Constitutional Litigation Unit

16th Floor Bram Fischer Towers • 20 Albert Street • Marshalltown • Johannesburg 2001 • South Africa
PO Box 9495 • Johannesburg 2000 • South Africa
Tel: (011) 838 6601 • Fax: (011) 834 4273 • Website www.lrc.org.za
PBO No. 930003292
NPO No. 023-004

LRC
Legal Resources Centre

Legal Resources Centre Recommended Resolutions to the NGO Forum April 2018

Reaffirming the importance of the right to human dignity as the foundational value which undergirds all human rights.

Recognising in particular the inextricable link between human dignity, in the sense of the full, free realisation of an individual's world view, and the rights to freedom of expression, access to information, and the right to privacy.

Observing that an individual's ability to fully exercise their fundamental right to freedom of expression depends on their ability to communicate securely and safely and without arbitrary interference.

Noting with concern the prevalence of infringements on people's ability to freely express their opinions and be exposed to a wide variety of opinions due to the broad, expansive powers of governments which enable arbitrary surveillance and the weak regulation of the private telecommunications and digital services sector which is inconsistent and fails to comply with international human right standards and principles.

Noting further the need for the recognition of a right to privacy in Africa to resolve many of the challenges faced in the realm of freedom of expression and access to information, in particular the protection of particular individuals such as human right defenders, journalists and communities in vulnerable positions.

Reaffirming the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights – particularly Arts. 1, 12 & 19-, the United Nations Resolution 68/167 on the Right to Privacy in the Digital Age, the African Union Convention on Cyber Security and Personal Data Protection, and African Commission Resolution 362 on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/Res. 362(LIX) 2016.

The NGO Forum therefore calls on the African Commission to resolve:

- That human dignity, as contained in Art. 5 of the African Charter on Human and People's Rights is the core right and value which underpins the need for the respect, recognition and promotion of the right to privacy of all people in Africa;

- To accept that effective respect and promotion of this right is necessary for the enjoyment of a range of human rights, including freedom of expression, access to information, association and peaceful assembly;

- That the above recognition of the importance and validity of the right to privacy ought to inform and embedded within the process of the revision of the Declaration of the Principles of Freedom of Expression in Africa flowing from African Commission Resolution 362;

National Office: J Love (National Director), T Wegerif (Deputy National Director), K Reinecke (Director: Finance), EJ Broster
Cape Town: S Dass(Director), A Andrews, S Kahanovitz, C Mathiso, M Mudarikwa, EL Roos,
Durban: S Samuel (Director), TC Mbhense, A Turpin
Grahamstown: C McConnachie (Director), LK Jolobe, S Sephton
Johannesburg: N Fakir (Director), AF Ashton, LJ Limacher, SP Mkhize
Constitutional Litigation Unit: SG Magardie (Director), MJ Bishop, G Bizos SC, C du Toit, NM Kekana, P Mdakane, Y Ntloko, ER Webber, WC Wicomb

- That the mandate of the Special Rapporteur on Freedom of Expression and Access to Information should include privacy and digital rights concerns where these impinge on the ability to communicate and receive opinions freely. Specifically including:
    - Unlawful, disproportionate or unnecessary state surveillance and the private enterprises which enable this through the provision of technological solutions;
    - The role of the private sector in conducting unlawful collection and processing of their customers personally identifiable information;
    - Regulation of the costs of access to the internet, and content and platform neutrality online;
    - The prevalence of 'internet shutdowns' in African States, particularly during periods of social protest and elections;
    - Regulation of the processing of personal data, which can directly or indirectly identify individuals, by public and private bodies, and in particular the need for the processing of sensitive personal data such as biometrics to be subject to higher safeguards..

The LRC is a member of the International Network of Civil Liberties Organizations (INCLO). INCLO is a network of 13 independent, national human rights organizations from the global South and North working to promote fundamental rights and freedoms.