Instruments and strategies to promote internet access as a basic right

‘... the same rights that people have offline shall be protected online ...’

Draft Declaration of Principles on Freedom of Expression and Access to Information in Africa

Izak Minnaar, 5 November 2019, Sangonet, Johannesburg
Instruments and strategies to promote digital equality and internet access as a basic right

• African Commission on Human and People’s Rights
  • Updated Declaration on Principles of Freedom of Expression and Access to Information in Africa
  • Resolution 362, 2016
• UN SDG 16.10.2
• African Declaration on Internet Rights and Freedoms
  • SADC AfDec coalition strategy
• Digital equality initiative in SA
  • Universal internet access and free public access as a basic right
Updating the ACHPR 2002 Declaration on Principles of Freedom of Expression and Access to Information

• **Recognising** the important contribution that can be made to the realisation of the right to freedom of expression and access to information by new digital technologies and the role of open government data in fostering transparency, efficiency and innovation;

• **Affirming** that the same rights that people have offline shall be protected online and that States shall respect, protect and fulfil rights online in accordance with relevant regional and international human rights law;

• **Acknowledging** that the exercise of the right to freedom of expression and to access information using the internet are central to the enjoyment of other rights and essential to bridging the digital divide;
Access to the Internet

84. States shall facilitate freedom of expression and access to information online and the means necessary to exercise these rights.

85. States shall recognise that universal, equitable, affordable and effective access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights.

86. States shall in cooperation with all relevant stakeholders adopt laws, policies and other measures to provide universal, equitable, affordable and effective access to the internet without discrimination,
Updating the ACHPR 2002 Declaration

Non-Interference

89. States shall not interfere with the right of individuals to seek, receive and impart information through any means of communication and digital technologies, through measures such as removing, blocking and filtering of content, unless such interference is justifiable and compatible with international human rights law.

90. States shall not engage in the wholesale disruption of access to the internet and other digital technologies for segments of the public or an entire population.
ACHPR Resolution 362, 2016

Called on African states to implement “legislative and other measures to guarantee, respect and protect citizen’s right to freedom of information and expression through access to Internet services” in line with the Commission’s resolution on the Right to Freedom of Information and Expression on the Internet in Africa.

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UN SDG 16.10.2

Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

**Indicator:** Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information

**Metadata:** The focus of this indicator is thus on the status of adoption and implementation of constitutional, statutory and/or policy guarantees for public access to information. The definition relates directly to “public access to information”, which is wider than, but is also very much based upon, the established fundamental freedoms of expression and association. Conversely, these freedoms also both impact on the environment for public access to information.
The African Declaration on Internet Rights and Freedoms is a Pan-African initiative to promote human rights standards and principles of openness in Internet policy formulation and implementation on the continent. The Declaration is intended to elaborate on the principles which are necessary to uphold human and people’s rights on the Internet, and to cultivate an Internet environment that can best meet Africa’s social and economic development needs and goals.

African Declaration on Internet Rights and Freedoms

- Openness
- Internet Access And Affordability
- Freedom Of Expression
- Right to Information
- Freedom of Assembly And Association And The Internet
- Cultural And Linguistic Diversity
- Right To Development And Access To Knowledge
- Privacy And Personal Data Protection
- Security, Stability And Resilience Of The Internet
- Marginalised Groups And Groups At Risk
- Right To Due Process
- Democratic Multistakeholder Internet Governance
- Gender Equality
In a regional assessment of the status of digital rights, Coalition members registered concerns over continuing attempts by especially governments and telecommunications companies to limit free expression and infringe on privacy rights, and their failure to prioritise the need for affordable and quality internet access for the region’s citizens.

Coalition members noted instances of:

• Targeted arrests, threats and torture of journalists, bloggers, independent online content producers and human rights defenders, for the production of content or organising activities in response to government maladministration.

• Structural online censorship, including self-censorship by citizens themselves as they police each other on behalf of the state on private online platforms.

• High data costs driven by the introduction of taxes and the bundling of data.

• The existence of laws which, albeit not targeted at regulating the internet, continue to be used to charge citizens, thus hampering freedoms online.
SADC AfDec coalition strategy

• Use the African Declaration on Internet Rights and Freedoms to increase advocacy efforts at national and regional level on the rights to freedom of expression and assembly, access to information and privacy.

• Analyse regulatory frameworks and their implementation in the region.

• Engage in community awareness campaigns to increase appreciation by the citizens on their rights both off and online.

• Litigate to improve the digital rights environment in the Southern African Development Community (SADC).

• Targeted country campaigns to promote digital rights and digital equality
Promoting digital equality in South Africa

- Universal internet access
- Internet access as a basic right
- Free internet access options for those who cannot afford internet access
- “Leaving no-one behind”
SA Promotion of Access to Information Act (2000)

Preamble: *The purpose of the act is to:*

*foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information;*

*actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights*
SA media and online industry advocacy campaign

Led by the SA National Editors’ Forum, IABSA (online industry association), Media Monitoring Africa and APC

1. PAIA reforms: pro-active disclosure
2. Open data - Open Government Partnership
3. Universal internet access

Access to information is a fundamental human right and access to the internet is fundamental to exercise those rights
Commissioned by APC on behalf of the partner organisations

Launched on 28 September 2017 (IDUAI) at FIFAfrica in Johannesburg

Four parts to the 2017 report:

Relationship between information rights and universal access to the internet

International law position on access to the internet from a human rights perspective

Regulatory and other initiatives being implemented to promote access to online information in South Africa

Specific measures that can be implemented to build a model towards universal free access to online information

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SA legislative and policy framework make provision for universal internet access

**Constitution of the Republic of South Africa, 1996:** Freedom of expression; access to information; political activity. Regional and international law.

**Legislation:** Promotion of Access to Information Act; Electronic Communications and Transactions Act; Electronic Communications Act.

The 2017 Issue Paper has been used as a basis for formal engagement with a variety of role players in South Africa and beyond to provide thought leadership and advocate for universal access to public information via free access to the internet, to enable citizens to exercise their human rights online with respect to access to information, freedom of expression, participation and the digital economy, communication and education.

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Interaction with the SA Human Rights Commission, Information Regulator and industry players resulted in the development of a seven-point plan to achieve universal and free public internet access.
The seven-point plan for universal and free access to the internet in South Africa

1. Free public access at government sites
2. Zero-rated access to government websites
3. Free wi-fi as a municipal basic service
4. Daily tranche of free internet access
5. Digital literacy programmes
6. Minimum standards for the provision of free access
7. Oversight and monitoring

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The second report launched on 27 Sept, at the SA IDUAI event with the theme:

*Universal Internet Access*

Hosted by the SA Information Regulator, SA Human Rights Commission, Unesco and other partners

Report available on [https://internetaccess.africa/](https://internetaccess.africa/)
Overarching themes of the seven-point plan

- **Access to relevant content**: The first theme seeks to provide universal access to relevant online content and to provide a basic level of free access to those who cannot afford it. Through a set of proposed measures, it is intended that all persons in South Africa should be enabled to enjoy the benefits that the internet can offer, regardless of their income, so that the cost of access does not present an insurmountable barrier.

- **Safety of access**: The second theme seeks to ensure that, once people are online, they are safe and free from harm. This is further intended to ensure that people have trust in the internet, and can maximise the developmental potential that access to the internet presents. This requires appropriate skills development to empower users with the necessary information, and to ensure that safeguards underpin the systems themselves to protect the rights of users and the systems themselves.

- **Implementation of access**: The third theme is intended to ensure that the overarching aim of the seven-point plan - this being to achieve universal and free access to online information in South Africa - is realised. This requires targets to be set, relevant data to be gathered and analysed, and a process of monitoring and evaluation to be undertaken to ensure that the realisation of this aim remains consistently on track.

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1 // 7: Free public access at government sites

- Public access refers to facilities that allow any member of the public to make use of computers with broadband connection.
- Public access at government sites assists persons in overcoming challenges such as high costs, lack of devices with internet connectivity, or lack of electricity.
- South Africa’s national broadband policy - SA Connect - sets out connectivity targets for schools, health facilities and government facilities, with an aim of 100% broadband access by 2030.
- Indicators for public access at government sites include speed, quality and cost of network capacity at government facilities; speed and rollout of quality service; network reach and price of access; increased investment by network operators; and the take up of services in the public sector, schools and clinics.
- Key considerations for implementation:
  - Awareness-raising and an enabling environment
  - Appropriate allocation of resources
  - Technical training to support public access facilities
  - Need to go beyond simple access
  - Security
  - Prioritisation of remote areas
2 // 7: Zero-rated access to government websites and data

• e-Government can be defined as the use of ICTs to more effectively and efficiently deliver government services to citizens and businesses.

• The national e-Government Strategy and Roadmap contains the following guiding principles: interoperability; ICT security; economies of scale; elimination of duplication; adoption of indigenous languages in ICT applications; digital inclusion.

• South Africa has eight commitments in terms of the Open Government Partnership.

• Once the government has made the relevant information and services available on its websites, the next step is to ensure that users can access this for free through zero-rating.

• Need to strike the correct balance between zero-rating and net neutrality through fair access practices.

• Key considerations for implementation:
  • e-Government Strategy and Open Government Partnership commitments
  • Public interest considerations
  • Avoiding anti-competitive practices
  • Openness
  • Criteria for selection of websites
3 // 7: Free public wi-fi

• Access to wi-fi has become relatively commonplace in South Africa, but the key question is: who should pay for the backhaul / bandwidth?
• There are both benefits and shortcomings to offering free public wi-fi.
• Examples of free public wi-fi initiatives: Project Isizwe; Western Cape provincial government initiative.
• Important role played by the private sector in the roll-out of wi-fi services, typically in exchange for payment or in terms of an incentivised scheme.
• Need to ensure appropriate procurement processes are followed.
• Key considerations for implementation:
  • Determining the allocation of free wi-fi
  • Consistency in the service provision
  • Zero-rated content portals and access to government websites
  • Avoidance of data exploitation
  • Appropriate security measures
  • Corporate accountability
4 // 7: Provision of free basic internet as a basic municipal service

- Basic municipal services are provided for in South Africa in terms of the Local Government: Municipal Systems Act 32 of 2000 (MSA).
- The MSA does not contain a finite list of what constitutes a basic municipal service.
- Current basic services include free basic water, free basic electricity and free basic sewerage and sanitation; only indigent households qualify for free basic services.
- Obvious parallel to be drawn between the basic municipal services currently offered and the importance of access to the internet in the realisation of fundamental rights.
- Example: Nelson Mandela Bay Municipality, where persons who qualify for free basic water and electricity from the municipality also receive a tranche of free basic internet access in the amount of 250 megabytes per month.
- Key considerations for implementation:
  - Scope of the MSA
  - Beneficiaries
  - Delivery of service
  - Provision of service
5 // 7: Digital literacy programmes

- Media and information literacy - including digital literacy - provides answers to the key questions that users of ICTs may ask themselves: how to access, search, critically assess, use and contribute content wisely, both online and offline; what the ethical issues are that surround the access and use of information; and how to engage with media and ICTs to promote equality, dialogue, peace, sustainability, freedom of expression and access to information.

- Categories of skills: supply-side; demand-side; institutional capability; media and information literacy.

- Example of child-led digital literacy intervention: Web Rangers initiative run by Media Monitoring Africa, in partnership with the Department of Communications and Digital Technologies, Google and Facebook, among others.

- Need to move from skills to jobs by addressing the skills gap, increase employability, create quality jobs and spark innovation.

- Needs to be coupled with the availability of relevant content, including local content in local languages.

- Key considerations for implementation:
  - Types of skills required
  - Delivery of skills provision
  - Utility and relevance

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6 // 7: Minimum protections in the provision of free access

• Minimum protections for the user:
  • Compliance with the right to privacy and data protection frameworks
  • Minimal collection and retention of data
  • Requirement that consent be informed, voluntary and freely given
  • Adequacy, appropriateness and quality of the service provided

• Minimum protections for the network:
  • Legal framework
  • Organisational framework
  • Technical framework
  • Capacity building and cooperation

• Key considerations for implementation:
  • Relevant frameworks
  • Consent of the user
  • Service provided
  • Interdependence
7 // 7: Oversight and monitoring of the progressive realisation of free access

- Need to develop an appropriate oversight and monitoring framework for the realisation of access to the internet and the interplay that this has in the realisation of other fundamental rights, including freedom of expression and access to information.

- The ROAMX Principles, developed by UNESCO, offer a useful framework for monitoring the universality of the internet in a country:
  - **R**: the internet must be based on human rights
  - **O**: the internet must be open
  - **A**: the internet must be accessible to all
  - **M**: a multi-stakeholder approach should be adopted
  - **X**: cross-cutting and contextual considerations should be considered

- Key considerations for implementation:
  - Assessment of implicated rights
  - Development of targets and monitoring framework
  - Engagement in state-reporting processes
  - Tracking of recommendations and follow-up

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Implementation of the seven-point plan

• General considerations:
  • The need for a public interest and rights-based approach
  • Coordination among relevant stakeholders
  • Appropriate regulatory and policy framework
  • Prioritisation of vulnerable and marginalised groups
  • Addressing socio-economic divides
  • Coverage
  • Oversight
  • Public-private partnerships

• Checklist for the implementation of the seven-point plan

• To access the full report, please visit https://internetaccess.africa/universal-access
The research reports were researched, prepared and designed by ALT Advisory: https://altadvisory.africa/

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