

Overview of Proposed Principles in the ICT Policy Review Framework Paper April 2013

This is not intended as a summary of the entire Framing Paper document and should be read together with the full document. The focus below is on the principles proposed for comment and the specific questions raised relating to them.

Introduction

The Framing Paper is intended to set the objectives and principles that should inform any communications sector related policy and legislative framework. Fourteen principles / objectives are proposed based on the initial principles set in existing communications related policies and discussion encouraged around these. Submissions will be used to develop a "new" set of principles to guide and frame the approach to the ICT policy review.

The Department requests that submissions focus on "ideal principles rather than previous performance". Subsequent papers and documents will review performance and outline the "institutional framework, individual activities, programmes and tools necessary to translate those principles into reality".

The Proposed Principles

- South Africans have a right to freedom of expression
- South Africans have a right to access a diverse range of content
- South Africans have a right to access a broad range of information, opinion and news of relevance to their communities and lives
- South Africans have a right to quality communication infrastructure and services which enable economic growth, employment and wealth creation
- South Africans have a right to benefit from the ability of the communications sector to facilitate social development and improve the quality of life for individuals and communities
- South Africans have a right to celebrate their cultural heritage in the language(s) of their choice
- South Africans have a right to equal universal access to communication services and infrastructure
- All sectors of the population have a right to equally enjoy and benefit from communication services
- South Africans are entitled to communication services that reflect, respect and uphold constitutional and community standards and values
- South Africans have a right to privacy and to protection of personal information
- Government has a responsibility to maximise the overall public benefit derived from the use of public resources
- All South Africans are entitled to a quality communication system that facilitates innovation, fair competition and equitable treatment of all role players
- South African citizens and consumers are entitled to maximum transparency in how services are delivered and conditions under which they are delivered
- South Africans have a right to an environment that is not harmful to their health or well-being

1 South Africans have a right to freedom of expression

This principle should be the core consideration in reviewing all communication related policies and laws. It encapsulates a number of objectives and goals for the communications sector, such as:

- The need to ensure access by all South Africans to compelling news, information education, entertainment and creative expression. A new policy framework should consider how to ensure such access by all citizens across a range of platforms, devices and services.
- The need to ensure that the policy facilitates communication and conversations by citizens with each other and with Government, thereby ensuring a socially cohesive South African society. It recognises the obligation on the communications sector as a whole to facilitate meaningful communication and robust debate.
- The importance of facilitating the right of all to tell their own stories and to create and share their own content.
- The right of all citizens to access key information in order to participate actively in the South African society. This includes access to information held by Government and the private sector, in line with the Public Access to Information Act.

The current regulatory frameworks place obligations on Government, the regulator and service providers to facilitate this right. These include:

- Requirements that the regulator acts in the public interest, independent of influence from Government, commercial or other sectoral interests.
- Content obligations for broadcasters.
- A three tier broadcasting system with public, commercial and community services all fulfilling different responsibilities.
- Provisions requiring that services are accessible to people with disabilities.
- Universal service obligations by the South African Post Office and telecommunication operators.

Do you agree freedom of expression is the core principle that should guide the policy review process? Are there any other key considerations relating to the right to freedom of expression which should be considered?

#2 South Africans have a right to access a diverse range of content

While this principle is inherent in the right to freedom of expression, it is suggested that it is such a key consideration for the communications sector that it should continue to be a specific focus underpinning any ICT policy framework. The principle includes:

- The right to access national, regional and community content via a range of services, devices and platforms.
- The right to a diverse range of content, including access to a broad range of genres and formats (drama, music, information and opinion, educational material and cultural expression).
- Recognition that South African citizens have diverse needs and interests, dependent on many factors, including gender, age, ability, location, language, beliefs and personal interests and preferences. Content should therefore be diverse to meet these different needs.
- The right of citizens to be able to tell their own stories and to create and disseminate their own content.
- Facilitating diversity of ownership of the means to communicate.

Existing broadcasting related laws include specific provisions requiring the regulator to consider diversity in deciding on licences and developing regulatory policies. Requirements to ensure diversity of ownership are linked to this. In the future, broadcasting-like content will be available across a range of platforms, channels and devices - potentially increasing the diverse range currently available.

Do you agree that access to diverse content provided by a range of different service providers should remain a separate and specific consideration in the new policy environment? Are there any other considerations that would strengthen this principle?

#3 South Africans have a right to access a broad range of information, opinion and news of relevance to their communities and lives

While it could be argued that this consideration is inherent in the right to freedom of expression, the importance of access by all citizens to a broad range of news, information and opinion is specifically recognised in the Bill of Rights clauses on freedom of expression. It says, for example, that all South Africans have a right to a free media and to receive and impart information. In line with this, and international practice, the current framework specifically prescribes that broadcasting services should air news and information. This principle includes:

- Recognition that people need access to a broad range of diverse information and news at an international, national, provincial and local level to make informed choices about their lives.
- Reinforcement of the need for a range of sources of news, information, opinion and analysis that is relevant to audiences and users.
- Emphasis on the right of individuals and communities to be heard, and to be able to disseminate rather than only receive news, information and opinion.
- Recognition of the right of all to fair representation of their opinions and perspectives.
- Recognition of the fact that information assists in community development and plays a significant role in developing a sense of community awareness, cohesion and identity.
- An obligation on the public sector and public services to ensure access to information about their priorities, programmes and services.

Is this principle adequately captured in existing policy and legal frameworks? Is it necessary to continue to focus on this as a distinct obligation? How, if at all, will access to content over a range of platforms, channels, services and devices affect this principle? What other considerations should be taken into account to ensure the realisation of this principle?

#4 South Africans have a right to quality communication infrastructure and services which enable economic growth, employment and wealth creation

The communications sector is an essential economic enabler that facilitates and stimulates the growth and dynamism of a broad range of other economic activities. Effective policy and regulatory frameworks for the sector therefore balance the economic outcomes of the sector and the impact these have on other sectors that are dependent on communications for their success. Current policies regarding the cost of services are one aspect of this.

The sector is also an important economic sector in its own right. A new policy framework needs to take into account the effect provisions will have on growth in the sector itself (including related sectors such as manufacturing and the creative industries) and the impact on economic development more broadly. It needs to encourage innovation and to be flexible so that it can respond to a rapidly changing environment. In the existing communications related frameworks, objectives related to independent regulation (free from influence by powerful players) and fair competition are also aimed at reinforcing economic growth of the sector itself.

This expanded role can only be sustained if opportunities are shared on an equitable basis. Existing policy provisions redressing the inequalities of the past through specific broad-based black economic empowerment provisions to ensure transformation at a shareholder, director, management and staffing level, are focused on this. Requirements recognising the diversity within the country and ensuring the communication sector responds to and reflects this by, for example, addressing the needs of urban and remote communities, women and men of all ages and people with disabilities, are also key. Provisions requiring access to open systems, combining interoperability, portability and open rather than proprietary standards are also fundamental.

The role of the communications sector in the economy is potentially a creator of employment, both within the sector and within related and indirectly-related industries. Policy needs to ensure that the job creation potential of the sector is maximised. In this regard the policy should promote education and skills development.

Has this principle been adequately covered & its full meaning captured in existing policy & legislation? What other core issues should be considered to facilitate economic development and inclusion?

#5 South Africans have a right to benefit from the ability of the communications sector to facilitate social development and improve the quality of life for individuals and communities

There is recognition in existing policy of the role the communications sector can and should play in enabling and promoting social development. Provisions that currently emphasise this include:

- Recognition that universal access to affordable and reliable postal services is essential and therefore reinforcing the importance of the South African Post Office while imposing obligations on it.
- Similar requirements on public entities such as Telkom, Sentech, the SABC and the Universal Service and Access Agency.
- Recognition that all licensees bear certain public service obligations (such as local content requirements for broadcasters and conditions for community services on other operators and providers).

The sector also has an important role to play in facilitating improved public service. Government is currently re-evaluating its own service delivery strategies in order to introduce efficiencies and promote excellence in service delivery. An evolution of Government services from a mainly paper based and office bound delivery model to an integrated electronic and technology based one, will enable South Africans to access Government services anytime, anywhere and through a variety of platforms. This shift will ensure fast and effective access to Government services by citizens, and will enable greater accountability and better monitoring of service delivery.

Communications services and their associated infrastructure, services, content and applications have a crucial role to play in extending access to and improving the quality of a wide range of development and social service interventions, such as education, health, public administration and social services. Further, ICTs have an important role to play in co-ordinating and supporting a wide range of social support and development interventions, and in enabling and promoting service delivery and rural development. Areas where communications have been shown internationally to support the delivery of better and advanced services include:

- The use of communication services and applications to offer digital Government services enabling citizens to transact with Government at any time and wherever they are. This can improve service delivery, translating South Africa's Batho Pele principles into concrete reality.
- The use of communications tools and infrastructure to manage and optimise public service administration. This could mean availability of modern communications systems for management of administrative processes, secure databases, monitoring and evaluation of performance.
- The use of computers and other communication tools in schools and educational institutes through e-learning platforms providing for access to a wide range of educational content and teaching support and development services.
- The development of e-health systems that support the integration, extension and co-ordination of quality health-care on a widespread basis.
- The deployment of communication systems to help detect and combat crime.
- The use of communications technologies to monitor weather patterns and their effect on the agricultural sector and to provide early warning systems to manage natural disasters.
- The use of communications technologies to support communication, consultation, and participation in public decision-making.

Has this principle been adequately covered and its full meaning captured in existing policy and legislation? What other core issues should be considered to facilitate social development and inclusion?

#6 South Africans have a right to celebrate their cultural heritage in the language(s) of their choice

This principle entails facilitating the availability of a range of services that prioritise South African content and languages across all platforms, channels, services and devices. It enables South Africans

to access a range of cultural content easily in all relevant languages (including sign language) - to hear and tell our own stories, listen to our own music and celebrate our creativity. This principle further recognises the right of artists and creators to develop their craft and access the means to show-case it.

The departure point is that the communications infrastructure in South Africa exists not only to provide information and education, but also to meet cultural needs of South Africans. The South African infrastructure, networks and services have an obligation to provide space to South African products, content and creations.

Current policy, legislative and regulatory frameworks require South African Broadcasting Services to air local content and music. The framework also focuses on strengthening and transforming creative industries (including the independent TV production sector and the local music industry).

In addition, the public broadcaster is required to broadcast in all official languages, as the framework reinforces the need for all services to redress the skewed historical promotion of only English and Afrikaans.

Is this right to cultural expression in all South African languages adequately captured in existing policies? Does it remain relevant in the new multi-channel, multi-platform environment? What other considerations are critical to the realisation of this right in a new communications environment?

#7 South Africans have a right to equal universal access to communication services and infrastructure

Universal access to communication services and infrastructure, irrespective of economic standing, geographic location or social status, is critical to the right to equality. All existing policies specifically focus on this principle and the need, given skewed development of the past, to actively redress previous discriminatory practices and to overcome the digital divide. This objective obliges public, private (large players and SMMEs) and community/non-profit sector players to ensure universal access and service to infrastructure, services and content. The principle also includes:

- Recognition that affordability of service is a critical objective given that the cost to communicate is key to access and therefore to universal service.
- The need to promote and support the nationwide availability of communications infrastructure, services and facilities, with particular attention to remote, impoverished and disadvantaged individuals and communities.
- The need to encourage all South Africans to use a wide range of devices and technologies so as to ensure optimal access to communication services and infrastructure.
- The right of access to quality communications services by all South Africans, both rich and poor, in urban and rural areas, including those disadvantaged by gender, disability or lack of literacy.
- The right of all South Africans to a postal address and to reliable postal services.

Have these considerations been adequately captured in existing policies and laws? If new services should achieve universal access, does this principle need to be strengthened? In the era of high speed internet, should this principle, for example, include universal availability of such services?

#8 All sectors of the population have a right to equally enjoy and benefit from communication services

The Bill of Rights states that everyone has the right to equal protection and benefit of the law and specifies that laws and policies should include measures to "protect or advance persons, or categories of persons, disadvantaged by unfair discrimination". This principle is in some ways inherent in the previous objective on universal access and service, but South African policies and laws all include specific measures to ensure conscious and deliberate redress of the apartheid legacy of discrimination and skewed development and promote equality in all sectors of the population.

This principle has been captured in existing frameworks through specific measures to promote, for

example, historically disadvantaged individuals and communities and the needs of women, children, the elderly, people with disabilities and cultural and religious minorities. Provisions in the current policies and laws include:

- The need to be sensitive in the development of policy and regulatory frameworks to the impact of these on different sectors of society.
- Specific obligations to ensure people with disabilities can access services (such as using sign language and braille in communications and ensuring access to facilities).
- The need to protect children from commercial exploitation and access to unsuitable content.
- Recognition of the importance of redressing skewed ownership and management patterns through specific empowerment provisions.

Is this principle adequately captured in existing policies and laws? Is it important to continue to separate this principle from a more general right to equal universal access? Are there other considerations that need to be focused on to ensure the realisation of this right? What will have to be taken into account in developing a communications sector of the future that is responsive to all segments of the population?

#9 South Africans are entitled to communication services that reflect, respect and uphold constitutional and community standards and values

While reinforcing the importance of freedom of expression, and recognising the diversity of people's views and values in South Africa, the Constitution also prohibits hate speech and protects the rights to dignity and privacy. The rights of the child are also specifically safeguarded.

Existing communication policy frameworks reflect these rights, and, for example, provide for the development of standards and codes of conduct to protect children from harmful and/or inappropriate content. Codes to reinforce internationally recognised editorial principles and ensure the integrity and legality of information are also provided for. These provisions currently cover not only broadcasting content, but also, for example, information available on the internet and mobile services.

Is this principle adequately captured in existing policy frameworks? How should policy ensure that communications services reflect, respect and uphold laws and agreed on standards and values in the future, without encroaching on the rights of South Africans to freedom of expression? How can policy frameworks continue to protect these rights given that technology will increasingly facilitate access to information across a range of platforms and devices? Is there a need to more specifically focus on the need to promote media literacy and education of users and audiences?

#10 South Africans have a right to privacy and to protection of personal information

Reinforcing the right to privacy is essential to the communications sector. It includes ensuring that the policy and the regulatory framework reinforce the right to protection of personal information - whether stored electronically or physically delivered via, for example, postal services. It also refers to the need of citizens to be able to trust that institutions will use and process their information with integrity.

Internationally it is increasingly evident that mechanisms to protect privacy need to be updated to address new issues arising from new technologies, services and applications. It is also recognised that there is a need to strengthen related laws, promote the education of citizens and address cyber-crime. Frameworks need to be flexible to address these issues.

Is there a need to include specific objectives related to the right to privacy and protection of personal information in a new communications sector policy framework? Are these principles adequately covered in the current policies, laws and regulations? What other considerations are important to this right?

#11 Government has a responsibility to maximise the overall public benefit derived from the use of public resources

This principle is recognised in both South African and international policy frameworks. The Constitution is in many ways focused on ensuring that public resources bring benefit to all citizens. The existing communications policy frameworks further reinforce this principle by outlining specific social and economic considerations that should be taken into account when assigning and managing scarce resources such as the frequency spectrum and providing for specific economic, social and cultural obligations on users of this spectrum.

Technological advances allow us to use public resources such as the frequency spectrum, the numbering system and the right of way more efficiently and effectively to ensure greater public benefit from these.

The notion of public benefit further encapsulates the principle of value for money, including, for example, recognising that public and other institutions that oversee, manage or utilise public resources should ensure maximum public value from these. This implies that the framework itself and related institutions and processes should be capable, efficient and effective. They should further focus specifically on enabling agreed upon mandates for the sector and only intervening where it is necessary to realise clearly articulated public objectives. Interlinked principles include the need for participation, accountability and transparency in policy-making and related processes and a focus on protection of decision-making from influence by political, industry or other powerful interests.

Is this principle adequately reflected in existing policy and legal frameworks? What, if any, additional considerations are relevant to this principle? How, if at all, do technological advances affect the considerations underpinning the governance of spectrum?

#12 All South Africans are entitled to a quality communication system that facilitates innovation, fair competition and equitable treatment of all role players

This principle is aligned with a range of Constitutional rights - including the rights to equity and equality of opportunity. The NDP emphasises that communication services should be provided at a cost and quality at least equal to South Africa's peers and competitors. This right reinforces the need for the communications framework to focus on enabling and encouraging innovation and investment in the sector in order to maximise the number and range of services and content available to all South Africans. It entails the important principle of similar and equitable treatment of like services regardless of the platform or technology used to deliver the service in order to promote the objective of diversity and choice. It further requires that any framework governing the sector is flexible and can adapt to changing technological, market and customer circumstances and needs.

Other considerations linked to this principle include:

- The need for capable, effective and efficient processes and institutions.
- Ensuring that South Africa has the skills and capacity necessary to develop and build a quality and innovative communications system relevant and responsive to South African circumstances.
- Promoting open systems that facilitate innovation, fair competition and equitable treatment of all role players as well as increase access by citizens to a choice of services. Open systems include the concepts of interoperability, portability and open rather than proprietary standards.
- Ensuring the framework promotes customer-oriented and technology neutral services.

Is this principle adequately captured in existing policy and legislative frameworks? Is it still relevant for the future? What other goals should be considered in order to realise this objective? What is the role of communications specific policy in this regard, given that there are other laws that promote for example, fair competition?

#13 South African citizens and consumers are entitled to maximum transparency in how services are delivered and conditions under which they are delivered

Protection of consumers is the foundation of many of South Africa's policies and laws. Given changes in technology, this should increasingly include provisions to protect e-consumers. Consumer protection includes clarity on what services are provided, the expected quality of such services, and the cost of these to the user. It entails putting in place specific measures to ensure that service providers make available the best possible information about products and services and the conditions under which they are offered. It further requires developing mechanisms for consumers to complain about levels of service. Most importantly it underscores the need to ensure any communications framework protects the interests of citizens and consumers.

Is this principle of importance in an environment underpinned by choice of different service-providers that are competing on the platform, service and product levels? How important will it be in an environment in which different technologies and platforms can be used to offer similar services? Is it important for this to be specifically incorporated into a communications framework given other related legislation that protects consumer interests?

14 South Africans have a right to an environment that is not harmful to their health or well-being

The Bill of Rights specifically balances ecologically sustainable development with justifiable economic and social development. Communications infrastructure must be extended in line with these requirements. Devices to receive communications must not be harmful to users' safety, health or well-being. The current communications framework recognises this by requiring environmental impact studies and for type approval of devices. Government has identified the need to ensure the safe disposal of electronic waste.

Is this principle still important to emphasise in a new communications framework? Are principles linked to this adequately covered in existing policies and laws? What other issues should be considered relating to the environment?

In addition to the above the Framing Paper seeks view and inputs on, "for example":

The relevance of the existing objectives set out in related policy and legislative frameworks.

- What, if any, new principles or considerations need to be incorporated given the changing environment?
- What important policy and regulatory issues do these principles raise that need to be considered by the Policy Review Panel?