Knowing Your Digital Rights Part 2: The State VS The People

[00:00:00] **Masechaba Masemola wa-Mdaka:** We often read and hear harrowing stories and experiences of victims who have been on the receiving end of the wrath of the state, particularly when it comes to freedom of expression, association, right to privacy and personal information. The following voice clip has been recorded by a voiceover artist to protect the identity of the contributor.

[00:00:27] **Voice Note:** I'm a female journalist and also a political reporter. I work in Botswana and in 2019 when I was coming from the BNF conference, I woke up the following morning and four men and one woman came to my house and unannounced they produced a text from the police. They said they came to search. They had a warrant to search for my gadgets.

[00:00:52] **Voice Note:** So, I opened the house because I didn't know what they were looking for only to learn that they said they are looking for people who wrote stories from the former [00:01:00] DIS boss, who was the head of intelligence. They found that I had some pictures concerning the stories that was written in the publication that I'm working for. I was just so shocked and confused that they gave me the warrant. On the warrant, they listed my phones, laptop, and a computer, which they felt I have.

[00:01:21] **Voice Note:** Unfortunately, by then, I had given them a phone, which they confiscated. They kept on searching. They called other neighbors to come and witness the search.

[00:01:33] **Voice Note:** That was so traumatic for me and by then I contacted my editor and my editor felt that I shouldn't give them the phone. But unfortunately, they said they would arrest us if we didn't give them the phone. That was one of the most traumatic events. They got the warrant from Palapye instead of Gaborone in my scenario and the warrant was active for two days.

[00:01:55] **Voice Note:** After they got it, they left me to go to the conferences without being [00:02:00] disturbed and it looks like they were following me in there. What I learnt is that there are some laws like the DCEC Act, which journalists must be aware of. They are not working well for us because it clearly states that if they're investigating a certain case, a journalist may not write about it, which is very dangerous for our profession. We are not protected when it comes to our gadgets which we are using mostly as part of our resources or for our data.

[00:02:29] **Masechaba Masemola wa-Mdaka:** I am your host, Masechaba Masemola wa-Mdaka. This is part two of the episode taking an in depth look at digital rights and digital security. In this episode, we will delve into the practicalities of overcoming the challenges of censorship,

[00:02:49] **Masechaba Masemola wa-Mdaka:** surveillance, and strategies curtailing freedom of expression. It is strange that in this age, where we speak of various freedoms and rights associated with [00:03:00] these, we find ourselves still battling. The story, which is often sold as the blanket or sweeping statement to justify these is to say that this is the protection of matters of national security.

[00:03:13] **Masechaba Masemola wa-Mdaka:** But to what end? And do the means justify the ends? In this continuation of the conversation, I am joined by Frederico Links, Rosemary Viljoen and Tawanda Mugari. Frederico is a Namibian journalist, researcher, trainer, and freedom of expression advocate. As a researcher, he is mostly affiliated with Namibia's leading independent think tank, the Institute for Public Policy Research.

[00:03:42] **Masechaba Masemola wa-Mdaka:** He is also the founding and former chairperson of the Namibian Internet Governance Forum, NAM IGF. Rosemary Viljoen is the project director of Internews South Africa, an international media support non profit organisation. She [00:04:00] leads the organisation's work in the human rights focused Advancing Rights in Southern Africa.

[00:04:05] **Masechaba Masemola wa-Mdaka:** also known as ARISA program being implemented across the SADC region. Tawanda Mugari is an organisational holistic security expert who has extensive experience working with private, public, and non governmental organisations. Tawanda is the co-founder and geek in chief of the digital society Africa.

[00:04:28] **Masechaba Masemola wa-Mdaka:** Frederico and Tawanda join us remotely from Namibia and Zimbabwe and I have the pleasure of having Rosemary in studio.

[00:04:37] **Rosemary Viljoen:** Good morning, Masechaba. It's wonderful to be here. We are super excited and, uh, looking forward to a wonderful chat with yourself, Tawanda, and Frederico.

[00:04:46] **Frederico Links:** Uh, good morning, uh, Masechaba, and it's good to be part of this discussion.

[00:04:51] **Tawanda Mugari:** It's, uh, always great to be here.

[00:04:54] **Masechaba Masemola wa-Mdaka:** Most definitely. I look forward to this follow up conversation and to round off this episode series [00:05:00] with, uh, all your shared insights. So I'll get straight into the questions. Rosemary, let's unpack the report titled 'Under the Radar - Analysis of Cybersecurity and Digital Surveillance in Botswana.'

[00:05:16] **Masechaba Masemola wa-Mdaka:** Briefly tell us why this report and why Botswana?

[00:05:21] **Rosemary Viljoen:** We as Internews, we have global and Africa reach, and we've really seen a worrying trend of increased attacks, harassment, intimidation of journalists and civil society activists. Um, And we really are seeing a raft of laws being implemented by governments, including the Botswana government.

[00:05:43] **Rosemary Viljoen:** And it shows the lengths that government will go to, to silence media for speaking truth to power. The report under the radar, the under the radar report, at least highlights the instruments being used by the Botswana government to stifle digital and human rights [00:06:00] in Botswana. This includes the rollout of the massive surveillance cameras, which has facial recognition software and technology under the government's safe city project.

[00:06:11] **Rosemary Viljoen:** The cost was 1.5 billion Pula to roll out cameras with a population of 2.5 million. Now that's got to tell you something in terms of the intention by the government and in a country that has relatively low crime, you're wondering what is the facial

recognition for? Um, how is government using the surveillance combined with other, uh, laws that they have?

[00:06:38] **Rosemary Viljoen:** They have another six laws, the cyber and computer crimes related law, the criminal procedure evidence, whistleblower act. The Media Practitioners Association Act, um, all of those laws together help government to control the voice and freedom of expression of media and civil [00:07:00] society.

[00:06:59] **Masechaba Masemola wa-Mdaka:** This is incredible, especially when one considers the legacy that countries like Botswana hold on the continent and maybe even to some extent globally in terms of how they're perceived as being very established democracies. And, you know, as you rightfully, you know, when you speak of racial, what is the intention? Why? Again, the answering the why Botswana in this case, I think that's definitely something worth looking deeper into.

[00:07:26] **Masechaba Masemola wa-Mdaka:** Frederico, I'd like to bring you in here, um, especially that we're speaking about Botswana, how much of a growing phenomenon is this increase of surveillance and infringement, um, which often leads to people even being violently targeted or silenced? Where do we see other growing or severe country cases?

[00:07:45] **Frederico Links:** I think it's, it's clear that this is happening across the SADC region and it's happening across the continent and there's increasing literature now and increasing number of reports of incidents such as, such as what we're [00:08:00] seeing in Botswana and this playing out across the continent, you know, to a greater or lesser degree in terms of the threat situation in various countries.

[00:08:14] **Frederico Links:** In Namibia, certainly it's the case that the tendency, the, trend towards increased surveillance is picking up in South Africa with what's coming down the pipeline, um, in terms of a new law regulating surveillance, state surveillance in South Africa, this seems to be a move by the South African government also to strengthen and enhance its surveillance capacities.

[00:08:38] **Frederico Links:** So across the region in Zimbabwe, we're seeing increased laws and regulatory initiatives seeking to limit all sorts of online spaces. Um, Eswatini, we're seeing the same sort of actions,

Mozambique, um, journalists, civil society actors being surveilled and threatened, intimidated. So, I mean, this is a growing [00:09:00] trend, and this sort of digital authoritarian trend is not just a Southern Africa trend.

[00:09:05] **Frederico Links:** It's not just an African trend. It's something that is becoming a threat across the world, and especially across what is now called the Global South. Um, so this is something that really is looking ahead. This trend is something that should concern us going forward.

[00:09:25] **Masechaba Masemola wa-Mdaka:** Certainly. I want to again, Frederico, on this point, as we think about, you know, forecasting prevention and response mechanisms with protecting the civic space in particular, who would you say in these country examples that you've listed is most at risk?

[00:09:40] **Masechaba Masemola wa-Mdaka:** The report speaks to the various stakeholders in the process, being the public, journalists, and legal practitioners. Who would you say bears most of the brunt, especially with regards to censorship?

[00:09:59] **Frederico Links:** I mean, I think especially [00:10:00] in our countries and across the region, you know, where political opposition is weak and fractured, the media in the first instance is seen as the threat by various state actors.

[00:10:13] **Frederico Links:** So ultimately the media as the, as sort of the voice, as the mirror of society, as the one that's, uh, you know, disseminating information. The media sector, the news media sector, is sort of seen as threatening state narratives in various areas and sectors of, you know, what the state thinks it should be the lead in terms of creating and spreading narratives.

[00:10:44] **Frederico Links:** So the media is first and foremost seen as a threat and then, of course, um, in a lot of our countries, civil society is seen as a sort of a second threat, because in, in a lot of countries, civil society [00:11:00] actors are the only ones, aside from the media, actually demanding accountability from the state.

[00:11:06] **Frederico Links:** Um, and so this sector then becomes also one that is specifically targeted, and, and specific, uh, organisations and individuals within civil society. You know, these are the two sectors. And of course, you know, then ultimately also you have in some of our countries, the political opposition, even though, you know, the political opposition in all of our countries and most of our countries is, is, is still largely weak and, and the, and the landscape is fractured.

[00:11:38] **Frederico Links:** Ruling parties, especially those that have been in power and consider, you know, themselves as the legitimate rulers and I'm using the word rulers here very specifically because that's the sort of mindset that we're dealing with, you know, seeing themselves as as the legitimate rulers because they liberated.

[00:11:55] **Frederico Links:** Our country's from colonialism and Apartheid in the, in, in, in Namibia and [00:12:00] South Africa. So the political opposition is seen as a threat to the existing regime. You have that sort of order of threats that are perceived by your, your state actors, your political elites, your, your, your, uh, incumbent political parties.

[00:12:17] **Frederico Links:** And the order can of course, shift depending on the, on the society, depending on the local politics, it's usually these three stakeholder groups within our societies that are, that are the targets of state surveillance activities.

[00:12:34] **Masechaba Masemola wa-Mdaka:** Yeah. You know, I actually just want to stay just to thread the loop from the ideas and what you've shared here around this phenomenon of growing restrictions.

[00:12:43] **Masechaba Masemola wa-Mdaka:** As we think about creating an enabling environment for the protection and promotion of active participation by, by citizens, I mean, you speak about rulers and this caretaker role, uh, Federico, almost feeling like we're being, you know, [00:13:00] almost infanticised in certain ways, because maybe somehow we need to be controlled.

[00:13:06] **Masechaba Masemola wa-Mdaka:** Tawanda, as we think about shifting mindsets, right, especially those now who are on the receiving end of all of this. How do we gear towards moving from digital subjects to digital citizens?

[00:13:22] **Tawanda Mugari:** Wow. Uh, thanks Masechaba. I think, uh, that's really an amazing angle. Um, and I think I, I really wanted to start by unpacking to say, I always say, look at your own house, the way you live in your own space.

[00:13:35] **Tawanda Mugari:** Surveillance doesn't just start from a government point of view. Uh, why do you need cameras at your house? You know, why do you need those burglar guards? Why do you need certain security issues that you put there, you know, so if we start, you know, to think with that lens, then you also find that there is going to be an easier way for us to be [00:14:00] transitioning and actually becoming like digital citizens, as you said, you know, so I think the thing that I just want to explain here is that, um, we need to look at at any technology as a double-edged sword, but it also then depends with the person that is behind the technology or the one who is invested in the technology.

[00:14:21] **Tawanda Mugari:** You know, it is, for example, if I'm going to say I've got a son in my house and they are always online, I would really want to appreciate to see what they are doing online because I do not want them to gain access to certain information that can then maybe contradict the values of the house. Okay, so that is one point or sometimes I would really want to when I travel out of my space, I would like to be seeing my house, which means that I'll then install, uh, maybe cameras, which I can remotely be accessing when I'm somewhere else.

[00:14:56] **Tawanda Mugari:** All these things are things that are enhancing my [00:15:00] security and also making sure that I'm also at peace when I'm somewhere else. I'm protecting my environment and this in the same light. It is for a lack of a better word. Okay. This is exactly what might be the intention of these governments and these rulers and these offices.

[00:15:18] **Tawanda Mugari:** But at the same time, you find that there's a fine line between protecting the citizen and also the privacy of the citizen. You know, there's, there's always that science. Oh, okay. Why then do we classify certain things as protecting cyber terrorism? Okay. These are some of the things that, that are being introduced within these laws, but at the same time,

[00:15:43] **Tawanda Mugari:** Where is the.privacy element of me as a basic citizen in a country. If I'm going to call Rosemary, do I really want

that record to be there that I called Rosemary and I talked to Rosemary for 10 minutes? The sad [00:16:00] reality that's now happening as well is that it's no longer just the duration of the conversation. It is now, what are we discussing with Rosemary?

[00:16:10] **Tawanda Mugari:** You know, so yes, we can say if Rosemary and Tawanda are prime suspects to something. But also, who is classifying that Tawanda and Rosemary are prime suspects? It now becomes a whole discussion, you know, but we've also seen the good of these cameras when somebody has been abducted or kidnapped. The last point of location, it's easy for people to say, Oh no, there's camera footage that then showed us that this person was abducted by this number plate, et cetera, et cetera.

[00:16:43] **Tawanda Mugari:** But at the same time, if I'm a person and I still quote to say of interest, because there's always a debate to say who is a person of interest. It is as long as I think Federico did mention it, as long as it is somebody who's pushing to say [00:17:00] we need more accountability to the government, they can then be classified as a person of interest,

[00:17:07] **Tawanda Mugari:** but they're actually doing a national service by making sure that the government is accountable. So when we have high tech cameras and these laws that are now recording our phone calls and tracking our whereabouts, then it now becomes an issue where we now say, do I really need to be using this technology or not? In some cases, we see that people are now going back to the Stone Age with the saying, I love technology, but it's better for me to be writing on a piece of paper my thoughts.

[00:17:37] **Tawanda Mugari:** After that, I'll burn the paper. Some people are now saying, let's meet in a park, but leave your phone. We are now doing the old way of meetings because clearly the new ways come with new challenges and some of these challenges are now making people rethink the use of technology. And to say, okay, [00:18:00] if I am going to be meeting Rose, do I really need to send her the location where I'm saying, let's meet here.

[00:18:09] **Tawanda Mugari:** It is convenient but is it now secure? Is it safe? Because of these surveillance issues, some of us when you then use your credit card in certain shops, they're also tracking to say

Tawanda was at this shop and that shop and that shop. So there's so many things that we now need to unpack and understand as netizens are to say what are the do's and don'ts of using the internet and, uh, It's a sad reality that most people who classify themselves at risk in countries are now regressing and actually not using this technology after all.

[00:18:48] **Masechaba Masemola wa-Mdaka:** Tawanda, you've brought up a few points here and maybe I'm maybe throwing a curveball in the conversation. Rosemary, and I think now specifically to the work that Internews [00:19:00] does around providing the knowledge and providing the space for stakeholders to come together to have the conversation stemming from what Tawanda has been sharing.

[00:19:10] **Masechaba Masemola wa-Mdaka:** I'm thinking now we actually did a special feature episode on the Malaba protocol last year with Dr. Chidi Odinkalu and obviously in this protocol it has various provisions and I want to speak specifically to the criminal provisions relating to attacks on computer systems, computerised data breaches, content related offenses or what can be deemed as an offense. Tawanda's explaining or going through the motions of how there seems to be this very sort of criminal element, which is towards the other.

[00:19:42] **Masechaba Masemola wa-Mdaka:** So while we are being policed, who's policing the police in this case? If there are these conventions by the African Union on cyber security and personal data protection, where is their responsibility? So where do we stop and start?

[00:19:59] **Rosemary Viljoen:** So that speaks to exactly what Federico was referring to earlier, which is why media and civil society become the targets of governments.

[00:20:06] **Rosemary Viljoen:** Civil society and media understand the importance of the laws, they understand mostly the impact of the laws and the mechanisms being used by governments. And where we do see in countries where we have an informed media, which is why as Internews we advocate for capacitating journalists and civil society on the laws.

[00:20:34] **Rosemary Viljoen:** On how the laws are being used. We assist them into to better advocate, uh, for the protection of their rights. What happens in this instance is that governments turn it back on civil society

and media, and they use the very same laws that they're advocating against to harass and criminalise journalism.

[00:20:56] **Rosemary Viljoen:** Unfortunately, in most of our countries, we [00:21:00] have weak judiciary, and because we have the legal fraternity that don't fully understand the technology, there is a great lack of understanding the technical space and understanding the legal ramifications. And that's the loophole that we see government operating in.

[00:21:20] **Rosemary Viljoen:** We've been in countries where we've trained on cyber security bills and when we've reached out to parts of the legal fraternity, there was a very big lack in understanding of the law, of the technical aspects of the law, and then also how the law could be applied. We've also seen in some of our engagements with civil society and some journalists that there is almost a blanket acceptance that these laws are there to protect them.

[00:21:49] **Rosemary Viljoen:** And they don't question what the impact of the law and the provisions of the cybersecurity laws actually mean on a day to day operational level. So I [00:22:00] think there is a understanding of what the provisions are, but on a granular level, on a day to day level, that lack of comprehension allows government to use and abuse these laws.

[00:22:12] **Masechaba Masemola wa-Mdaka:** And quite conveniently so, as one might observe, with the trend, at least. which seems to be prevailing rather than working in the collaborative sense. Tawanda, I would like to bring you back in here. You were just touching on some, um, or rather maybe I shouldn't say comically, how people are sort of resorting or retorting back to old ways of having meetings or having private conversations.

[00:22:37] **Masechaba Masemola wa-Mdaka:** I mean, you speak about, you know, people maybe writing things on paper and burning it, you know, they sort of, this sort of, I'm kind of like seeing this, you know, in the park movie scene, uh, with people talking on opposite sides of the bench, but you know, nobody actually knows that they're together. Can you explain to, or at least give us an insight into what happens when the technology, which is supposed to be work, [00:23:00] fails?

[00:23:00] **Masechaba Masemola wa-Mdaka:** I'm speaking specifically now to shutdowns, internet shutdowns, what happens when the internet space, the web space, is not accessible. Telecommunication structures, infrastructure in this case, in most countries, is wholly controlled by the state. What happens when this happens and what are the alternatives? Satellite technology, maybe?

[00:23:21] **Tawanda Mugari:** Yeah, that's, uh, that's, that's something that's really close to my heart. Uh, I, I think together with Rosemary as well, I think, uh, we've invested, um, such a time, you know, to do deep research around internet shutdowns and how they actually started. I think, um, there is this like strategy that is now there.

[00:23:45] **Tawanda Mugari:** And unfortunately it's now being best practice in courts, you know, for governments to implement when they want to silence their own people, whether it is because of a protest or maybe during an election, [00:24:00] or maybe simply because that there is a planned protest that needs to happen. So there are different stages to internet shutdown.

[00:24:08] **Tawanda Mugari:** It starts by just slowing down the internet, which is better known as throttling. This is where the government, through the internet service providers, slows down the internet. So imagine if you want to send a WhatsApp picture to somebody. It's a small image, you know, but it takes forever for you to upload it to get that one tick and the second tick to say it is actually delivered and it takes a longer time for that person to download that image ultimately then like frustrates.

[00:24:41] **Tawanda Mugari:** People from sending out, you know, the messages which are, will be in media form, then will then resort to text-based type of messaging, which now does, doesn't show the evidence of the extent of damage of the protest or maybe the brutality that is being [00:25:00] done by the state, like police or actors.

[00:25:03] **Tawanda Mugari:** Then after that, maybe they've seen that, okay, this slowing down of internet is not really solving the problem. They can now do a partial shutdown. Partial shutdowns are now selective blocking of certain platforms online, you know. So it can start by social media platforms, selective ones, the common ones.

[00:25:24] **Tawanda Mugari:** I know that WhatsApp is the thing that everyone uses in Southern Africa, you know, so they'll be like, okay, let's block the usage of WhatsApp. Let's block the usage of Twitter because some people then run to Twitter and start to tweet. Let's block Facebook. Let's block Instagram. So all those are now a partial shutdown or they can say internews is.

[00:25:49] **Tawanda Mugari:** is the one that is actually pushing this out. Let's block the website. So they can block the website or a platform that's now like a targeted and it's called the partial shutdown. This can [00:26:00] also be circumvented, or you can actually bypass this censorship by the use of a VPN, you know, which is a virtual private network.

[00:26:09] **Tawanda Mugari:** Where it can now bypass that blockage but sometimes you find that governments can then say, okay, the citizens have actually educated themselves, or they know the use of a VPN, then they'll be like, let's block that VPN as well. Right? If that doesn't work, they can then say, let's just kill the whole internet, which you now say the kill switch.

[00:26:32] **Tawanda Mugari:** Okay. Which is literally, we've got no accessibility to any platform using the internal infrastructure of the country, which means now, like the fiber is no longer working. That's now if you're on like a telecom line, it's not working. Anything that you're using, which is in country is not actually working.

[00:26:55] **Tawanda Mugari:** This is now when people then start to say, Oh, okay. So let's now try to push people to [00:27:00] be implementing like Viasat, which is now like the satellite. Okay. This can bypass simply because it is not being managed by the country's infrastructure but the regulations as well now, they've actually been tightened. You know, in some countries like Zimbabwe, you cannot just put a Viasat, like a satellite, uh, dish for internet. You need clearance from some form of regulatory.

[00:27:29] **Tawanda Mugari:** If you are found with a Viasat, which is not really like registered, it can also term jail term, you know, you can have like up to, I don't know, but there's a serious fine to that as well. So you, you find that this is why I don't know if you're following there is um, the Starlink, everyone is talking about it.

[00:27:50] **Tawanda Mugari:** Everyone is excited, but African countries, uh, especially the countries that we work in the hesitant, they're not engaging fully with Starlink [00:28:00] because it will then mean that they've got limited or no control over the access of the internet for citizens and it becomes cheaper as well.

[00:28:12] **Masechaba Masemola wa-Mdaka:** Exactly. Tawanda, I actually want to jump in here and maybe this is a question that might be at the forefront of people's minds.

[00:28:18] **Masechaba Masemola wa-Mdaka:** You speak about this kill switch and you talk about regulatory bodies. How do governments actually get service providers to agree to something like throttling the network or shutting down? I mean, is there something actually that speaks to this being illegal? Or is it, I mean, nobody's actually thinking about this?

[00:28:41] **Tawanda Mugari:** I think, I think I can pass this question to Rosemary first. Uh, then, then from Rosemary, please go.

[00:28:48] **Masechaba Masemola wa-Mdaka:** Rosemary, please.

[00:28:50] **Rosemary Viljoen:** Okay. So what happens in every single country, any equipment that emits any form of transmission [00:29:00] using the airwaves of that country is controlled. All service providers have to seek and get permission from governments to operate and they get a license to operate.

[00:29:11] **Rosemary Viljoen:** So their licenses are threatened. This is what happened in Eswatini when we saw the democracy uprisings. MTN shut off the internet and they initially denied it and then came back with a statement after pressure from outside of Eswatini, from media, from civil society, and they admitted that they were then instructed by the Eswatini government to completely shut down the internet.

[00:29:39] **Rosemary Viljoen:** And Starlink is a case in point in South Africa. I think our government is using the BBEE, triple BEE ownership, but I think that's a smokescreen for, uh, exactly what Tawanda was saying. It's a lack of control and control is why we have [00:30:00] this, this dearth of cyber security laws that provide protection, but moreover, they're about control.

[00:30:09] **Masechaba Masemola wa-Mdaka:** Making it work for one side, I suppose. Rosemary, staying with you on this question, let's look at a very recent example, the BRICS summit, which took place from the 22nd to the 24th of August in Johannesburg. We have also seen this happen in other examples, uh, in the South African case around the state of the nation addresses.

[00:30:32] **Masechaba Masemola wa-Mdaka:** In the South African Parliament. Why was the incident that took place with the Daily Maverick such a noteworthy one to speak of, especially stemming from Tawanda's comments and what you've also just remarked on now, as we think about regulatory bodies, who's in charge, etc.

[00:30:50] **Rosemary Viljoen:** Okay, so before I start with that, because I think what I, what I'll share now is an important, sets the tone for why, [00:31:00] why this, uh, issue with Daily Maverick was important.

[00:31:03] **Rosemary Viljoen:** So in the lead up to BRICS, uh, journalists for any large event, they have to seek media accreditation to attend and to report on the event. And there was a statement issued by the South African government that said if media did not report about BRICS and and we were having a ton of leaders with really poor human rights track records coming to the country with Russia and the Ukraine war.

[00:31:34] **Rosemary Viljoen:** The South African government in particular was really keen to ensure that media coverage was not embarrassing. There was a statement that was issued and then withdrawn that said if media did not cover BRICS in a manner that was positive, they would not get accreditation. And there was great push by international media associations and local media, and that led to the withdrawal.

[00:31:59] **Rosemary Viljoen:** [00:32:00] So with that in mind, we have Daily Maverick, uh, who on the 23rd of August writes an article about Indian President Modi refusing to get off a flight at the Waterkloof Air Base because he was not being met by President, uh, Cyril Ramaphosa, but rather by what he believed to be a sort of a low level delegation, which was, uh, ministers coming to greet him.

[00:32:28] **Rosemary Viljoen:** As a result of that story, Daily Maverick was subjected to A DD DOS, which is a distributed denial of service attack and this means that there's a malicious attempt to disrupt the

normal traffic on the server or the network or website that's being targeted. And they overwhelm, you know, so there's bots that overwhelm the server with a ton of repeated messages, which is just on repeat.

[00:32:55] **Rosemary Viljoen:** And so the network either just tanks or the server tanks or the website tanks. [00:33:00] And so what Daily Maverick had to do is they had to then go and put up a firewall that blocked any traffic from India. They identified that this came from India, the DOS attack came from India, and they had to then block for a short term, traffic from India.

[00:33:17] **Rosemary Viljoen:** And you combine the threat about media accreditation for an event like BRICS, then you see the attack on Daily Maverick, and you then see how governments are able to manipulate the technology. You see that if media are writing stories that they perceive to be embarrassing or negative, they will, they will shut you down.

[00:33:41] **Rosemary Viljoen:** The challenge for us is that many media are surviving by being online. The cost of printing newspapers has become so expensive that most media have moved on to Facebook, have moved on to a website or an online [00:34:00] platform. And if they are writing stories that governments, uh, not just their government, but other governments, um, that, that might be doing business with their particular government, if they are writing stories that are deemed negative, their entire platform is taken out.

[00:34:16] **Rosemary Viljoen:** Many media in Africa do not have the resources that Daily Maverick or do not have the resources that maybe other South African media would have. And that's a real danger for freedom of speech in Africa.

[00:34:31] **Masechaba Masemola wa-Mdaka:** Frederico, the work you do, and I'm also not touching on the remarks made by Rosemary and what that means for them as internews and the work that they do.

[00:34:44] **Masechaba Masemola wa-Mdaka:** You are both working in institutions or positions that would maybe, for lack of a better word, term you as watchdogs of making sure that all stakeholders are compliant and informed, but that there is a strong leaning towards support of the [00:35:00] agencies which make the laws to become more open for engagement and dialogue.

[00:35:04] **Masechaba Masemola wa-Mdaka:** Is this dialogue potentially a consultative process and is it effective for everyone actually coming to the table? Is there a peer review platform of, you know, learning lessons from one another, especially if one thinks of the regional blocks or how we operate continentally as, you know, political economic bodies?

[00:35:27] **Frederico Links:** Yes, I mean, this is a question about sort of the the culture of democracy in our law and policymaking spaces. And, you know, across the region, that culture is sorely lacking. Um, where, um, you know, we don't have real consultations around law and policy making. Um, so, in a lot of our country's citizens.

[00:35:59] **Frederico Links:** Uh, civil [00:36:00] society, the media are not brought into consultative spaces and where there are sort of consultants then it's a tick box exercise where, uh, government actors handpick the stakeholders that they want to consult or that they wish to have some sort of sham consultation process in order to say, look, this was A democratic process and so on.

[00:36:23] **Frederico Links:** But on the whole, you know, the practice is, is, is not good. And this speaks to sort of the weaknesses in our, in our legislative and judicial structures. Our parliaments are not geared to really critically scrutinising laws, whether it's in the tech law or Internet governance related law, or whether it's any sort of law that has very technical aspects to it.

[00:36:56] **Frederico Links:** You look across the landscape [00:37:00] of our legislative spaces and you see a lot of our parliamentarians do not have the educational informational and awareness backgrounds to be able to critically engage with what's, uh, what's put before them or brought before them. Same as, I mean, Rosemary pointed out the issues around our judiciaries, and this is, this is a common thread.

[00:37:22] **Frederico Links:** Um, across the region as well where our judiciaries do not necessarily play a sort of a countervailing role towards the executive power, and it's because of there's also this lack of technical understanding and expertise within our prosecutorial departments. And this is actually, these are actually things that come out in reports, assessments that have been done by agencies and entities such as the ITU, the International Telecommunications Union, um, that have been

done, that have come out of, sort of e-governance readiness assessments of our countries.

[00:38:04] **Frederico Links:** You know, these weaknesses then become really obvious when you're confronted with problematic law and policy, such as what we're seeing in terms of cyber security and cyber crime and data protection and information access law and policy that we're seeing.

[00:38:23] **Masechaba Masemola wa-Mdaka:** Absolutely, Frederico. I couldn't agree with you more.

[00:38:26] **Masechaba Masemola wa-Mdaka:** And I think what's very telling from what you've just shared is how one is able to almost recognise why the endemic almost breakdown of the culture of not really supporting this inclusivity and consultative process. The breakdown in itself, I suppose, is also behind what really lies beyond or at the forefront of the intention of actually bringing these matters closer to where they really matter.

[00:38:56] **Masechaba Masemola wa-Mdaka:** And one almost sees that it's, it's quite [00:39:00] institutionalised and systematic, almost the intention is not quite genuine. I think that's where, as you rightfully put it, that, um, the work continues and we remain hopeful without necessarily putting a bleak view on the future, but one obviously of caution and promoting the awareness of why this is important.

[00:39:19] **Masechaba Masemola wa-Mdaka:** In closing, as we think about the reality of the virtual space and why it matters, Tawanda simply put, why are digital rights a human right and how does this work personally resonate with you?

[00:39:36] **Tawanda Mugari:** Thanks, I think, uh, I'll just answer this question briefly. Uh, but I think we need to take a step back before we even talk about digital rights.

[00:39:47] **Tawanda Mugari:** We also need to be saying internet in itself is a human right, you know, the access to the internet, you know, the access to the digital devices that we have, [00:40:00] you know, um, I think one of the challenges that we are, we have, especially in Africa is

that, um, technology is not where it's supposed to be, as compared to the globe.

[00:40:13] **Tawanda Mugari:** So when we now talk about the digital rights, you know, for somebody who has just got access to the Internet, it can actually be tight, you know, because when somebody gets a digital device, they get excited, you know. When they are now on the internet, they get more even excited, you know, so when you now go into the issues of saying, Oh, okay, what are the digital rights, the principles that need to be taken care of by this individual, this group, then it becomes like an afterthought because we are still getting excited by the lake of accessing the internet itself.

[00:40:49] **Tawanda Mugari:** But it is a human right, simply put, because as long as it is my citizenship online, it then simply means that I [00:41:00] need to have certain permissions or rights there, simply the right to privacy. I think if we just think of it as the way we, we have our privacy in the physical space, it is actually a little the same way that we also.

[00:41:18] **Tawanda Mugari:** Want to know to motivate our governments to to actually have that same lens when it comes to the digital space. And I think it resonates really well with me, because I've been working in the space for now at least 18 years, but my whole background is into tech and I've always wanted how, I like to simplify accessibility to resources and talking about technology in a non-tech way.

[00:41:46] **Tawanda Mugari:** You know, sometimes I think we've also discussed this here that some of the legislation that's actually being put is not being understood by the normal citizen. I think we've done so many trainings with [00:42:00] Rosemary and people only understand the law in the training, but these are the major stakeholders that need to be documenting and taking this news or these laws outside for other people to understand.

[00:42:17] **Tawanda Mugari:** So I think it's a life challenge, but at the same time, I'm appreciative of organisations like Internews that have now taken a deliberate move to make sure that digital rights, it's a conversation that's actually being discussed in spaces, whether it is on social media, it's in in-person meetings, or it's on the radio as well.

[00:42:38] **Tawanda Mugari:** So I'm really excited about the future even if we don't make more noise about it, but let's have platforms where we are educating our children at least that there is these do's and don'ts when it comes to the online and we're engaging with the stakeholders that actually make the laws to actually say, Do you really [00:43:00] understand what you're saying?

[00:43:02] **Tawanda Mugari:** And also trying to motivate other investors within our countries to come in because I also think that one of the things that puts everyone at, at a disadvantage is also the cost, uh, you know, of such like services like the internet, you know, you, you like the accessibility to cheaper technology, which is being blocked by governments because they've got agreements with the current internet service providers.

[00:43:29] **Tawanda Mugari:** I really appreciate, you know, organisations like internews because they've really opened a lot of channels of education and knowledge, especially to people that can actually then broadcast it further, you know, to a bigger audience.

[00:43:46] **Masechaba Masemola wa-Mdaka:** Frederico, all variables considered, can the cyberspace truly ever be a free space or do the digital hygiene checks alone make it restrictive in nature? Your [00:44:00] thoughts, please.

[00:44:02] **Frederico Links:** I think there will be restrictions as they are on most things in life that we enjoy in society and so on, but checks and balances, transparency and accountability mechanisms need to be in place so that we don't have a situation where there is state or regulatory overreach or abuses by corporations.

[00:44:27] **Frederico Links:** Um, so then the proper checks and balances need to be in place and that's what grows trust. If people feel that there are mechanisms in place to which they can turn or mechanisms, they, they know that there are mechanisms that hold government and corporates accountable for their conduct, then people have trust in systems and processes.

[00:44:48] **Frederico Links:** And that's really what we're talking about. Are the mechanisms in place that would, uh, you know, grow, uh, trust in, um, in, in various things, not just in the [00:45:00] lawmaking processes but in

the conduct of, of regulatory agencies, in the conduct of the executive branch of government, in the conduct of law enforcement, in the conduct of telecommunications and internet service providers.

[00:45:14] **Frederico Links:** Are there mechanisms to which we can turn and say, look, these mechanisms function in the public interest? And on the whole, the answer is at this point in time, no. If you look across the region, and that's really where we need to engage. I spoke previously about sort of the democratic culture and practice and our institutions, state institutions especially, need to reflect that.

[00:45:41] **Frederico Links:** Need to reflect that when it comes to law and policy making, when it comes to regulatory implementation, um, when it comes to judicial oversight, even when it comes to institutional oversight. That they reflect, you know, what these institutions should be, uh, in a [00:46:00] democratic society, where institutions act in the public interest.

[00:46:04] **Frederico Links:** But then, that also speaks to, you know, what level of understanding do we in general have as citizens of our countries, of what, how institutions should function in our interest. And that is where, sort of a civil society, we play a role in, terms of educating and awareness raising to say, look, if we want.

[00:46:31] **Frederico Links:** Um, our institutions, our state institutions to act in our interest, if we want to trust our state institutions we have to be involved in crafting the, the foundational sort of law and policy that, that creates these institutions and that we get through civic education. You know, we have to have more of that media information literacy.

[00:46:56] **Frederico Links:** And digital literacy programs from primary [00:47:00] school through to tertiary education level so that people understand, you know, what the technologies are, what the laws are, that impact is the use of these technologies and the consumption of these services and technologies by me as an individual and what is the impact of this on me.

[00:47:18] **Frederico Links:** So, so there's a lot of work there, and you have a lot of organisations working in this space, media information literacy, digital literacy, news and information literacy, um, civic education and awareness spaces, but it really has to come through our education

systems, through, uh, you know, various other, uh, mechanisms, you know, it isn't just the one thing that solves the problem.

[00:47:41] **Frederico Links:** There are things that have to be fixed at various levels of society, various levels of state. We can tinker with laws, we can tinker with policies, we can tinker with, regulatory bodies, um, but there needs to be sort of an all of [00:48:00] society approach to, to how do we, you know, we move away from this negative trend that we're seeing of the rise of digital authoritarianism, the rise of the state seeing this opportunity with these emergent technologies to control society, to manipulate, uh, society, to repress society.

[00:48:24] **Frederico Links:** So this requires an all of society intervention. And this is, as I said, I mean, the organisations that, that work in the space that are, um, pushing for this. Um, and, and really there needs to be more support for, for these organisations. And that's where, you know, entities such as Internews come in and I have to be, I also have to say, you know, it's, it's great that they are organisations that support local civil society and media actors who are working in the space trying to make the spaces is more democratic.

[00:48:56] **Masechaba Masemola wa-Mdaka:** Rosemary, where do you see the [00:49:00] continued role of Internews in advancing the cause and ensuring that everybody comes to the table and there is accountability to be held on all sides?

[00:49:12] **Rosemary Viljoen:** For us as internews, we really see ourselves as a convener, a convener of media, civil society.

[00:49:21] **Rosemary Viljoen:** Uh, industry experts, the legal fraternity, and we've seen fragmentation where in country civil society and media sort of pull at opposite ends in terms of trying to carry favour with government and we believe that by bringing partners together and creating collaborative networks, that gives strength to democracy, that gives strength to holding government accountable for infringements of freedom of expression rights.

[00:49:54] **Masechaba Masemola wa-Mdaka:** Well, certainly one is able to attribute from these [00:50:00] two episodes how much, uh, we need to be cognisant of the fact that we are in a digital age and we are in an evolution of our space and it's one that we need to be fully, um, we need

to recognise that moment and the work is certainly outlined but it's not mutually exclusive to only being tailor made.

[00:50:22] **Masechaba Masemola wa-Mdaka:** I think there's definitely space for everyone, legal practitioners, um, all stakeholders considered. I'd like to thank you all, Rosemary, Tawanda, Frederico, and also by extension, Wakesho and Helen fom our part one of this two part episode, thank you so much for being part of this important conversation and one that certainly should continue.

[00:50:45] **Frederico Links:** Thank you, Masechaba.

[00:50:46] **Rosemary Viljoen:** Thank you, Masechaba

[00:50:47] **Tawanda Mugari:** Thank you so much.

[00:50:50] **Masechaba Masemola wa-Mdaka:** What a conversation and much food for thought. Some things that stood out for me: Getting a deeper [00:51:00] understanding for what it means for governments to have the ability not only to operate digital surveillance, but also control internet service providers and the internet within countries and the subsequent impact on freedom of speech and what news gets out and what doesn't.

[00:51:15] **Masechaba Masemola wa-Mdaka:** Inclusivity and the need to consult all stakeholders in the process cannot be underestimated. As with the first part of this conversation, I am even more aware of the fact that we need to broaden our mindsets to include the fact that we are not digital subjects, but rather digital citizens.

[00:51:39] **Masechaba Masemola wa-Mdaka:** Digital rights are human rights. My right, Your right, Our right, humanity should and continues to be for us All, and indeed everywhere all the time … This has been the fourth episode, season 4 of “Let’s Talk Human Rights – the FNF Africa podcast exploring various human rights issues“. We trust you have been informed, and enlightened by it.

[00:52:11] **Masechaba Masemola wa-Mdaka:** Please hit the subscribe button so that you don’t miss any future episodes. And if you’ve been listening to this podcast for a while and enjoying it - why not leave us a 5

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[00:52:39] **Masechaba Masemola wa-Mdaka:** such as human rights, the rule of law, democracy, innovation, digitization, and free trade. By conducting campaigns, media events, seminars, workshops, study tours, cultural happenings, and training courses the foundation promotes human rights including freedom of expression, freedom of the press, children's rights, and LGBTQIA+ rights, and engages against violence targeting women and capital punishment.

[00:53:11] **Masechaba Masemola wa-Mdaka:** If you are interested in our activities, follow us on Instagram, Facebook and Twitter. Simply check for "Friedrich Naumann Foundation Africa", the links are in the show notes.