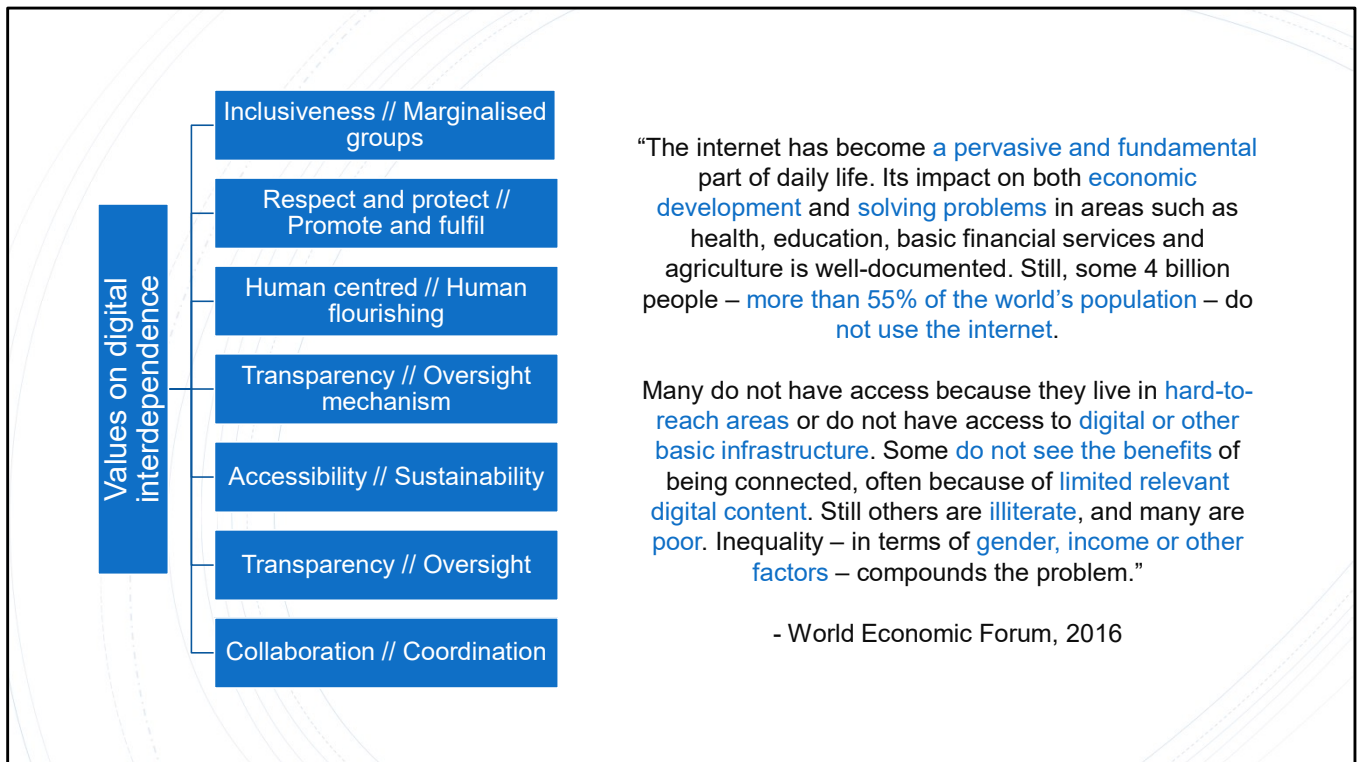


# Access to the internet in Africa: A rights-based approach

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Resources //

- International Telecommunications Union, ‘Re-thinking universal access’, 2007.
- World Economic Forum, ‘Internet for all: A framework for accelerating internet access and adoption’, April 2016.
- UN Secretary-General’s High-Level Panel on Digital Cooperation, ‘The age of digital interdependence’, June 2019.

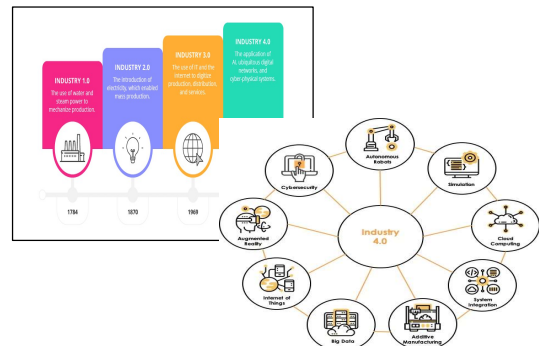
## SDG Target 9.c: Access to ICT

“Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020”

### Measuring progress:

- Percentage of the population covered by a mobile network, broken down by technology
- Reflects population can potentially subscribe to and use mobile cellular services to communicate
- Considered the minimum requirement for ICT access
- See recommendations from the Broadband Commission for Sustainable Development

## Fourth Industrial Revolution(?)



“Key features of the Fourth Industrial Revolution (4IR) – accelerating digitalization, artificial intelligence (AI), cloud computing, robotics, and 3D printing – have obvious and important implications for education, employment, and the future of work. This is especially true for African countries. Over the past decade, the share of the continent’s under-20 population has expanded by more than 25%, and is projected to be the continent’s largest age cohort by 2070. As Africa meets the 4IR, its youth will be one of its most important assets.” – World Economic Forum

### Selection of recommendations from the Broadband Commission for Sustainable Development:

- Embed a focus on digital inclusion in broadband plans and digital economy efforts, paying attention to the challenges of marginalised communities and vulnerable populations, particularly women and children.
- Add public access policies into universal access and service initiatives and national broadband plans, such as ensuring universal service and access policies explicitly include sites and locations where low-cost internet access may be facilitated (such as libraries, community centres, and areas of public gathering).
- Support effective and innovative spectrum policies to improve broadband availability for underserved and marginalised groups.
- Expand initiatives to map network coverage and infrastructure needs, developing priority lists for investment, including where subsidies are required.
- Include measures to protect children online in national broadband plans.
- Support international and national efforts to provide broadband connectivity to refugees and displaced individuals.
- Include a focus on limiting environmental impacts and addressing climate change in national broadband plans.

[Source: Broadband Commission for Sustainable Development, ‘The state of broadband 2019: Report highlights’, September 2019]

Internet access // Broadband // Connectivity



Access



Meaningful



Universal

**Aspirations contained in the African Union  
Agenda 2063: The Africa We Want**

- **Modernised infrastructure:** That cities and other settlements are hubs of cultural and economic activities, with modernised infrastructure, and that people have access to affordable and decent housing with all the basic necessities of life, including ICT.
- **Technological transformation:** That the necessary infrastructure will be in place to support Africa's accelerated integration and growth, technological transformation, trade and development, including a well-developed ICT and digital economy.
- **ICT projects and services:** Need for a concerted push to finance and implement major infrastructure projects in, amongst others, ICT.

**Defining the term 'access'**

**Internet access for economic growth**

- Internet access reach **critical mass** of public
- Internet must be **accessible and affordable**
- Need to balance **demand-side** vs **supply-side** skills

**Elements of access to the internet**

**Accessibility** and the ability of **all people** to use and access services, regardless of education, disability, age, gender and other relevant factors

**Availability** of **necessary infrastructure** required for networks and coverage

**Affordability** relating to the **ability to pay** for access to infrastructure, networks, devices and services

**Awareness** by users and potential users of **what is available and the benefits**

**Ability** of different groups and individuals to access services, acquire information and data, and use the information and data to **enhance the quality of their lives**

**Quality of service** and the expectation that the services provided should be of **good quality and acceptable standards**

Resources //

- Association for Progressive Communications, 'Universal free
- Media Monitoring Africa et al, 'Universal access to the internet and free public access in South Africa', 2019.

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Resources //

- Association for Progressive Communications, 'Universal free access to online information in South Africa: Free public wi-fi and zero-rated content', 2017.
- Media Monitoring Africa et al, 'Universal access to the internet and free public access in South Africa', 2019.

- **Global:**

- International Covenant on Civil and Political Rights (1966) read with General Comment 34 (2011)
- Convention on the Rights of Persons with Disabilities (2006) ('UNCRPD')
- UN Resolution A/HRC/32/L20: Promotion, protection and enjoyment of human rights online (2016) ('UN Resolution')

- **Regional:**

- African Charter on Human and Peoples' Rights (1981)
- AU Agenda 2063: The Africa we want (2015)
- ACHPR Resolution 362(LIX): The right to freedom of information and access to information in Africa (2016)
- ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) ('ACHPR Declaration')

- **Domestic:**

- Regulatory and licensing frameworks
- ICT, broadband and other similar policies



## Selected regional and international frameworks

### Resources //

- Singh, A, 'Legal standards on freedom of expression: Toolkit for the judiciary in Africa', Unesco, 2018.
- Singh, A, 'Digital discrimination: The need to realise universal access to the internet', ALT Advisory, 2019.

**African Charter on Human and Peoples' Rights:**

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his *[or hers or their]* opinions within the law.

**International Covenant on Civil and Political Rights**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his *[or her or their]* choice.

**International Covenant on Economic, Social and Cultural Rights**

State parties must recognise the right of everyone to enjoy the benefits of scientific progress and its applications"

**Declaration of Principles on Freedom of Expression and Access to Information**

**Principle 5:** "The exercise of the rights to freedom of expression and access to information shall be protected from interference both online and offline, and States shall interpret and implement the protection of these rights in this Declaration and other relevant international standards accordingly."

**Principle 37: Access to the internet**

- Facilitate freedom of expression and access to information online and means necessary to exercise these rights
- Universal, equitable, affordable and meaningful access to the internet necessary to realise freedom of expression, access to information and exercise of other rights

**Principle 38: Non-interference**

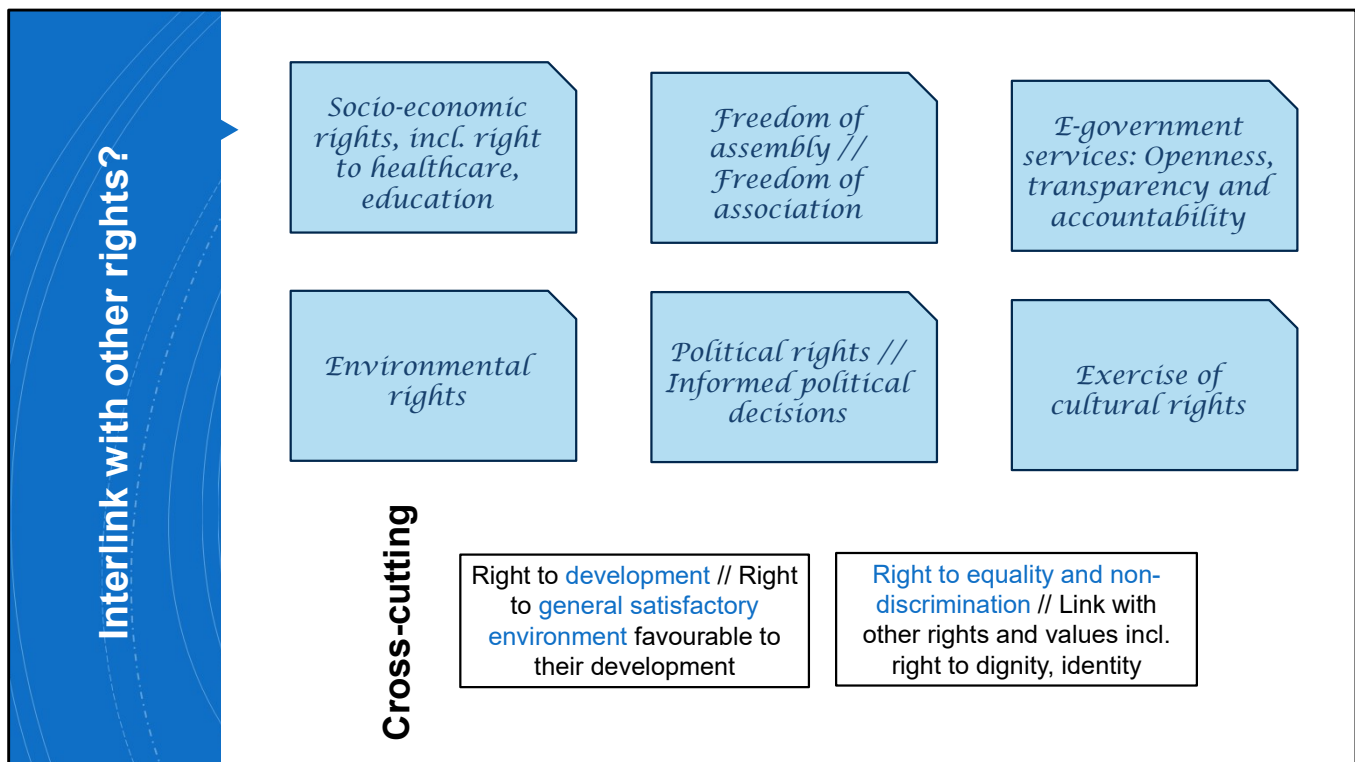
- No removal, blocking or filtering of content unless three-part test for justifiable limitation
- No economic measures must comply with three-part test for justifiable limitation
- Not engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population

**Article 9(1) of the CRPD:**

"To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to **persons with disabilities access, on an equal basis with others**, to the physical environment, to transportation, to **information and communications**, including **information and communications technologies and systems**, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia ... **information, communications and other services**, including electronic services and emergency services."

- Promote access for persons with disabilities to **ogies and systems**, including the Internet
- Develop at early stage → make more cost effective





Relevant articles in the African Charter on Human and Peoples' Rights on cross-cutting rights:

- Article 2: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without discrimination of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."
- Article 22(2): "States shall have the duty, individually or collectively, to ensure the exercise of the right to development."
- Article 24: "All people shall have the right to a general satisfactory environment favourable to their developments."

## Right to equality and non-discrimination: The digital divide

Divide	Description
Access	It starts with access or the lack thereof: although internet penetration has increased, it continues to be a key barrier as more people globally remain offline.
Affordability	The gap between rich and poor affects affordability of ICTs and serves as an important difference in adoption within countries as much as between them.
Age	Older people are generally using ICTs to a lesser extent than younger populations, despite the notion that they could benefit from online social and health services.
Bandwidth	International bandwidth and the capacity to transmit and receive information over networks varies greatly between countries but also within them, limiting potential useful endeavours.
Content	Relevant content in local language(s) is important to stimulate adoption.
Disability	Those with disabilities face additional hurdles to use ICTs if websites are not compliant with web accessibility guidelines, as well as in respect of the availability and accessibility of appropriate devices.
Education and Skills	Like social divides, education and literacy rates are fundamental challenges to bridge digital divides. Persons who have access to ICTs from an early age are more easily able to acquire more advanced digital literacy skills later in life.
Gender	There is a small but persistent difference in online usage between men and women.
Location	Rural and remote areas are often at a disadvantage in terms of speed and quality of services as compared to their urban counterparts.
Migration	Migrants may not possess the same levels of digital skills as the population in their new country and if they do, may be subject to content and language divides.
Mobile	Mobile devices provide opportunities to bridge the access gap but can also introduce new forms of divides in terms of technology, speed and usage.
Speed	The gap between basic and broadband access is creating a new divide as speed is important to reap the full benefits of a digital society.
Useful usage	What people do with their access is a key difference in whether users take full advantage of ICTs, such as e-government services.

[Source: United Nations, 'e-Government survey', 2018]

### Resources //

- United Nations, 'e-Government survey', 2018.
- ALT Advisory et al, 'Access denied: Internet access and the right to education in South Africa', 2020.

- **Estonia:** the Telecommunications Act added [internet access to its universal service list](#), providing in article 5(1) that internet service would be “[universally available to all subscribers](#) regardless of their geographical location, at a **uniform price**”.
- **Greece:** article 5A(2) of the Constitution provides that: “All persons have the [right to participate in the Information Society](#). Facilitation of [access to electronically submitted information](#), as well as the [production, exchange and diffusion](#) thereof, [constitutes an obligation of the State](#), always in observance of the guarantees of articles 9, 9A and 19”.
- **France:** Constitutional Court has held that “given the generalized development of public online communication services and the importance of the latter for the [participation in democracy and the expression of ideas and opinions](#)’, the free communication of ideas and opinions enshrined in the Declaration of the Rights of Man and the Citizen of 1789 implied freedom to access such services.
- **Finland:** section 60C of the Communications Market Act has been amended to require telecommunications operators that are defined as universal service providers [to provide every permanent residence and business office with access to a reasonably priced and high-quality connection](#) with a downstream rate of at least 1 Mbit/s”.
- **Costa Rica:** Constitutional Court has stated that: “In the context of a society based on information or knowledge, this imposes upon public authorities, for the benefit of those under their administration, to [promote and guarantee universal access to these new technologies](#)”.

[Source: Diplo Foundation, ‘Right to access the internet: The countries and the laws that proclaim it’, 2011]

## Examples of recognition of internet access in other countries

ICT POLICY CHECKLIST		
No.	Action	Completion
<b>(i) Agenda setting</b>		
1.	Challenges have been identified through scoping or mapping projects	Yes/no
2.	Stakeholders (including the public and private sector actors) and technical experts have been consulted	Yes/no
3.	Unintended consequences have been identified and considered	Yes/no
<b>(ii) Formulation and adoption</b>		
4.	Extensive public participation processes have been conducted and concluded, and submissions are published openly and considered	Y
5.	Domestic and local contexts have been considered	Y
6.	Policy is drafted in plain language and avoids uncertainty and ambiguity	Y
7.	The policy title and policy statement are simple and to the point	Y
8.	ICT terminology has been clearly defined and a glossary of terms explains concepts and acronyms	Y
9.	It is clear to whom the policy applies and who the relevant institutions and agencies are	Y
10.	The intended objectives and outcomes are detailed and realisable	Y
11.	The core content seeks to remedy the challenges identified	Y
12.	Timeframes and modes of evaluation are expressly defined and realisable	Y
13.	Compliance and enforcement mechanisms are identified or established	Yes/no
14.	Related laws, regulations, and procedures are documented and their harmonisation and alignment has been considered	Yes/no

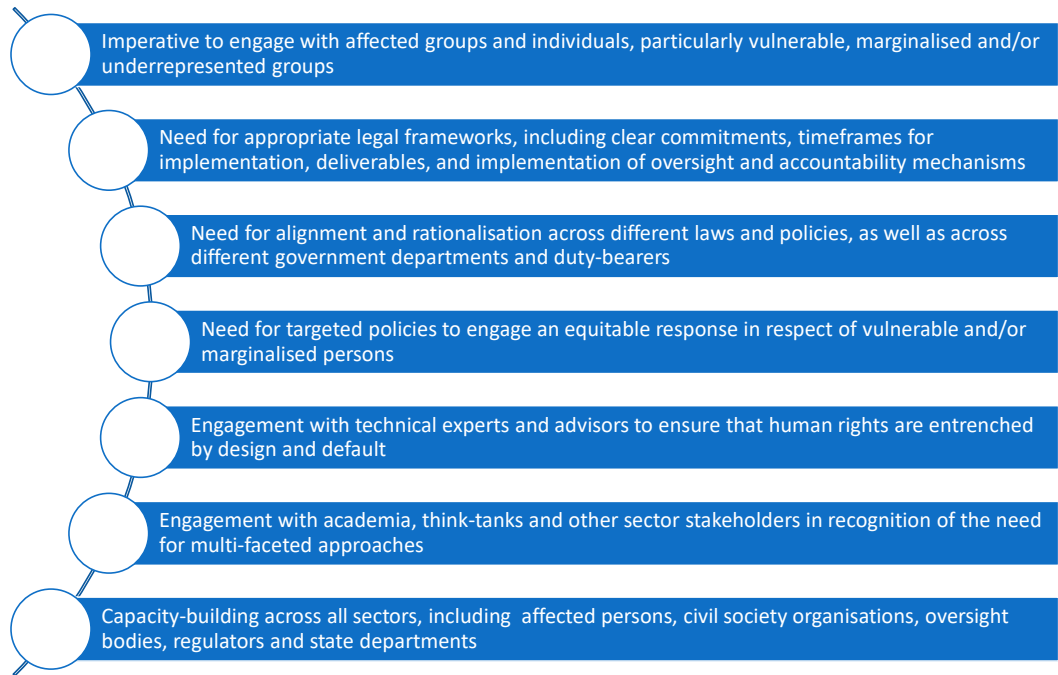
## Checklist for making ICT policy in Africa: Proposed steps for a rights-based approach

<b>(iii) Implementation</b>		
15.	Skills development programmes have been established and technical expertise is available	Yes/no
16.	Institutional separation is present and coordination and communications mechanisms have been established	Yes/no
17.	Additional guidelines, frameworks, implementation plans, and technical specifications have been formulated or are in the process of being formulated	Yes/no
18.	Public awareness programmes, training, and education has been incorporated	Yes/no
19.	Compliance is actively measured and documented	Yes/no
<b>(iv) Evaluation and termination</b>		
20.	Structures have been established to collect accurate and reliable data	Yes/no
21.	Appropriate monitoring and evaluating systems have been established	Yes/no

[Source: fesMedia Africa, 'Making ICT policy in Africa: An introductory handbook', 2021]

## Where to from here?

Overarching aim: Access to the internet must be equitable, affordable and universally accessible for all persons

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- Imperative to engage with affected groups and individuals, particularly vulnerable, marginalised and/or underrepresented groups
  - Need for appropriate legal frameworks, including clear commitments, timeframes for implementation, deliverables, and implementation of oversight and accountability mechanisms
  - Need for alignment and rationalisation across different laws and policies, as well as across different government departments and duty-bearers
  - Need for targeted policies to engage an equitable response in respect of vulnerable and/or marginalised persons
  - Engagement with technical experts and advisors to ensure that human rights are entrenched by design and default
  - Engagement with academia, think-tanks and other sector stakeholders in recognition of the need for multi-faceted approaches
  - Capacity-building across all sectors, including affected persons, civil society organisations, oversight bodies, regulators and state departments



#### Resources //

- Media Defence, 'Litigating digital rights cases in Africa', 2020.
- APC et al, 'Submission to the United Nations Special Rapporteur on Extreme Poverty and Human Rights in response to the call for submissions on digital technology, social protection and human rights', 2018.
- APC et al, 'Parallel coalition report prepared for the 64<sup>th</sup> session of the Committee on Economic, Social and Cultural Rights in response to the Government of South Africa's initial report dated 25 April 2017 and supplementary report dated 6 July 2018', 2018.