

TOOLKIT

# A.I. GOVERNANCE FOR AFRICA

PART 2: EMERGING  
FRAMEWORKS IN AFRICA

SPOTLIGHT: SOUTHERN AFRICA



Thomson Reuters  
Foundation

# AI GOVERNANCE FOR AFRICA TOOLKIT SERIES

## PART 2: EMERGING AI GOVERNANCE IN AFRICA

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This is **Part 2** of the Thomson Reuters Foundation's toolkit series on AI Governance for Africa. It examines emerging AI governance instruments and approaches on the continent, with a focus on Southern Africa – in particular, South Africa, Zambia, and Zimbabwe.

**Part 1** introduced AI governance principles and approaches, and outlined emerging international frameworks, with case studies from the European Union, the United States, and China.

**Part 3** will explore options to build an advocacy strategy in pursuit of AI governance.

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## Introduction

Part 1 of this toolkit was a general introduction to AI governance, the issues which AI may cause if unregulated, and best practices in formulating governance frameworks. The purpose of this part, Part 2, is to examine what measures have been taken towards AI governance in Africa, both regionally and domestically. We focus specifically on the South African, Zambian, and Zimbabwean contexts.

The awareness of the benefits of AI is coupled with an acknowledgment of the myriad risks and challenges it poses. These include the common challenges around discrimination, bias and fairness, transparency, accountability, and data privacy.<sup>1</sup> However, there is also an acknowledgment of the unique challenges faced on the continent including digital inequalities, the lack of a structured data ecosystem<sup>2</sup> and concerns around access. This has prompted calls for context-specific responses. As noted by the African Union High-Level Panel on Emerging Technologies (APET) and the African Union Development Agency (AUDA-NEPAD):<sup>3</sup>

“Africa’s collective efforts cannot afford to continue with the habit of seeking for already-made solutions, from some other contexts attempting to counter African problems, as a matter of course. It should be noted that African problems are African context defined, and so, should be the approach to AI solution provisioning, which should be African home-grown.”

AI is a policy concern for the continent and the African Union (AU) has encouraged the implementation of governance measures. In this regard, it was noted:

“It is critical to have policies and regulatory frameworks in place that promote productive AI harnessing, by encouraging innovation and investment. AU should encourage African governments to take deliberate and proactive approach, to implement supportive regulation, policies, and initiatives.”<sup>4</sup>

## The continental response

As is the case under international law, the regional position on AI governance is scattered across various instruments. Table 2 below reveals that only a handful of African countries have formulated national AI strategies or policies, and this subject seems to be receiving varying degrees of priority.

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<sup>1</sup> African Union High-Level Panel on Emerging Technologies (APET) and the African Union Development Agency (AUDA-NEPAD) *AI for Africa: Artificial intelligence for Africa’s Socio-Economic Development* (2023) at page 50 (AUDA-NEPAD Report). (Accessible [here](#)).

<sup>2</sup> For more information about these challenges, see Abdessalam Jaldi *Artificial Intelligence Revolution in Africa: Economic Opportunities and Legal Challenges* (July 2023). (Accessible [here](#).)

<sup>3</sup> Above n 1 at page 49.

<sup>4</sup> Above n 1 at page 45.

The adoption of the African Union Continental Artificial Intelligence Strategy, discussed below, is a step in the right direction and will ideally galvanise more states to grapple with the complex dynamics of AI governance.

In relation to individual states, the 2023 Government AI Readiness Index ranked Mauritius, South Africa, Rwanda, Senegal, and Benin as the most AI-ready in the region.<sup>5</sup> The Index assesses readiness using 39 indicators across three pillars: government, the technology sector, and data and infrastructure.

In relation to the number of organisations or institutions working on AI innovation in the region, data by the Centre of Intellectual Property and Information Technology Law (CIPIT) estimates this figure to exceed 2,400. The countries leading on this front are South Africa, Egypt, and Morocco.<sup>6</sup> This figure is likely to continue increasing year-on-year.

While AI readiness across Africa is comparatively low, regional initiatives in the form of strategies, policies, and reports are, on a joint reading, alive to the benefits and risks of this technology in the African context. Mindful of the rapid developments in this space, there is a need to accelerate law and policy reform to mitigate potential risks to fundamental rights.

**Table 1 | Continental Instruments**

Year	Instrument	Access
2013	The Smart Africa Manifesto	The Manifesto is available <a href="#">here</a> .
2014	The African Union Convention on Cyber Security and Personal Data Protection (The Malabo Convention)	The Convention is available <a href="#">here</a> .
2019	Sharm El Sheikh Declaration adopted by the Specialised Technical Committee on Communication and Information Technologies of the African Union	The Declaration is available <a href="#">here</a> .
2020	The African Union's Digital Transformation Strategy for Africa	The Strategy is available <a href="#">here</a> .
2021	African Commission Resolution 473	Resolution 473 is available <a href="#">here</a> .
2021	Artificial Intelligence for Africa Blueprint	The report is available <a href="#">here</a> .
2022	The African Union Data Policy Framework	The framework is available <a href="#">here</a> .
2023	Report on Artificial Intelligence for Africa's Socio-Economic Development' by the African Union High-Level Panel on Emerging Technologies (APET) and the African Union Development Agency (AUDA-NEPAD)	The report is available <a href="#">here</a> .
2024	African Union Continental Artificial Intelligence Strategy	The Strategy is available <a href="#">here</a> .
2024	African Union Child Online Safety and Empowerment Policy	The policy is available <a href="#">here</a> .

### **AU Continental Artificial Intelligence Strategy**

In June 2024, the AU endorsed the Continental Artificial Intelligence Strategy, described as an African-centric strategy for the development and adaptation of AI in the African context. The strategy flags five themes which fall under the banner of AI governance being: maximising the

<sup>5</sup> Oxford Insights "Government AI Readiness Index" (2023). (Accessible [here](#).)

<sup>6</sup> AU Continental Artificial Intelligence Strategy (2024) at page 17. (Accessible [here](#).)

benefits of AI, building capabilities for AI, minimising AI risk, exploring African public and private sector investment in AI, and exploring regional and international cooperation and partnership. It further prioritises certain sectors for potential developmental uses of AI: agriculture, the health sector, education, and climate change adaptation.

The strategy offers further guidance to African states to develop effective and robust approaches to AI governance:

- **Implementing and updating laws:** States must ensure they have enacted and implemented laws (and if necessary, updated these laws to address AI-related harms) in the following areas: Intellectual property; Electronic communications and transactions; Whistleblowing and protected disclosures; Access to information; Data protection; Cybersecurity; Consumer protection; Antitrust and competition; Laws and policies for the inclusion and empowerment of different groups such as women, children, and persons with disabilities.
- **Identify regulatory gaps:** The second consideration is that government should identify other regulatory gaps with respect to AI and ensure that the rule of law is upheld. Gaps may include labour rights for gig and platform workers and regulations applicable to social media and content generators.
- **National AI strategies and policies:** Government should establish enabling national AI strategies and policies that align with broader development goals and in consultation with public and private sector experts. In establishing these policies, states should also identify specific sectors where AI can make a positive contribution.
- **Independent reviews and assessments:** In order to mitigate the potential harm caused by AI, the strategy calls on countries to make use of independent review processes and impact assessments. It cites UNESCO’s Ethical Impact Assessment as a source to derive best practice principles.<sup>7</sup>
- **Continued research:** Given AI’s rapid development, states should undertake AI requires continuous research and evaluation to understand, for example, emergent risks of its use in Africa, that AI systems are used in inclusive and sustainable ways, monitoring what best practices emerge from other jurisdictions, and that regulatory sandboxing initiatives are supported.

### **AU Convention on Cyber Security and Personal Data Protection (The Malabo Convention)**

The AU Assembly adopted the Convention on Cyber Security and Personal Data Protection (the Malabo Convention) in 2014, and it finally came into force on 8 June 2023. This is a significant development as the Convention aims to establish a comprehensive legal framework for data

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<sup>7</sup> UNESCO “Ethical impact assessment: a tool of the Recommendation on the Ethics of Artificial Intelligence” (2023). (Accessible [here](#)).

protection, electronic commerce, and cybersecurity. Now that it is in force, all 55 AU member states must implement domestic laws that conform to the principles in the Convention.<sup>8</sup>

Although the Malabo Convention does not specifically address AI, it provides some useful standards concerning data protection. This is significant in light of the vast amounts of data required to train AI models. There are two notable provisions:

- Article 9 provides that the scope of data protection laws should include ‘automated processing’ within their scope of application. This means that AI systems must comply with data protection laws when they process personal data.
- Article 14.5 provides that a person should not be subject to a consequential decision that is based solely on the automated processing of their personal data. This means that an important decision about a person cannot be made entirely by a machine – there must be some human involvement. Most comprehensive data protection laws in African countries already include similar provisions, but the Convention is a welcome development for countries that do not yet provide such protections.

### **Sharm El Sheikh Declaration and the AU Working Group on AI**

In 2019, AU Ministers in charge of Communication and Information and Communication Technology and Postal Services adopted the Sharm El Sheik Declaration (the Declaration), which acknowledges that digital transformation requires political commitment, the alignment of policies and regulation, and an increase in resources and investment. It further recognises that the AU requires a Digital Transformation Strategy to inform a coordinated response to digital technologies and the Fourth Industrial Revolution (4IR).

Importantly, the Declaration established a Working Group on Artificial Intelligence which is mandated to study the following: “the creation of a common African stance on AI; the development of an Africa wide capacity building framework; and establishment of an AI think tank to assess and recommend projects to collaborate on in line of Agenda 2063 and SDGs.”

The working group is made up of experts from Egypt, Ghana, Kenya, Mali, Algeria, Cameroon, Ethiopia, and Uganda.<sup>9</sup> Egypt was elected as the Chair of the Working Group, Uganda as the Vice Chair, and Djibouti as the Rapporteur. The Working Group has met three times since its formation in 2019.<sup>10</sup> Despite the important role that this Working Group could play, there is limited public information about how it has fulfilled or intends to fulfil, its mandate.

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<sup>8</sup> ALT Advisory “AU’s Malabo Convention set to enter force after nine years” (19 May 2023). (Accessible [here.](#))

<sup>9</sup> Egypt’s Ministry of Communications and Information Technology *Egypt Hosts AU Working Group on AI First Session* (6 December 2019). (Accessible [here.](#))

<sup>10</sup> Egypt’s Ministry of Communications and Information Technology *Egypt Chairs AU Working Group on AI* (25 February 2021). (Accessible [here.](#))

### **African Commission Resolution 473**

In March 2021, the African Commission on Human and Peoples' Rights (ACHPR) adopted Resolution 473 which concerns AI, robotics, and other new and emerging technologies. The resolution calls on State Parties to ensure that the development and deployment of such technologies are compatible with the rights in the African Charter.<sup>11</sup> Notably, it calls for State Parties to acknowledge these technologies on their agendas and to work towards a comprehensive governance framework.<sup>12</sup> It appeals to State Parties to maintain human control over AI, noting that the requirement should be codified as a human rights principle.<sup>13</sup> The Resolution commits to undertake a study to develop standards to address the challenges posed by such technology.<sup>14</sup> The study is not yet completed.

### **SMART Africa and the AI for Africa Blueprint**

In 2013, seven African Heads of State<sup>15</sup> adopted the SMART Africa Manifesto which aimed to accelerate socio-economic development through the use of ICTs. Importantly, in 2014, the Manifesto was endorsed by all heads of State and Governments of the African Union and now has 53 signatories. The SMART Africa Alliance has been formed to action and monitor compliance with the SMART Africa Manifesto.

The Smart Africa Alliance, together with several partners, developed an AI for Africa Blueprint to “outline the most relevant opportunities and challenges of the development and use of AI for Africa and how to address them”; and “to make concrete policy recommendations to harness the potential and mitigate the risk of AI in African countries.”<sup>16</sup>

The Blueprint provides actionable recommendations to assist states with the implementation of national AI strategies. In doing so, it acknowledges the diversity of African states and accordingly does not propose a single AI policy solution. Instead, it provides guidelines that can be used by states to formulate their own, context-specific policy. The Blueprint details five areas that it recommends should be considered in the formulation of a national policy. These include human capital, AI adoption (from lab to market), networking, infrastructure, and regulation.<sup>17</sup>

The Blueprint recognises the critical need for a robust governance framework to regulate AI, recommending that an adequate legal framework should consider the following elements:<sup>18</sup>

- Legal provisions on copyright, patents, and unfair competition;

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<sup>11</sup> African Commission on Human and Peoples Rights, Resolution 473 on the need to undertake a study on human and peoples' rights and artificial intelligence (AI), robotics and other new and emerging technologies in Africa, 10 March 2021 (Resolution 473), section 1.

<sup>12</sup> Section 4 and 5 of Resolution 473.

<sup>13</sup> Section 6 of Resolution 473.

<sup>14</sup> Section 7 of Resolution 473.

<sup>15</sup> Rwanda, Kenya, Uganda, South Sudan, Mali, Gabon, and Burkina Faso.

<sup>16</sup> SMARTAfrica *Artificial Intelligence for Africa Blueprint* (2021) page 14 (AI Blueprint). (Accessible [here](#)).

<sup>17</sup> See Chapter 3 of the AI Blueprint.

<sup>18</sup> AI Blueprint at 41.



- Data protection mechanisms, and mechanisms for data sharing;
- Guidelines on ethical design and procurement;
- Provisions to create an enabling business environment such as incentives, infrastructure, cybersecurity, and clarity on liability issues and licencing.
- Intersectional policy measures to cut across multiple regimes and industries such as financial markets, financial services, health, and other sectors.

The Blueprint acknowledges the difficulty with AI regulation by stating:<sup>19</sup>

“Uninformed approaches to governance can lead to systemic biases and overregulation that can and will stifle innovation, thus limiting the opportunities that can be leveraged and further creating an environment for political abuse. At the same time, under-regulation will result in cultivating a culture whereby trust and confidence is absent, with consumers and citizens being left unprotected.”

It further notes that the governance of AI will require a combination of hard and soft approaches. Hard approaches refer to the adoption of laws and regulations that it suggests are only necessary in response to a particular concern which cannot be solved through other measures. It recommends that a hard approach be taken for issues concerning copyright and patents, investment and intellectual property, and unfair competition. Soft law refers to substantive expectations that are not enforceable by governments, including guidelines, standards, codes of conduct, and best practice. The Blueprint acknowledges that soft law will likely fill governance gaps while regulatory measures are being developed.

### **Regulatory Sandboxes**

A regulatory sandbox is an example of a soft law measure that is often used in response to innovative technologies, including AI. A regulatory sandbox is a framework that allows “start-ups and other innovators to conduct live experiments in a controlled environment under a regulator’s supervision.”<sup>20</sup>

Mauritius has a Sandbox Framework for the Adoption of Innovative Technologies in the Public Service,<sup>21</sup> aiming to help the public sector better understand the challenges, costs, and capabilities of emerging technologies before conducting a formal procurement process.

Regulatory sandboxes have also been used in Ghana, Nigeria, South Africa, Zimbabwe, and Rwanda.<sup>22</sup> Kenya’s Communication Authority also recently held consultations on a sandbox framework for emerging technologies.<sup>23</sup>

<sup>19</sup> AI Blueprint at 41.

<sup>20</sup> AI Blueprint at 42.

<sup>21</sup> Republic of Mauritius Ministry of Public Service, Administrative and Institutional Reforms “Sandbox Framework for Adoption of Innovative Technologies in the Public Service” (March 2021). (Accessible [here](#).)

<sup>22</sup> See African Observatory on Responsible Artificial Intelligence “Sandboxes in Mauritius” (8 June 2023). (Accessible [here](#).)

<sup>23</sup> The consultation process has closed, but information about it can be accessed [here](#).

## African Union Child Online Safety and Empowerment Policy

Given children’s evolving capacities, a child-centric policy on AI is critical. In May 2024, the AU adopted the Child Online Safety and Empowerment Policy with the view of protecting children as they engage online and mitigating the risks associated with the internet. While the Policy does not expressly mention AI, it broadly advocates for states to ensure that ICT policies protect the best interests of the child, take proactive measures to curb discrimination, protect children’s right to life, survival, and development, and enable consultative processes with children.

## Domestic AI governance

One could argue that harnessing the power of AI aligns with Africa’s broader continental strategy. The AU Agenda 2063 envisages accelerated integration and technology across the 55 states.<sup>24</sup> On the AI front, there is still some way to go to meet this aspiration.

As the table overleaf shows, the salient trends on domestic governance include the following:

- No country has adopted full AI legislation (although at least two have adopted partial legislation, not including data protection laws).
- At least **31 African** countries have adopted a **data protection law** that addresses the use of AI in relation to data: specifically, these 31 countries guard against automated decision-making.
- Relatively few have crafted national AI policies (8) or strategies (12).
- Only 15 African countries appear to have established an expert body on AI.

Read together, these findings suggest African countries have developed limited governance responses to AI. No country has adopted dedicated AI legislation, and the most prominent form of governance is enabled through data protection laws. Although very few countries have adopted a national policy, several of them have expert bodies or developed strategies.

Despite the limited measures, it is clear from continental instruments such as the AI for Africa Blueprint that AI is gaining traction as a policy concern. However, more is required to effectively govern AI in most countries.

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<sup>24</sup> AU Agenda 2063 (2015). (Accessible [here](#).)

Country	AI legislation	Data protection law addresses AI decision-making	Has a national AI strategy	Has a policy or draft policy on AI	Expert body on AI
Algeria	No	Yes	Yes	No	Yes
Angola	No	Yes	No	No	No
Benin	No	Yes	Yes	No	Yes
Botswana	No	Yes	No	No	No
Burkina Faso	No	Yes	No	No	Yes
Burundi	No	No	No	No	No
Cabo Verde	No	Yes	No	No	No
Cameroon	No	No	No	No	No
Central African Republic	No	No	No	No	No
Chad	No	No	No	No	No
Comoros	No	No	No	No	No
Congo	No	Yes	No	No	No
Cote d'Ivoire	No	Yes	No	No	No
DRC	No	No	No	No	No
Djibouti	No	No	No	No	No
Egypt	No	No	Yes	No	Yes
Equatorial Guinea	No	Unknown	No	No	No
Eritrea	No	No	No	No	No
Eswatini	No	Yes	No	No	No
Ethiopia	No	No	No	Yes (draft)	Yes
Gabon	No	Yes	No	No	No
The Gambia	No	Partial	No	No	No
Ghana	No	Yes	No	No	No
Guinea	No	Yes	No	No	No
Guinea-Bissau	No	No	No	No	No
Kenya	No	Yes	No	Partial (draft)	Yes
Lesotho	No	Yes	No	No	No
Liberia	No	No	No	No	No
Libya	No	No	No	No	No
Madagascar	No	Yes	No	No	No
Malawi	No	No	No	No	No
Mali	No	Yes	No	No	No
Mauritania	No	Yes	No	No	No
Mauritius	Partial	Yes	Yes	Yes	Yes
Morocco	No	Yes	Yes	No	Yes
Mozambique	No	No	No	No	No
Namibia	No	No	No	No	Yes
Niger	No	Yes	No	No	No
Nigeria	Partial	Yes	Yes (draft)	No	Yes
Rwanda	No	Yes	Yes	Yes	Yes
Sao Tome & Principe	No	Yes	No	No	No
Senegal	No	Yes	Yes	No	No
Seychelles	No	No	No	No	No
Sierra Leone	No	No	Yes	No	Yes
Somalia	No	No	No	No	No
South Africa	No	Yes	Yes	Yes (draft)	Yes
South Sudan	No	No	No	No	No
Sudan	No	No	No	No	No
Tanzania	No	Yes	No	No	No
Togo	No	Yes	No	No	No
Tunisia	No	Yes	Yes	Yes	Yes
Uganda	No	Yes	No	Yes	Yes
Sahrawi Republic	No	No	No	No	No
Zambia	No	Yes	Yes (draft)	No	No
Zimbabwe	No	Yes	No	Yes (draft)	No
	<b>2 partial</b>	<b>31/55</b>	<b>12/55</b>	<b>8/55</b>	<b>15/55</b>

### Understanding how data protection laws govern AI

As the previous table shows, the most prominent form of AI governance in Africa is currently through data protection laws. This section briefly details how data protection laws regulate AI. Although there are some differences in domestic laws, data protection legislation generally does two things that concern AI: first, they include automated processing within the scope of their application and second, they provide a right against automated decision-making.

**Automated processing:** In the context of AI, automated processing involves the use of algorithms, rules, or instructions to perform tasks that would otherwise require human effort or decision-making. It can range from simple repetitive tasks to highly complex decision-making processes. It often involves the use of data and computational algorithms to analyse information, make predictions, optimize processes, and generate outputs. For example, automated processing can be used for data analysis where AI systems analyse large data sets to identify patterns or trends. It can be used for facial recognition where AI systems automatically process images to recognise objects or faces. These applications can have very real consequences – for example, they could determine a medical diagnosis or decide whether someone qualifies for a loan.

Data protection laws often include automated processing within the scope of application of the law. This means that when a company or government uses an AI system to collect personal data, collate it or analyse it, it has to be done in compliance with the data protection law. Generally, this means complying with rules around consent, minimality, purpose limitations and security safeguards.

**The right against automated decision-making:** The right against automated decision-making is a fundamental aspect of data protection laws and is provided in most legislation around the world. The right is aimed at safeguarding individuals from potentially harmful or unfair decisions made solely by automated systems without human intervention. In the examples above, AI applications could perform analytic or recognition functions without any human involvement. This means that they could analyse all available information about a specific individual and determine whether or not they qualify for a loan. Such decision could have legal or consequential implications for an individual. Such decisions carry further risk as the results may be discriminatory or biased and would lack explainability.

The right provided in data protection law attempts to guard against these risks by providing individuals with a right not to be subject to such a decision. The right generally requires that a data subject be notified when such a decision has been made and allows them to request it to be reconsidered. The purpose of the right is to ensure that there is a degree of human oversight and involvement in these decisions.

## Governance in Southern Africa

This section assesses AI governance in Southern Africa in greater detail, with a particular focus on **South Africa, Zambia, and Zimbabwe**.

At the regional level, there are several relevant instruments:

- **SADC Model Law on Data Protection:**<sup>25</sup> The SADC Model Law, developed in 2013, does not explicitly mention AI but does provide for certain rights in relating to the **automated processing** of personal data as outlined on the previous page.
- **Windhoek Statement:** During UNESCO’s Southern Africa sub-Regional Forum on AI in 2022, various ministers from Southern Africa signed the Windhoek Statement on Artificial Intelligence in Southern Africa.<sup>26</sup> The Statement includes a set of recommendations on AI and data governance, capacity-building and awareness-raising, the need for investment and infrastructure, the opportunities that AI presents in the context of education, the need for research, development, and innovation, the potential use of AI in matters pertaining to the environment and disaster risk reduction, gender considerations and AI, as well as the importance of collaboration and partnership.

**Table 3 | Governance Instruments in Southern Africa**

Country	Dedicated AI legislation	Data protection legislation addresses AI	Has a national AI strategy	Has a policy or draft policy on AI	Expert body on AI has been established
Angola	No	Yes	No	No	No
Botswana	No	Yes	No	No	No
Comoros	No	No	No	No	No
Democratic Republic of Congo	No	No	No	No	No
Eswatini	No	Yes	No	No	No
Lesotho	No	Yes	No	No	No
Madagascar	No	Yes	No	No	No
Malawi	No	No	No	No	No
Mozambique	No	No	No	No	No
Namibia	No	No	No	No	Yes
Seychelles	No	No	No	No	No
South Africa	No	Yes	Yes	Yes	Yes
Tanzania	No	Yes	No	No	No
Zambia	No	Yes	Yes (draft)	No	No
Zimbabwe	No	Yes	No	Yes (draft)	No

<sup>25</sup> ITU “Data Protection: SADC Model Law” (2013). (Accessible [here](#).)

<sup>26</sup> Windhoek Statement on Artificial Intelligence in Southern Africa Windhoek (Namibia), 9 September 2022. (Accessible [here](#).)

As the previous table shows, none of the countries in the SADC region (including South Africa, Zambia, or Zambia) have dedicated AI legislation, though, on a positive note, all three countries have data protection legislation which addresses AI. While only South Africa has introduced a draft AI policy, the other two countries have announced draft policies though these were not publicly available at the time of publication.

We unpack these measures in more detail below.

### South Africa

Dedicated AI legislation	Data protection legislation addresses AI	Has a national AI strategy	Has a policy or draft policy on AI	Expert body on AI has been established
No	Yes	Yes	Yes	Yes

Out of the three countries which this toolkit discusses, South Africa has made the most significant progress on AI governance. There are, however, some gaps in terms of policy and policy implementation.

At a broader level, the right to privacy is protected in section 14 of the Constitution.<sup>27</sup> Article 14(d) safeguards everyone’s right not to have the privacy of their communications infringed. The Constitutional Court has recognised the importance of the right to privacy by describing it in the following terms,

“The right to privacy accordingly recognises that we all have a right to a sphere of private intimacy and autonomy without interference from the outside community. The right to privacy represents the arena into which society is not entitled to intrude. It includes the right of the individual to make autonomous decisions, particularly in respect of controversial topics.<sup>50</sup> It is, of course, a limited sphere.”<sup>28</sup>

As noted elsewhere in this toolkit, the unfettered use of AI can have significant implications for this right. In July 2021, the Protection of Personal Information Act (POPIA) came into effect.<sup>29</sup> This Act gives effect to the constitutional right to privacy and sets out the normative standards on how data controllers must process data. While POPIA does not expressly mention AI, it does address automated decision-making in section 71. This section prohibits the processing of data which is conducted solely on an automated basis and has legal consequences for data subjects.

Further, there is some degree of overlap between the standards reflected in the Act and governance principles for AI. For example, POPIA speaks to accountability, processing limitations, and security safeguards.<sup>30</sup>

<sup>27</sup> Constitution of the Republic of South Africa, 1996. (Accessible [here](#).)

<sup>28</sup> *Botha v Smuts and Another* [2024] ZACC 22 (9 October 2024) at para 84. (Accessible [here](#).)

<sup>29</sup> Act 4 of 2013. (Accessible [here](#).)

<sup>30</sup> *Ibid* at sections 8 to 12, and 19 to 22.

In March 2024, South Africa and Zambia endorsed the UN’s non-binding resolution on AI.<sup>31</sup> The resolution, discussed in greater detail in Part 2 of this toolkit, has been co-sponsored by over 120 States and places international law and international human rights at the centre.

In 2022, South Africa established the Artificial Intelligence Institute of South Africa (AIISA).<sup>32</sup> The AIISA was established in response to the Presidential Commission on the Fourth Industrial Revolution (PC4IR). Its primary function, which seems wide, is to generate knowledge and applications that position South Africa in “the global AI space.”

In 2023, the Department of Communications and Digital Technologies (DCDT), together with the AIISA, published a draft AI National Discussion Document.<sup>33</sup> While the status of the Discussion Document is somewhat unclear, it lists several ethical themes that DCDT and the AIISA should consider:<sup>34</sup> First, anti-competitive conduct in AI. Second, risks in robotic or autonomous devices that use AI. Third, aggressive job loss. Fourth, criminal behaviour. Fifth, existential risks if AI technologies “get out of control” and pursue goals that are detrimental to humanity. Lastly, the risk of military-purpose AI falling into the wrong hands and being used in a broader, public context.<sup>35</sup>

In August 2024, South Africa’s Department of Communications and Digital Technology issued a draft National AI Policy Framework for public comment.<sup>36</sup> The policy framework aims to lay the groundwork for the development of a national AI policy, by establishing framing principles and concerns which should guide the final AI policy. The document puts a strong emphasis on AI ethics, stipulating that South Africa’s national AI policies and strategy must protect human rights, promote inclusion, and address the various risks and harms associated with AI.

The framework names nine strategic pillars for South Africa’s AI policy, including: developing the country’s AI talent pool; developing the necessary digital infrastructure; investing in AI research and development; promoting public sector uses of AI; developing standards and guidelines for ethical design and use of AI; ensuring data protection; ensuring safety and security; and promoting AI transparency and explainability. As a high-level document, the framework does not give guidance on how each of these ambitious goals could be implemented.

With respect to relevant developments in case law, there is an ongoing class action against Uber which was announced in 2021.<sup>37</sup> The case seeks to ascertain the employment status of Uber drivers and questions around their compensation. While it is presently unclear how far along the proceedings are, the case appears to be hinged on precedent set by the UK Supreme Court.

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<sup>31</sup> UN General Assembly Resolution *Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development* A/78/L.49 (11 March 2024). (Accessible [here](#).)

<sup>32</sup> AIISA “Overview of the AI Institute of South Africa”. (Accessible [here](#).)

<sup>33</sup> Department of Communications (draft). (Accessible [here](#).)

<sup>34</sup> *Ibid*.

<sup>35</sup> *Ibid* at page 38.

<sup>36</sup> Department of Communications and Digital Technology “South Africa National Artificial Intelligence Policy Framework” (August 2024). (Accessible [here](#).)

<sup>37</sup> Leigh Day “Prominent Human Rights Lawyers launch class action for South African Uber drivers” (22 February 2021). (Accessible [here](#).)

As South Africa continues to refine its AI governance, it must do so having considered the input of various stakeholders.

## Zambia

Dedicated AI legislation	Data protection legislation addresses AI	Has a national AI strategy	Has a policy or draft policy on AI	Expert body on AI has been established
No	Yes	Yes (draft)	No	No

Zambia’s government has called on African countries to embrace digitisation in order to further development,<sup>38</sup> and appears to be taking steps to implement this itself. In March 2024, Zambia endorsed the UN’s non-binding resolution on AI.<sup>39</sup> Importantly, the resolution emphasises that Member States should refrain from using AI systems which do not comply with international human rights law.

In June 2024, the Ministry of Technology and Science announced that Zambia’s national AI strategy was now complete and would be launched on 24 October 2024, Zambia’s independence day.<sup>40</sup> A draft version of the strategy is not available online. In announcing the completion of the strategy, the Minister stated that government believes AI will create alternative jobs and support ongoing efforts to accelerate the country’s mineral exploration.<sup>41</sup>

The Electronic Government Act is important for present purposes as it provides eight guidelines which underscore the country’s approach to e-government.<sup>42</sup> Section 2, which sets out the guidelines, provides –

“4. The guiding principles of e-government include the following:

- (a) e-government shall focus on the needs of citizens and businesses in the delivery of services;
- (b) development and utilisation of innovative design and transformational integrated business processes which are streamlined, collaborative, and citizen-focused for the enhancement of service delivery;
- (c) innovative application of solutions in order to reduce long term operational costs and create opportunities to evaluate and eliminate redundant steps and processes and reduce cycle times associated with conventional processes;
- (d) integrated provision of e-government service which recognises the unique roles and capabilities of public bodies;
- (e) sharing of administrative information among public bodies which avoids information duplicity;
- (f) protection of information held by a data controller used in accordance with the law;

<sup>38</sup> SMART Zambia Institute ‘President Hichilema urges African nations to prioritise digitisation’ (4 October 2024). (Accessible [here](#).)

<sup>39</sup> Above n 31.

<sup>40</sup> Ministry of Technology and Science ‘Government completes drafting artificial intelligence strategy’ (4 June 2024). (Accessible [here](#).)

<sup>41</sup> Ibid.

<sup>42</sup> Act 41 of 2021. (Accessible [here](#).)



- (g) prudent and responsible use of public resources in the implementation of e- government activities; and
- (h) collaboration with the private sector for the promotion and optimisation of sustainable resource utilisation.”

Article 17 of the Constitution protects the right to privacy.<sup>43</sup> Relatedly, the Data Protection Act was passed in 2021.<sup>44</sup> Section 4 of the Data Protection Act establishes the Data Protection Commission (DPC), which has not yet made a publicised finding on automated processing.<sup>45</sup> Section 62 of the Act provides data subjects with the right not to be subject to automated decision-making, including on profiling, where this will create a legal consequence. This, however, does not apply where the decision is necessary for contractual purposes, has been authorised by law, or is made with the data subject’s consent.

From a policy perspective, Zambia’s National ICT policy 2022 – 2026 is indicative of the government’s desire to bolster the ICT sector.<sup>46</sup> The policy is fairly brief. The crux of the policy is the implementation matrix, which sets out objectives and measures relating to the country’s digital economy objectives, implementation timeframes, indicators, and flags the institutions responsible for implementing the stipulated measures. The policy mentions AI in passing as emergent technology that may enable advancements in economic and human development.

Separately, the National Digital Transformation Strategy 2023 – 2027<sup>47</sup> includes one goal on AI: to train 5,000 ICT professionals on AI, robotics, machine learning, blockchain, and/or big data. The parties responsible for this are the Ministry of Education, the Ministry of Science and Technology, the Technical Education, Vocational, and Entrepreneurship Training institutions, other academic institutions, and the private sector.

The aforementioned policies should be read with the Strategic Plan 2022 – 2024 formulated by the Zambia Information and Communications Technology Authority (ZICTA).<sup>48</sup> ZICTA is a statutory body that regulates the ICT sector. While the strategic plan also only mentions AI superficially, it acknowledges the need to review existing ICT legislation, regulations, and guidelines. It further notes the need to address low digital literacy.

Recently, ZICTA has been proactive in gathering data on the state of AI in the country. In May 2024, ZICTA, the BongoHive, and the Ubuntu AI Community announced a partnership for the purposes of surveying to assess Zambia’s AI landscape.<sup>49</sup> The survey was to be distributed to 800 participants from the private sectors, public institutions, and academic, and development agencies. The purpose of the survey is to inform national AI strategies and policies and contribute

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<sup>43</sup> Constitution of Zambia, 2016. (Accessible [here](#).)

<sup>44</sup> Act 3 of 2021. (Accessible [here](#).)

<sup>45</sup> See Office of the Data Commissioner’s site [here](#).

<sup>46</sup> National Information and Communication Technology Policy 2023 – Implementation Plan 2022 – 2026 (2023). (Accessible [here](#).)

<sup>47</sup> National Digital Transformation Strategy 2023 – 2027 (2023). (Accessible [here](#).)

<sup>48</sup> ZICTA ‘Corporate Strategic Plan 2022 – 2024’ (2023). (Accessible [here](#).)

<sup>49</sup> L Mumbi “BongoHive, Ubuntu AI Community, and ZICTA Launch AI Survey in Zambia” (21 May 2024). (Accessible [here](#).)

toward their resilience. A separate survey, facilitated with the Independent Broadcasting Authority (IBA), was sent to 80 journalists from various provinces in order to understand the use of AI tools in the media sector.<sup>50</sup> The survey revealed that an overwhelming majority of respondents, 78 percent, support the regulation of AI tools.

While Zambia does not have a dedicated expert body on AI, it has established a government department, the Smart Zambia Institute, that is responsible for matters pertaining to e-governance.<sup>51</sup> The Smart Zambia Institute falls under the Office of the President and is mandated to develop e-governance systems that service government (G2G), business (G2B), and citizens (G2C).

The ongoing efforts to bolster AI governance in Zambia are commendable, yet it remains to be seen whether documents such as the recently finalised AI national strategy adopt a rights-based approach.

## Zimbabwe

Dedicated AI legislation	Data protection legislation addresses AI	Has a national AI strategy	Has a policy or draft policy on AI	Expert body on AI has been established
No	Yes	No	Yes (draft)	No

The extent of Zimbabwe’s AI use is unknown and there are regulatory gaps. Government officials have embraced the potential for AI development and asked for experts to support its efforts in navigating regulation.<sup>52</sup> In August 2024, at an address to the Zimbabwe National Defence University, the Zimbabwean President urged the university to undertake more research in the use of emerging technologies such as artificial intelligence and drones for peace and security.<sup>53</sup>

It has been reported that a national AI policy framework has been drafted, though it is yet to be shared publicly or implemented.<sup>54</sup> Accordingly, assessing the state of AI regulation requires a review of various other law and policy.

As a point of departure, there is the National ICT Policy 2022 – 2027, which identifies priority areas for the government’s ICT development.<sup>55</sup> Some of these priorities include reviewing applicable legislation and policy, improving digital literacy, and investment and funding. The section dealing

<sup>50</sup> Internews ‘AI Survey Report on the Adoption of Artificial Intelligence (AI) by Journalists in Zambia’ (26 April 2024). (Accessible [here](#)).

<sup>51</sup> The Smart Zambia Institute was established through Government Gazette notice No 836 of 2016. (Accessible [here](#).)

<sup>52</sup> W Mawire “Zimbabwe intensifies cybersecurity awareness measures” ConnectingAfrica (23 October 2024). (Accessible [here](#).)

<sup>53</sup> The Herald “ZNDU: A key player in AI research for peace and security” (19 August 2024). (Accessible [here](#))

<sup>54</sup> The Herald “National AI policy framework complete” (14 October 2024). (Accessible [here](#).)

<sup>55</sup> National ICT Policy 2022 – 2027 (2022). (Accessible [here](#).)

with emerging technologies lists AI, among other technologies, as an area to be supported. Notably, the Policy affirms Zimbabwe’s goal to have transformed into a digital economy by 2030. The principles underpinning the policy goals are democracy, equality and inclusiveness, innovation, and sustainability.

According to the Smart Zimbabwe 2030 Master Plan, Zimbabwe intends to have developed effective ICT regulation – through rules, practices, and standards – by 2030.<sup>56</sup> It does not explicitly mention AI. The plan does, however, include three phases of goals and priorities for Zimbabwe to build a digital government, digital society, and digital economy. The public version of the plan has an incomplete project implementation strategy and no timeline.

The Cyber and Data Protection Act was enacted in 2021,<sup>57</sup> giving force to the right to privacy as protected under article 57 of the Constitution. The Act designates the Postal and Telecommunications Regulatory Authority (PORTAZ) as the data protection regulator.<sup>58</sup> In terms of section 25, data subjects have the right to object to automated processing which produces a legal consequence. To facilitate the implementation of some of the provisions of the Cyber and Data Protection Act, POTRAZ launched a complaints procedure on its website for aggrieved data subjects to file complaints relating to data protection and also intrusion of privacy.<sup>59</sup>

In September 2024, Zimbabwe also gazetted Statutory Instrument 155 of 2024, which are the Cyber and Data Protection Regulations on the licensing of data controllers and the appointment of Data Protection Officers.<sup>60</sup> The regulations also lay out the obligations to be met by data controllers in the processing of biometric and genetic data. Of note, Section 8, highlights that data controllers processing data for journalistic purposes are exempt from applying for a data controller licence.

While the contribution of PORTAZ, if any, to the discussion on AI regulation, is unclear, it has reportedly engaged with relevant Parliamentary Portfolio Committees on ICTs.<sup>61</sup>

The Freedom of Information Act, enacted in 2020,<sup>62</sup> enables the right to access to information held by public entities including personally identifiable information such as health records and fingerprints. In terms of the Act, the Media Commission, whose primary mandate is to promote and protect freedom of expression, is also mandated to process appeals where requests for access to information have been denied.<sup>63</sup> The Act imposes a duty on every public entity, public commercial entity, and statutory office to have an information disclosure policy.<sup>64</sup>

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<sup>56</sup> Smart Zimbabwe 2030 Master Plan. (Accessible [here](#).)

<sup>57</sup> Act 5 of 2021. (Accessible [here](#).)

<sup>58</sup> Id at sections 5 and 6.

<sup>59</sup> See Data Protection Authority Complaints Procedure [here](#).

<sup>60</sup> SI 155 of 2024 Cyber and Data Protection (Licensing of Data Controllers and Appointment of Data Protection Officers) Regulations 2024. (Accessible [here](#).)

<sup>61</sup> T Charakupa “PORTAZ engages Parliamentary Portfolio Committees on ICTs” ZBC News (26 August 2024). (Accessible [here](#).)

<sup>62</sup> Act 1 of 2020. (Accessible [here](#).)

<sup>63</sup> Zimbabwe Media Commission “About ZMC” (undated). (Accessible [here](#).)

<sup>64</sup> Above n 62 at section 5.

Zimbabwe does not have a dedicated expert body on AI. The Research Council of Zimbabwe (RCZ) appears to have adopted a partial mandate in this realm. Established in 1986, the RCZ is a government body which coordinate research for the benefit of government, academia, and industry.<sup>65</sup> The RCZ is supporting two academic projects on AI. The first project is titled ‘Advancing Agricultural Sustainability: Leveraging Artificial Intelligence for Optimal Livestock Security and Productivity’.<sup>66</sup> The second project is titled ‘Developing a Two-Sided Artificial Intelligence Risk Predictive Model for Early Identification of High-Risk Antenatal Mothers: Enhancing Maternal and Neonatal Health Outcomes in Zambia Malawi and Zimbabwe’.<sup>67</sup>

The Zimbabwe Centre for High Performance Computing (ZCHPC) established in 2015 is another body focused on big data and AI.<sup>68</sup> In 2019, Statutory Instrument 168 of 2019 was gazetted which outlines the operations and structures of the ZCHPC.<sup>69</sup> These include improving the usage of cutting-edge technology in government and also providing research on and supporting the development and demonstration of technologies to advance the capacity and capabilities of high-end computing, storage, networking, and related software programmes.

In October 2024, the Minister of ICTs also indicated that the Ministry is in the process of establishing a multistakeholder AI Committee that will act as an advisory body and draw experts from various industries including media and broadcasting, civil community, academia, finance and ICTs among others.<sup>70</sup>

On the whole, Zimbabwe is in a similar position to Zambia on AI governance in that a clearer regulatory framework seems imminent. Continued multistakeholder collaboration can enhance its current standing.

## Closing commentary

Despite the significant strides African countries have taken to govern AI, more is required to ensure the ethical and safe deployment of AI across the continent. A common trend in policy and strategy at the domestic level is that it is currently relatively superficial in grappling with AI.

It is clear which sectors AI has already begun impacting, thus, more decisive and sector-specific policy measures should be crafted to understand the current and future trends and challenges. Once finalised, these policies should be made publicly accessible. Further developments in this space create exciting opportunities for Africa to become a leading voice on ethical AI governance

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<sup>65</sup> Research Council of Zimbabwe (undated). (Accessible [here](#).)

<sup>66</sup> See RCZ List of Ongoing Projects (undated). (Accessible [here](#).)

<sup>67</sup> Ibid.

<sup>68</sup> See ZCHPC history and services [here](#).

<sup>69</sup> Manpower Planning and Development (Zimbabwe Centre for High Performance Computing) Regulations, 2019. (Accessible [here](#).)

<sup>70</sup> Above n 54.

and, as per Agenda 2063, become a continent where “... well-educated and skilled citizens, underpinned by science, technology, and innovation for a knowledge society is the norm...”<sup>71</sup>

This concludes Part 2 of this toolkit. Part 3 will explore advocacy approaches to advance AI governance in Africa.

Ends.

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<sup>71</sup> Above n 24 at 2.