indicators are used in the study, namely 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.

Indicators

Indicators in the governance category, designated with a "G", seek "...evidence that the company has governance processes in place to ensure that it respects freedom of expression and privacy. Both are part of the Universal Declaration of Human Rights and are enshrined in the International Covenant on Civil and Political Rights. They apply online as well as offline. For a company to perform well in this category, its disclosure should at least follow, and ideally surpass, the UN Guiding Principles on Business and Human Rights and other industry-specific human rights standards on freedom of expression and privacy such as those adopted by the Global Network Initiative" (Ranking Digital Rights, n.d.).

G1 Policy Commitment

The company being assessed should make explicit policy commitments to respect the users' freedom of expression as well as rights to information and privacy.²³ The

²² Details of the 2020 RDR Index methodology are available: <https://rankingdigitalrights.org/2020-indicators/>

²³ Details of the 2020 RDR Index methodology are available: <https://rankingdigitalrights.org/2020-indicators/>

company should have a policy that explicitly and clearly articulates commitment to human rights, including freedom of expression and right to information.

The freedom of expression and information indicators are identified with the letter "F". "Indicators in this category seek evidence that the company demonstrates that it respects 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 company's disclosed policies and practices must demonstrate how it avoids actions that may interfere with this right, except where such actions are lawful, proportionate and for a justifiable purpose. Companies that perform well on this indicator demonstrate a strong public commitment to transparency not only in terms of how they respond to government and others' demands, but also how they determine, communicate, and enforce private rules and commercial practices that affect users' fundamental right to freedom of expression and information." (Ranking Digital Rights, n.d.). Below are the "F" indicators²⁴ used in this Report:

F1(a) Access to terms of service

The company should have terms of service that are easy to find and to understand. This means that the document should be one two or clicks away from the home page, well written and available in the major language(s) in the home market.

F2(a) Changes to terms of service

The company should clearly disclose that it directly notifies users whenever it changes its terms of service, prior to these changes coming into effect.

F5(a) Process for responding to government demands to restrict content or accounts

The company should clearly disclose its processes for responding to government demands (including judicial orders) to remove, filter or restrict content or accounts.

F6 Data about government demands to restrict content and accounts

The company should regularly publish data about government demands (including judicial orders) to remove, filter or restrict content and accounts.

F9 Network management

²⁴ Details of the 2020 RDR Index methodology are available: <https://rankingdigitalrights.org/2020-indicators/>

The company should clearly disclose that it does not prioritise, block, or delay certain types of traffic, applications, protocols, or content for any reason beyond assuring quality of service and reliability of the network.

F10 Network shutdown

The company should clearly disclose the circumstances under which it may shut down or restrict access to the network or to specific protocols, services, or applications on the network

F11 Identity policy

The company should not require users to verify their identity with their government-issued identification or other forms of identification that could be connected to their offline identity.

Privacy indicators start with the letter "P". "Indicators in this category seek evidence that in its disclosed policies and practices, the company demonstrates concrete ways in which it respects the right to user privacy as articulated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other international human rights instruments. The policies should also demonstrate a strong commitment to protecting users' digital security. Companies that perform well on these indicators demonstrate a strong public commitment to transparency not only in terms of how they respond to government and others' demands, but also how they determine, communicate, and enforce private rules and commercial practices that affect users' privacy." (Ranking Digital Rights, n.d.). Below are the Privacy indicators²⁵ used in this Report:

P1(a) Access to privacy policies

The company should offer privacy policies that are easy to find and easy to understand.

P2(a) Changes to privacy policies

The company should clearly disclose that it directly notifies users when it changes its privacy policies, prior to these changes coming into effect.

P3(a) Collection of user information

The company should clearly disclose what user information it collects and how.

P10(a) Process of responding to government demands for user information

²⁵ Details of the 2020 RDR Index methodology are available: <https://rankingdigitalrights.org/2020-indicators/>

The company should clearly disclose how it responds to government demands for user information.

P11(a) Data about government demands for user information

The company should regularly publish data about government demands for user information.

Evaluation and scoring

Companies receive a cumulative score across all RDR Index categories. The results show how companies performed by each category and indicator.

The RDR Index evaluates institutional disclosure of the overarching "parent" or "group", as well as those of selected services and/or local operating companies, depending on company structure. Each indicator has a list of elements, and companies receive credit (full, partial or no credit) for each element they fulfil.

The evaluation covers disclosure for every element of each indicator, based on one of the following possible answers:

“Yes”/ full disclosure. Company disclosure meets the element requirement.

“Partial.” Company disclosure has met some but not all aspects of the element, or the disclosure is not comprehensive enough to satisfy the full scope of what the element is asking for.

“No disclosure found.” Researchers were not able to find information provided by the company on their website that answers the element question.

“No.” Company disclosure exists, but it specifically does not disclose to users what the element is asking. This is distinct from the option of “no disclosure found,” although both result in no credit.

“N/A.” Not applicable. This element does not apply to the company or service. Elements marked as N/A will not be counted for or against a company in the scoring process.

The banking sector in Lesotho is characterised as a monopoly or "perfectly colluding oligopoly" (Moshoeshe et al., 2021). Similarly, the telecommunications sector lacks competition (Gillwald et al., 2017). The researchers selected Express Credit, Econet Telecom Lesotho, Standard Lesotho Bank and Vodacom for the study based on either market concentration or

popularity in the market. Two telecommunications companies, which are also digital wallet providers, were selected because they are the only market players in the mobile voice network services; they dominate the internet and digital wallet markets. Econet Telecom Lesotho is dominant in the wired-broadband market as well. Being dominant in these four markets, Econet Telecom Lesotho, and Vodacom Lesotho's privacy and freedom of expression and information practices affect a large part of the population.

The assessment was conducted between December 2021 and March 2022. To select the companies for this study, a few factors were considered:

- a) The company's home jurisdiction must be Lesotho.
- b) It must provide services online, for example, through a website or App.
- c) The researcher can access the App or website for the purpose of the study

Econet Telecom Lesotho (Econet)

Econet is a subsidiary of Econet Wireless International, which owns 70% of the entity while 30% is held by the Government of Lesotho (Econet Telecom Lesotho, n.d.).²⁶ It operates under two telecommunications licences: a mobile network licence and a fixed network licence, both issued by the LCA. Under these two licences, Econet provides a mix of services that include mobile voice and internet services, fixed-line broadband and mobile money services. It has nationwide mobile network coverage in the mix of 3G and 4G. Its mobile network covers all major towns in the country, and it provides 3G and 4G LTE as well (Econet Telecom Lesotho, n.d.). The fixed broadband service is available in a few urban areas and has about 5,000 subscriptions, even though the company is the dominant player in this market. Econet also provides a digital wallet service, branded EcoCash, which is regulated by the Central Bank of Lesotho.

Express Credit

According to a statement on its website, Express Credit Lesotho is a Tier III credit-only Microfinance Institution – licensed and regulated by the Central Bank of Lesotho. It is a global consumer finance company operating in Lesotho, Zambia, Botswana, Namibia, and Malawi.²⁷ Its target market is government employees. The lending business in Lesotho is highly competitive but the firm is one of the few that provide services through multiple channels.

²⁶ See <https://www.etl.co.ls/about-econet/>

²⁷ See <https://www.expresscredit.co.ls/page/about-us>

Standard Lesotho Bank

Standard Lesotho Bank is the largest bank by assets in Lesotho. It is part of the Standard Bank Group, which holds 80% of its shares (Standard Bank Group, 2021). Standard Bank has the largest footprint in terms of physical branches. In addition to physical branches, it provides digital channels through a browser and mobile app.

Vodacom Lesotho (Vodacom)

Vodacom is part of the Vodacom Group. Vodacom South Africa has a controlling stake in Vodacom Lesotho, and Vodafone has a controlling stake in Vodacom South Africa. Vodacom dominates the mobile voice and data services market and the mobile money market through its digital wallet service branded M-Pesa. It operates under an integrated licence issued by the Lesotho Communications Authority and a Financial Service's licence issued by the Central Bank of Lesotho. Its mobile network covers over 95% of residential areas. It has 1.2 million subscriptions and a market share of 88%.²⁸

Findings

To give a general picture, this section begins with a comparison of the companies and services with respect to the three categories in which they were assessed. This is followed by an evaluation of each company on all applicable indicators.

Governance (G1) – Policy Commitment

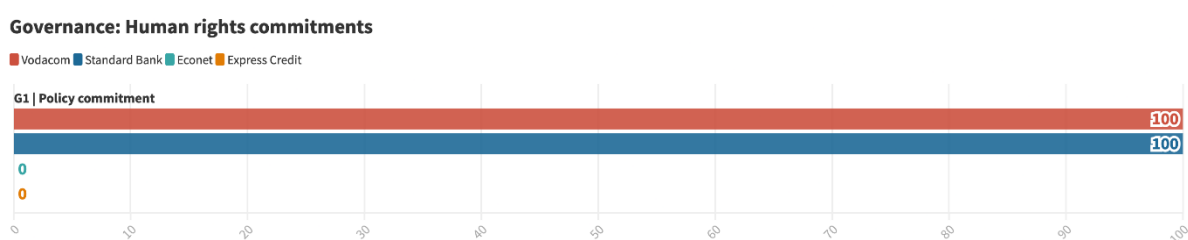


Figure 1: Policy commitment to users' freedom of expression and right to information and privacy

Source: Derived from data collected for this study.

As Figure 1 shows, for this indicator, the disclosures by the Vodafone Group and Standard Bank Group are comprehensive, hence the full credit. Vodafone Group human rights policy is aligned to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, among other international conventions and instruments. It makes a commitment to "...respect and seek to protect our customers' lawful rights to hold and express opinions and share

²⁸ See https://www.vodacom.co.ls/?page_id=2982

information and ideas without interference".²⁹ Standard Bank Group's policy statement reads: "Human rights are the basic and universal rights that underpin each person's inherent freedom, dignity and equality as outlined in the United Nations Universal Declaration of Human Rights and the International Labour Organisation Declaration on Fundamental Principles and Rights at Work. We have used these universal benchmarks as our starting point for defining human rights."³⁰ The study did not find any disclosures by Econet Wireless Global group and Express Credit.

Freedom of Expression and Information

Terms of service establish the business relationship between a user and the company. The user knows in advance what content and practices are prohibited when using the digital service. It is critical for a company's terms of service to be accessible on the company's website or app and within a few clicks. Also, the terms of service must be in the major languages spoken in the country. They must also be clearly written in accessible language and the correct syntax. None of the assessed companies received a full F1(a) score because none provided terms of service for a product, in both Sesotho and English, even though the terms of service found were both easy to find and understand in one language.

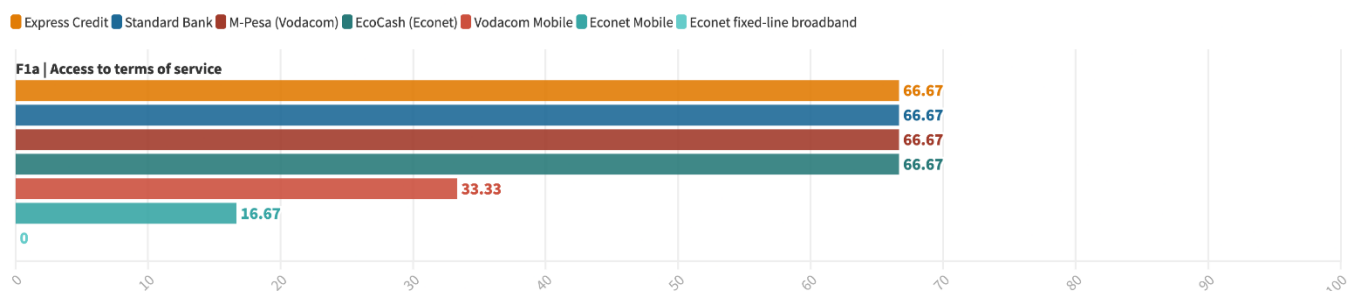


Figure 2: Access to terms of service.
Source: Derived from data collected for this study.

Figure 2 shows that disclosures varied by service but for most services, companies ensured that the terms of service were easy to find and understand. However, among the products studied, only Vodacom's mobile service's terms were available in Sesotho. The researchers could not find the English version of the terms on Vodacom's website and the document lacked clarity and in most cases the syntax was incorrect. Regarding Econet mobile, the terms and conditions for prepaid mobile services could not be located, even though most users are

²⁹ See Vodafone Group Human Rights Policy Statement: <https://www.vodafone.com/content/dam/vodacom/sustainability/pdfs/vodafone-group-human-rights-policy-statement-december-2019.pdf>

³⁰ See Standard Bank Group Statement on Human Rights: https://www.standardbank.com/static_file/StandardBankGroup/Who%20we%20are/Our%20values%20and%20code%20of%20ethics/PDFs/Human%20Rights%20Statement%20PDF.pdf

prepaid customers in the Lesotho market. No disclosure on the terms of service for Econet's fixed line broadband service could be found on the company's website. The researchers did not find disclosures for the following indicators with respect to any of the companies:

- Process of responding to government demands to restrict content
- Data about government demands to restrict content and accounts
- Network management
- Network shutdowns, and
- Identity policy.

Privacy

On privacy, the study evaluated companies on a total of five indicators. Some disclosures were found (P1(a) – access to privacy policies and P3(a) – collection of user information) as shown in Figure 3. The researchers did not find disclosures for any of the companies with respect to the following: P2(a) – changes to privacy policies, P10 – process for responding to government demands for information, and P11(a) – data about government demands for information.

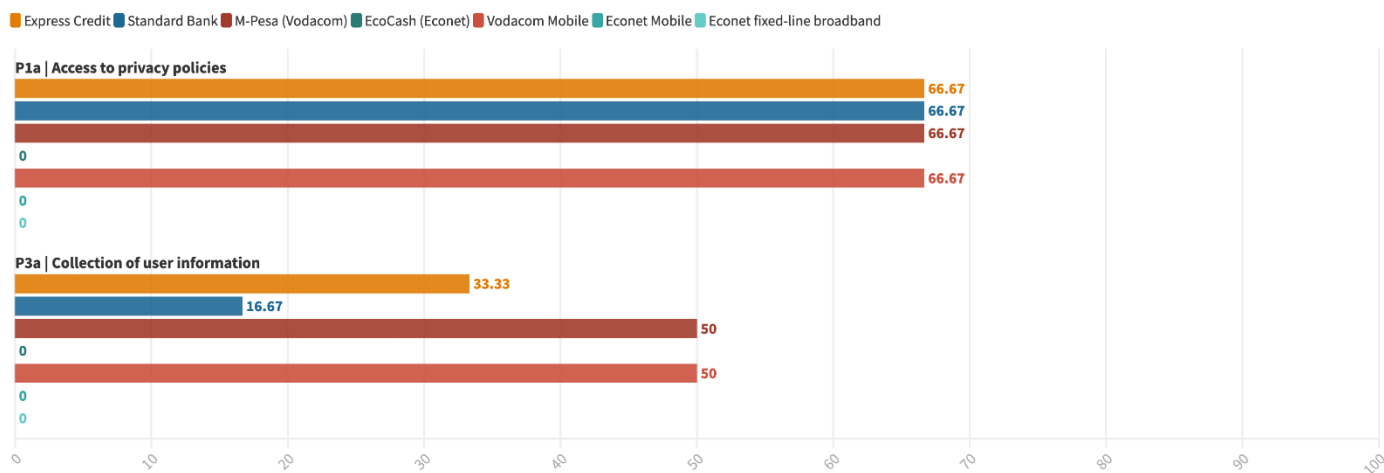


Figure 3: Privacy disclosures by service.
Source: Derived from data collected for this study.

Express Credit

Express Credit

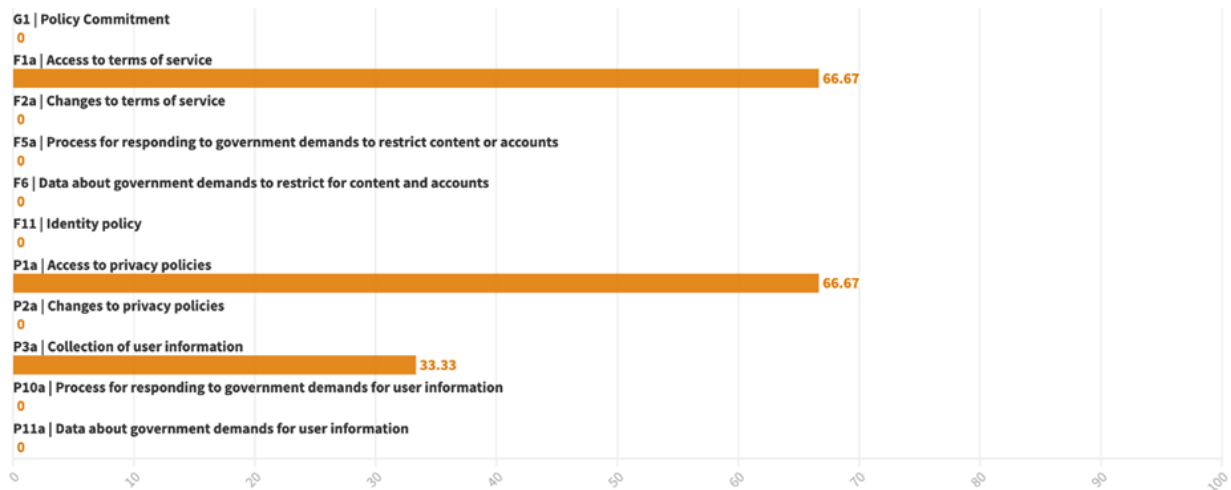


Figure 4: 2021 Mini Index - Express Credit

Source: Derived from data collected for this study

The study did not find any disclosure regarding the policy commitment of the company to respect human rights, hence the zero score under G1: Policy Commitment. On access to terms of service, the company had published the terms of service³¹, which could be accessed from its home page. The company did not get full points because the terms were written in English only. No terms were written in Sesotho. However, the company makes no disclosure about changes to terms of service and the process of responding to government demands to restrict content or accounts.

On identity policy, the company scored no credit as it requires customers to produce their government-issued identification. On its "How it Works" page, the company requires users to use the National ID or Passport (not expired), or one-month stamped bank statement (salary and bank account number must be visible) and a stamped copy of the latest payslip. If the payslip is printed on the payslip paper, the stamp is not required. An official employer reference letter, which must not be older than 10 days (in a free form and showing the employer and employee contact details) is also required. Express Credit demands government-issued identity documents in compliance with Section 16 of the National Credit Cards Act 2011.

Express Credit has a privacy policy that can be accessed from its home page. While the policy is clearly written, it is only available in English. On the collection of user information, the company's disclosure is partial as it does not disclose all the methods it uses to collect personal data and other information. The disclosure in the Privacy Statement reads as follows: "We may

³¹ See <https://www.expresscredit.co.ls/page/terms-of-use>

request you to provide certain personal information" and "Express Credit may gather information (including personal information) from you as you access and navigate through this website using data collection tools and cookies, among other technologies."³² No disclosures were found concerning the process of responding to government demands for user information and data about government demands for user information.

Standard Lesotho Bank

Since Standard Lesotho Bank is part of the Standard Bank Group, this Report considers the group's policy on human rights. The group has published a document titled *Standard Bank Group Statement on Human Rights*³³ articulating its commitment to human rights. The commitment is also made in the Group's *Environmental, Social and Governance Report 2020*³⁴. Figure 5 shows a summary of the findings.

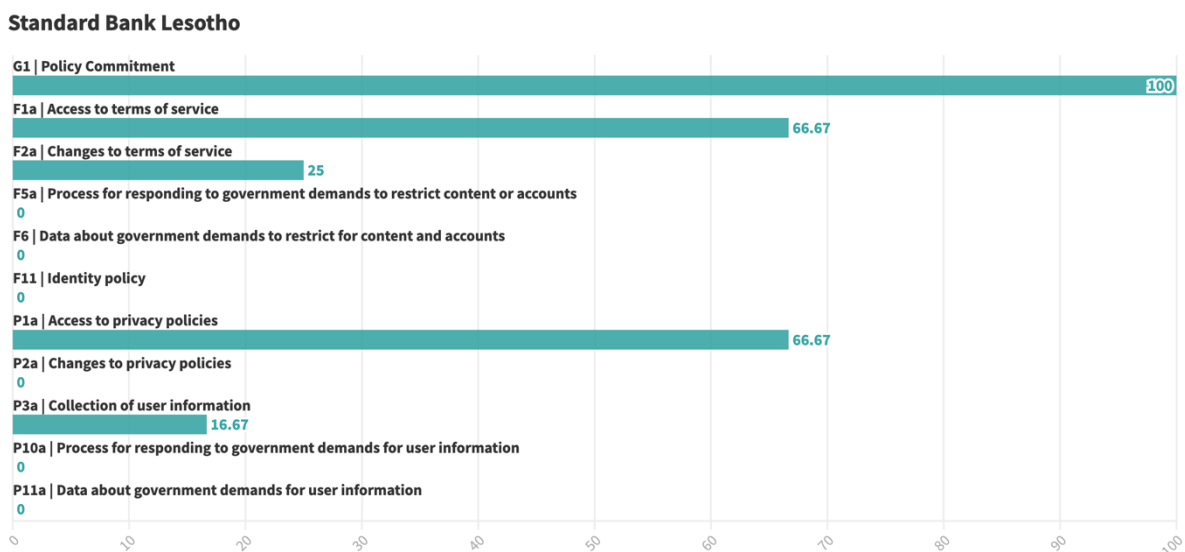


Figure 5: 2021 Mini Index - Standard Bank Group.
Source: Derived from data collected for this study.

On access to terms of service, Standard Lesotho Bank does publish the terms of service which a user can access from their home page³⁵ with a single click. For internet banking users, a link

³² See <https://www.expresscredit.co.ls/page/privacy-policy>

³³ See Standard Bank Group Statement on Human Rights: https://www.standardbank.com/static_file/StandardBankGroup/Who%20we%20are/Our%20values%20and%20code%20of%20ethics/PDFs/Human%20Rights%20Statement%20PDF.pdf

³⁴ See Group's Environmental, Social and Governance Report 2020: https://thevault.exchange/?get_group_doc=18/1623759414-SBGESGReport2020FN.pdf

³⁵ See Standard Lesotho Bank's terms of service: <https://www.standardlesothobank.co.ls/lesotho/personal/About-us/legal/conditions-of-access>

to the relevant terms of service is available on the login window as shown on Figure 6. Full credit was not given because the terms are written in English only.

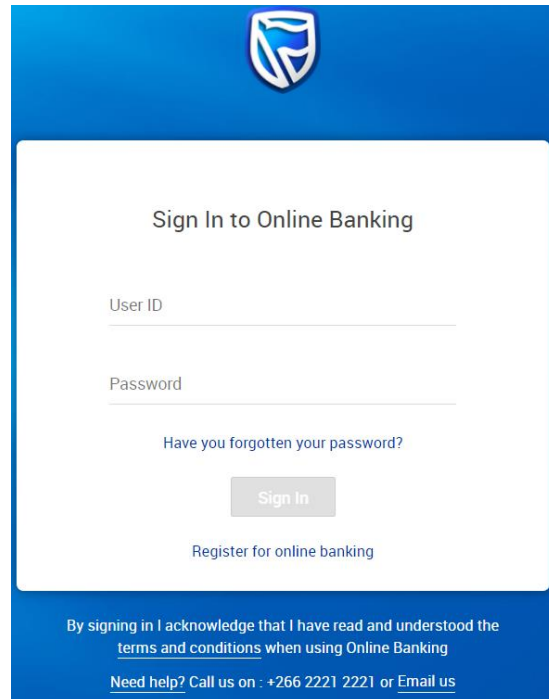


Figure 6: Standard Bank Lesotho internet banking login window.

Source: <https://ibanking.standardlesothobank.co.ls/#/login>, Retrieved January 22, 2022

On changes to terms of service, Standard Lesotho Bank's disclosure is partial because it is only made for the mobile banking app. The terms state: "Users have the option of using the company's website or mobile app to access services." Yet there is no disclosure for users accessing the services through the website. The disclosure for mobile banking app reads:

18.1 We may change these Terms by giving you a written notice.

18.3 We may send you any notice about the Mobile App by email and we may regard the notice as having been received by you one day after it was sent.

19.2 We will send any legal documents or notices to you at the address we have for you on our records.

Standard Lesotho Bank's privacy statement is located at the bottom of the home page³⁶ and is accessible from other pages. The policy is written in an accessible language and is easy to understand. However, full credit was not given because the policy is written in English only.

³⁶ See Standard Bank Lesotho's Privacy Policy: <https://www.standardlesothobank.co.ls/>

Standard Lesotho bank does not make disclosures concerning the following:

- Identity policy
- Changes to the privacy policy
- The process of responding to government demands to restrict content or accounts
- The process of responding to government demands for user information and;
- Data about government demands for user information.

Econet Telecom Lesotho

Figure 1 shows the evaluation of the Econet Wireless Global group with respect to freedom of expression and the right to information and privacy. Specific elements are evaluated for the following services: (voice and data)³⁷, fixed-line broadband (ADSL, Fibre to the home)³⁸ and EcoCash³⁹ (see Figure 7).

The researchers did not find any policy commitment by Econet Wireless Global group to respect freedom of expression and the right to information and privacy. The terms of service for mobile can be accessed with one click from the home page⁴⁰. However, the mobile service has two contract types: prepaid and post-paid. The link located at the bottom of the home page relates to post-paid contracts only. The terms of service for prepaid users, who account for over 95% (Gillwald et al., 2017) of customers, could not be located on the website. The terms of service for fixed-line broadband services could not be accessed from the home page or the page where users can go to apply for the service. The terms and conditions are written in English only. The terms of service for EcoCash are comprehensive and well structured. In contrast, the mobile contracts' Terms & Conditions are not informative; there is no definition of terms, and uncommon terms such as "hybrid contract" and "corporate CUG", are used but are not defined on the page. There are also several syntax errors.

On changes to terms of service, Econet Mobile did not get any credit because the terms and conditions for its products did not include any information about changes to terms of services. Terms of service for the fixed-line broadband service could not be found. Regarding EcoCash, no credit was given as the company does not directly inform users prior to effecting changes to the terms and conditions. Specifically, clause 12.3 states, "ETL may vary or amend at any

³⁷ See Econet Mobile Voice products: <https://www.etl.co.ls/mobile-voice/>

³⁸ See Econet fixed broadband: <https://www.etl.co.ls/fixed-internet/>

³⁹ See EcoCash: <https://www.etl.co.ls/ecocash/>

⁴⁰ See Terms of service for mobile post-paid contract customers: <https://www.etl.co.ls/mobile-contracts-terms/>

time and without notice to you these Terms and Conditions and the Transaction Fees. Any such variations or amendments may be published in posters or pamphlets available at ETL's agents, outlets, on the ETL's website and/or by any other means as determined by ETL and any such variations and amendments shall take effect immediately upon publication."

Econet Lesotho

■ Mobile ■ Fixed-line broadband ■ EcoCash

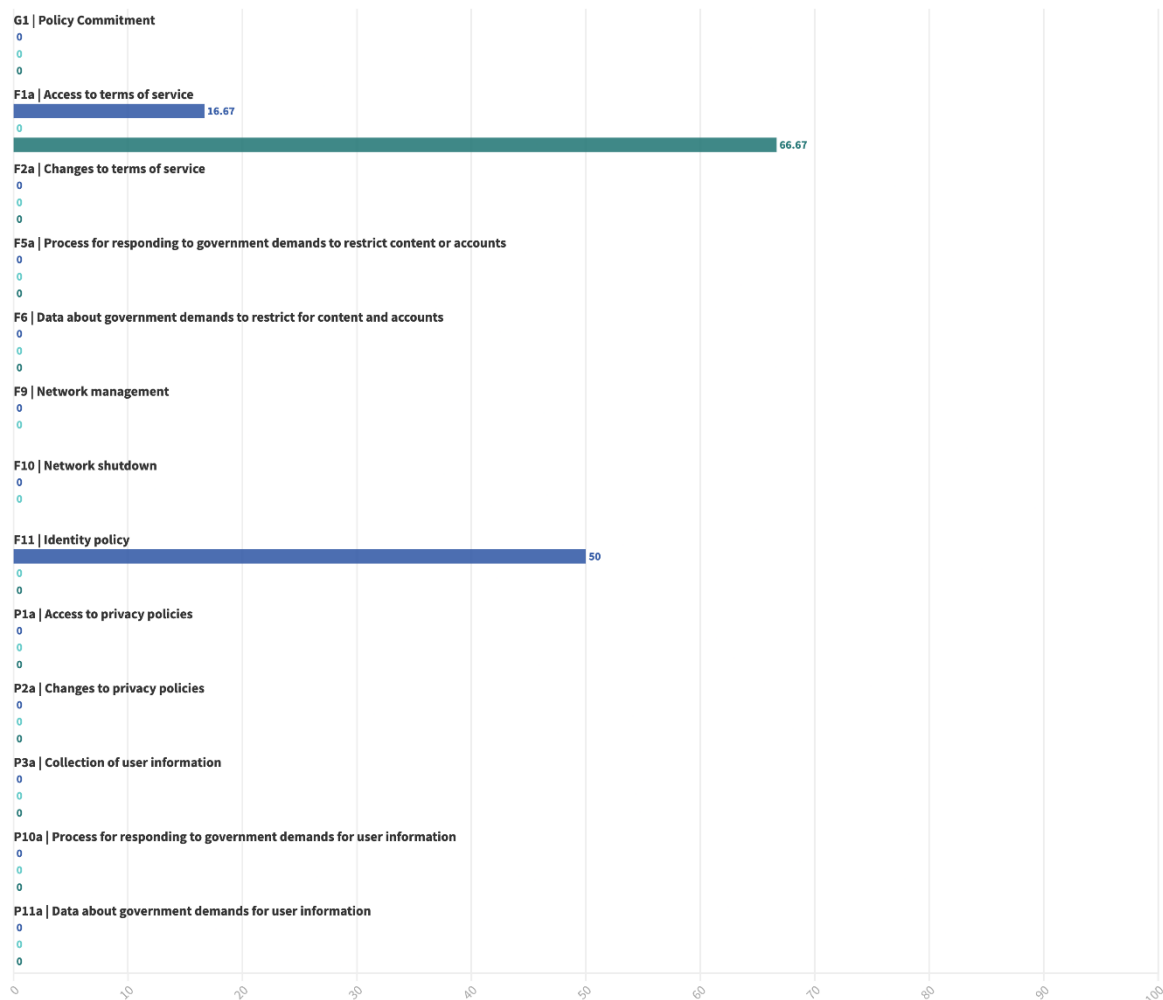


Figure 7: 2021 Mini Index – Econet Wireless Global:
Source: Derived from data collected for this study

Vodacom Lesotho

Figure 8 summarised the evaluation for Vodacom Lesotho. It received full credit on the policy commitment (G1) because of the Vodafone Group's disclosure, which applies to all Vodafone companies where the group holds an interest of at least 50.1% or management control (Vodafone Group, 2019). The group has published a disclosure on freedom of expression and information in its Human Rights Policy Statement⁴¹. It reads, "We respect and seek to protect our customers' lawful rights to hold and express opinions and share information and ideas without interference." (Vodafone Group, 2019, Page 3). And on privacy, the statement reads: "At the core of our principles is the right of our customers to privacy; a right that is enshrined in international human rights law and standards and enacted through national laws. Respecting that right is one of our highest priorities: it is integral to the Vodafone Code of Conduct, which everyone who works for us has to follow at all times."

Access to terms of service for mobile services is easy and only two clicks away from the homepage and from the bottom of every page. The general Terms of Service are only available in Sesotho, titled "*Ts'ebeletso ea customer care, melao, litataiso le litsamaiso tsa Vodacom Lesotho*"⁴² and there is no English version. The researchers found that the document was full of syntax errors, making it difficult to understand.

Access to terms of service for M-Pesa was also easy. The page was two clicks away from the homepage and from the bottom of every page. The M-Pesa Terms and Conditions are only available in English. The Terms and Conditions are understandable but have some syntax errors and the font colour is faint against white background, making the document hard to read.

Regarding **changes to terms of service**, no disclosure was found for the mobile services. For M-Pesa, there is a disclosure notice that reads: "We shall give you 21 days' notice of any proposed changes through such communication medium as we may determine."⁴³ However, nothing was found on whether the company maintains a public archive of changes or a change log.

⁴¹ See Vodafone's Human Right Statement: <https://www.vodafone.com/content/dam/vodacom/sustainability/pdfs/vodafone-group-human-rights-policy-statement-december-2019.pdf>

⁴² See Terms and Conditions for Prepaid customers: https://www.vodacom.co.ls/?page_id=1981

⁴³ See M-Pesa T & Cs: https://www.vodacom.co.ls/?page_id=6902

Vodacom Lesotho

■ Mobile ■ M-Pesa

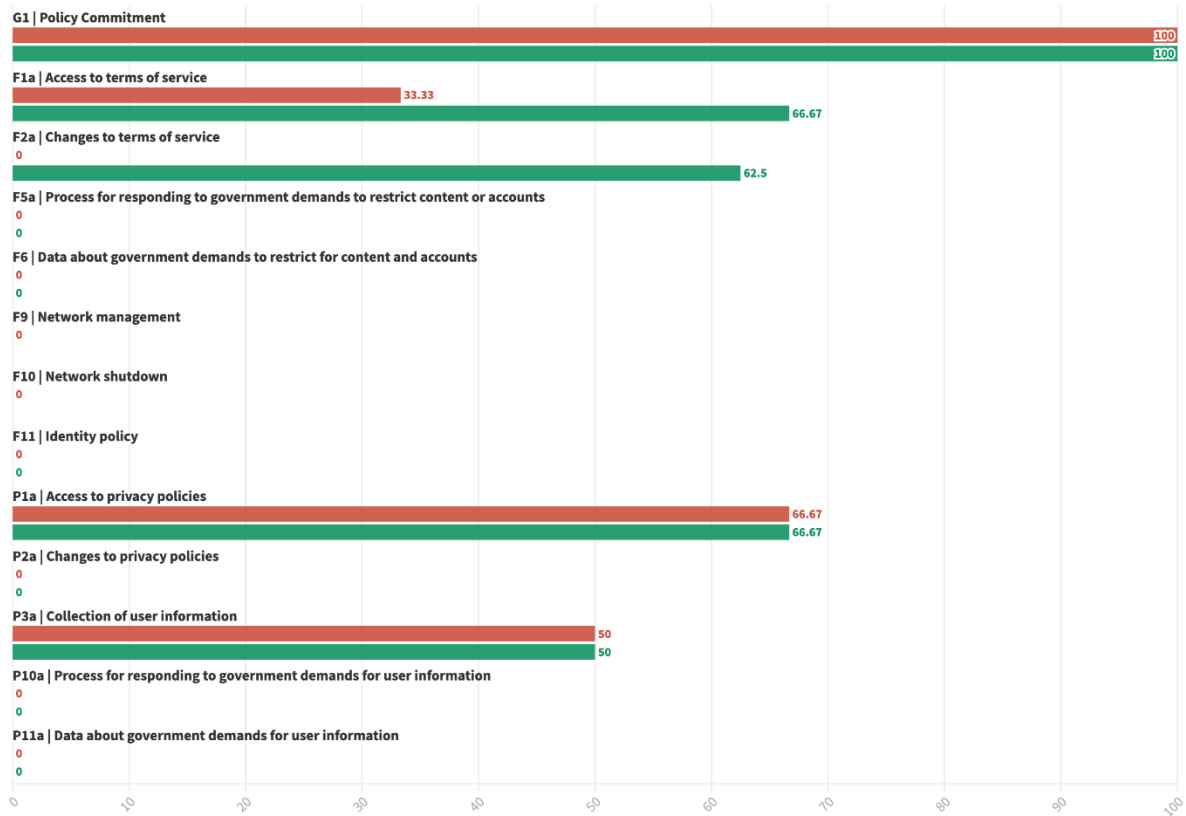


Figure 8: 2021 Mini Index - Vodacom Group Limited
Source: Derived from data collected for this study

On privacy, the company made some disclosures of varying levels on the services evaluated. For both M-Pesa and mobile, access to the privacy policy is easy and only one click away from the home page⁴⁴. The privacy policy is written in an understandable manner using simple everyday English. However, there is no Sesotho version.

There were, however, no clear disclosures relating to **changes to privacy policies**. The first paragraph of the Privacy Policy webpage says, "If we update this policy, we'll post any changes on our website." The policy does not mention whether or how the company would notify users. No public archive or change log was found to help users understand what has changed over time.

On **collection of user information**, Vodacom's privacy policy lists examples of the types of user information the company collects, but that list is not definitive. The opening statement that precedes the list reads: "The information we collect about you depends on the Vodacom products and services you use and subscribe to. It includes (but is not limited) to the following:"

⁴⁴ See Privacy Policy: https://www.vodacom.co.ls/?page_id=1780

With regards to M-Pesa, Para 14.1 of the M-Pesa terms and conditions⁴⁵ reads: "You hereby expressly consent and authorise that we may disclose and/or collect personal information or data relating to your account, details of your use of the services or documents about..." It does not explicitly state the type of personal information or data the company collects. In Section 4 of the Privacy policy, the company lists the methods that it uses to collect data. The first paragraph starts thus: "We may collect your personal information in a number of different situations, including when you..." The second paragraph begins thus: "We collect personal information about you from other sources (if it's appropriate) including...". Vodacom makes a commitment on data minimisation, even though the term "data minimisation" is not used. Clause 2 states: "To provide you with mobile services and products (including your phone and broadband), we need to collect some of your personal details in the following...". Clause 3 begins thus: "The information we collect about you depends on the Vodacom products and services you use and subscribe to....".

The researchers could not find a disclosure on the process for responding to government demands for user information. The study could also not find Vodacom's disclosure on data about government's demand for user information.

Comparison Between Digital Wallets

Figure 9 compares the digital wallets, EcoCash and M-Pesa. The wallets have equal credit of 66.67 out of 100. They were not awarded full credit as the terms are only in the English language, which excludes most users. M-Pesa outperforms EcoCash in four indicators.

⁴⁵ See M-Pesa T & Cs: https://www.vodacom.co.ls/?page_id=6902

Comparison of digital wallet services

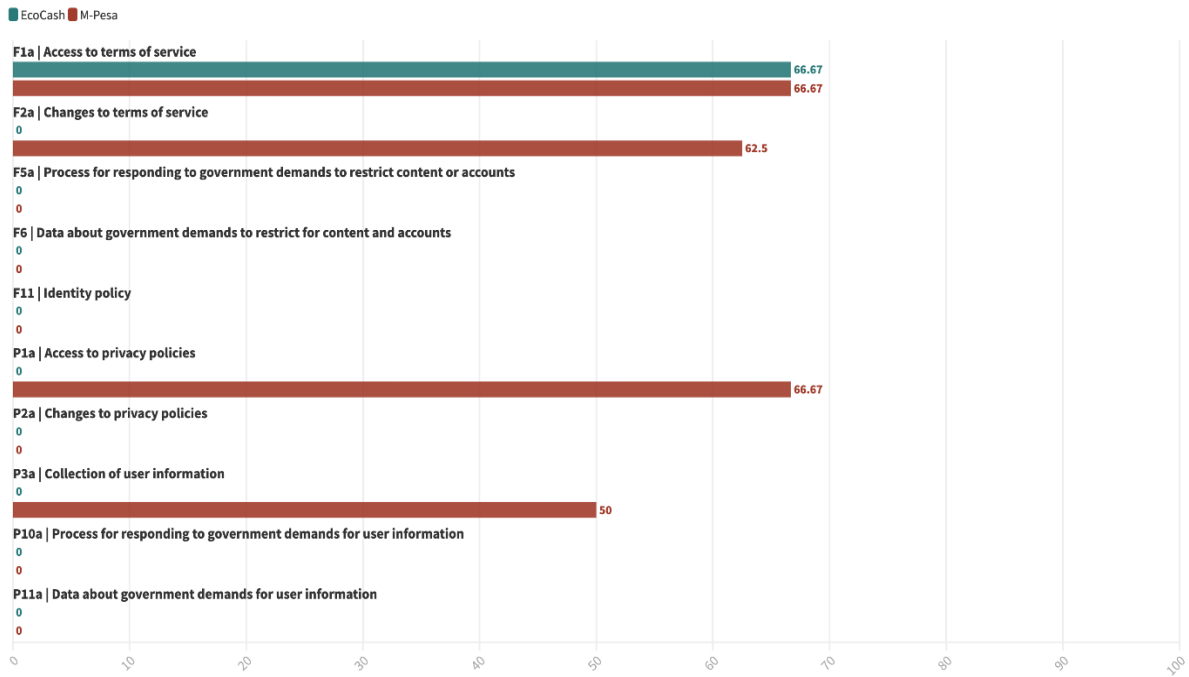


Figure 9: Comparison of EcoCash and M-Pesa
Source: Derived from data collected for this study

Comparison between Mobile Services

Figure 10 compares Econet Mobile and Vodacom-Mobile. The terms of service document for prepaid contract users was not available on Econet Lesotho's website. Econet's terms of service document for post-paid users was also hard to understand. The terms of service for Vodacom mobile were available for both prepaid and post-paid users. For prepaid users, the terms were published in Sesotho only and were not clear. For post-paid contracts, the document was fairly well written but in English only. There was no Sesotho version.

Comparison of mobile services

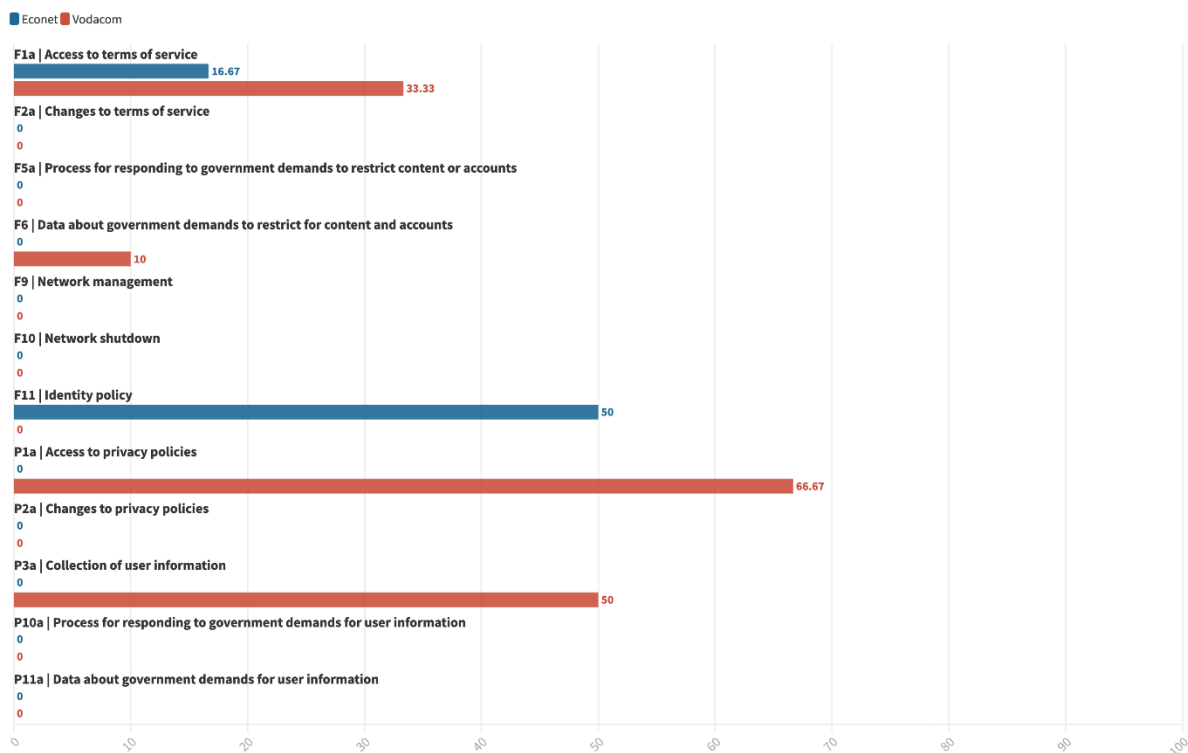


Figure 10: Comparison of Econet and Vodacom's mobile services.
Source: Derived from data collected for this study.

Significance of the findings

Among the companies studied on G1, the largest players – Standard Bank Group and the Vodafone Group – have policies where they commit to respect human rights in line with the Universal Declaration on Human Rights. The smaller players do not have such policy commitments.

For most products, companies have made terms of service and privacy policies easy to find. As a result, F1a and P1a have comparatively high scores. This is significant because it shows that despite a generally low rights culture in Lesotho, companies recognise the rights of users to access information governing their use of the services. Disclosures on privacy are particularly important in a country where interception of digital communications is deemed rampant, and with high-profile examples such as the 2017 case of the former prime minister alluded to earlier⁴⁶.

With respect to F2(a) and P2(a), which deal with notifying users about changes to both terms of service and the privacy policies, companies generally scored poorly. This is because for most products, the companies do not commit to inform users prior to effecting the changes,

⁴⁶ See <https://publiceyenews.com/pm-case-throws-spotlight-on-phones-privacy/>

nor do they specify the timelines for informing users before such changes becomes effective. None of the companies maintains a public archive or change log to enable users to see how the policy has changed over time and how cumulatively the changes affect them. The failure to inform customers about changes prior to enforcing them negatively affects their freedom of expression and information rights, for instance if changes prohibit access to content or services.

Indicators F5(a), F6, P (2)a, P10 and P11(a) relate to processes that companies follow when responding to government demands to restrict content or accounts, and government demand for user information. None of the studied companies made a disclosure on the processes that they follow in response to government demands relating to data. In Lesotho, there is no law prohibiting companies from disclosing this information. It is not clear why companies are not motivated to make disclosures on these indicators, which would help protect the reputation of a company. A case in point is the 2017 saga involving the prime minister, as alluded to elsewhere. In that case, the parent company, Vodafone (UK), discloses the process it follows in response to governments demands for user information,⁴⁷ although there are no disclosures on F6 or P11a for Vodafone. But they did receive a 100% in F5a.

On network management (F9), which applies to telecommunication companies only, the study did not find disclosures by Econet Telcom Lesotho and Vodacom Lesotho. On whether they prioritise, block or delay certain types of traffic, applications, protocols or content for any reason beyond assuring the quality of service and reliability of the network, the companies studied did not have disclosures on F10 (network shutdowns), which also applies to telecommunications companies only. While network shutdowns have not yet taken place in Lesotho, around 2016-2017, there were government threats to restrict access to social media sites, particularly Facebook and Twitter. The government had instructed Econet Telecom Lesotho and Vodacom Lesotho and their regulatory body, the Lesotho Communications Authority, to shut down access to these social media sites but the regulator managed to prevent the restrictions.⁴⁸ Neither network operator has, however, made a public disclosure on circumstances under which they may shut down networks or restrict content. Network shutdowns affect freedom of expression and the right privacy and information.

On F11, all but one service provider scored zero as their terms of service require the users to verify their identity using a government-issued document. This takes away the ability to communicate anonymously, which is crucial for freedom of expression. The Report

⁴⁷ See the data from our 2020 Index here <https://rankingdigitalrights.org/index2020/indicators/P10a>

⁴⁸ See <https://www.thepost.co.ls/local-news/minister-wants-facebook-shut-down/>

acknowledges that the companies insist on the identification documents to comply with the National Identity Cards Act of 2011 and the various anti-money laundering laws.

Conclusion and Recommendations

The findings suggest that providers of telecommunication and digital financial services in Lesotho do not reflect a strong culture of respect for digital rights. The findings are reflective of the human rights situation in the country. The country has a weak human rights culture and an entrenched culture of administrative secrecy. Companies need to adopt the minimum human rights standards such as those set out in the UN Guiding Principles.

Findings also suggest that corporate governance practices of holding companies⁴⁹ influence human rights practices in subsidiaries. While the level of policy disclosure is low for all the companies, Standard Bank Group and Vodafone Group have published their human rights policies and their subsidiaries, Vodacom Lesotho, and Standard Lesotho Bank, have more disclosures than Econet Telecom Lesotho and Express Credit Lesotho, which do not have a group human rights policy.

Based on the findings, the Report recommends the following actions by different actors:

Civil Society Organisations

Civil Society Organisations should create awareness on digital rights to enable users to advocate for their rights. They should clamour for adoption of human rights policies in line with the Guide for Integrating Human Rights into Business Management.

Companies

Econet Telcom Lesotho, Express Credit, Standard Lesotho Bank, Vodacom Lesotho, and similar companies should adopt governance practices that promote human rights. At a minimum, the companies should publish on their websites and apps the following:

- The company's human rights policy
- Terms of service and privacy policies
- Offer terms and conditions that are clear in Sesotho and English
- Inform users about changes well before such changes become effective
- Publish a changelog for customers to see how terms have been changing over time
- Publish information on processes they follow when responding to government demands for user information
- Publish data about government demands for user information

⁴⁹ A holding company is one with a controlling stake in another. It may also be referred to as a “parent company”.

- Telecommunication companies should publish information on how they handle government demands for internet shutdowns or relating to their other services

Regulators

The Central Bank of Lesotho and the Lesotho Communications Authority should encourage regulated companies to adopt the UN Guiding Principles on Business and Human Rights. The LCA should also monitor adherence to the provisions of the Communications Act 2012, Section 4(e) and Section 41(2) (c) of the Administrative Rules 2016 as well as the consumer protection guidelines currently in draft stage⁵⁰.

Policymakers

As the body responsible for consumer protection in general, the Ministry of Trade and Industry, working in collaboration with line ministries, sector regulators and the civil society, should promote the adoption of the UN Guiding Principles on Business and Human Rights in Lesotho. It should also review the consumer protection policy to include digital rights and develop legislation to facilitate implementation.

The Ministry of Justice and Constitutional Affairs should cultivate a culture that upholds human rights by establishing a human rights commission. For personal data protection, the ministry should update the Data Protection Act of 2011 to align it with good international practice, establish a data protection commission and promulgate legislation on the right of access to information.

Further research is needed to assess the level of digital rights awareness in Lesotho's companies, regulatory agencies, among policymakers, and users. This would inform strategies that human rights defenders may use to bring about positive change for the benefit of users.

⁵⁰ See https://www.lca.org.ls/wp-content/uploads/2022/02/CONSUMER-PROTECTION-GUIDELINES_FINAL.pdf

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ANNEXURES

ANNEX – 1 – RDR – QUESTIONS USED

Governance

G1: Policy Commitment

1. Does the company make an explicit, clearly articulated policy commitment to human rights, including to freedom of expression and information?
2. Does the company make an explicit, clearly articulated policy commitment to human rights, including privacy?

Freedom of Expression and Information

F1(a) Access to terms of service

1. Are the company's terms of service easy to find?
2. Are the terms of service available in the primary languages spoken by users in the company's home jurisdiction?
3. Are the terms of service presented in an understandable manner?

F2(a) Changes to terms of service

F2a.1: Does the company clearly disclose that it directly notifies users about all changes to its terms of service?

F2a.2: Does the company clearly disclose how it will directly notify users of changes?

F2a.3: Does the company clearly disclose the timeframe within which it directly notifies users of changes prior to such changes coming into effect?

F2a.4: Does the company maintain a public archive or change log?

F5(a) Process of responding to government demands to restrict content or accounts.

F5a.1: Does the company clearly disclose its process of responding to non-judicial government demands?

F5a.2: Does the company clearly disclose its process for responding to court orders?

F5a.3: Does the company clearly disclose its process of responding to government demands from foreign jurisdictions?

F5a.4: Do the company's explanations clearly disclose the legal basis under which it may comply with government demands?

F5a.5: Does the company clearly disclose that it carries out due diligence on government demands before deciding how to respond?

F5a.6: Does the company commit to push back on inappropriate or overbroad demands made by governments?

F5a.7: Does the company provide clear guidance or examples of implementation of its process of responding to government demands?

F6 Data about government demands to restrict content and accounts

F6.1: Does the company disclose the government demands it receives by country? F6.2: Does the company list the number of accounts affected?

F6.3: Does the company list the number of pieces of content or URLs affected?

F6.4: Does the company list the types of subject matter associated with the government demands it receives?

F6.5: Does the company list the number of government demands that come from different legal authorities?

F6.6: Does the company list the number of government demands it knowingly receives from government officials to restrict content or accounts through unofficial processes?

F6.7: Does the company list the government demands with which it has complied?

F6.8: Does the company publish the original government demands or disclose that it provides copies to a public third-party archive?

F6.9: Does the company report this data at least once a year?

F6.10: Can the data be exported as a structured data file?

F9 Network management

F9.1: Does the company clearly disclose a policy commitment to not prioritise, block or delay certain types of traffic, applications, protocols or content for reasons beyond assuring quality of service and reliability of the network?

F9.2: Does the company engage in practices such as offering zero-rating programs that prioritise network traffic for reasons beyond assuring quality of service and reliability of the network?

F9.3: If the company does engage in network prioritisation practices for reasons beyond assuring quality of service and reliability of the network, does it clearly disclose its purpose for doing so?

F10 Network shutdown

F10.1: Does the company clearly disclose the reason(s) why it may shut down service to a particular area or group of users?

F10.2: Does the company clearly disclose why it may restrict access to specific applications or protocols (e.g. VoIP, messaging) in a particular area or to a specific group of users?

F10.3: Does the company clearly disclose its process of responding to government demands to shut down a network or restrict access to a service?

F10.4: Does the company clearly disclose a commitment to push back on government demands to shut down a network or restrict access to a service?

F10.5: Does the company clearly disclose that it notifies users directly when it shuts down a network or restricts access to a service?

F10.6: Does the company clearly disclose the number of network shutdown demands it receives?

F10.7: Does the company clearly disclose the specific legal authority that makes the demands?

F10.8: Does the company clearly disclose the number of government's demands with which it complied?

F11 Identity policy

F11.1: Does the company require users to verify their identity using their government-issued identification, or with other forms of identification that could be connected to their offline identity?

Privacy

P1(a) Access to privacy policies

P1a.1: Are the company's privacy policies easy to find?

P1a.2: Are the privacy policies available in the primary language(s) spoken by users in the company's home jurisdiction?

P1a.3: Are the policies presented in an understandable manner?

P2(a) Changes to privacy policies

P2a.1: Does the company clearly disclose that it directly notifies users about all changes to its privacy policies?

P2a.2: Does the company clearly disclose how it will directly notify users of changes?

P2a.3: Does the company clearly disclose the timeframe within which it directly notifies users of changes prior to these changes coming into effect?

P2a.4: Does the company maintain a public archive or change log?

P3(a) Collection of user information

P3a.1: Does the company clearly disclose what types of user information it collects?

P3a.2: Does the company clearly disclose how it collects each type of user information?

P3a.3: Does the company clearly disclose that it limits collection of user information to what is directly relevant and necessary to accomplish the purpose of its service?

P10(a) Process of responding to government demands for user information

P10a.1: Does the company clearly disclose its process of responding to non-judicial government demands?

P10a.2: Does the company clearly disclose its process of responding to court orders?

P10a.3: Does the company clearly disclose its process of responding to government demands from foreign jurisdictions?

P10a.4: Do the company's explanations clearly disclose the legal basis under which it may comply with government demands?

P10a.5: Does the company clearly disclose that it carries out due diligence on government demands before deciding how to respond?

P10a.6: Does the company commit to push back on inappropriate or overbroad government demands?

P10a.7: Does the company provide clear guidance or examples of implementation of its process for government demands?

P11(a) Data about government demands for user information

P11a.1: Does the company list the number of government's demands it receives by country?

P11a.2: Does the company list the number of government demands it receives for stored user information and for real-time access to communications?

P11a.3: Does the company list the number of accounts affected?

P11a.4: Does the company list whether a demand sought communications content or non-content or both?

P11a.5: Does the company identify the specific legal authority or type of legal process through which law enforcement and national security demands are made?

P11a.6: Does the company include government demands that come from court orders?

P11a.7: Does the company list the number of government demands it complied with, broken down by category of demand?

P11a.8: Does the company list what types of government demands it is prohibited by law from disclosing?

P11a.9: Does the company report this data at least once per year?

P11a.10: Can the data reported by the company be exported as a structured data file?