Constitutional Litigation Unit

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LRC
Legal Resources Centre

Legal Resources Centre Statement to the African Commission on Human and Peoples' Rights April 2018

Honourable Chairperson, honourable commissioners, it is my pleasure to present this statement on behalf of the Legal Resources Centre of South Africa, Privacy International and the International Network of Civil Liberties Organisations. Today I would like to discuss a topic which is often felt to be too first world for a continent struggling with life and death issues, but I wish to impress upon you that the right to privacy is an important tool in the fight against repressive regimes and exploitation by the private sector.

The LRC and its partners believe that the right to human dignity is the foundational value which undergirds all human rights. We recognise 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 conscience, freedom of expression, access to information, and the right to privacy. An individual's ability to fully exercise their fundamental right to freedom of expression depends on their ability to communicate securely, safely and without arbitrary interference.

The prevalence of infringements on people's ability to freely express their opinions and be exposed to a wide variety of opinions is often due to the broad, expansive powers governments aggregate to themselves in the name of national security. This enables arbitrary, unnecessary and disproportionate surveillance; clearing the path for the targeting of human rights defenders and journalists.

The weak and inappropriate regulation of the private telecommunications and digital services sector's activities in Africa fails to comply with international human right standards and principles. Examples of this includes allowing the collection and processing of Africa's people's personal information and governments requiring telecommunications infrastructure and systems to be capable of breach. This practice is known as requiring lawful interception backdoors.

The recognition of a right to privacy in Africa will go a long way to resolve many of the challenges faced in the realm of freedom of expression and access to information. In particular the protection of individuals such as human right defenders, journalists and communities in vulnerable positions. All of whom are critical voices in any healthy democracy.

We wish to highlight the existence of pieces of international law which form the basis for the recognition of the right to privacy and digital rights in Africa, including the African Charter on Human and Peoples' Rights – particularly Arts. 5, 8, 9 & 60-, 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 the African Commission Resolution 362 on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/Res. 362(LIX) 2016.

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The Legal Resources Centre thus 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 the right to privacy is necessary for the enjoyment of a range of human rights, including freedom of conscience, 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 be 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;

- 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.