

Public Involvement in Law-Making in the Digital Age: Evaluating Public Participation in the Eastern Cape during the Basic Education Laws Amendment (BELA) Bill Consultations

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Abstract

Digitalisation is now an integral part of our lives. Law-making, an arduous and time-consuming process, is not spared its effects. In South Africa, the Constitution obligates law-making bodies to involve the public in the law-making process. The courts, particularly the Constitutional Court, have set the standard for public involvement in the law-making process. As the general public becomes increasingly familiar with technology and digital platforms, law-making bodies must act swiftly to leverage digitalisation to deliver effective, efficient messaging about law-making processes. During the public hearings on the Basic Education Laws Amendment Bill, some rogue elements exploited digitalisation to spread misinformation, and law-making bodies failed to counter it adequately with accurate and reliable information. This article explores the potential of digital spaces and technologies to facilitate public involvement in law-making processes. Data are drawn from two primary sources – observation and a systematic literature review – enabling triangulation to strengthen the study’s credibility. The article argues that law-making bodies need to harness and embrace digitalisation to enhance the constitutional imperative of public involvement in law-making processes.

Keywords

BELA Bill, digital age, digitalisation, digitisation, law-making, public involvement

1. Introduction

The era of digitalisation has brought new approaches to how we do things. Some of these approaches offer convenience and may reach a wide variety of audiences in a very short time. At the same time, these approaches have the potential to exclude some sectors of society and are costly to implement.

The process of law-making is an arduous task that requires consulting with the people to whom the proposed law will apply. Bogdanovskaia characterises the law-making process as follows:

This law-making process is a complex process. In the law-making process the interest of the society and the interest of the state meets.

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Fulfilling this task, the law-making process must be based on democracy and science in order to reflect and determine the development of the society. And the society is interested in the influence on the governmental bodies in law-making and in its control.¹

The Constitution places a duty on South African law-making bodies to facilitate public involvement in legislative and other processes. Specifically, the Constitution² enjoins Parliament, provincial legislatures and municipal councils to facilitate public involvement in legislative processes.³ In the context of this article, law-making bodies refer to Parliament, legislatures, government departments in all spheres and municipalities, all of which are responsible for drafting Bills and other subordinate legislative instruments. The Constitution emphatically states that its obligations must be fulfilled and further requires that they be performed diligently and without delay.⁴ The Constitution clearly imposes positive obligations on law-making bodies to facilitate public involvement in legislative processes. Generally, a positive obligation is broad and encompasses two layers. Firstly, it includes the obligation to protect a right through regulatory measures against interference by others.⁵ Secondly, it includes the obligation to fulfil rights, which concerns their realisation through financial and infrastructural support.⁶ In summary, positive obligations are, broadly speaking, an obligation to do something to fulfil a constitutional duty.⁷

The Constitution does not prescribe a method for facilitating public involvement in legislative processes. With developments in the digital space, digital platforms play a critical role in facilitating public involvement in these processes. The use of these platforms in law-making has both advantages and disadvantages. The aim of this article is to highlight and draw important lessons from the public hearings on the Basic Education Laws Amendment Bill⁸ conducted in the Eastern Cape province regarding the inadequate

1 Bogdanovskaia, I 'The Legislative Bodies in the Law-Making Process' (1999) *Law and Political Science* 3.

2 Constitution of the Republic of South Africa, 1996 (Constitution).

3 Section 59(1)(a) of the Constitution provides that the National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its committees. Section 72(1)(a) provides that the National Council of Provinces must facilitate public involvement in the legislative and other processes of the council and its committees. Section 118(1)(a) provides that a provincial legislature must facilitate public involvement in the legislative and other processes of the legislature and its committees. Section 12(3)(b) of the Local Government: Municipal Systems Act 32 of 2000 provides that no by-law may be passed by a municipal council unless the proposed by-law has been published for public comment in a manner that allows the public an opportunity to make representations with regard to the proposed by-law.

4 See ss 2 and 237 of the Constitution.

5 De Wet, E & Du Plessis, A 'The Meaning of Certain Substantive Obligations Distilled from International Human Rights Instruments for Constitutional Environmental Rights in South Africa' (2010) 2 *African Human Rights Law Journal* 345.

6 Ibid.

7 Mba, O 'Positive Obligations under the African Charter on Human and Peoples' Rights: The Duty of the Nigerian Government to Enact a Freedom of Information Act' (2009) 35(2) *Commonwealth Law Bulletin* 215.

8 Act 32 of 2024.

use of digital platforms in facilitating public involvement in law-making.⁹ Furthermore, the article explores ways to leverage digitalisation to advance the constitutional imperative of public involvement in law-making. This article demonstrates that digital platforms can also be used by members of the public to voice their support for or opposition to a proposed law.

2. Methodological technique

In drawing lessons from the inadequate use of digital technologies during the public hearings on the BELA Bill, this article employs triangulation to enhance credibility. Data for the article were drawn from two main sources: observation and systematic literature review. Observation is considered a classic method of scientific inquiry.¹⁰ It involves close observation of the research situation.¹¹ Becker and Geer define participant observation as either a covert or an overt activity in which the observer participates in the daily life of people under study, observing events and behaviour, listening to what is said, and interacting with people over a period of time.¹² The author of this article closely observed the unfolding events during the public involvement process relating to the BELA Bill in the Eastern Cape.

To ensure the validity and reliability of the data, the observation method was supplemented by a systematic literature review. A systematic literature review is a data-gathering process used to gather relevant information on a specific topic of interest.¹³ A systematic literature review emphasises that knowledge advancement must be built on existing work.¹⁴ It proposes that hypotheses can be tested or new theories developed through the summarising, analysis and synthesis of related literature. In this article, literature on public involvement in law-making and the advancement of digital technologies was systematically analysed to inform the study's conclusions.

3. Basic education in South Africa

Basic education is the bedrock of any nation's education system. It can be defined as an important socio-economic right directed, *inter alia*, at promoting and developing a

9 The BELA Bill was introduced in Parliament by the Minister of Basic Education on 9 January 2022. The Bill was passed by the National Assembly on 25 October 2023 and was transmitted to the National Council of Provinces (NCOP) for concurrence. The Bill was passed by the NCOP with amendments on 13 May 2024 and was remitted back to the National Assembly for final passing. The National Assembly finally passed the Bill on 16 May 2024. The Bill was assented to and signed by the President on 13 September 2024, and it came into operation as an Act of Parliament on 20 December 2024. In this article, the Act is referred to as the BELA Bill in some instances because, at the time of public consultations, it was still at the Bill stage. Therefore, a reference to the BELA Bill is also a reference to the BELA Act.

10 Kumar, A 'Observation Method' (2023) 13(6) *Library Philosophy and Practice* 1.

11 *Ibid.*

12 Becker, HS & Geer, B 'Participant Observation: The Analysis of Qualitative Field Data' in Adams, R & Preiss, J (eds) *Human Organisation Research* (The Dorsey Press 1960) 133.

13 Adeniran, AO & Tayo-Ladega, OT 'Understanding Literature Review as a Research Method' (2024) 6(1) *American International Journal of Humanities, Arts and Social Sciences* 26.

14 Xiao, Y & Watson, M 'Guidance on Conducting a Systematic Literature Review' (2017) 20 *Journal of Planning Education and Research* 1.

child's personality, talents, and mental and physical abilities to their fullest potential.¹⁵ Furthermore, basic education provides a foundation for a child's lifetime learning and work opportunities.¹⁶ For basic education to be impactful, the involvement of parents, teachers and learners is essential. One can further argue that the involvement of external stakeholders, such as non-governmental organisations (NGOs) and the broader community, strengthens the basic education system. For this reason, education is considered a societal issue. Failure to establish a solid basic education system will certainly give rise to various social problems, such as unemployment, crime, drug abuse and lack of development.¹⁷ Furthermore, it will stunt growth, particularly in fields such as science and technology.¹⁸ Education plays a central role in every community because it prepares and enables community members to participate fully in their communities.¹⁹ More fundamentally, the Constitution enshrines a right to basic education.²⁰ The great public interest in educational matters stems from the fact that a right to education is constitutionally enshrined in section 29(1) and (2). This section provides that:

- 29(1) Everyone has a right –
- (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account –
- (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.

The Constitutional Court in *Governing Body of the Masjid Primary School and Others v Essay NO and Others*²¹ affirmed that the right to basic education is an unqualified right, different from other textually qualified socio-economic rights in the Constitution.²²

15 *Governing Body of the Masjid Primary School and Others v Essay NO and Others* 2011 (8) BCLR 761 (CC) para 43.

16 *Ibid.*

17 Deak, V & Tanama, YJ 'The Functional Relationship of Education with Economic, Philosophy and Political Philosophy' (2021) 2(4) *International Journal of Social and Management Studies* 149.

18 *Ibid.*

19 Strohwal, A 'The Right to Basic Education as a Primary Driver of Transformation in South Africa: Considering Cooperation' (2024) 45(3) *Obiter* 595.

20 See s 29(1)(a) of the Constitution.

21 *Governing Body of the Masjid Primary School and Others v Essay NO and Others* 2011 (8) BCLR 761 (CC).

22 *Ibid* para 37.

This means that the right to basic education enshrined in section 29(1)(a) is not the kind of right where the state is required to take reasonable steps over a period of time and within its available resources towards its progressive realisation.²³ The right to basic education is generally recognised as a precondition to the enjoyment of other rights, and it affects the majority of individuals.²⁴ Any policy or legislative proposal affecting education, particularly basic education, tends to generate considerable public interest.

Basic education in South Africa is governed by the South African Schools Act,²⁵ the National Education Policy Act²⁶ and the Employment of Educators Act.²⁷ The South African Schools Act, as the main legislative framework, seeks to provide a uniform system for the organisation, governance and funding of schools. After identifying some gaps in the South African Schools Act, the Minister of Basic Education introduced the BELA Bill in Parliament in 2022.²⁸ The BELA Act amends the South African Schools Act²⁹ and the Employment of Educators Act³⁰ in several respects, including making school attendance compulsory from Grade R; introducing penalty provisions in relation thereto; and making it an offence to unlawfully and intentionally interrupt, disturb or hinder any official educational activity. The Act also tightens measures prohibiting corporal punishment and regulates the registration of homeschooling. The BELA Act grants the head of department (HOD), in consultation with the school governing body (SGB), ultimate authority over the admissions and language policy of a public school, as well as authority to manage budget matters related to the SGB. It also empowers the HOD to authorise an investigation into the financial affairs of a public school and to appoint forensic auditors or forensic investigators to conduct such investigations.

Under the Constitution, certain Bills must be dealt with and passed by both Houses of Parliament, namely the National Assembly (NA) and the National Council of Provinces (NCOP).³¹ The BELA Bill was introduced and subsequently passed by the NA in 2023. It was then referred to the NCOP for concurrence. The NCOP referred it to the Eastern Cape Provincial Legislature (ECPL) to conduct public hearings to confer mandates in terms of the Mandating Procedures for Provinces Act.³² The ECPL conducted public involvement sessions pertaining to the Bill from 4 to 8 March 2024.

23 McConnachie, C & McConnachie, C 'Concretising the Right to a Basic Education' (2012) 129 *South African Law Journal* 554.

24 Strohwalde (note 19 above) 596.

25 84 of 1996.

26 27 of 1996.

27 76 of 1998.

28 Basic Education Laws Amendment Bill 2022 [B2-2022]. The Bill was signed into law on 13 September 2024.

29 84 of 1996.

30 76 of 1998.

31 See ss 73(5) and 76(1) of the Constitution.

32 52 of 2008.

4. The impact of digitalisation: Law-making and public involvement

The digital age refers to the contemporary era, characterised by rapidly advancing digital technologies for the transfer and communication of information and data.³³ It has brought about significant changes in how information is accessed, shared and used, thus affecting a wide range of facets of human life.³⁴

When speaking of the digital age, it is apposite to distinguish between digitalisation and digitisation. The former term refers to the use of digital technology to change how something works, while the latter refers to converting analogue data into digital form.³⁵ Digitisation can also be referred to as a process of creating a digital copy of a physical original – also referred to as a digital surrogate, replica, digital copy or digitised product of an analogue item. Digitised data is easy to store, access and share widely.³⁶ This article broadly examines digitalisation, with a particular focus on digitisation, and discusses how it can enhance public involvement in law-making.

One of the most important benefits of digitisation is that it can enhance, promote and encourage access to information. Information in a digitised format can be published in various ways and can be made available to global audiences.³⁷ Digitisation enhances and promotes public education in law-making, thereby facilitating effective public involvement. Being able to access information anywhere in the world, at the country or provincial level, augurs well for public involvement in law-making.³⁸ Increasingly, political and social discourse is commonly taking place online,³⁹ with digital applications becoming central spaces where positions are negotiated, discussions are held, and information is disseminated.⁴⁰

Digitisation, in terms of public involvement in law-making, also helps preserve information, since digitised copies can be recovered if the original documents are lost or destroyed. Digitisation in the context of public involvement in law-making makes it simple to update or modify information to close information gaps. Digitisation also makes it easy for people to record and submit their views on proposed legislation.⁴¹ Information from the government reaches the general public quickly, and political positions can be shared

33 Hartel, JCR & Hartel, CEJ 'What the Digital Age is and Means for Workers, Services and Emotions Scholars and Practitioners' (2020) 16 *Research on Emotion in Organisations* 9.

34 Ibid.

35 Oetoro, A 'Digitisation, Digitalisation, and Digital Transformation Explained: What's the Difference?' (2024) <<https://www.agilitycms.com/blog/digitization-digitalisation-and-digital-transformation-explained>> accessed 2 May 2025.

36 Ibid.

37 Ibid.

38 Corona, L 'Digitisation: An Overview of Advantages and Disadvantages' (2024) *Digital Libraries – Definition, Types and Library Space* 5.

39 Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) 'Public Participation in the Digital Age' (2020) *Position Paper by the Sectoral Department* <https://www.giz.de/fachexpertise/downloads/GIZ_Position%20Paper_Public%20Participation%20in%20the%20Digital%20Age_2020.pdf> accessed 26 June 2026.

40 Ibid.

41 Corona (note 38 above).

at the press of a button.⁴² The digital transformation of civic participation is evident in the fact that citizens currently vote online, sign petitions online, and contact members of Parliament through websites and social media.⁴³ The use of digital applications as alternative channels for political and social discourse offers opportunities for more transparency, stronger citizen focus and ultimately new forms of active democracy.⁴⁴

Financial viability is impeding the introduction of digitisation in law-making institutions in South Africa, as creating digital content is expensive and time-consuming. Another pressing challenge – particularly in the Eastern Cape – is the lack of access to digital and information technology resources, such as computers, laptops, smartphones, and other devices.⁴⁵ This is exacerbated by the province's predominantly rural nature, vast geographical reach and high levels of poverty. According to the Independent Communications Authority of South Africa (ICASA), the Eastern Cape has the highest proportion of households – standing at 9.3% – with no access to either a cellular phone or a landline.⁴⁶ These disparities in access exemplify what information technology experts describe as the 'digital divide', namely, the large gap in access to digital technologies between developed and developing countries.⁴⁷ The lack of education and digital literacy training is also proving to be an impediment to the optimal use of digitisation in public involvement in law-making.⁴⁸

Some of the concerns that have been raised regarding digitisation include the protection of privacy, data security, individual data sovereignty, varying levels of digital skills, limitations in digital infrastructure for participation in online discourse, new forms of propaganda, and the protection of democratic rights and freedoms in the digital arena.⁴⁹

The cost of data in South Africa hampers the use of digitisation for public involvement in law-making. The South African Competition Commission has noted that data prices in South Africa are higher than in many other countries.⁵⁰ Despite the increase in online sales due to digitalisation, South Africa ranks lower than other countries, such as Brazil, Russia and China, on the Digital Ecosystem Development Index.⁵¹ South Africa's low ranking could be attributable to significant income disparities that affect consumers' ability to

42 Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (note 39 above).

43 Ibid.

44 Ibid.

45 Statistics South Africa 'General Household Survey 2025' 26 May 2026 <<https://www.statssa.gov.za/publications/P0318/P03182025.pdf>>

46 Independent Communications Authority of South Africa 'The State of the ICT Sector Report in South Africa' 31 March 2025 <<https://www.icasa.org.za/uploads/files/The-State-of-the-ICT-Sector-Report-of-South-Africa-2025.pdf>>

47 Kala, ESM 'Challenges of Technology in African Countries: A Case Study of Zambia' (2023) 13 *Open Journal of Safety Science and Technology* 202.

48 Ibid.

49 Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (note 39).

50 Competition Commission South Africa 'Data Services Market Inquiry Final Report' 2 December 2019 <<https://www.compcom.co.za/wp-content/uploads/2019/12/DSMI-Non-Confidential-Report-002.pdf>>

51 Pillay, S & Struweg, I 'Digital Consumer Perspective on Data Access in an Emerging Market' (2023) 25 *South African Journal of Information Management* 1645.

afford data and internet access, as well as varying levels of digital literacy and the growing digital divide.⁵²

The South African government, in its National Policy on Data and Cloud, indicates that data is the key enabler for digital transformation and the digital economy.⁵³ The policy further emphasises the importance of ensuring equitable access to data to foster digital and economic inclusion.⁵⁴ Through this policy, the government strives to create mechanisms that foster economic inclusion and bridge the gap between the rich and the poor. It further aims to ensure that digital inclusion focuses on the indigent, youth, women and people with disabilities by improving access to data and internet connectivity, thereby enabling them to innovate and develop digitally tradable goods and services that support economic inclusion.⁵⁵ The National Policy on Data and Cloud, therefore, represents an important governmental effort to reduce digital inequality in South Africa. The following section of this article explores the Constitutional Court's standard for public involvement in law-making and how digitisation can help meet it.

5. Public involvement in law-making: A constitutional obligation

Through its judgments, the Constitutional Court provides guidance on the extent of public involvement required in the law-making processes. The court has grappled with this issue in a long line of cases, from *Doctors for Life*⁵⁶ in 2006 to the *South African Iron and Steel Institute*⁵⁷ and *Mogale*⁵⁸ cases in 2023. In *Doctors for Life*, members of the court had different views on what constitutes public involvement and on the implications of its failure, resulting in majority and minority judgments.⁵⁹

In answering the question about the extent of public involvement required in the law-making process, the Constitutional Court in *Doctors for Life* explained the importance of public participation.⁶⁰ The court stated that the representative and participatory elements of our democracy should not be seen as being in tension with each other.⁶¹ Furthermore, the court affirmed that the representative and participatory elements of our democracy are mutually supportive.⁶² It further stated that the public's continuous participation provides vitality to the functioning of representative democracy.⁶³ According to the court,

52 Ibid.

53 Department of Communications and Digital Technologies 'National Policy on Data and Cloud' GN 2533 of 2024 in GG 50741 of 31 May 2024.

54 Ibid.

55 Ibid.

56 *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (6) SA 416 (CC).

57 *South African Iron and Steel Institute and Others v Speaker of the National Assembly and Others* 2023 (10) BCLR 1232 (CC).

58 *Mogale and Others v Speaker of the National Assembly and Others* [2023] ZACC 14.

59 *Doctors for Life International v Speaker of the National Assembly* (note 56) para 40. The majority judgment in this case was delivered by Ngcobo J, while the minority judgment was delivered by Yacoob J.

60 Ibid.

61 Ibid para 115.

62 Ibid.

63 Ibid.

participation encourages citizens to be actively involved in public affairs, identify with the institutions of government, and become familiar with the laws as they are made.⁶⁴

In addition, the court stated that Parliament and provincial legislatures must be given a significant measure of discretion in determining how best to fulfil their duty to facilitate public involvement. However, the court warned that courts will, in appropriate cases, determine whether there has been the degree of public involvement that is required by the Constitution.⁶⁵ The court's affirmation that Parliament and provincial legislatures must be given a measure of discretion to facilitate public involvement is quite pertinent. Parliament and provincial legislatures need to be flexible and, in the process, keep pace with technological advancements, including the embrace of digitisation.

The Constitutional Court noted that the standard of reasonableness is applied throughout the Constitution.⁶⁶ Reasonableness is specifically used in the context of public access to and involvement in the proceedings of the NCOP and its committees.⁶⁷ The court therefore concluded that 'reasonableness' is an objective standard that is sensitive to the facts and circumstances of a particular case.⁶⁸ Therefore, determining whether the legislature has acted reasonably in discharging its duty to facilitate public involvement depends on several factors.⁶⁹ Pertinent to these factors are the nature and importance of the legislation and the intensity of its impact on the public.⁷⁰ Practicalities such as time and expenses, which relate to the efficiency of the law-making process, must also be considered.⁷¹ However, the court hastened to warn that the aim of saving money and time does not justify inadequate opportunities for public involvement.⁷²

In the *Matatiele* case,⁷³ the Constitutional Court reiterated that the duty to facilitate public participation has at least two aspects.⁷⁴ The first aspect is the duty to provide meaningful opportunities for public participation in the law-making process.⁷⁵ The second is the duty to take measures to ensure that people can take advantage of the opportunities provided.⁷⁶ The court further reiterated the reasonableness standard for facilitating public involvement.⁷⁷ The Constitutional Court has consistently maintained that the standard for determining whether Parliament has met its obligation to facilitate public participation is reasonableness.⁷⁸ It further stated that the reasonableness of Parliament's or the legislature's

64 Ibid.

65 Ibid para 125.

66 Ibid para 126.

67 See s 72(1)(b) of the Constitution.

68 *Doctors for Life International v Speaker of the National Assembly* (note 56) para 126.

69 Ibid para 128.

70 Ibid.

71 Ibid.

72 Ibid.

73 *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2007 (6) SA 477 (CC).

74 Ibid.

75 Ibid.

76 Ibid.

77 Ibid.

78 *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others* 2016 (5) SA 635 (CC).

conduct depends on the peculiar circumstances and facts at issue.⁷⁹ Parliament and the legislatures certainly have discretion to decide how to fulfil the obligation to facilitate public involvement. The courts will be concerned only with whether the process was reasonable.⁸⁰ The use of digitisation in this process will certainly play an important role in ensuring that the reasonableness standard is met.

From *Doctors for Life*⁸¹ to *South African Iron and Steel Institute*,⁸² The Constitutional Court has consistently outlined the purpose of public involvement in the law-making process. In *South African Iron and Steel Institute*, the court stated:

The purpose of public participation and involvement in democratic processes is primarily to influence decision-making processes that affect the will of the people. Public participation is premised on the belief that those who are affected by a decision have the right to be involved in decision-making process.⁸³

All the judgments of the Constitutional Court on public involvement in the legislative process reveal that the court has been resolute in holding that the standard of adequate participation is reasonableness. The question this article concerns is to what extent digitisation can contribute to meeting the standard of reasonableness in the law-making process.

6. Exploitation of digitisation during the public hearings on the BELA Bill

The BELA Bill was highly contested, with strong feelings expressed by both supporters and opponents. However, the messages being received by the community were characterised by disinformation and misinformation. Disinformation is information that the person disseminating it knows is false.⁸⁴ It is a deliberate, intentional lie, and it points to people being actively disinformed by malicious actors.⁸⁵ On the other hand, misinformation is information that is false, but the person disseminating it is unaware of its falsehood.⁸⁶ The unrestrained spread of misinformation and disinformation is dangerous because it affects the ability to maintain a stable democracy.⁸⁷ False content has a damaging impact on human rights and the functioning of democracy.⁸⁸ Disinformation confuses and manipulates citizens, creates distrust in organisations, and feeds disbelief in democratic processes

79 Ibid para 60.

80 *Mogale and Others v Speaker of National Assembly and Others* 2023 (6) SA 58 (CC) para 34.

81 *Doctors for Life International v Speaker of the National Assembly* (note 56 above).

82 *South African Iron and Steel Institute and Others v Speaker of the National Assembly and Others* 2023 (10) BCLR 1232 (CC).

83 Ibid para 28.

84 Media Defence “False News”, Misinformation and Propaganda – Sub-Saharan Africa’ (2025) <<https://mediadefence.org/resource-hub/misinformation-propaganda-sub-saharan-africa/>> accessed 15 August 2025.

85 Ibid.

86 Ibid.

87 American Psychological Association ‘Misinformation and Disinformation’ (2025) <<https://www.apa.org/topics/journalism-facts/misinformation-disinformation>> accessed 30 July 2025.

88 Colomina, C et al ‘Impact of Disinformation on Democratic Processes and Human Rights in the World’ 2021 *European Union Publication* 1, 3.

such as law-making.⁸⁹ Disinformation can be spread by several means: manufactured amplification (artificially boosting the reach of information by manipulating search engines or promoting hashtags or links on social media);⁹⁰ bots (social media accounts operated by computer programs, designed to generate posts or engagement with social platform content);⁹¹ astroturf campaigns (masking the real sponsor of a message, giving the false impression that it comes from genuine grassroots activism);⁹² impersonation of authoritative media, people or governments (through false websites and/or social media accounts);⁹³ micro-targeting (using consumer data, especially on social media, to send different information to different groups);⁹⁴ and deepfakes (digitally altered or fabricated videos or audio).⁹⁵

During the processing of the BELA Bill through the two Houses of Parliament and the provincial legislatures, three main inaccuracies were spread on digital platforms. Such inaccuracies can spread like wildfire on social media platforms, as was the case here.⁹⁶ The methods used to spread these falsehoods were astroturf campaigns, bots, and deepfakes. The first inaccuracy was that the BELA Bill would legally permit sex education at the basic education level. The second was that, as a consequence of such sex education, the BELA Bill would allow children as young as 12 years old to consent to the termination of a pregnancy. The third was that the BELA Bill would permit schools to sell alcohol to raise funds.⁹⁷

In its processing, the BELA Bill had to go through the two Houses of Parliament, namely the NA and the NCOP, because it was processed in terms of section 76 of the Constitution.⁹⁸ Generally, the consideration of a Bill by the two Houses of Parliament involves a multi-stage process that commences with the introduction of the Bill in the NA by the Minister, committee, or member.⁹⁹ The Bill is then referred to the relevant NA committee for processing, including public participation. The NA committee tables its report, and the Bill is adopted by the NA. Thereafter, the process moves to the NCOP.

89 Ibid.

90 Ibid.

91 Ibid.

92 Ibid.

93 Ibid.

94 Ibid.

95 Ibid.

96 Digital Cooperation Organisation 'From Social Media to Truth: Countering Misinformation for a Thriving Digital Economy (2023) <<https://dco.org/wp-content/uploads/2024/10/From-Social-Media-to-Truth-Countering-Misinformation-for-a-Thriving-Digital-Economy.pdf>> accessed 30 July 2025.

97 Parliament of the Republic of South Africa 'Media Statement: Committee Notes Misleading Social Media Messages about Basic Education Laws Bill' (31 October 2023) <<https://www.parliament.gov.za/press-releases/media-statement-committee-notes-misleading-social-media-messages-about-basic-education-laws-bill>> accessed 11 May 2026.

98 See s 76 of the Constitution. This section deals with ordinary Bills affecting provinces and provides: '(1) When the National Assembly passes a Bill referred to in subsection (3), (4), or (5), the Bill must be referred to the NCOP and dealt with in accordance with the following procedure: (a) The Council must – (i) pass the Bill; (ii) pass an amended Bill; or (iii) reject the Bill.'

99 Legislative Sector South Africa 'Practical Guide for Members of Parliament and Provincial Legislatures' (2019) 13-14.

At the NCOP, the Bill is referred to the relevant Select Committee and to provincial legislatures. Upon receiving the Bill, the Select Committee facilitates briefings. The provincial legislatures embark on their own processes of referring the Bill to the relevant legislative committees, which process it, including through public participation. Finally, the legislature committees confer provincial mandates in respect of the Bill.¹⁰⁰

Public perceptions of several inaccuracies in the version of the BELA Bill introduced by the Minister in the NA carried over into the public participation sessions of provincial legislatures. However, it is important to note that the version of the BELA Bill referred to the NCOP by the NA was completely different from the one introduced by the Minister. Social media and digital platforms were used to spread inaccuracies about the version of the BELA Bill that the provincial legislatures took to the public participation process. Those who opposed the BELA Bill also spread misinformation and disinformation about provisions relating to sex education and termination of pregnancy. In addition, some public hearings were delayed because opponents refused to allow the presentation of the BELA Bill.¹⁰¹ Some of the contested provisions that were either in the BELA Bill or perceived by the public to be in it are discussed next.

Sale and consumption of alcohol on school premises: The version of the BELA Bill introduced by the Minister in the NA stated in clause 8(c) that the governing body of a public school may apply to the HOD for permission to allow the sale of alcohol on school premises for fundraising purposes, or, upon receiving an application from any person, may, in consultation with the HOD, grant such permission.¹⁰² The NA removed these provisions from the initial version of the BELA Bill. Therefore, subsequent versions of the Bill, including the one referred to the provincial legislatures, had no such provisions.¹⁰³ But due to misinformation, participants at the public hearings held by the provincial legislature insisted that this provision was still in the BELA Bill.

Sex education: The version introduced by the Minister in the NA, as well as the version referred to provincial legislatures, contained no provision for sex education. The misinformation spread on social media that the BELA Bill permitted teachers to offer comprehensive sex education precipitated an uproar. **Learner pregnancy and termination of pregnancy:** Neither version of the BELA Bill contained a provision permitting learners to consent to the termination of pregnancy. The only reference to learner pregnancies in both versions of the BELA Bill regards the power given to the Minister to regulate the management of learner pregnancies.¹⁰⁴ Therefore, the assertion that the Bill allowed for the termination of pregnancy is simply misinformation.

In light of the above challenges experienced during public participation on the BELA Bill, how then do provincial legislatures leverage digitisation to respond to misinformation and disinformation? Further, what is the impact of artificial intelligence on public involvement in law-making?

100 Ibid.

101 The public hearings in Chatty and Kariega in Nelson Mandela Bay had a late start, because some people opposed the presentation of the Bill.

102 Basic Education Laws Amendment Bill [B2 – 2022] GG No 45601 of 6 December 2024.

103 Basic Education Laws Amendment Bill [B2B – 2022].

104 Basic Education Laws Amendment Bill [B2 – 2022] clauses 39 and 41.

7. The impact of artificial intelligence on public involvement in law-making

In today's world, artificial intelligence (AI) has a significant and far-reaching influence on a variety of industries, including healthcare, corporate operations, transportation and education.¹⁰⁵ This is because AI uses complex algorithms and large datasets to simulate human intellect, enabling computers to learn, process information, and make decisions at speeds and levels of precision never seen before.¹⁰⁶ AI focuses on addressing real-world challenges, enhancing human decision-making, automating processes, and promoting innovation.¹⁰⁷ It is considered to have the potential to solve complicated global issues as the technology develops, advancing society and paving the way for greater collaboration between human creativity and intelligent systems.¹⁰⁸

One of the notable benefits of AI is improved decision-making.¹⁰⁹ With AI, large volumes of data may be accurately and swiftly analysed,¹¹⁰ and the AI system may then provide insights to support improved decision-making.¹¹¹ It is also believed that AI enhances educational outcomes by offering intelligent tutoring systems that can adjust to the needs of individual students, automate tasks for instructors and deliver individualised learning experiences.¹¹² In the legal sector, AI may be used for tasks such as document analysis (statute analysis and summaries), contract drafting, and the analysis and summarising of court cases.¹¹³ The advantage of AI in public involvement in the law-making process is that it can make information accessible by providing easy-to-use summaries of Bills.

AI has been criticised, among other things, for lacking emotional intelligence.¹¹⁴ When humans are confronted with sensitive decisions, they naturally take into account the emotional consequences of their choices.¹¹⁵ In comparison, AI operates without emotional intelligence, focusing on achieving the most efficient outcome based on the data it has been given, irrespective of any emotional implications.¹¹⁶ Some authors argue that AI cannot be allowed to make procedural decisions based on assessments of personality and other subjective factors that are not amenable to 'machine processing'.¹¹⁷ The literature warns that the increasing similarity between robots and humans may pose risks to humans and

105 Tata Jap, J 'Benefits of Artificial Intelligence' (2025) 12 *International Research Journal of Engineering and Technology* 62.

106 Ibid.

107 Pradeep Kumar, S 'Artificial Intelligence: Its Pros and Cons' (2025) 16 *International Journal of Management* 41.

108 Tata Jap (note 105) 62.

109 Ibid.

110 Ibid.

111 Ibid.

112 Ibid.

113 Najafli, A 'The Impact of Artificial Intelligence on the Legal System: Benefits, Risks, Legal, and Ethical Challenges' (2024) 2 *Acta Globalis Humanitatis Et Linguarum* 249.

114 Pradeep Kumar (note 107 above) 48.

115 Ibid.

116 Ibid.

117 Livson, M 'Impact of Digitalization on Legal Regulation: Formation of New Legal Practices' (2021) 9 *Campo Juridico* 1.

lead to criminal prosecutions of robots themselves.¹¹⁸ Furthermore, a robot's assessment of legal action, in isolation from the assessment of the person who committed it, can undermine the validity and fairness of such decisions and, more generally, the protection of the individual's fundamental rights.¹¹⁹

AI has also been criticised for increasing human complacency.¹²⁰ The integration of AI into everyday human life may further encourage such complacency.¹²¹ The danger in this regard is that humans may accept whatever output AI produces without critical evaluation or verification.¹²² Taking this into account, the use of AI in public participation in law-making will diminish the principle of meaningful participation. People may, for example, simply ask AI to summarise the Bill, identify deficiencies in it, and formulate a submission to Parliament or a law-making body. In this instance, the person will simply accept what the AI provides without any analysis or evaluation. The court in *Mavundla v MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal*¹²³ heavily criticised the applicant's legal representatives for failing to verify the accuracy of the AI-generated research. Therefore, AI-generated views on a particular Bill, without any form of verification and evaluation, will not constitute well-thought-out and meaningful contributions to the law-making process, but rather machine-generated outputs. In that instance, the proposed law may not align with the lived realities of the people.

Another challenge for AI is potential bias. Bias in an algorithm is defined as a systematic error in its outputs or processes. One potential source of bias in AI systems is an imbalance in the data used to train the algorithms.¹²⁴ Since AI algorithms learn from historical data, if the data used to train these systems contain biases, the AI may perpetuate or even amplify those biases.¹²⁵ The impacts of AI bias can be seen in sectors such as education, housing, healthcare, insurance, and the legal and judicial systems.¹²⁶ AI-based systems which operate on inadequate, incomplete and inaccurate data deliver erroneous results that encroach on individuals' fundamental rights, especially the right to protection against discrimination.¹²⁷ In the legal context, this may lead to unfair outcomes. Marginalised communities, including racial minorities, tend to bear the brunt of biased AI decisions.¹²⁸ The consequences of biased AI are tangible and far-reaching,

118 Ibid.

119 Ibid.

120 Pradeep Kumar (note 107) 48.

121 Ibid.

122 Ibid.

123 *Mavundla v MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal* KwaZulu-Natal Division of the High Court (unreported) 2025-01-08 Case no 7940/2024P.

124 Vicente, L & Matute, H 'Humans Inherit Artificial Intelligence Biases' (2023) 13 *Scientific Reports* 1.

125 Kumar, A & Navya, DR 'Artificial Intelligence (AI) and the Future of Law' (2025) 5 *International Journal of Progressive Research in Engineering Management and Science* 1138.

126 Bansal, C et al 'Artificial Intelligence (AI) Bias Impacts: Classification Framework for Effective Mitigation' (2023) 24 *Issues in Information Systems* 373.

127 Ibid.

128 Min, A 'Artificial Intelligence and Bias: Challenges, Implications, and Remedies' (2023) 2 *Journal of Social Research* 3815.

affecting various aspects of life and leading to unfair treatment.¹²⁹ Potential bias in AI may diminish meaningful participation in the law-making process by generating biased information relating to a particular Bill. The AI-generated views on Bills may compromise the constitutional imperative of public involvement in law-making because those views may be detached from community realities.

8. The importance of incorporating digital technologies into law

There is limited research on the incorporation of digital technologies into law. Livson agrees with this assertion, noting that, although there has been a lot of research on the problems of digitalisation in law, including that published under the aegis of reputable legal institutions, researchers are still unable to fully assess the possibilities of using digital technologies in general, and, in particular, those containing elements of AI, in the main areas of legal activity and the boundaries of their application in law.¹³⁰ This article is a novel research attempt to enquire into the likely impact of AI and digitalisation on law-making processes.

International scholars agree that the challenge in introducing digital technologies into the legal sphere lies in determining the limits of their participation in law-making and law enforcement.¹³¹ There seems to be a consensus that the introduction of digital technologies in law, in general, and in law-making in particular, is inevitable, but it is important to set limits on these technologies.

The United Nations Development Programme recognises the potential of technology to safeguard rights and prevent violations, indicating an international shift towards embracing digital justice as a strategy to enhance legal systems worldwide.¹³² Globally, digital technologies are credited with improving efficiency and accessibility and enhancing legal resources.¹³³ With regard to efficiency and accessibility, digital technologies enhance judicial processes by automating procedures, thereby not only expediting case resolution but also broadening access to justice.¹³⁴ Digital technologies enhance the accessibility of legal resources, allowing more individuals to benefit from legal support and advice without the traditional barriers of high costs.¹³⁵

African states have started to embrace digital technologies by incorporating AI technologies into the administration of justice. In Tanzania, the AI-driven transcription and translation system handles the diverse dialects of Kiswahili as well as English,

129 Ibid.

130 Livson (note 117) 3.

131 Ibid.

132 Guterres, A 'The Highest Aspiration: A Call to Action for Human Rights' (2020) United Nations <https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/2020_sg_call_to_action_for_hr_the_highest_aspiration.pdf> accessed 13 May 2026.

133 Gaffer, H 'Implications of Digitalisation and AI in the Justice System: A Glance at the Socio-Legal Angle' (2024) 10 *International Journal of Law: Law and World* 154.

134 Ibid.

135 Ibid.

providing real-time records of proceedings.¹³⁶ Kenya has introduced an e-filing platform that integrates AI-enabled case routing and allocation.¹³⁷ This digital case management system automatically assigns cases to judicial officers, reducing delays.¹³⁸ These examples demonstrate that African states are beginning to adopt the idea of maximising the use of digital technologies to improve the administration of justice.

9. Harnessing digitisation to enhance public involvement: The way forward for law-making institutions

It is clear that Parliament and provincial legislatures must modernise and start to invest in digitisation to enhance public participation in the law-making process. The question is: to what extent do these law-making bodies leverage digitisation to consolidate messaging in response to misinformation in the law-making process? Social media has become an essential tool for enhancing public participation in law-making. Social media allows users to interact, create and share content via the internet.¹³⁹ This article proposes six key factors to consider when leveraging digitisation to enhance public participation in the law-making process.

Firstly, Parliament and the provincial legislatures must establish reliable, efficient and secure data networks. This is important for two reasons: first, to enable rapid information sharing, and second, to facilitate digital data transmission. Developments in the information technology space indicate that organisations are beginning to embrace cloud computing, which is emerging as a transformative force in the digital era.¹⁴⁰ Cloud computing has eliminated the need for costly physical infrastructure while allowing organisations to focus on innovation and agility.¹⁴¹ The introduction of cloud computing has accelerated digital transformation across industries, enabling businesses to adapt to the rapidly changing technological landscape.¹⁴² Cloud technologies have enabled seamless connectivity between millions of internet-enabled devices such as smartphones and tablets, transforming how businesses and consumers interact with digital platforms.¹⁴³ This article argues that Parliament and the provincial legislatures must invest in technologies such as cloud computing to intensify messaging relating to law-making.

In South Africa, the government has generally been blamed for lagging behind in digital transformation initiatives.¹⁴⁴ The government's information technology function is entrusted

136 J 20 Summit – South Africa 2025, 'From Innovation to Inclusion: AI and African Justice' (3-4 September 2025) <<https://j20.judiciary.org.za/wp-content/uploads/2025/09/From-Innovation-to-inclusion-Deputy-Chief-Justice-of-South-Africa-Justice-Dunstan-Mlambo.pdf>> accessed 14 May 2026.

137 Ibid.

138 Ibid.

139 Kaplan, A & Haenlein, M 'Users of the World, Unite! The Challenges and Opportunities of Social Media' (2010) 53 *Business Horizons* 59.

140 Alzide, S 'Cloud Computing: Evolution, Challenges, and Future Prospects' (2024) 1 *Journal of Information Technology, Cybersecurity, and Artificial Intelligence* 52.

141 Ibid.

142 Ibid.

143 Ibid.

144 Business Tech 'The System is Down – Home Affairs Want to Ditch its Biggest Handicap' (28 November 2024) <<https://businesstech.co.za/news/government/801883/the-system-is-down-home-affairs-want-to-ditch-its-biggest-handicap/>> accessed 20 April 2025.

to the State Information Technology Agency SOC Limited (SITA), which is required to provide information technology and related services to or on behalf of departments and organs of state.¹⁴⁵ SITA has come under fire for inefficiencies in handling the government's information technology requirements and for failing to drive the digital transformation agenda.¹⁴⁶ Some provincial legislatures, such as the Eastern Cape, depend on SITA to provide and maintain their information and communication technology systems. For effective digitisation in law-making, a reliable, efficient and secure data network is a necessity. Data transmission technologies and networks are the backbone of modern communication systems.¹⁴⁷ Transmission technologies and networks are responsible for the transfer of data between devices and networks, enabling the seamless exchange of information.¹⁴⁸ The rapid growth of the internet and the proliferation of mobile devices have led to increased demand for faster, more efficient data transmission technologies and networks.¹⁴⁹

Podcasts have become the most dynamic and rapidly growing media format. This important media platform could be used by Parliament and the provincial legislatures to facilitate public participation in the law-making process. The use of community radio stations is becoming outdated. Podcasts provide a valuable platform for stakeholder engagement in the law-making process. Podcasting has certainly developed into one of the important media formats in the digital age.¹⁵⁰ The interesting fact about podcasting is that it has evolved from topics such as comedy and personal anecdotes to encompassing a wide range of content, including news and educational podcasts.¹⁵¹ The shift from traditional radio to podcasts reflects broader changes in media consumption habits, where digital technology and mobile internet access have empowered audiences to engage with content on demand.¹⁵² With the growing number of smartphones and the rise in internet usage, podcasts have emerged as a popular medium for public engagement and information sharing. Parliament recognised the power of electronic media when it introduced its own parliamentary channel on the MultiChoice platform.¹⁵³ The introduction of the parliamentary channel has had a positive impact on Parliament's public education drive. However, the time is now right for Parliament to embrace and explore other digital platforms, such as podcasts.

145 Section 6 of the State Information Technology Agency Act 88 of 1998.

146 Business Tech (note 144).

147 Zaquinaula, FPA 'Data Transmission Technologies and Networks: A Review' (2023) 33 *Journal of Namibian Studies* 3190.

148 Ibid.

149 Ibid.

150 Minooka, L 'The Rise of Podcasting: Evolution, Impact, and Future Directions' (2024) 22 *Global Media Journal* 1.

151 Ibid.

152 Mombo, MA 'Podcasts as the New Radio: Shaping the Future of Storytelling' (2025) 1 *African Multidisciplinary Journal of Research* 551.

153 Public Service Accountability Monitor 'Submission on the 2021 Appropriation Bill' May 2021 <<https://psam.org.za/wp-content/uploads/2021/05/PSAM-Appropriations-Submission-Final-May-2021.pdf>> accessed 26 June 2026; Waterhouse, S et al 'Moving Online, Opening the (Virtual) Door: Public Access to Online Committee Meetings in National Parliament During Lockdown' (November 2021) *Dullah Omar Institute Research Report* <https://static.pmg.org.za/Public_access_To_online_Committee_meetings_final_version_19_May_2022.pdf> accessed 26 June 2026.

Social networking platforms such as TikTok and X can be useful for effective public participation in the law-making process. TikTok and X may be used, for example, to record short video clips that explain a Bill succinctly and provide a step-by-step guide to how people can participate in the legislative process relating to the Bill. Short-form videos increase user engagement and are lower-cost, making them cost-effective for information dissemination and brand-building.¹⁵⁴ Research shows that TikTok has an impact on visual culture.¹⁵⁵ Visual culture is a cultural form shaped by visual media communication, as opposed to a linguistic culture centred on linguistic symbols.¹⁵⁶ It represents a new mode of communication that promotes the development of new communication practices.¹⁵⁷ As a kind of visual culture, short video content attracts users by integrating visual and auditory elements.¹⁵⁸ The combination of these elements has unique advantages. The literature shows that visual and auditory methods used in learning can help cement what has been learnt in the learner's memory, allowing it to be retained for longer.¹⁵⁹ Increasingly, people are using visual and auditory media to communicate, and traditional forms of communication may, in time, become obsolete. Social media platforms such as X and TikTok are widely used by young people in Africa, and studies have found that high school and university students in countries such as South Africa, Ghana, Nigeria and Kenya use social media frequently in both urban and rural areas.¹⁶⁰

Parliament and the provincial legislatures should use YouTube channels to boost public participation. Social media platforms such as YouTube have redefined audience engagement, with content shifting from passive consumption to active participation. YouTube transcends textual limitations, enabling users to communicate, connect and express themselves through short and long videos.¹⁶¹ YouTube is much more than an online platform for sharing and broadcasting content. Its peculiarity is that its technical and social features support the formation of a participatory culture among community members.¹⁶² By making content sharing easy and integral to communal discourse, platforms such as YouTube prioritise community members' sense of belonging and identification with the broader community.¹⁶³

154 Meng, LM 'The Impact of Content Characteristics of Short-Form Video Ads on Consumer Purchase Behaviour: Evidence from TikTok' (2024) 183 *Journal of Business Research* 114874.

155 Xiaowei, N 'The Dissemination and Influence of Visual Culture, Taking TikTok as an Example' (2023) *The International Conference on Interdisciplinary Humanities and Communities Studies* 845.

156 Ibid.

157 Ibid.

158 Ibid.

159 Wen-hau, Z 'The Implications of Visual Media in Foreign Language Teaching and Learning: Take Chinese as an Example' (2018) 16 *US-China Foreign Language* 212.

160 Tetteh, PK & Kankam, PK 'The Role of Social Media in Information Dissemination to Improve Youth Interactions' (2024) 10 *Cogent Social Science* 1, 3.

161 Venkata, SK et al 'The Influence of YouTube on the Growth and Success of Over-the-Top Media: A Study' (2024) 10 *International Journal of Advanced Engineering Management and Science* 47.

162 Chau, C 'YouTube as a Participatory Culture' (2010) 128 *New Directions for Youth Development* 65.

163 Ibid.

Furthermore, Parliament and the provincial legislatures should create positions for social media/digital media specialists in their organisational structures. The specialists' responsibilities would include creating digital content; monitoring and updating all social media platforms related to law-making; promptly responding to any misinformation being spread on social media platforms; and improving the social media presence of law-making bodies.

Lastly, training must be conducted for members of Parliament and provincial legislatures on digitisation so that they understand the evolution of digital technology and how it can be used to maximise public participation in the law-making process. Members of law-making bodies must lead the digitisation of law-making. It is, however, important to evaluate older adults' digital skills to help them make the most of innovative technologies.¹⁶⁴ Digital inclusion is partly shaped and improved by internet skills, which help to reduce the digital divide.¹⁶⁵ Education and digital literacy are, therefore, critical to narrowing this divide. It is also important to understand how older adults' technological skills can be enhanced to improve the effective use of the internet and related technologies.¹⁶⁶ Since many members of legislatures are older adults, it is essential to provide them with training in these technologies.¹⁶⁷

10. Conclusion

The Constitutional Court, in its judgments discussed above, has set reasonableness as the standard of public participation in the law-making process. Leveraging digitisation in the law-making process will certainly help meet this standard. The high levels of misinformation and disinformation regarding law-making processes constitute a threat to the South African democratic project. The six key factors proposed in this article identify areas within the digital technology space that can be harnessed to ensure effective and efficient messaging in the law-making process, thereby countering any inaccuracies that may be disseminated.

Technology is advancing rapidly; therefore, digital transformation should be at the top of the agenda for Parliament and the provincial legislatures in South Africa. Failure to keep pace with digital evolution could mean the constitutional imperative to facilitate public participation in law-making is not met, resulting in the delegitimisation of the law-making process.

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164 Gwala, N & Mawela, T 'Investigating the Internet Skills of Older Adults in South Africa' (2024) 23(3) *Artha - Journal of Social Sciences* 49.

165 Ibid.

166 Ibid 51.

167 Ibid.