

A prolegomenon on deepfakes and human rights in the African Charter

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Abstract: *Deepfake, the manipulation of videos, audio and images using Artificial Intelligence (AI) technology, is popularly gaining attention in different areas of law since its first creation in 2017. Recent scholarships have considered its impacts on evidence law and proofs in courtrooms. Other areas of law that have been tested with deepfake include criminal law, torts, intellectual property and national security law, among others. In Africa, one of the challenges in addressing issues relating to deepfake is illiteracy. Most Africans are said to be ignorant of what deepfake is. Yet, with its nature and as a form of AI, deepfake impacts almost all known human rights since human rights are interdependent and interrelated. This paper seeks to introduce and underscore the impacts of deepfake on human rights in Africa, particularly the rights contained in the African Charter on Human and Peoples' Rights (African Charter). Although an analysis of the impact of deepfake on all the rights contained in the African Charter is outside the scope of this paper, the most impacted human rights—the right to dignity, privacy and information—will be discussed. As a prolegomenon (introduction) on this topic, the paper aims to highlight the human rights violations in the creation of deepfakes in Africa. The paper argues that while most deepfakes are created by private individuals, under the 'duty to respect' framework of human rights, both individuals and State Parties have obligations to respect human rights.*

Keywords: *African Charter, AI, deepfake, human rights, technology*

1. Introduction

Perhaps, one of the best ways to introduce a paper of this nature is to narrate a personal experience and a practical example of the impact of deepfakes. At a conference titled ‘technology and the Future of human rights,’ organised by the Centre for human rights, University of Pretoria, in September 2022, this author presented a paper titled *deepfakes and Shallowfakes as Artificial Misinformation in the Era of technology: Effects on Democratic Participation in Africa*¹. The presentation commenced with three short videos. In the first video, President Obama was seen saying:

We’re entering an era in which our enemies can make it look like anyone is saying anything at any point in time. Even if they would never say those things. So, for instance, they could have me say things like... “Killmonger was right” or “Ben Carson is in a sunken place” or, how about this, simply, “President Trump is a total and complete dipshit.” Now, you see, I would never say these things. At least, not in a public address. But someone else would... This is a dangerous time... (Romano, “Jordan Peele’s”)

As it would turn out, the “someone else” was indeed, President Obama. Sorry, Jordan Peel (Caldera, 2019).

In the second video, David Beckham, the former English football player, spoke nine languages including Kiswahili and Yoruba in a call to end malaria (Westerlund, 2019). In the third, a Nigerian Governor was seen stuffing his babaringa with bundles of United States dollars (This Day, 2021). Thereafter, the audience seeing the videos for the first time were asked if they knew which ones were real and fake, but none could tell, with certainty. And it made no difference either for those who had seen the videos a couple of times, as the Nigerian Governor, whether true or false had argued that the video was ‘cloned’ (This Day, 2021). Everyone saw the videos but doubted their eyes.

In the simplest words, a deepfake is a forged video, audio or picture, using AI (Caldera, 2019; Winter & Salter, 2020). Although the manipulation of videos, audio and pictures, is not a recent vintage (Langguth, *et al.*, 2021), the advancement in technology and the proliferation of deepfake software apps, have particularly triggered critics about the need to address the dangers posed by deepfakes. While not all uses of deepfakes are bad (Citron & Chesney, 2019; Naruniec *et al.*, 2020), when they are created, they mostly set out to achieve one underlying aim: to deceive the audience.

¹ This author has published an article on the paper presented at this conference. See Mujib Jimoh, “The Right to Democratic Participation in Africa in the Era of deepfake,” *Pretoria Student Law Review* 17 (2023): 106.

However, the deception is not as much a problem as the inability of the audience to spot it. If the audience could spot it, nonetheless, only one-third of the problem would be solved. There are two other major problems. First, once a deepfake is released to the public, its forged nature cannot be corrected in the minds of the audience. “The truth becomes irrelevant in the heat of the moment while feelings and opinions dictate the perspective on reality” (Fragó, 2019). Second, there is a futuristic problem, an “information apocalypse,” where people feel information cannot be trusted again (Westerlund, 2019).

Noteworthy, the underlying deceptive aim in creating deepfakes is usually geared towards other objectives. It could have some political connotations, like Jordan Peele’s Obama video or it could be to spite or defame a character, like the user “u/deepfakers”’s 2017 post on Reddit, superimposing faces of female celebrities such as Scarlet Johansson and Gal Gadot, into porn video (Cole, 2017). The objective could be harmless, like David Beckham’s video or it could be for fun, yet the aim to deceive is not eroded. The foregoing raises many legal issues ranging from evidence law (LaMonaga, 2020; Maras & Alexandrou, 2018), criminal law (Citron, 2019), Torts (Kocsis, 2022), intellectual property (Nema, 2021), national security law (Chesney & Citron 2019), among others. Also, within the spectrum of issues arising from deepfakes is human rights. Since human rights are said to be interrelated and interdependent (Scott, 1989) and since deepfake is a form of AI (Kocsis, 2022), all known human rights are potentially implicated by the effects of deepfakes.

Deepfake is a relatively recent concept as it emerged in 2017 and scholarship on it is still growing².

In Africa, one of the challenges in addressing issues relating to deepfake is illiteracy. Most Africans are said to be ignorant of what deepfake is (Ndebele, 2023). This paper, thus, seeks to introduce and underscore the impacts of deepfake on human rights in Africa, particularly the rights contained in the African Charter on Human and Peoples’ Rights (African Charter or Charter). It aims to contribute a timely scholarly work on the deepfake–human rights discourse from an African Human Rights perspective. Although an analysis of the impacts of deepfake on all the human and peoples’ rights contained in the African Charter is outside the scope of this paper, the most impacted human rights, the rights to dignity, privacy and information will be discussed. This paper will be broadly divided into four parts. After this introduction, Part II will provide an overview of the African human rights system. Part III discusses the impacts of deepfake on the rights to human dignity, privacy and information. Part IV will conclude the paper.

² But see Milena Popova, “Reading out of Context: Pornographic deepfakes, Celebrity and Intimacy,” *Porn Studies* 7, no. 4 (2020): 367.

2. The African Human Rights System³

The foundation of the African Human Rights System is the African Charter (Jimoh 2023a, 1). The Charter was adopted in 1981 and came into force in 1986 (Samb, 2009). Almost all African countries have ratified it (Adigun, 2024). Despite the flaws and criticisms by eminent scholars, the impacts of the African Charter on the African Human Rights System have been described as “legendary” (Osuntogun, 2016). The main reason attributed to this bold complement to the Charter is its broadness in the recognition of human rights, particularly Economic, Social and Cultural Rights (ESCRs) (Swanson, 1991 & Jimoh, 2024). For instance, one widely publicised praise for the African Charter is the equality it maintains with respect to ESCRs and civil and political rights (Ssenyonjo, 2011). The Charter is said to place ESCRs above civil and political rights (El-Obaid & Appiagyeyi-Atua, 1996), though the African Commission on Human and Peoples’ Rights (African Commission or Commission) is, at the same time criticised for giving them less attention (Murray, 2001).

Notwithstanding, the Charter is said to have taken the maximalist approach. Other reasons include the fact that the Charter presents the idea “that rights are interdependent and indivisible” (Samb, 2009), its adoption of a liberal approach to the issue of *locus standi* (Osuntogun, 2016), its recognition of a contextual approach to human rights (Motala, 1989 & Bondzie-Simpson, 1988), its recognition of both human rights and peoples’ rights and its imposition of duties on individuals (Jimoh, 2023b). For these reasons, the Charter is said to have provided a strong legal framework for the promotion and protection of human rights in the continent and that the “jurisprudence of the African Commission attests to this achievement” (Centre for human rights, 2016).

The two main regional human rights judicial and quasi-judicial bodies where the rights contained in the African Charter may be claimed are the African Commission and the African Court on Human and Peoples’ Rights (the African Court or Court). The state parties to the Charter enjoy a margin of appreciation, however narrow, (Born, Morris & Forres, 2020)⁴ and may, as in

³ Notable human rights scholars have written extensively on the African Human Rights System. Professor Rachel Murray has a lot of work on this. See for instance, Rachel Murray, *The African Charter on Human and Peoples’ Rights: A Commentary* (Oxford: Oxford University Press, 2019); Rachel Murray, *human rights in Africa from The OAU to the African Union* (Cambridge: Cambridge University Press, 2004); Rachel Murray and Steven Wheatley, “Groups and the African Charter on Human and Peoples’ Rights,” *human rights Quarterly* 25, no. 1 (2003): 213. Professors Heyns and Viljoen have written extensively on this too. See for instance, Christof Heyns, “The African Regional human rights System: In Need of Reform,” *African Human Rights Law Journal* 2 (2001): 155; Frans Viljoen, *International Human Rights Law in Africa* (2nd ed, Oxford University Press, 2012).

⁴ See the African Court’s narrow application of the margin of appreciation principle in *Applications 009&011/2011 – Tanganyika Law Society and The Legal and human rights*

dualist states, enact the provisions of the Charter into their local law, placing it on the same pedestal as their local legislation⁵. While the African Commission is established by the African Charter, the African Court is established by the protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights.

Both the African Commission and the Court can receive communications from both State Parties and individuals alleging violations of rights guaranteed under the Charter (Gumedze, 2003). For a communication made by an individual on a breach of any rights under the Charter to be seized and admissible by the African Commission, it must fulfil fourteen conditions (Jimoh, 2022). If the application is made to the African Court, there are eight conditions to be satisfied (Heyns, 2001). Since its establishment in 1987, the African Commission has been instrumental in the development of human rights jurisprudence in Africa. It has, through its four mandates under the Charter, adopted several resolutions, declarations and guidelines, in promoting human rights in the continent. It has also adopted different international law interpretation theories and the derivative human rights approach in construing the rights contained in the African Charter (Amin, 2021 & Jimoh, 2024). In addition, through the provisions of articles 60 and 61 popularly referred to as the “decompartmentalisation” articles, the African Commission has drawn inspiration from the decisions and general comments of the human rights Committee, the decision of the International Court of Justice, decisions of the European Court of human rights and the decisions of the Inter-American Court of human rights (Burgogue-Larsen, 2018 & Jimoh, 2023c). Although the jurisprudence of the African Court is still developing, it has also contributed to the promotion of human rights in Africa (Makunya, 2021).

3. The Impacts of deepfake on the Rights in the African Charter

3.1. Deepfake and the Right to Human Dignity

Due to the superior nature of the dignity of the human person,⁶ it has been described as a value rather than a norm. According to Petsche, values are the foundation of the normative system and they give rise to

Centre and Reverend Christopher Mtikila v The United Republic of Tanzania. The Commission did the same in Communication 255/2002 – Garreth Anver Prince v. South Africa.

⁵ For instance, Nigeria has done this by placing the Charter on equal footing with its local legislation. See *Abacha & Others v Fawehinmi* (2001) AHRRLR 172.

But see also Muyiwa Adigun, “The Implementation of the African Charter on Human and Peoples’ Rights and the Convention on the Rights of the Child in Nigeria: The Creation of Irresponsible Parents and Dutiful Children?,” *The Journal of Legal Pluralism and Unofficial Law* 51(3) (2019): 320, 328 (arguing that the Charter is superior to other Acts in Nigeria, though inferior to the Constitution).

⁶ But see critical criticisms of the notion that dignity is a superior right in Ruth Macklin, “Dignity is a Useless Concept: It Means No More Than Respect for Persons or Their Autonomy,” *British Medical Journal* 327 (2003): 1419; Stephen Pinker, “The Stupidity of Dignity: Conservative Bioethics’ Latest, Most Dangerous Ploy,” *The New Republic*, May 28, 2008, <https://newrepublic.com/article/64674/the-stupidity-dignity>.

norms (Petsche, 2010). “Thus, for example, the prohibition of degrading treatment (a norm),” states Petsche, “is based on the dignity of the human person (a value) and gives rise to the corresponding individual right not to be made subject to such treatment” (Petsche, 2010). The African Charter follows this value→norm approach. It provides that “every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status (value). All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited” (norms) (African Charter, Article 5).

Although the origin of the right to human dignity is unclear (Dan-Cohen, 2011), some sources describe Kant as the father of the concept (Smith II, 2016), while others attribute it to the writings of Cicero (Weatherall, 2015). It is clear that the right has its roots in natural law. It is an intrinsic right of a human person (Glensy, 2011). According to Weatherall, Cicero’s *Dignitas hominis* denotes “the inherent status of ‘worthiness’ of every individual by virtue of his being human” and “the honourable authority of a person, combined with attention and honour and worthy respect paid to him” (Weatherall, 2015). By the concept of African humanism (*ubuntu*), an African worldview—dignity is firmly engrained in the value system (Metz, 2011 & Van Binsbergen 2001).

Under the African Human Rights jurisprudence, the right to human dignity is both substantive and procedural. In addition to the provisions of Article 5 of the African Charter, the preamble to the Charter in two clauses makes express reference to dignity (African Charter, Clauses 2 and 8). Gelaye explains thus:

Here one may ask what significance is of an express incorporation of dignity in the preamble of the African Charter. The scholarship on treaty interpretation underscores the importance of statements incorporated in preambles. Accordingly, one of the core functions of preambles is to specify the purpose that specific provision of the treaty seeks to achieve. As such, they serve as guidance in the interpretation of treaties by judicial bodies. This helps to minimise the misapplication of specific provisions of the treaty. If preambles have such a role, the presence of human dignity in the African Charter is a positive development, since the adjudicatory bodies will have the mandate to use the concept in the discovery, explication, application and limitation of rights in it. Hence, it could be argued that human dignity is a value that shapes the interpretation of human rights in the African Charter (Gelaye 2021, 126).

Dignity is a rule of *jus cogens* (Kleinlein, 2017). Under international law, a *jus cogens* is an overriding and compelling rule for which no

derogation is permitted except by a subsequent norm of the same character (Brownlie, 1979). While *jus cogens* cover many areas of international law, most eminent scholars accept that norms of *jus cogens* are mainly human rights. “A brief look at the peremptory norms,” state den Heijer and van der Wilt “beyond contestation, prohibition of apartheid, slavery, torture, genocide, crimes against humanity immediately confirms this contention” (den Heijer & Van der Wilt, 2016). A cautious reading of Article 5 of the African Charter reveals that when the norms contained in the second clause are violated, the right to human dignity is, by implication, violated (Ukaj-Elshani, 2019). Thus, under the African Charter, all forms of exploitation and degradation of human persons are a violation of the right to dignity. Both the African Commission (see for instance *Huri-Laws v. Nigeria*) and the Court (see for instance *Mugesera v Rwanda*) have considered communications and applications alleging a violation of this right. For instance, in *Purohit and Another v. The Gambia*, the African Commission held that human dignity is an inherent basic right to which all human beings are entitled without discrimination.

Most deepfakes are pornographic in nature (Winter & Salter, 2020). In recent years, *Porn Studies* has published different papers on the use of deepfakes to shame and demean celebrities through the creation of nonconsensual porn. Deepfakes superimpose the faces of celebrities on different bodies without their consent, thus, violating their human person (Popova, 2020). Most of the time, deepfakes are created to humiliate the character of a person, such as showing people doing abhorrent things like paedophilia (Hall, 2018) and rape (Citron, 2019) and as such, constitute degradation or violations of human dignity (Öhman, 2022). A key component of the right to dignity is respect and deference (Mahlmann, 2012; & Caldwell, 1976). The first of Schachter’s twelve conducts antithetical to the right to dignity are “statements that demean and humiliate individuals or groups” (Schachter, 1983). Certainly, if a picture is worth a thousand words (Citron & Chesney, 2019), a video is worth more. The foregoing negative uses of deepfakes, therefore, constitute a violation of this right. Although neither the African Commission nor the Court has addressed the question of human rights responsibility in the use of deepfake, the extant African Human Rights jurisprudence leads to the conclusion that deepfake constitutes a violation of this right. For instance, in *Modise v Botswana*, the African Commission acknowledged that indignity could take many forms and that exposing victims to “indignity” violates the right to human dignity in the Charter (*Modise v Botswana*, para 92).

Noteworthy, deepfakes are mostly created by private individuals. However, the framework of human rights responsibility demands an obligation to respect, protect and fulfil (Alston & Quinn, 1987). The obligation to respect places a responsibility on both individuals and

the States not to harm the human rights of others⁷. Thus, while States have the obligation to ensure that human rights in their jurisdictions are respected, this duty is also on private individuals (Meron 1989; Nampewo, Mike & Wolf, 2022). Moreover, the *jus cogens* nature of the right to dignity demands that the right be respected by both States and individuals. In its decision in Purohit v. The Gambia, the African Commission stated that dignity is an inherent right that every human being is obliged to respect by all means possible, and it confers a duty on every human being to respect this right (Purohit, para 57). In addition to private individuals, governments are under an obligation not to authorise and disseminate deepfakes to manipulate the citizenry against its opposition members.

Considering the nature of deepfakes, one important provision in the African Charter that relates to the admissibility of communication by the African Commission and Court is the provision of Article 56(4) of the Charter. It provides that “communications...shall be considered if they are not based exclusively on news disseminated through the mass media.” As a form of mass media (Kasturi, 2014), social media represents the platform where most deepfake contents are released. Where an allegation of a breach of human dignity is based exclusively on deepfake content posted solely on social media, would the African Commission and Court still require that such communication not be based exclusively on the mass media? In *Jawara v The Gambia*, the African Commission observed that:

While it would be dangerous to rely exclusively on news disseminated from the mass media, it would be equally damaging if the Commission were to reject a communication because some aspects of it are based on news disseminated through the mass media. This is borne out of the fact that the Charter makes use of the word ‘exclusively’. There is no doubt that the media remains the most important, *if not the only source of information*. It is common knowledge that information on human rights violations is always obtained from the media. The genocide in Rwanda and the human rights abuses in Burundi, Zaire and Congo, to name but a few, were revealed by the media. *The issue therefore should not be whether the information was gotten from the media, but whether the information is correct* (paras 24, 25 and 26).

The foregoing decision is confusing. In the earlier part of the observation, the African Commission suggested that some other form of evidence must be adduced. In the latter part, the Commission

⁷ But see David Jason Karp, “What is the Responsibility to Respect human rights? Reconsidering the ‘Respect, Protect, and Fulfill’ Framework,” *International Theory* 12 (2020): 83 (arguing for a reconsideration of the understanding of the duty to respect).

seemed to suggest that truth is the yardstick and not exclusivity. The extant jurisprudence seems to lean towards the former and suggests that other evidence reinforcing the violation, however minimal, should be adduced (Gumedze, 2003 & FIDH, 2016). Thus, a political opponent whose deepfake video is circulated online to sway the minds of the electorates may need to support their communication with other evidence apart from the social media platforms where the deepfake is circulated.

3.2. Deepfake and the Right to Privacy

Most scholars in the early part of the last century described privacy as the seclusion of oneself or property from the public (Winfield, 1931). By the later part of that century, scholars began to reject this description and found that it difficult to define and conceptualise privacy (Uniacke, 1977). “The year is 2021, and privacy is still a concept in disarray” (Hartzog, 2021). One, if not the most influential scholar of privacy of our time, Professor Daniel Solove, has written extensively on the concept and has advised that the obsession over the meaning of privacy should stop⁸. Rather, he suggests that the appropriate question should be what is privacy for (Cohen 2013). This paper heeds Solove’s advice.

In Africa, Professors Roos and Makulilo are perhaps the leading scholars on privacy law and have written brilliant works on the concept (Roos 2006; Roos 2012; & Makulilo, 2014). Professor Solove in his book *Understanding Privacy* after acknowledging that the existing taxonomy on privacy needed revision in light of modern technology,⁹ opines the following new taxonomy of the ambit of privacy:

1. Information collection, which comprises surveillance and interrogation.
2. Information processing, which comprises aggregation, identification, insecurity, secondary use and exclusion.

⁸ For consideration of some of Professor Solove’s work on privacy, see Daniel Solove, “Conceptualizing Privacy,” *California Law Review* 90 (2002): 1087; Daniel J. Solove, “The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure,” *Duke Law Journal* 53 (2003): 967; Daniel Solove, “A Taxonomy of Privacy” *University of Pennsylvania Law Review* 154 (2006): 477; Daniel Solove *Understanding Privacy* (Massachusetts: Harvard University Press, 2008); Daniel J. Solove and Paul M. Schwartz, *Privacy Law Fundamentals* (4th ed. IAPP, 2017).

⁹ This taxonomy was described by Professor William Posser in William Posser, “Privacy,” *California Law Review* 48, no. 3 (1960): 383. These are:
 (a) Intrusion upon seclusion or solitude, or in private affairs.
 (b) Public disclosure of embarrassing private facts.
 (c) Publicity that places a person in a false light in the public eye.
 (d) Appropriation for the defendant’s advantage of a person’s name or likeness.

3. Information dissemination, which comprises breach of confidentiality, disclosure, exposure, increased accessibility, blackmail, appropriation and distortion.
4. Invasion, which comprises intrusion and decisional interference (Solove, 2010).

Privacy is implicated by deepfakes (Citron & Chesney 2019). Using Solove's taxonomy (3) and (4), negative deepfake uses could constitute blackmail and distortion and are in fact, an appropriation, intrusion and interference. One key aspect of privacy law is the protection of individuals from harassment and manipulation (Hartzog 2021, 1683). But deepfake does exactly the opposite. The most often cited case to illustrate this point is the case of Rana Ayyub, an Indian journalist. Ayyub wrote about corruption in Hindu national political parties (Chesney & Citron, 2019). Thereafter, a deepfake video of her appeared online with the malicious purpose of labelling her as "promiscuous, immoral, and damaged goods" (Citron & Chesney, 2019). Such intent to control, expose and damage the identity of Ayyub invaded her privacy. As Citron states, "Those who wish to control, expose and damage the identities of individuals routinely do so by invading their privacy" (Citron, 2019). Perhaps, the best description of the impact of deepfake on privacy is that given by Professor Citron:

Machine-learning technology is used to create digitally manipulated "deep fake" sex videos that swap people's faces into pornography. Each of these abuses is an invasion of sexual privacy—the behaviours, expectations, and choices that manage access to and information about the human body, sex, sexuality, gender, and intimate activities... Much like nonconsensual pornography, deep-fake sex videos exercise dominion over people's sexuality, exhibiting it to others without consent. They reduce individuals to genitalia, breasts, buttocks and anuses, creating a sexual identity not of the individual's own making. They are an affront to the sense that people's intimate identities are their own to share or to keep to themselves (Citron 2019, 1870, 1921).

However, the African Charter contains no privacy provision. One reason attributed to this is that at the time of drafting the Charter, privacy was understood as an individualistic right, which was incompatible with the communal tenets promoted by the Charter (Jimoh, 2023d). Although a recent Declaration by the African Commission, the 2019 African Declaration on Freedom of Expression and Access to Information contains privacy provisions, the African Commission has been adjudged to have been deficient in the promotion of the right (Jimoh, 2023a). Moreover, declarations are not binding under international law. Notwithstanding, there is little reason to believe that the right to privacy may not be claimed

at both the African Commission and the Court. There are three ways this may be done.

First, privacy may be pleaded as part of the right to human dignity contained in the Charter (Bloustein, 1964 & Gavison, 1980). The African Commission has been implored to use its derivative approach as it did concerning the right to water, to derive privacy from the right to dignity (Singh & Power, 2019). Second, both the African Commission and the Court can take inspiration, using the decompartmentalisation articles of the African Charter, from other human rights instruments to which a State Party to the African Charter is a party in upholding this right (Jimoh, 2024).

Third, where these two approaches fail, it may be argued that Africans up to at least age 35, have a guaranteed privacy right under the African Human Rights System. The basis for this submission is that the African Charter on the Rights and Welfare of the Child guarantees the privacy right of the African Child defined as a person below the age of 18 (African Charter on the Rights and Welfare of the Child, art. II). Similarly, article 7 of the African Youth Charter safeguards the right to privacy of young persons defined as a person up to 35 years. Both Charters are in force. Importantly, while the African Committee of Experts on the Rights and Welfare of the Child and the African Union Commission have the responsibilities of protecting the rights in the Charters respectively, it has been argued that other regional human rights bodies, including the African Commission and Court by the decompartmentalisation articles, can entertain a question on the violations of these Charters (Adeola, 2015).

3.3. Deepfake and the Right to Information

The Right to Information (RTI) is a right to the truth. It is a necessary norm in a democratic society. “Democratic discourse is most functional,” states Professor Citron, “when debates build from a foundation of shared facts and truths supported by empirical evidence” (Citron & Chesney, 2019). RTI has been classified as an intrinsic right and not just an instrumental right (McDonagh, 2013). One advantage of the intrinsic classification of RTI is its good fit for unlimited access to information in “terms of the nature of the information to which it applies” (McDonagh 2013). When seen as a right to the truth, the unlimited access to it must be seen as an unlimited access to the truth, as the truth must be seen as part of RTI, without necessarily stating it. Yet, deepfake does no less than distorting the truth. Even without deepfakes, safeguards for RTI are weak in Africa, the provisions of the African Charter, notwithstanding (Adu, 2018). Article 9 of the Charter provides:

- (1) Every individual has the right to receive information.
- (2) Every individual shall have the right to express and disseminate his opinion within the law.

It is important to state that Article 9 contains two different rights, RTI and the right to freedom of expression. The jurisprudence on RTI under the European human rights System, until recently, has been interwoven with the right to freedom of expression (McDonagh, 2013). Perhaps, this may be because RTI is moulded into the right to freedom of expression in other international instruments.¹⁰ The Charter, on the other hand, separates the two rights, with the advantage being that RTI could be considered as a stand-alone right without necessarily espousing the jurisprudence on RTI's relationship with the right to freedom of expression. The importance of this separation may be useful in a jurisprudential analysis of the scope of these rights within the African Human Rights System. This is because, unlike the right to freedom of expression, RTI is not limited by the clawback clause which the Charter is notorious with (Naldi, 2001 & Sibanda, 2007). A literal interpretation of the provisions of Article 9 of the Charter may lead to a finding that while the right to freedom of expression may be limited by "law,"¹¹ RTI may not, except under Article 27(2) of the Charter which contains the legitimate reasons for limitation (*Media Rights Agenda v. Nigeria*).

Deepfakes affect RTI in two main ways. First, it has a direct effect on RTI. This is because the nature of RTI, as the right to receive the true information, is distorted. The very essence of deepfake is to utilise neural networks that can analyse different sets of data samples to learn how "to mimic a person's facial expressions, mannerisms, voice, and inflections... feeding footage of two people into a deep learning algorithm to train it to swap faces" (Westerlund, 2019). When this is done, the information received by the recipient is forged and tampered with and thus, the benefits of RTI to be able to know the truth cannot be guaranteed. The resultant effect is artificial misinformation (Segun, 2021). Secondly, deepfake has indirect effects on RTI. Because human rights are interdependent and interrelated, the distortion of RTI may indirectly affect the enjoyment of other rights which benefit from RTI. Rights like the right to participate freely in the government (Charter, Article. 13), the right to health (Charter, Article. 16), and the right to education (Charter, Article. 17), benefit mostly from RTI (UNICEF 2015).

African States must respect and protect RTI, particularly with the proliferation of deepfake technology. Governments are under obligation to ensure that they do not sanction deepfakes as a tool for repressing their opposition. The African Commission and Court have, in numerous of their decisions, upheld RTI (*Article 19 v. Eritrea*). It has been suggested that one way State Parties may make RTI guaranteed under the Charter effective, is

¹⁰ See for instance Universal Declaration of human rights art 19; European Convention on human rights, art 10. Of But the Inter-American Court of human rights in *Claudio Reyes v Chile* IACHR 9 September 2006 Series C No 151 para 77, treated both rights as separate and distinct.

¹¹ Insofar as it is in accordance with Charter, international law and domestic law. See *Article 19 v. Eritrea* (2007) AHRLR 73 (ACHPR 2007).

to enact laws which strengthen RTI and criminalise the creation and use of deepfake for manipulation (Westerlund, 2019). In the performance of this duty, however, measures taken by State Parties should be legitimate and proportional to prevent clamping on other rights (Citron & Chesney, 2019).

4. Conclusion

Technological advancements necessitate a corresponding legal change to avoid a gap (Moses, 2007). In responding to the legal implications of deepfakes, most scholarships on this have been written by American Professors addressing the issues within the U.S. legal system. The contribution of this paper to the discourse is the regionalisation of the human rights issues in the use of deepfakes in Africa. The paper discusses the effects of deepfakes on the rights to human dignity, privacy and RTI. Both individuals and State Parties to the African Charter must respect these rights. In addition, States have the obligation to protect these rights and to create a framework ensuring that they are respected. Certainly, there are other human rights implicated by deepfake since human rights are interdependent and interrelated. This paper creates a pathway for human rights scholars to continue the discourse.

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