

Information and Internet Rights in Zimbabwe



MISA
ZIMBABWE

A research paper compiled by Izak Minnaar, to assist MISA Zimbabwe to strategically advocate for the right to access information and the internet, using the African Declaration on Internet Rights and Freedoms and other advocacy instruments

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The purpose of this paper is to highlight key advocacy principles, instruments, text and references to guide and support MISA Zimbabwe in its efforts to advance information and internet rights, which are interdependent - and in particular to assist them in their quest to encourage ordinary citizens to participate in the shaping of internet policy and for the protection and enjoyment of their digital rights.

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1. OVERVIEW OF INFORMATION SOCIETY ADVOCACY PRINCIPLES

In 2015 UNESCO deliberated on its future agenda related to access to information and the protection of those rights online and offline. UNESCO then compiled a set of information society guiding principles for information and digital rights advocacy to be executed on all levels.

Key principles, selected and edited from the **Connecting the Dots**¹ outcomes document, include:

- Increasing access to information and knowledge across society, assisted by the availability of information and communication technologies (ICTs), supports sustainable development and improves people's lives.
- Fostering of universal, open, affordable and unfettered access to information and knowledge, and narrowing the digital divide, including the gender gap, and encourage open standards, raise awareness and monitor progress.
- The need for ICT policies that enhance access guided by governance principles that ensure openness, transparency, accountability, multilingualism, inclusiveness, gender equality, and civil participation including for youth, persons with disabilities, marginalized and vulnerable groups.

- Promotion of universal access to information and knowledge and ICTs by encouraging the creation of public access facilities, and by supporting users of all types to develop their capabilities to use the Internet as creators and users of information and knowledge.
- The importance of open access to scholarly, scientific and journalistic information, open government data, and free and open source software, towards the building of open knowledge resources.
- The protection, promotion and implementation of international human rights law on free expression and the free flow of information and ideas on the Internet.
- The right to privacy online and people's understanding of the evolving ways in which governments and commercial enterprises collect, use, store and share information, as well as the ways in which digital security tools can be used to protect users' privacy rights.
- Personal data protection measures which provide users with security, respect for their rights, and redress mechanisms, and which strengthen trust in new digital services.

Access to information is a fundamental human right and access to the internet is fundamental to exercise information rights.

¹ www.unesco.org/new/fileadmin/MULTIMEDIA/IHQ/CI/CI/pdf/outcome_document.pdf

2. INTERNET FREEDOM IN ZIMBABWE

The **State of Internet Freedom** in Africa report published in September 2019 by CIPESA² looked at trends for the past decade in 12 African countries, including Zimbabwe, and concluded that Internet freedom in these countries has been on the decline since 2000 as a result of the following factors:

- **Weaponizing the law to legitimise government actions**, including the legalising of surveillance and interception of communication (such as Zimbabwe's 2007 Interception of Communications Act)³; the rise of national security and terrorism as justification of repressive laws (noting the 2014 Baba Jukwa FaceBook "cyber-terrorism" accusations and the deactivation of the Mugabe Seven FaceBook account)⁴; enforcing insult laws (such as the 2017 arrest of Martha O'Donovan)⁵; and excessive and punitive responses (such as the #ThisFlag charges against Pastor Evan Mawarire in 2016 for "inciting violence and disturbing the peace".)⁶
- **Disrupting networks**, such as the January 2019 countrywide Internet shutdown in Zimbabwe following protests against fuel price hikes and the struggle for economic justice; and the July 2016 order to Telcos and ISPs to block access to social media platforms as a way to disrupt online organising and strikes organised by the #ThisFlag social movement.⁷

- **Deployment of cyber-surveillance equipment**, such as the Iranian international mobile subscriber identity catchers in Zimbabwe in 2015⁸; and the reported (in March 2018) Zimbabwean 'strategic' partnership with a Chinese company for the conduct of a large-scale artificial intelligence based facial recognition programme "primarily used in traffic management, security and law enforcement and with the possibility to be extended to other public programmes. Under the project, the government will build a national facial database, and then share it with the Chinese government, to help it train the racial bias out of its facial recognition systems."⁹
- **Identification of all users of telecommunication services**, with little oversight, such as the Zimbabwean centralised subscriber database managed by POTRAZ who claim to use it, among other things, "to assist law enforcement agencies for safeguarding national security, as well as authorising access for the purposes of research in the sector."¹⁰
- **Increases in mobile data prices**, sometimes for political reasons, such as the 500% price jump in August 2016. The move was seen as part of the Zimbabwean government's efforts to quash activism on social media around the #ThisFlag movement.¹¹

² cipesa.org/?wpfb_dl=307

³ *Ibid*, p17

⁴ *Ibid*, p18

⁵ *Ibid*, p19

⁶ *Ibid*, p23

⁷ *Ibid*, p28

⁸ *Ibid*, p30

⁹ *Ibid*, p32

¹⁰ *Ibid*, p33

¹¹ *Ibid*, p36

- Finally, under the heading **Deploying Bots, Cyberattacks and Disinformation**, the CIPESA report noted that “in July 2018, there emerged several new social media accounts on *Facebook* and *Twitter* to advance the Zimbabwean government and ruling ZANU-PF propaganda, manipulate conversations, target and harass online activists and disrupt political conversations by the opposition. The influencers self-identifying as ‘Team Varakashi’ are state propaganda machinery, who led a spirited disinformation campaign targeting both domestic and foreign audiences by amplifying and magnifying government talking points through hundreds of accounts.”¹²

Overall, the CIPESA study has found that African governments have broadened the range of measures to govern the Internet. “The implementation of oppressive laws and regulations is on the rise in the countries under review. It is evident that countries are using legislation to legitimise practices which are otherwise unlawful to impose

restrictions and Internet controls. While laws in place are touted as necessary towards fighting cybercrime or enhancing cybersecurity in the countries, they are largely directed towards stemming opposition, clamping down on criticism and quelling local dissent.”¹³

These trends are also confirmed in other recent reports, such as Article 19’s **Global Expression Report 2018/19**¹⁴ (which notes that Zimbabwe, despite the change in leadership, has seen no significant change in its freedom of expression scores¹⁵ based on data from 39 indicators across five pillars of freedom of expression: Transparency, Civic Space, Protection, Digital and Media¹⁶); the annual reports on the **State of Internet Freedom in Africa**¹⁷ and the **Freedom of Expression Situation in Africa** report¹⁸ published by the African Freedom of Expression Exchange; **Freedom of Expression Violations in Zimbabwe**¹⁹ published by MISA Zimbabwe; and the UNESCO report on **World trends in freedom of expression and media development: regional overview of Africa 2017/2018**²⁰.

¹² *Ibid*, p38

¹³ *Ibid*, p43

¹⁴ www.article19.org/xpa-2019/

¹⁵ www.article19.org/reader/global-expression-report-2018-19/regional-overviews/africa-regional-overview/new-leadership-brings-more-of-the-same-in-zimbabwe-but-a-democratic-opening-in-angola/

¹⁶ www.article19.org/xpa-2019/ - drill down to generate graph on Zimbabwe’s scores

¹⁷ Latest report published June 2018: *Constricting Freedom of Information Online, 2017* - www.africafex.org/afex/wp-content/uploads/2018/06/Constricting-Freedom-of-Expression-Online_-Annual-Report-on-the-State-of-Internet-Freedom-in-Africa.pdf

¹⁸ January - March 2019 report: www.africafex.org/afex/wp-content/uploads/2019/06/FOE-Situation-in-Africa-Report-January-March-2019-1.pdf

¹⁹ 2017 - August 2019 report: www.africafex.org/afex/wp-content/uploads/2019/11/Freedom-of-Expression-Situation-in-Zimbabwe-January-2017-to-June-2019.pdf

²⁰ UNESCO. 2018. *World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report*, Paris - unesdoc.unesco.org/ark:/48223/pf0000266191

On the issue of progress with universal internet access in Zimbabwe - a prerequisite for digital equality and a requirement for the full enjoyment of information and other basic rights by all citizens - MISA Zimbabwe reported in November that “a combination of factors have contributed to a drop in the number of Zimbabweans that use the Internet, while on the other hand, archaic and undemocratic laws continue to restrict free expression and access to information on online platforms.²¹”

It quotes the **Abridged Postal & Telecommunications Sector Performance Report** for the Second Quarter of 2019, which reported a decline in internet users in Zimbabwe. “According to the report produced by the industry regulator, Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ), at the end of December 2018, 62.9% of Zimbabwe’s population had access to the Internet. By the end of June 2019, this figure had dropped to 57.2%. A major contributor to the drop in internet usage rates is the increasing cost of mobile data and connectivity fees.”

3. THE AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOMS

Since the publication of the **African Declaration on Internet Rights and Freedoms** (AfDec)²² in 2014 as a Pan-African initiative to promote human rights standards and principles of openness in Internet policy formulation and implementation on the continent,²³ awareness of the importance of protecting internet rights and freedoms in Africa has increased dramatically.

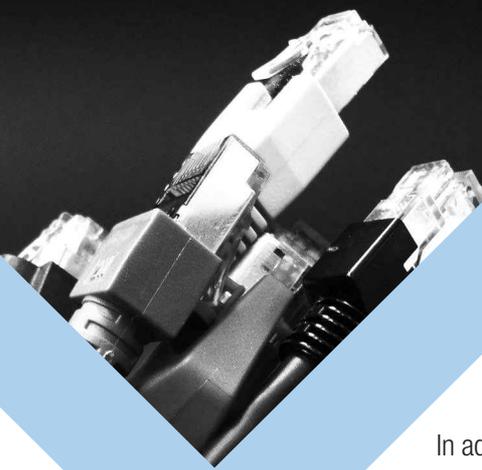
AfDec’s overall long-term goal is for national and regional internet-related policy frameworks across Africa to promote and respect human rights and that the 13 AfDec principles be used as a guide and reference document in internet-related law and policy making in Africa.²⁴

Achievements of note include:

- the 2016 African Commission on Human and Peoples’ Rights (ACHPR) Resolution 362 on the **Right to Freedom of Information and Expression on the Internet in Africa**, which noted the AfDec 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 goals²⁵.”

21 zimbabwe.misa.org/2019/11/08/internet-freedom-and-access-on-the-decline-in-zimbabwe/
22 africaninternetrights.org/articles/
23 africaninternetrights.org/about/
24 *African Declaration on Internet Rights and Freedoms Coalition Strategic Plan for 2019-2022 v.4.1 - Overall goal, page 2 - africaninternetrights.org/wp-content/uploads/2019/07/AfdecStrategy2019.pdf*
25 www.achpr.org/sessions/resolutions?id=374





- The inclusion of human rights, especially the right to freedom of expression and access to information which “must be upheld online as well as offline” in the African Union Commission’s 2018 **Declaration on Internet Governance**²⁶.
- the new section on “Freedom of expression and access to information on the internet” in the **Revised Declaration of Principles on Freedom of Expression and Access to Information in Africa**, which was adopted, with amendments, by the ACHPR at its 65th ordinary session in November 2019 in Banjul²⁷ (still due to be amended and launched publicly at the April/May 2020 ordinary session - see Annexure for the near-final version of the revised Declaration).

However, the AfDec Secretariat notes in the Coalition’s strategic plan for 2019 - 2022, that there are still fear-driven efforts by African states to control use of the internet; to shut it down or block parts of it. “Shutdowns have in fact increased, and new forms of control have emerged. These include taxes and tariffs on social media; cybersecurity legislation that criminalises speech and justifies mass or arbitrary surveillance; and requirements for bloggers to register or apply for licences. Another disturbing development is the increase in online misogyny and harassment of women and girls, as well as misinformation and hate speech, often encouraged or initiated by governments or political parties. Digital divides still exist and in some ways are widening. Governments are embracing digital identity programmes, mostly without data protection frameworks being in place. In other words, the African Declaration is even more relevant now than it was in 2014²⁸.”

3.1. Multilateral instruments

In addition to the AfDec principles and the two key declarations mentioned above (ACHPR on freedom of expression and access to information and AU on internet governance), a number of other multilateral instruments, soft law and civil society led initiatives could be used as frameworks and references to guide country level legislation, policies and strategies for access to information regimes and the required level and standards of universal internet access to achieve effective access to information by citizens.

AfDec Principles

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

Due Process

Democratic Multistakeholder Internet Governance

Gender Equality

26 www.afifg.africa/sites/default/files/DeclarationonInternetGovernance_adoptedAUSummit2018.pdf, clause 8

27 www.achpr.org/sessions/info?id=317, clause 35 ix.

28 africaninternetrights.org/wp-content/uploads/2019/07/AfdecStrategy2019.pdf, p2

4. UNITED NATIONS' SUSTAINABLE DEVELOPMENT GOAL 16.10

In 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Development, setting out 17 goals (SDGs) as an urgent call for action by all countries - developed and developing - in a global partnership to ensure “peace and prosperity for people and the planet”²⁹.

Goal 16 calls on all UN member states to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”³⁰, with target 16.10 to “ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements”.

Measurement indicator 16.10.2: Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.³¹

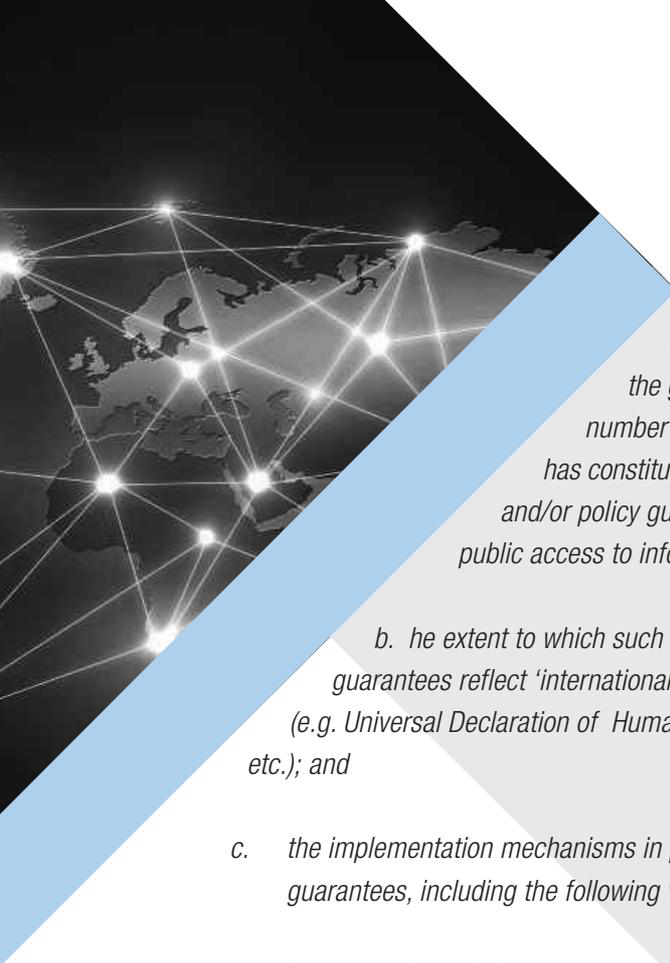
The December 2019 UNESCO publication **Access to Information: A New Promise for Sustainable Development**³², explains that the operative words are “*adoption*” and “*implementation*”. As such, the indicator establishes:

²⁹ sustainabledevelopment.un.org/?menu=1300

³⁰ sustainabledevelopment.un.org/sdg16

³¹ unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.10

³² UNESCO, November 2019. *Access to Information: A New Promise for Sustainable Development, In-Focus edition of the World Trends in Freedom of Expression and Media Development*, Paris. unesdoc.unesco.org/ark:/48223/pf0000371485



a. whether a country (or at the global level, the number of countries) has constitutional, statutory and/or policy guarantees for public access to information;

b. the extent to which such national guarantees reflect 'international agreements' (e.g. Universal Declaration of Human Rights, etc.); and

c. the implementation mechanisms in place for such guarantees, including the following variables:

- Government efforts to publicly promote the right to information.
- Citizens' awareness of their legal right to information and their ability to utilise it effectively.
- The capacity of public bodies to provide information upon request by the public³³.

The metadata document also sets out the methodology for assessing the indicator as follows:

1. Does a country have constitutional, statutory and/or policy guarantees for public access to information?
2. Do those constitutional, statutory and/or policy guarantees reflect known international agreements (e.g. the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights etc.)?
3. What implementation mechanisms are in place to ensure that such guarantees work optimally³⁴

To address these questions, according to the metadata document, the following should serve as performance sub-indicators:

- National law or constitutional guarantee on the right to information.
- Country has signed and ratified relevant treaty obligations, with no significant exemptions, and these are reflected, to the extent possible, in domestic FOI legislation.
- Public is aware of and exercises the right to access official information.
- Public bodies release information both pro-actively and on demand.
- Effective and efficient appeals mechanism via an independent administrative body e.g. information commissioner or ombudsman.
- Any restriction on grounds of protection of personal privacy is narrowly defined so as to exclude information in which there is no justifiable public interest.

The means of verification will include, according to the metadata document:

- Any law or policy on right to information that accords with international standards.
- Reports from credible agencies/experts about right to information guarantees and the extent to which they reflect international standards/agreements.
- Policies of public bodies concerning the release of information (which ensure readily, freely available public access to information, including online).
- Evidence of state commitment to open government e.g. publication and dissemination of laws, court decisions, parliamentary proceedings, spending programmes (vis-à-vis SDG undertakings).
- Statistical information about public requests for official information and their fulfilment or rejection.
- Statistical information about appeals or complaints over information requests that have been refused³⁵.

³³ *Ibid*, p13

³⁴ *Ibid*, p13

³⁵ *Ibid*, p14

Importantly, by being included within the SDGs, ATI can also be considered as a means to an end, and not only as a right in itself. It is a prerequisite for achieving sustainable development as a whole. For example, ATI means improving access to healthcare and water by empowering people with knowledge to assess services, enabling stakeholders to hold governments and companies accountable for delivery. Well-crafted ATI legislation and its rigorous implementation promotes development as well as democracy³⁶.

In conclusion, the UNESCO report states that affordable, effective internet access is also increasingly a precondition for public access to information and this is reflected in indicator 4.A.1 on connected schools, indicator 9.C on universal affordable internet access in least developed countries by 2020, indicator 16.3 on access to justice and indicator 16.5 on anti-corruption as well as transparent and accountable institutions. “Without affordable internet and independent media, information would not reach most people in world³⁷.”

5. UNESCO'S INTERNET UNIVERSALITY INDICATORS AND THE ROAM PRINCIPLES

A new internet assessment handbook published in late 2019, **UNESCO's Internet Universality Indicators-A**

Framework for Assessing Internet Development³⁸

explains that, while digital technologies offer unprecedented opportunities for access to information, freedom of expression, human connectivity, technological innovations, as well as multistakeholder engagement; at the same time, they pose major challenges, especially with regards to free expression, privacy, online disinformation, the safety of journalists, transparency, accountability, deepening inequalities, gender and other divides³⁹.

“Artificial Intelligence (AI) is increasingly becoming the veiled decision-maker of our times. The diverse technical applications loosely associated with this label drive more and more of our lives. They scan billions of web pages, digital trails and sensor-derived data within micro-seconds, using algorithms to prepare and produce significant decisions. AI and its constitutive elements of data, algorithms, hardware, connectivity and storage exponentially increase the power of Information and Communications Technology (ICT). This is a major opportunity for Sustainable Development, although risks also need to be addressed. To assess AI and other advanced ICTs' benefits and challenges - particularly for communications and information - a useful approach is UNESCO's Internet Universality ROAM principles to guide the ensemble of values, norms, policies, regulations, codes and ethics that govern the development and use of AI.”

From: **Steering AI and Advanced ICTs for Knowledge Societies**

en.unesco.org/system/files/unescosteering_ai_for_knowledge_societies.pdf

³⁶ *Ibid*, p10

³⁷ *Ibid*, p15

³⁸ UNESCO, 2019. *UNESCO's Internet Universality Indicators - A Framework for Assessing Internet Development*. Accessible on unesdoc.unesco.org/ark:/148223/pf0000367617

³⁹ *Ibid*, p3

The authors explain that the internet is much more than digital technology; it is also a network of economic and social interactions and relationships. As such, this has shown potential to enable human rights, empower individuals and communities, and facilitate sustainable development. It has also presented challenges to established norms in ways that can have both positive and negative impacts on economic, social and developmental outcomes. How the range of Internet issues are integrated within public policy affects matters like equality, inclusiveness, media and journalism, cultural diversity, quality education for all, and the protection of human rights.⁴⁰

To assess the impact of the internet on human rights and sustainable development, in 2015 UNESCO adopted the concept of Internet Universality - a practical tool based on the **R-O-A-M** principles, which are fundamental to the development of the internet in ways that are conducive to achieving the Sustainable Development Goals with no one left behind⁴¹.

These principles are:

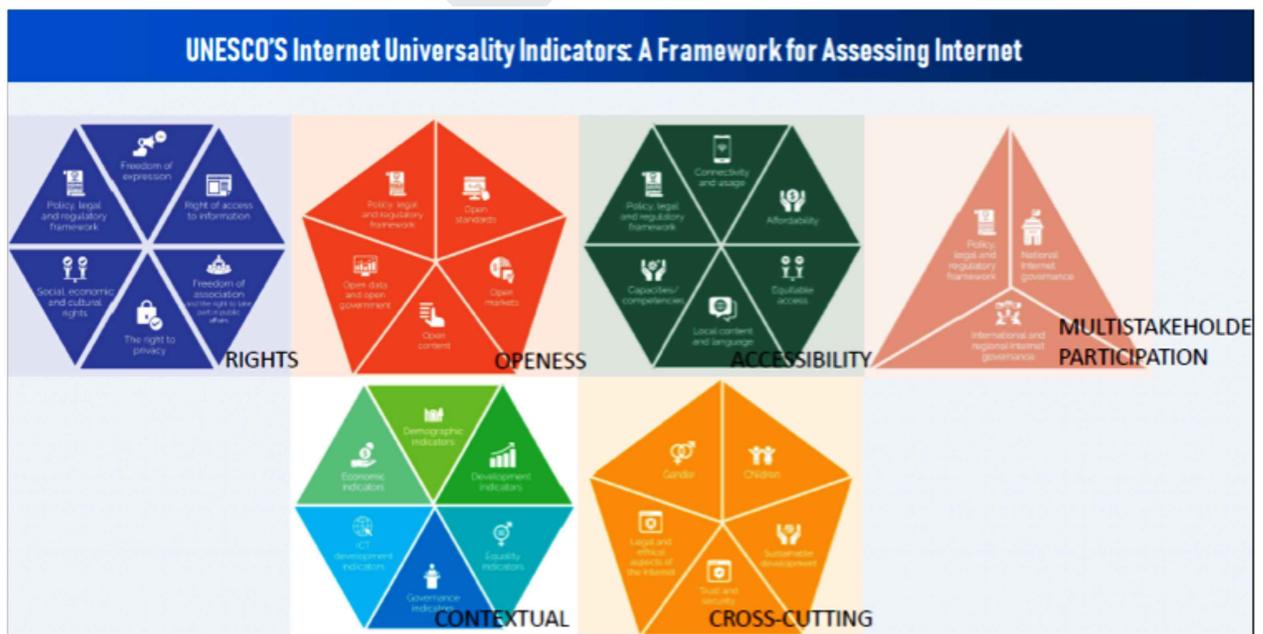
R - that the internet is based on human Rights

O - that it is Open

A - that it should be Accessible to all, and

M - that it is nurtured by Multistakeholder participation.

Together with a set of Contextual Indicators as well as the addition of Cross-Cutting Indicators concerned with gender and the needs of children, sustainable development, trust and security, and legal and ethical aspects of the Internet, these form the “ROAM-X” indicator framework. The six categories contain in total 25 themes with 303 indicators. The results of research based on these indicators can highlight gaps and inform recommendations for targeted improvement to guide the growth and evolution of the internet, internationally and in each country.⁴²



The handbook's chapters 3 to 8 deal with each of the categories, themes and indicators in detail⁴³.

40 Ibid, p11
 41 Ibid, P3, 12
 42 Ibid, p3
 43 Ibid, p33 - 101

UNESCO, as the custodian UN agency for global monitoring of SDG indicator 16.10.2, uses the Internet Universality Indicators for this purpose, but also for assessing the impact of internet access on a range of other SDGs, as well as for a wide range of issues related to freedom of expression and media development, thus updating and complementing **UNESCO's Media Development Indicators**⁴⁴, **Journalists' Safety Indicators**⁴⁵, and **Gender-Sensitive Indicators for Media**⁴⁶.

The Indicators were recognised in November 2018 by UNESCO's Intergovernmental Council of the International Programme for the Development of Communication (IPDC) and they "endorsed the use of this tool on a voluntary basis as a useful resource available for Member States⁴⁷."

In July 2018, the Indicators were also highlighted in the UN Human Rights Council Resolution on the promotion, protection and enjoyment of human rights on the Internet⁴⁸.

6. SPECIAL RAPPORTEUR DECLARATIONS AND REPORTS

The UN Special Rapporteur on Freedom of Opinion and Expression, together with the Special Rapporteur on Freedom of Expression and Access to Information in Africa and their counterparts in other regions, have dealt over the past three years in their annual joint declarations with many of the issues highlighted in the section above on internet freedom in Zimbabwe, as demonstrated by the following extracts:

- **Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda (2017)**⁴⁹, which, among other issues, states the following:

Acknowledges the transformative role played by the Internet and other digital technologies in supporting individuals' ability to access and disseminate information and ideas ...;

Deplores attempts by some governments to suppress dissent and to control public communications through such measures as repressive rules regarding the establishment and operation of media outlets and/or websites, ... unduly restrictive laws on what content may not be disseminated; the arbitrary imposition of states of emergency; technical controls over digital technologies such as blocking, filtering, jamming and closing down digital spaces; and efforts to "privatise" control measures by pressuring intermediaries to take action to restrict content.

44 en.unesco.org/programme/ipdc/initiatives/mdis

45 en.unesco.org/themes/safety-of-journalists/journalists-safety-indicators

46 en.unesco.org/themes/media-diversity-and-gender-equality

47 *Decisions taken by the 31st Council Session of the International Programme for the Development of Communication (IPDC), 21-22 November 2018, UNESCO HQ.* unesdoc.unesco.org/ark:/48223/pf0000266235

48 en.unesco.org/sites/default/files/internet_universality_indicators_print.pdf

49 www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc

1. General Principles:
 - f. State mandated blocking of entire websites, IP addresses, ports or network protocols is an extreme measure which can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, including in the sense of it is proportionate, there are no less intrusive alternative measures which would protect the interest and it respects minimum due process guarantees.
 - g. Content filtering systems which are imposed by a government and which are not end-user controlled are not justifiable as a restriction on freedom of expression.

Joint Declaration on Media Independence and Diversity in the Digital Age (2018) ⁵⁰, again, selected paragraphs:

Concerned about contemporary legal threats to freedom of expression and the media, including broadening and often ambiguous notions of national security, laws which unduly limit expression online, blocking of websites, the unprecedented number of journalists jailed for their work and the delegation of content regulation to online platforms.

Highlighting that digital technologies, although primarily facilitating freedom of expression and access to information, have also led to new threats such as intrusive forms of State surveillance, de-indexing of content for privacy reasons, challenges such as locating and visibility of information and news disseminated by the media, and the digital divide both within and between countries.

Reiterating our grave concern, noted in the 2011 and 2015 Joint Declarations, that shutdowns and other similar interferences with the Internet are generally unacceptable under international law, in particular in the context of political debate and elections.

1. General Principles:
 - a. States are under a positive obligation to create a general enabling environment for seeking, receiving and imparting information and ideas (freedom of expression), including through the following measures:
 - i. *ensuring that legislation on the right to access information held by public authorities is in place and being implemented*
 - ii. *promoting universal access to the Internet*
 - iii. *providing appropriate protection for privacy and personal data, including through enabling the anonymous use of digital technologies*
 - iv. *ensuring that legislation providing protection to whistle-blowers is in place and being implemented; and*
 - v. *ensuring that defamation laws are exclusively civil rather than criminal in nature and do not provide for excessive damages awards*

• **Twentieth anniversary Joint Declaration: Challenges to Freedom of Expression in the next Decade (2019)**⁵¹, inter alia:

Welcoming the significant contributions that digital technologies have made to expanding global communications and the possibility for people everywhere to access information and ideas and to speak and be heard, while noting the continuing imperative of providing universal and affordable access to the Internet;

⁵⁰ [freedex.org/wp-content/blogs.dir/2015/files/2019/12/JointDeclaration2May2018_EN.pdf](https://www.freedex.org/wp-content/blogs.dir/2015/files/2019/12/JointDeclaration2May2018_EN.pdf)

⁵¹ [freedex.org/wp-content/blogs.dir/2015/files/2019/12/JointDeclaration10July2019_EN.pdf](https://www.freedex.org/wp-content/blogs.dir/2015/files/2019/12/JointDeclaration10July2019_EN.pdf)

Acknowledging the need to address, within the framework of international human rights law, serious problems that arise in the context of digital technologies, including disinformation; incitement to hatred, discrimination and violence; terrorist recruitment and propaganda; arbitrary and unlawful surveillance; interference with the use of encryption and anonymity technologies; and the power of online intermediaries;

Deploring arbitrary disruptions and shutdowns to restrict access to telecommunications networks and the Internet;

Highlighting the importance of the right to access information held by public authorities, as reflected in the Sustainable Development Goals Target 16.10;

2. Building and Maintaining a Free, Open and Inclusive Internet

The exercise of freedom of expression requires a digital infrastructure that is robust, universal and regulated in a way that maintains it as a free, accessible and open space for all stakeholders. Over the coming years, States and other actors should:

- a. *Recognise the right to access and use the Internet as a human right as an essential condition for the exercise of the right to freedom of expression.*
- b. *Protect freedom of expression in accordance with international human rights law in legislation that can have an impact on online content.*
- c. *Refrain from imposing Internet or telecommunications network disruptions and shutdowns.*

- d. *Expand significantly initiatives to provide universal and affordable Internet access.*
- e. *Respect and reinforce the principle of network neutrality.*
- f. *Ensure that major technological developments, such as the transition to 5G mobile networks and expansion of the 'Internet of Things' (IOT), respect human rights, particularly through robust human rights due diligence in the development of infrastructure, network service, interoperability, and privacy-by-design.*
- g. *Avoid measures that risk fragmenting the Internet and limiting access to the global Internet.*

In addition, the call to African governments by Commissioner Lawrence Mute, Special Rapporteur on Freedom of Expression and Access to Information in Africa in his May to October 2019 **Inter-session Activity Report**⁵² for the 65th Ordinary Session of the African Commission on Human and Peoples' Rights, should be noted:

⁵² www.achpr.org/public/Document/file/English/ComMute%20_IntersessionReport%2065OS_ENG.pdf – paragraphs 54 and 55



The state of freedom of expression and access to information on the continent remains mixed. Legislative and judicial actions continue to enhance the rights to freedom of expression and access to information. The instinct for states to use legislation to clamp down on internet use for any number of reasons however remains untamed. The practice of journalism also remains under great pressure from statist forces which are not amenable to independent journalism. The power of the internet and social media as tools for economic, social and indeed political change may not be dismissed, and states need to forthwith recognise that that genie cannot be bottled and rather it should be harnessed to support development, and that ultimately states have legal commitments to ensure the rights to freedom of expression and access to information which they should fulfil.

In the above regards, I call on States to:

- a. *Decriminalise defamation and insult laws;*
- b. *Ensure a safe environment in which journalism may be practised;*
- c. *Enact or implement access to information legislation;*
- d. *Establish programmes to support universal access to the internet; and*
- e. *Invite me to undertake advocacy visits to support implementation of Article 9 of the African Charter.*

7. AFRICAN MODEL LAW AND ELECTION GUIDELINES

Inspired by the 2002 **Declaration of Principles on Freedom of Expression and Access to Information in Africa**⁵³, the African Commission on Human and Peoples' Rights (ACHPR) in 2013 published the **Model Law on Access to Information in Africa**⁵⁴ in an effort to guide and assist African governments to comply with the **African Charter on Democracy, Elections and Governance**⁵⁵, which has as one of its objectives the promotion of the necessary conditions 'for citizen participation, transparency, access to information, freedom of expression and accountability in the management of public affairs', and obliges State Parties to 'implement programmes and carry out activities to promote good governance by ensuring transparent and accountable administration'⁵⁶.

The Model Law contains the following principles⁵⁷ governing the right to information:

- (a) *Every person has the right to access information of public bodies and relevant private bodies expeditiously and inexpensively.*
- (b) *Every person has the right to access information of private bodies that may assist in the exercise or protection of any right expeditiously and inexpensively.*
- (c) *This Act and any other law, policy or practice creating a right of access to information must be interpreted and applied on the basis of a presumption of disclosure. Non-disclosure is permitted only in exceptionally justifiable circumstances as set out in this Act.*

53 www.right2info.org/resources/publications/instruments-and-standards/africa_declaration-of-principles-on-freedom-of-expression-in-africa

54 www.achpr.org/public/Document/file/English/model_law.pdf

55 archive.ipu.org/idd-E/afr_charter.pdf

56 www.achpr.org/public/Document/file/English/model_law.pdf, p9

57 *Ibid*, p17

- (d) *Information holders must accede to the authority of the oversight mechanism in all matters relating to access to information.*
- (e) *Any refusal to disclose information is subject to appeal.*
- (f) *Public bodies and relevant private bodies must proactively publish information.*
- (g) *No one is subject to any sanction for releasing information under this Act in good faith.*

A cardinal principle at the heart of the right of access to information is that of proactive disclosure (as per clause (f) above). The principle of proactive disclosure requires that those who hold information of public interest must routinely provide such information to the public even without being requested to do so. Such information must be provided in easily accessible formats and it must consider the needs of its intended users⁵⁸.

However, since States (including those with constitutional provisions and laws on access to information), have generally been slow in mainstreaming proactive disclosure of information into their day-to-day processes of governance. The ACHPR in 2017 issued **Guidelines on Access to Information and Elections in Africa** to provide direction on the proactive disclosure of information in the electoral process as a means of strengthening democratic governance in Africa⁵⁹.

At the launch of the Guidelines, the Special Rapporteur on Freedom of Expression and Access to information in Africa stated⁶⁰ that, for elections to be free, fair and credible, the electorate must have access to information at all stages of the electoral process. Without access to accurate, credible and reliable information about a broad range of issues prior, during and after elections, it is impossible for citizens to meaningfully exercise their right to vote in the manner envisaged by Article 13 of the

African Charter on Human and Peoples' Rights⁶¹.

The importance of access to information in the electoral process and for democratic governance is recognised in the **African Charter on Democracy, Elections and Governance⁶²**, as well as other sub-regional treaties and standards.

The Guidelines provide direction to stakeholders in the electoral process who have a responsibility to proactively disclose various categories of information in their possession or control that are necessary for safeguarding the integrity and legitimacy of the electoral process. Guidance is provided in relation to the following stakeholders⁶³:

- (a) *Authorities responsible for appointing the Election Management Bodies*
- (b) *Election Management Bodies*
- (c) *Political Parties and Candidates*
- (d) *Law Enforcement Agencies*
- (e) *Election Observers and Monitors;*
- (f) *Media and Online Media Platform Providers;*
- (g) *Media Regulatory Bodies; and*
- (h) *Civil Society Organisations.*

58 www.achpr.org/public/Document/file/English/guidelines_on_access_to_information_and_elections_in_africa_eng.pdf, p5

59 *Ibid*, p5

60 *Ibid*, p4

61 au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf, p5

62 archive.ipu.org/idd-E/afr_charter.pdf

63 www.achpr.org/public/Document/file/English/guidelines_on_access_to_information_and_elections_in_africa_eng.pdf, p6

8. ACHPR RESOLUTION 362

In November 2016, the African Commission adopted Resolution 362 on the **Right to Freedom of Information and Expression on the Internet in Africa**.⁶⁴ It formally acknowledged the AfDec and provided guidance to the Special Rapporteur on Freedom of Expression and Access to Information in Africa on the revision of the 2002 Declaration of Principles on Freedom of Expression in Africa, with the near-final version of the updated document annexed to this report. Importantly, the resolution also calls on “States Parties to respect and take legislative and other measures to guarantee, respect and protect citizens’ right to freedom of information and expression through access to Internet services.”

In the context of the preamble of the resolution which highlights the importance of the Internet in advancing human and peoples’ rights in Africa, a grouping of online and media industry organisations in South Africa used this ACHPR call for “access to internet services” as a launch pad for an advocacy campaign for universal and free internet access in South Africa:

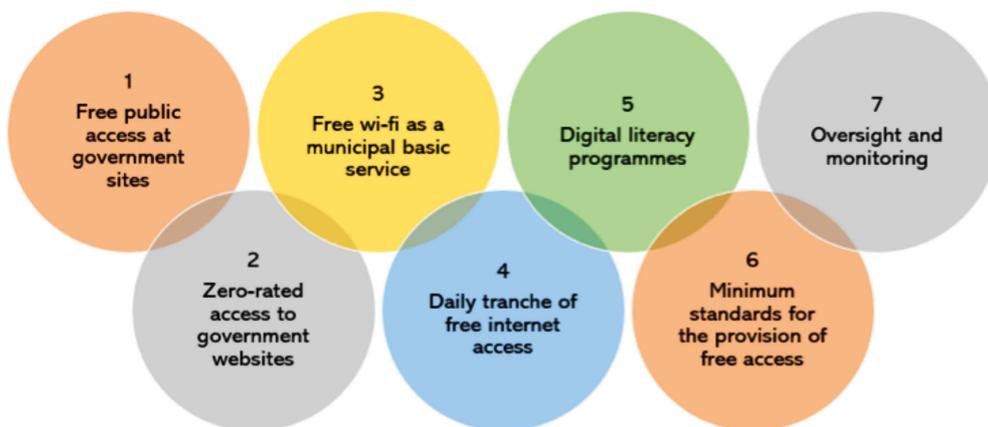
“All South Africans - and especially those who cannot afford it and other vulnerable groups - need a daily first

tranche of free internet access to exercise their basic human rights such as access to government services, participating in the digital economy, looking for jobs, online communication and for learners and students to access online educational resources. This is the only way to achieve universal access to information and digital equality amongst our citizens, including the rural poor who have access to mobile phones.”⁶⁵

The group published two research reports, in 2017 an **APC Issue Paper on Perspectives on Universal Free Access to Online Information in South Africa: Free Public Wi-Fi and Zero-Rated Content**⁶⁶, followed by a 2019 report on Universal Access to the Internet and Free Public Access in South Africa: A Seven-Point Implementation Plan,⁶⁷ advocating for:

These research reports were used to provide thought leadership to the media and information sector, for industry workshops, lobbying and formal submissions to government institutions, including to the Competition Commission of South Africa’s Data Services Market Inquiry, which included three favourable findings in its December 2019 report: a lifeline package of daily free data to prepaid customers, zero-rating of content from public benefit organisations and educational institutions, and free public Wi-Fi in low-income areas and government buildings.⁶⁸ In addition, the South African Human Rights Commission has started to report on the progressive realisation of universal internet access.

The seven-point plan for universal and free access to the internet in South Africa



⁶⁴ [www.achpr.org/sessions/resolutions?id=374-ACHPR/Res.362\(LIX\)2016](http://www.achpr.org/sessions/resolutions?id=374-ACHPR/Res.362(LIX)2016)

⁶⁵ cipesa.org/2019/09/working-towards-universal-internet-access-and-digital-equality-in-south-africa/

⁶⁶ internetaccess.africa/wp-content/uploads/2019/10/UA-Issue-Paper.pdf

⁶⁷ internetaccess.africa/universal-access/

⁶⁸ altadvisory.africa/2019/12/05/digital-discrimination-the-need-to-realize-universal-access-to-the-internet/

9. CONTRACT FOR THE WEB

The founder of the World Wide Web Foundation and web inventor Sir Tim Berners-Lee announced⁶⁹ in November 2019 the outcomes of a year-long consultation process to draft a **Contract for the Web**⁷⁰, defining responsibilities that governments, companies and citizens each have to create a better web.

The idea is to set a global agenda for the next phase of the web, the period during which the remaining unconnected 50% of the global population will hopefully come online, and at a time when the connected half face many risks to their privacy, security, democracy and rights.

This effort to formulate nine universally endorsed principles across the four themes of Access & Openness⁷¹, Privacy & Data Rights⁷², Positive Tech⁷³ and Public Action⁷⁴ draws on expertise from governments, business and civil society, and took into account the outcomes of many earlier initiatives, including AfDec⁷⁵, the **Declaration of the African Platform on Access to Information**⁷⁶ and many others⁷⁷. It also broadly covers all the issues in another recent initiative by the Open Internet for Democracy⁷⁸, with their nine **Democratic Principles for an Open Internet**⁷⁹ and **Advocacy Playbook**⁸⁰.

The Contract for the Web contains 76 clauses, organised under the nine principles. Only the top level clauses are reflected below, with the detailed clauses available in a comprehensive publication⁸¹ which also includes annexures with links to a selection of human rights and other frameworks⁸² that relate to the Contract's substance, and a glossary⁸³ that provides references aimed at supporting the understanding of the Contract.

Governments will:

1. *Ensure everyone can connect to the internet - so that anyone, no matter who they are or where they live, can participate actively online*
 - a. *by setting and tracking ambitious policy goals*
 - b. *by designing robust policy-frameworks and transparent enforcement institutions to achieve such goals, and*
 - c. *by ensuring systematically excluded populations have effective paths towards meaningful internet access*

69 contractfortheweb.org/2019/11/23/launching-the-contract-for-the-web/

70 contractfortheweb.org/

71 contractfortheweb.org/principle-theme/access/

72 contractfortheweb.org/principle-theme/data-rights/

73 contractfortheweb.org/principle-theme/positive-tech/

74 contractfortheweb.org/principle-theme/public-action/

75 africaninternetrights.org/articles/

76 www.africanplatform.org/fileadmin/Content/PDF/APAI-Declaration-English.pdf

77 See contractfortheweb.org/about/ for a list of previous declarations drawn upon by the Contract for the Web

78 openinternet.global/

79 openinternet.global/read-principles

80 openinternet.global/playbook

81 9nrane41q4966uwmljcfggv-wpengine.netdna-ssl.com/wp-content/uploads/Contract-for-the-Web-2.pdf

82 *Ibid*, p12

83 *Ibid*, p28

2. *Keep all of the internet available, all of the time - so that no one is denied their right to full internet access*

- a. *by establishing legal and regulatory frameworks to minimise government triggered internet disruptions, and ensure any interference is only done in ways consistent with human rights law*
- b. *by creating capacity to ensure demands to remove illegal content are done in ways that are consistent with human rights law, and*
- c. *by promoting openness and competition in both internet access and content layers*

3. *Respect and protect people's fundamental online privacy and data rights - so everyone can use the internet freely, safely, and without fear*

- a. *by establishing and enforcing comprehensive data protection and rights frameworks,*
- b. *by requiring that government demands for access to private communications and data are necessary and proportionate to the aim pursued, and*
- c. *by supporting and monitoring privacy and online data rights in their jurisdictions*

Companies will:

4. *Make the internet affordable and accessible to everyone - so that no one is excluded from using and shaping the Web*
- a. *by crafting policies that address the needs of systematically excluded groups*
 - b. *by working towards an ever-increasing quality of service, and*
 - c. *by ensuring full use of the internet by all, through*

a close coordination with Government and Civil Society

5. *Respect and protect people's privacy and personal data to build online trust - so people are in control of their lives online, empowered with clear and meaningful choices around their data and privacy*

- a. *by giving people control over their privacy and data rights*
- b. *by supporting corporate accountability and robust privacy and data protection by design, and*
- c. *by making privacy and data rights equally available to everyone*

6. *Develop technologies that support the best in humanity and challenge the worst - so the Web really is a public good that puts people first*

- a. *by being accountable for their work through regular reports*
- b. *by engaging with all communities in an inclusive way, and*
- c. *by investing in and supporting the digital commons*

Citizens will:

7. *Be creators and collaborators on the Web - so the Web has rich and relevant content for everyone, by being active participants in shaping the Web, including content and systems made available through it*
8. *Build strong communities that respect civil discourse and human dignity - so that everyone feels safe and welcome online, by working towards a more inclusive Web*
9. *Fight for the Web - so the Web remains open and a global public resource for people everywhere, now and in the future, by being active citizens of the Web*

10. AFDEC STRATEGY CHECKLIST

The three-year strategy developed by the Secretariat of the African Declaration on Internet Rights and Freedoms Coalition for the period April 2019 to April 2022 includes the following tasks⁸⁴ to be executed at national level, which could be factored into the MISA Zimbabwe programme of action for 2020 and beyond:

Awareness raising

- National stakeholders (governments, civil society, media, etc.) are aware of the Declaration, the ACHPR resolution and the revised ACHPR Declaration on Freedom of Expression and leverage them to protect and promote internet rights.
- Increased support and action from the technical community on protecting and promoting internet rights in Africa.
- Consistent use by digital rights activists of the AfDec as a framework for advocacy and accountability.

Research, monitoring and responding to violations

- UN Universal Periodic Review (UPR): Zimbabwe report due 18 March 2021 (review Oct-Nov 2021).
- Reporting violations to national human rights institutions, and on a regional level, to submit reports/complaints to the ACHPR in response to country reviews.

- Recommendations from authoritative human rights mechanisms to improve internet rights at the national level, engagement in dialogue with governments on internet rights.
- Stronger networks/coalitions of NGOs working to advance internet rights through engaging with international mechanisms.

Capacity building

- Increased knowledge among relevant national stakeholders of internet rights and how to secure them.
- At least two national human rights institutions adopt the Declaration as a standard/use it in their work.
- Increased capacity in the Coalition to engage in internet policy, governance and regulatory processes to advance internet rights.
- Participation of at least two persons from the AfDec Coalition in AfriSIG.
- Development of data protection legislation that integrates human rights.

⁸⁴ African Declaration on Internet Rights and Freedoms Coalition Strategic Plan for 2019-2022 v.4.1 - africaninternetrights.org/wp-content/uploads/2019/07/AfdecStrategy2019.pdf. p4 -7

Advocacy

- Stakeholder analysis and mapping, meetings with policy influencers.
- Engage state actors on the need for policy and legislative reforms.
- Legislation impacting internet rights is informed by and reflects the principles contained in the African Declaration.
- Announcements of intended reforms needed for the protection and promotion of digital rights.
- Coalition members are able to make the argument at national level for “fourth industrial revolution” strategies having to comply with internet rights.
- Presentations at telecoms events on harmful impact of shutdowns and social media taxes.
 - Telecommunications regulators are more aware of rights frameworks and how they can use these frameworks, as well as why they need to comply with them.
 - Integration of internet rights into broader human rights monitoring and advocacy.
- Human rights defenders and institutions have internet rights on their radar.
- Increased awareness of the Declaration and other relevant regional and international declarations, agreements and frameworks that uphold human rights online.
- Legal advocacy including litigation against violations, practices and legal provisions that hinder the enjoyment of digital rights, using national, sub-regional, and regional courts and mechanisms.
- Reform and implementation of laws that recognise, protect and promote rights online.

In addition, at a strategy network meeting in September 2019⁸⁵, SADC members of the Coalition agreed on the following advocacy objectives for 2020:

- Use AfDec 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 SADC.

⁸⁵ www.apc.org/en/news/african-declaration-internet-rights-and-freedoms-coalition-promotion-freedom-expression

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