



#DEFYHATENOW

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The Need for Comprehensive Digital Rights Laws in South Sudan

By Achol Deng

Introduction

Earlier in the year, #DefyHateNow team attended a two-day training on digital rights, facilitated by Article 19, in partnership with Kenya ICT Action Network (KICTANet). The training covered a variety of topics including; internet access and affordability, right to information, censorship, privacy and data protection, cyber security and harmful content or hateful speech, which is at the center of #DefyHateNow's work. Conversations from this workshop formed a basis for our research into the existing laws in South Sudan that protect/affect digital rights.

Notably, East African countries such as Kenya and Uganda have entrenched hate speech laws, as a way of protecting individuals, groups and organizations from spontaneous criminal offence against them that must and might be provoked. These two countries have also developed several training mechanisms for the public and private sectors including police, the public and media houses with the aim of helping and contributing to the understanding of hate speech.

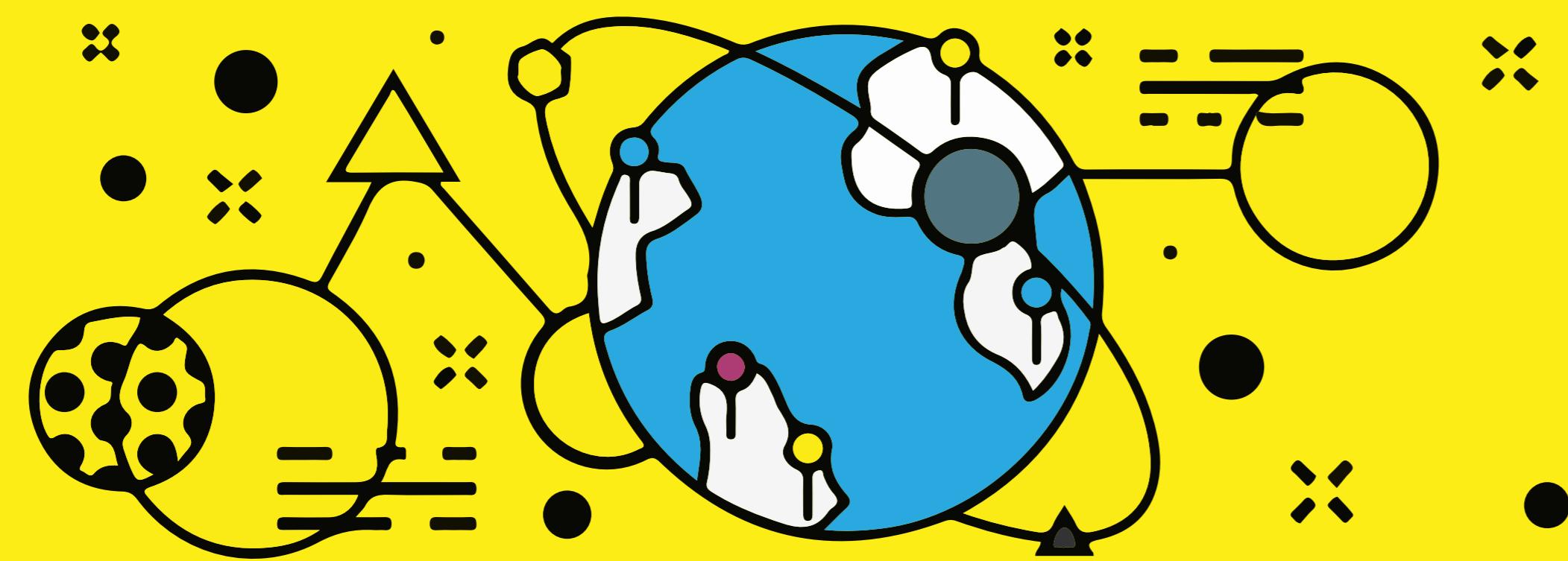


Further, #DEFYHATENOW acknowledges that there has been a slight increase in internet connectivity and online promotion of digital rights, freedom of expression and access to information in several East African countries with the exception of South Sudan, hence bringing up the question of the quest to protect digital rights in South Sudan.

This brief will look into different digital rights legal frameworks in East Africa and Africa as a whole, and make recommendations to the South Sudanese legislators with regards to the adoption and enactment of these frameworks into South Sudanese laws.

Overview of digital rights at the universal and the African continent level

Digital rights are human rights in the internet era. Basically, they are an extension of human rights such as freedom of expression and the right to privacy. It pertains to computer access and the ability to use, create and publish digital media, permissions for fair use of digital copyrighted material. However, the extent to which digital rights are recognized varies from country to country, but the right to internet access is recognized in most countries. Despite this recognition, South Sudan falls behind in acknowledging, protecting and promoting digital rights.

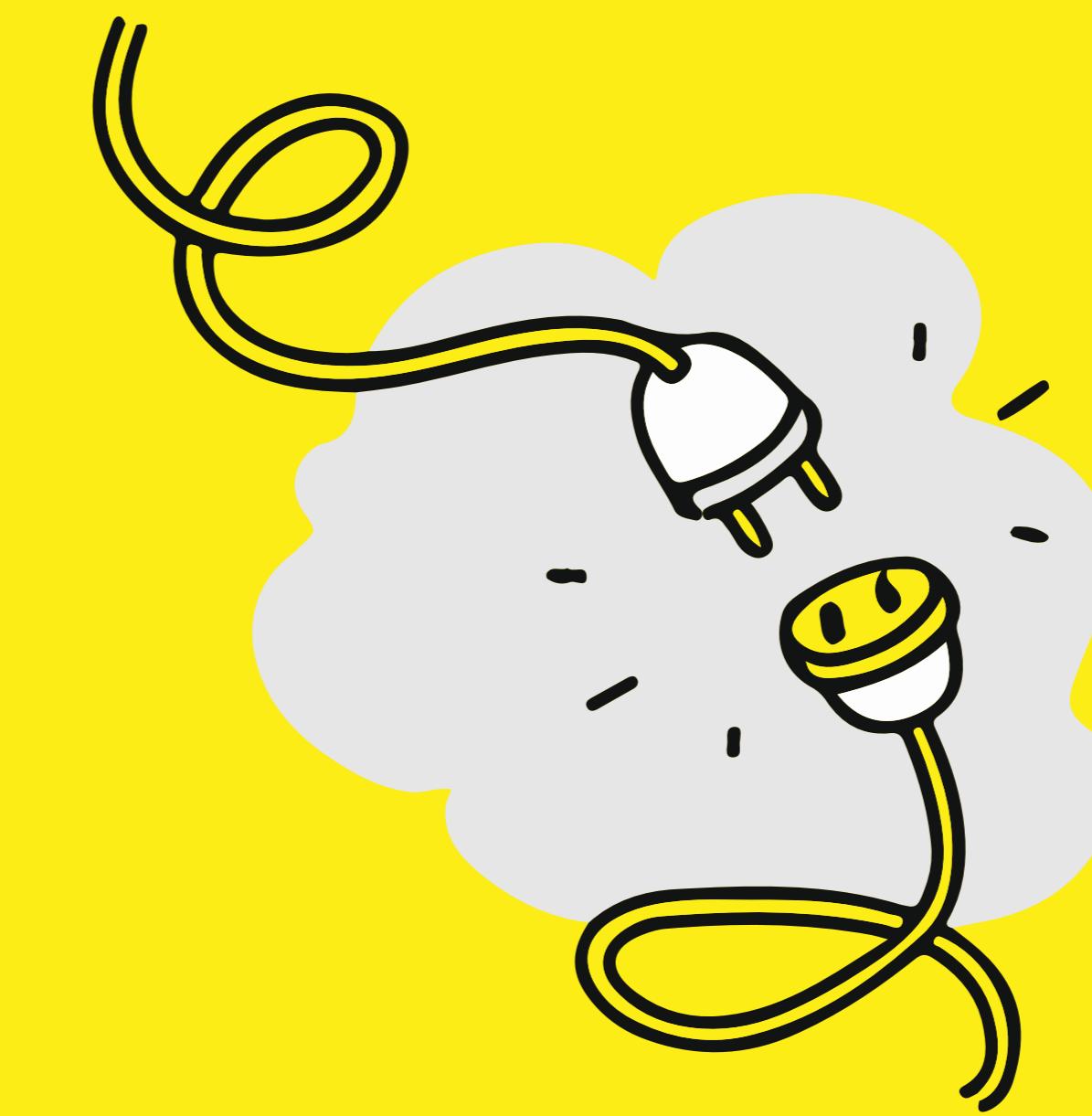


Globally, the rights to internet privacy and freedom of expression are well laid out in the Universal Declaration of Human Rights (UDHR) that South Sudan is a signatory of.

Even though South Sudan hasn't experienced any internet blockage and shut down like many other East African countries such as Uganda and Ethiopia, the telecommunication companies and the government in charge have denied South Sudanese citizens access to information by not providing enough coverage for cell phone network across the country or shutting down the phone network as a way of punishment in several states during the armed conflict.



According to the United Nations (UN), disconnecting people from the internet violates the rights protected by UDHR and goes against international law.



Dr. Merten Reglitz, a lecturer in Global Ethics at the University of Birmingham, in the *Journal of Applied Philosophy* said “Access to internet and information shouldn’t be a luxury but a basic right that should be protected by the government and telecommunication agencies”. South Sudan Government and telecommunication institutions should protect these rights by availing the necessary equipment that will allow full coverage of telephone networks and provide internet at an affordable rate.

On the continental level, the African Union Convention on Cyber Security and Personal Data Protection (The Malabo Convention) articulates different characteristics related to information technology :- law, non-digital and non-criminal justice matters. Even though the convention does not provide an efficient and fully functional instrument for international cooperation between the State parties, it is a great step towards harmonizing cybercrime domestic laws and aiding cooperation against cybercrime between Parties.

The African Union Convention with respect to cybercrime may be presented as a set of aspirational ideologies that can be adopted by South Sudan legislature as a step towards achieving the right to access the internet in the country.



The Malabo Convention has been ratified by five countries; Ghana, Guinea, Mauritius, Namibia and Senegal. However, even though many East African countries are yet to ratify the convention, Rwanda has signed it. The South Sudan government needs to ratify the Malabo convention as it is an important instrument that governs several technology laws and can be enacted into domestic law.

The African Declaration on Internet Rights and Freedom “The Declaration” was drafted by the civil society organizations during the 2014 Nairobi Internet Governance Forum, with the aim of guiding and creating a democratic internet policy in Africa.



The initiative was developed in response to the challenges facing the continent on how to protect human rights and freedom on the internet, in a way that is applicable at the sub-regional, regional and national levels.

The initiative was also set to meet Africa's social and economic development needs and goals by setting up principles and values promoting and protecting human and people's rights in the internet dogma and establishing a policy environment that is reinforced by human rights standards.

It also formulates the implementation of the charter on the African continent. The endorsement of this instrument by South Sudan could help in safeguarding freedom of expression and internet rights for its citizens.

Existing digital rights legal framework in South Sudan

The legal framework in South Sudan with regards to internet rights and its accessibility is minimal.



The 2013 Media Laws including the **Right of Access to Information Act**, The **Media Authority Act**, and **The Broadcasting Corporation Act**

Article 14 and Article 21 respectively, have been put in place to safeguard the rights to freedom of expression and promote internet rights.

According to Reech Malual, a lawyer and human rights activist, the right to privacy is protected under Article 22 South Sudan's Constitution of 2011. "The Right of Access to Information Act of 2013 also protects some data, such as issues to do with security or the National Security, which are not to be accessed or to be talked of within the media arena. For example, one is not allowed to talk about security strategies or the number of guns the country's military has," Malual adds. This goes to show that even though existing laws support the freedom of expression, to some extent, they limit the civilians' rights.

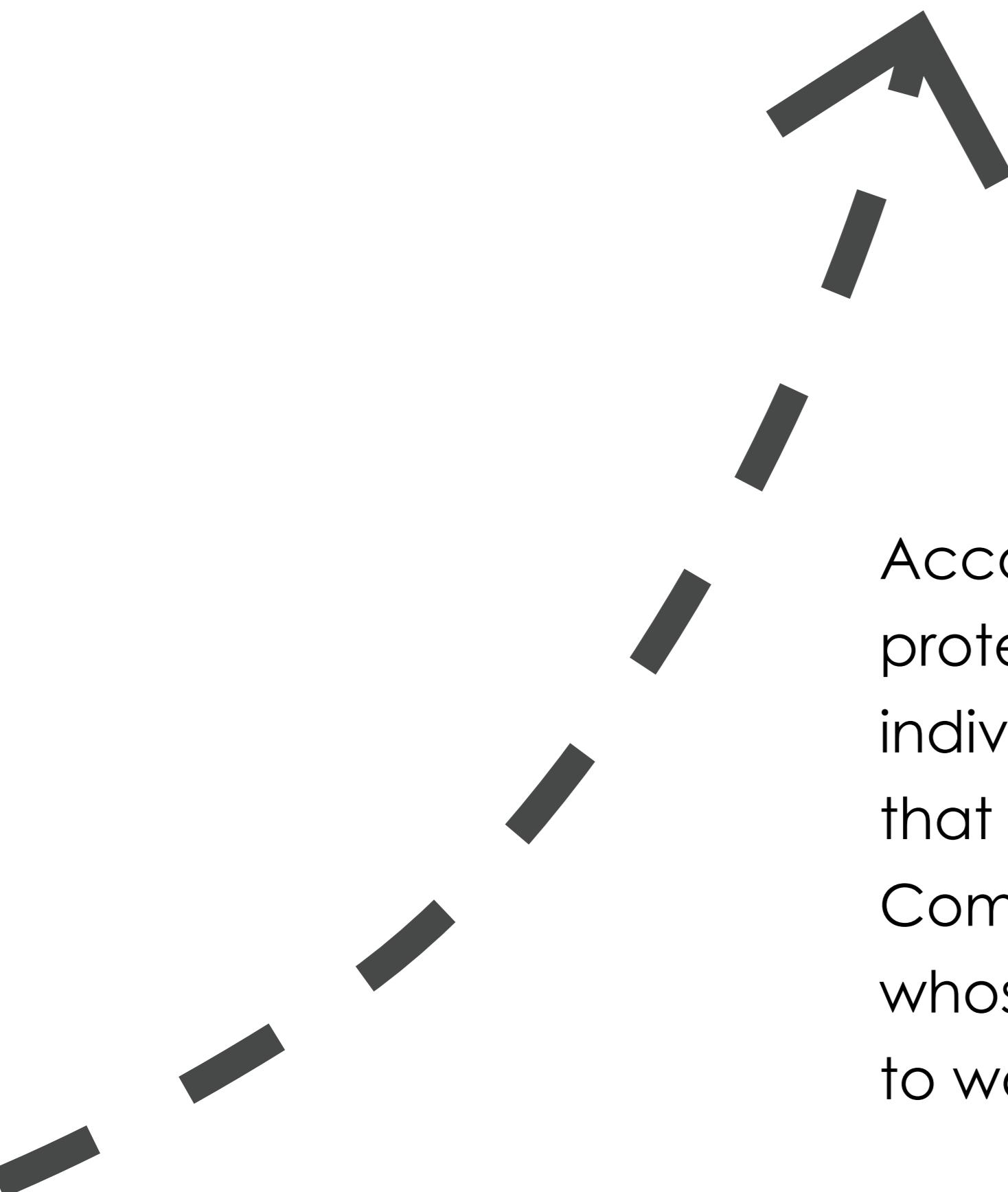
The country does not, however, have a critical map informing its citizens of their digital rights, and this is coupled by numerous other factors such as insecurity fatigue faced by many people in South Sudan, and high illiteracy rate among the population.

The above-mentioned factors have, in a way, created an advantage for government and telecommunication agencies, which allows them to vacuum the only existing space that sometimes results in the violation of the citizens' right to access information and freedom of expression.

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“South Sudan, since it became independent, has been working on a number of laws, such as the Right to Access Law which came in 2013. It is not about South Sudan not having made that law, it's just that the case has not been made, and I think it is something we can be able to take up,” says Nicodemus Ajak Bior, a commissioner for Right of Access Commission.

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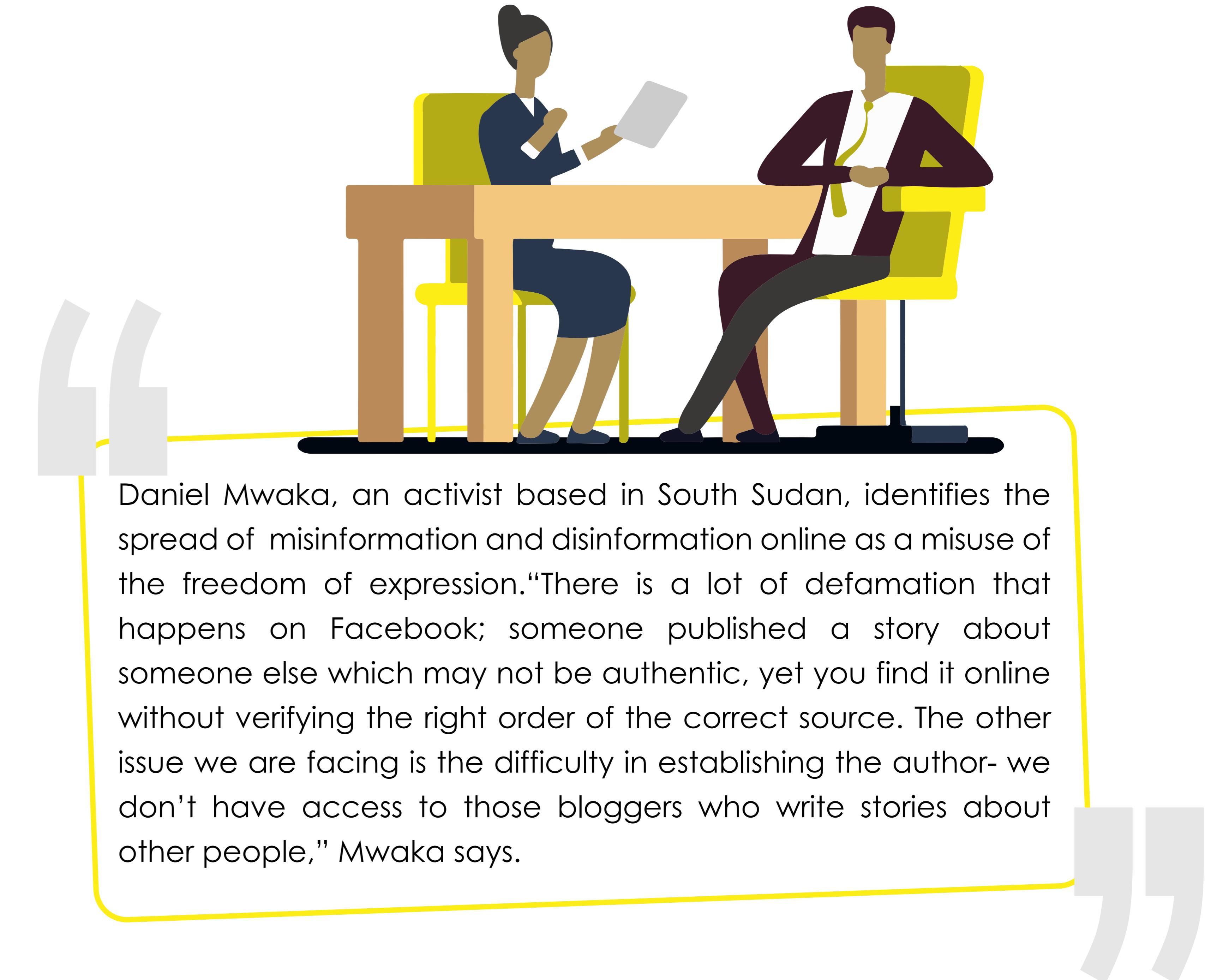


According to Reech Malual, “We have not seen of late that data is protected, whether with respect to the Republic of South Sudan or individuals, because what we know so far is that we don't have institutions that are functional. We have now the Right of Access to Information Commission, a commission that has just been established after 2013 and whose work is to access information. We do not have an institution made to work on issues of data protection.”



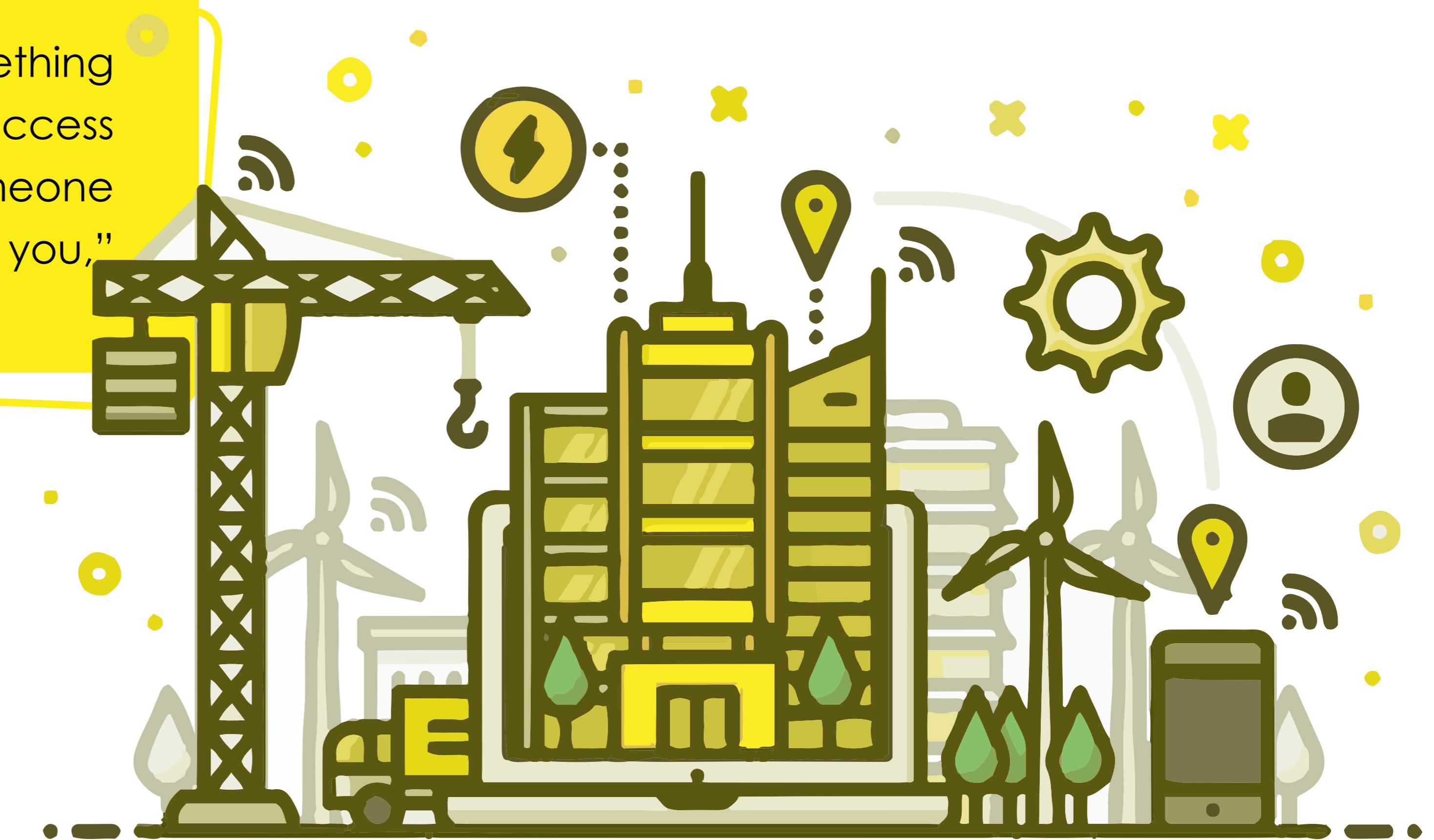
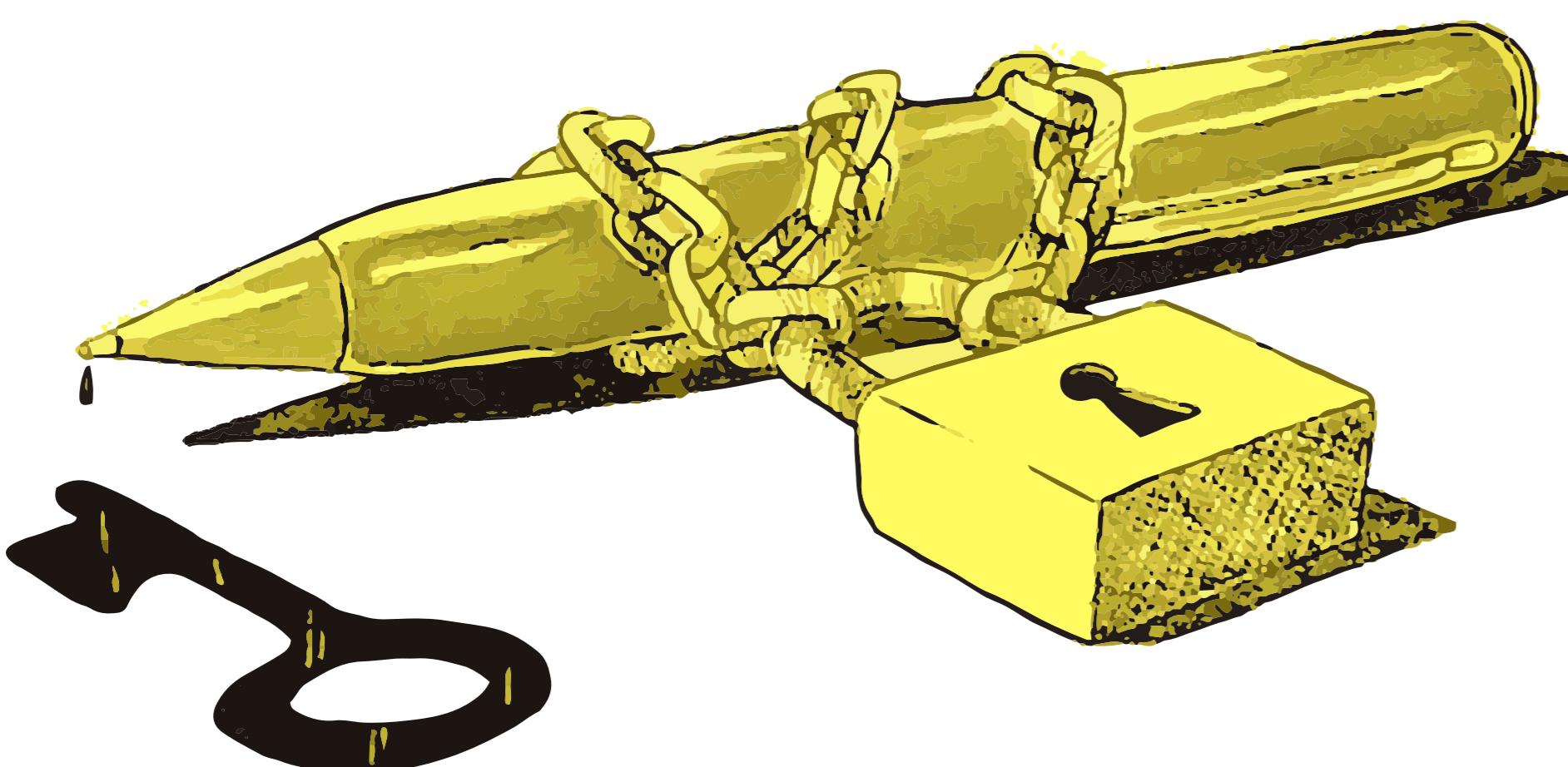
Current Challenges

Our interviewees noted that there has been an abuse of the Freedom of Expression on Social Media, especially Facebook. According to Ajak Bior, "The challenge we are facing is the control issue; you cannot control Facebook or any online platform, and South Sudan being in conflict, these platforms have been used to spread lies and fabricate stories, and it has become very difficult for people to control it. This is a major challenge, not just for South Sudan, but even for developed countries that have very advanced tools to monitor online content. Here, we don't have the tools to monitor online content and that's a big challenge for us."



" Daniel Mwaka, an activist based in South Sudan, identifies the spread of misinformation and disinformation online as a misuse of the freedom of expression. "There is a lot of defamation that happens on Facebook; someone published a story about someone else which may not be authentic, yet you find it online without verifying the right order of the correct source. The other issue we are facing is the difficulty in establishing the author- we don't have access to those bloggers who write stories about other people," Mwaka says.

"Access to internet is another issue. Somebody can write something about you or defame you on Facebook, but if you don't have access to internet, you will not be aware of what is happening unless someone you know who might have seen the defamatory posts informs you," adds Mwaka.



"We do not have a Cybercrime Investigation Unit within the police force, which is a challenge. For example, National Security officers punish people who have been accused of misusing online freedom of expression by detaining them, which is not appropriate in accordance with the law," says lawyer and human rights activist, Reech Malual.

Digital rights and access to the internet at an affordable rate have a vital role in the full realization of nationally and internationally agreed upon sustainable human development goals. The internet presents a collection of opportunities that South Sudanese citizens can benefit from and achieve several goals. For instance, over the past years there has been a change in the way people interact and communicate, resulting in a huge growth in entrepreneurship in the development of new information and communication technology (ICT) and e-commerce (the sale of goods and services online).

These opportunities have contributed to economic growth in the African continent and have potential in an even greater role in South Sudan's future. Moreover, the Internet is contributing to socio-political expansion efforts and is being used as a tool for women empowerment to help fill gaps in public sector capacity, fortify the voice of marginalized groups, and to upsurge political participation in the public arena.



However, for South Sudan to successfully foresee the development and implementation of digital rights, there is a need to address the challenges that are faced in the country. In particular, the lack of internet and its affordability, and phone network shut down. Once these trials have been addressed, the country can embark on creating a legal position that will discourse the issues of internet rights violations that befell or may have occurred in South Sudan in order for citizens to enjoy all human rights online and offline.

According to Malual, “The digital rights in South Sudan are not well observed, but Article 9(3) of the Constitution says that every individual, international convention or treaty that we have ratified has become part of the bill of rights, so other laws that are ratified include the convention on civil and political rights, and many other laws like the Banjul charter, African Charter on Human and People’s Rights, are laws that are available and they enforce digital rights in one way or the other. However, we have weak institutions that are not able to help the discourse of the public.”



What South Sudanese say on the importance of digital rights laws

Mwaka believes that laws governing digital rights are important since they protect one's image and reputation. "If we don't have those laws, someone can do anything and of course you won't be able to sue them. We need those laws so that we can hold those who write negative information as well as spread hate speech and violence on Facebook accountable."

According to Malual, "The importance of digital rights laws to South Sudanese is that it will give them a mechanism to be able to decide on an informed basis, after doing research and gathering facts. It is very important in a democratic practice to be able to exercise digital rights, for example in elections. "

"Digital rights has a lot of importance; people in this country are all online and are creating and enhancing. It is a platform that we can not do without, but then we have to figure out how to deal with the problems that come about, particularly for those individuals who misuse it," says Commissioner Ajak Bior of the Right of Access Commission.

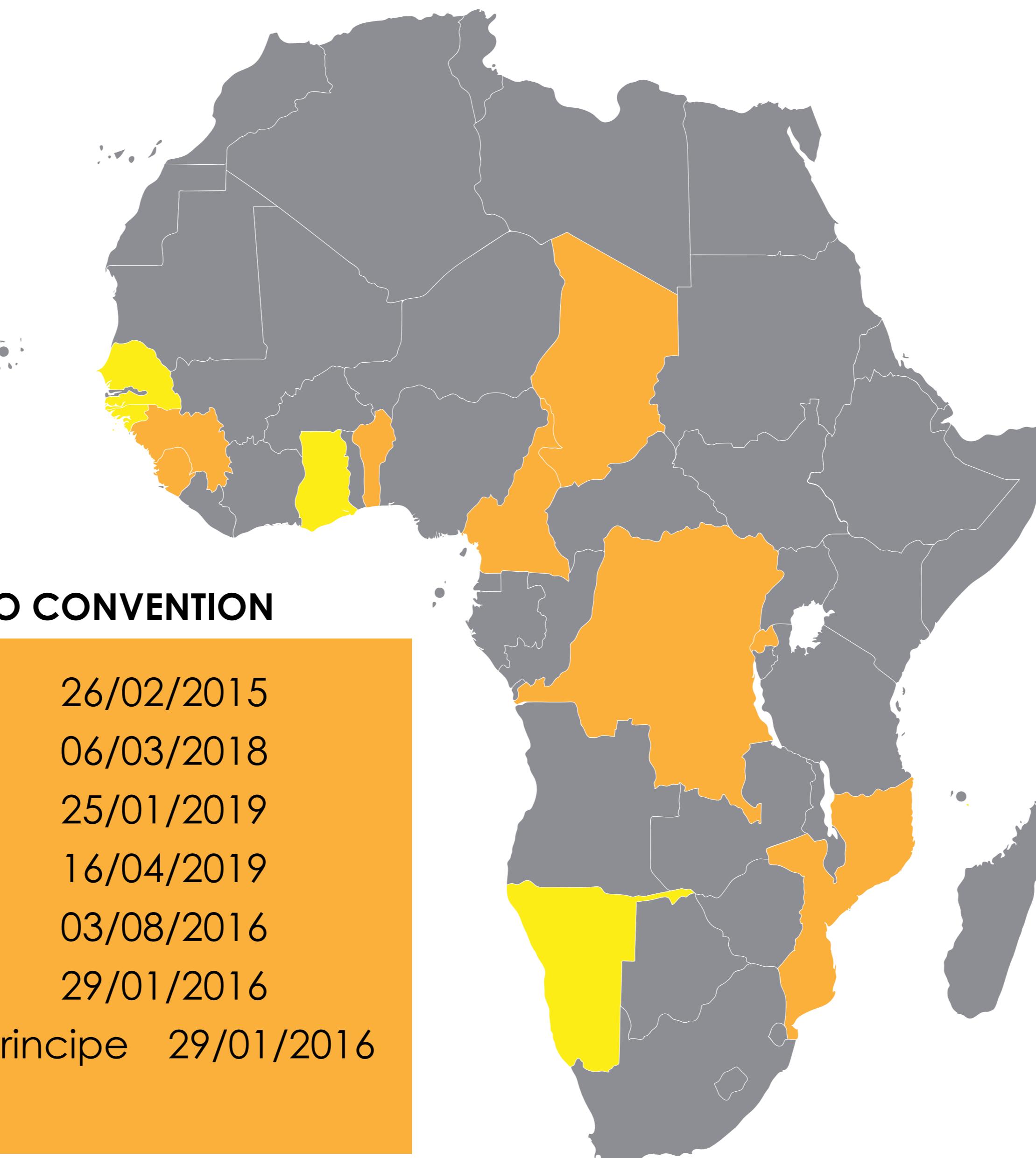
Recommendations

- South Sudanese Government should enact laws that protect and promote digital rights and access to phone networks across the country, and address the gap between villages and towns.
- Adopt strong regional legal frameworks and implement them in a vigilant and transparent way, to ensure that digital rights are not infringed and are protected at all levels.
- Civil society organization should continue to advocate for the policy issues regarding internet, by interacting with various sectors and engage in spreading awareness, research and capacity building.
- Increase awareness in digital rights and put in place mechanisms that monitor and implement measures for violations.

Additional reporting by:

Winnie Cirino, a freelance journalist based in Juba, South sudan.

COUNTRIES WHICH HAVE SIGNED,
RATIFIED/ACCDED TO THE
AFRICAN UNION CONVENTION
ON CYBER SECURITY AND
PERSONAL DATA PROTECTION



LIST OF COUNTRIES WHICH HAVE SIGNED THE MALABO CONVENTION

Benin	28/01/2015	Mauritania	26/02/2015
Chad	14/06/2015	Mauritius	06/03/2018
Comoros	29/01/2018	Namibia	25/01/2019
Congo	12/06/2015	Rwanda	16/04/2019
Ghana	04/07/2017	Senegal	03/08/2016
Guinea-Bissau	31/01/2015	Sierra Leone	29/01/2016
Guinea	31/07/2018	Sao Tome & Principe	29/01/2016
Mozambique	29/06/2018		

LIST OF COUNTRIES WHICH HAVE
RATIFIED/ACCDED TO THE
MALABO CONVENTION

Ghana	13/05/2019
Guinea-Bissau	31/01/2015
Mauritius	14/03/2018
Namibia	01/02/2019
Senegal	16/08/2016

KEY

- SIGNED,
- RATIFIED/ACCDED