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SUBMISSION BY MEDIA MONITORING AFRICA

DRAFT CODE FOR PERSONS WITH DISABILITIES REGULATIONS

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INTRODUCTION

1. Media Monitoring Africa (MMA) welcomes the opportunity to provide this submission on the Draft Code for Persons with Disabilities Regulations (Draft Regulations) published by the Independent Communication Authority of South Africa (ICASA). It is estimated that over 4.5 million people in South Africa are living with a disability.¹ While there is limited data and research on the situation in South Africa of persons with disabilities in respect of accessing broadcasting and information and communication technologies (ICTs),² the challenges and urgent need for appropriate strategies, responses and implementation is well documented.³
2. Accordingly, MMA notes that the Draft Regulations have the potential to contribute positively towards overcoming the uneven distribution of accessing various services, and thereby to ensure that persons with disabilities have meaningful access to information. The importance of promoting access to broadcasting and electronic communication services for persons with disabilities cannot be gainsaid given the array of opportunities and benefits that come with accessing such services.
3. However, MMA is concerned that the Draft Regulations do not go far enough in four key respects: (i) in terms of the scope of the Draft Regulations, including that the Draft Regulations should explain the obligations on ICASA itself, as well as on electronic communications service (ECS) licensees and broadcasting service licensees; (ii) in terms of realising the constitutional and international law obligations to ensure that persons with disabilities have universal access to the internet and other ICTs; (iii) in terms of the need to address challenges in accessing information during emergency and disaster situations, beyond breaking news; and (iv) in terms of monitoring and reporting. Accordingly, this submission is structured as follows:
 - 3.1. **First**, an overview of MMA.
 - 3.2. **Second**, the constitutional law framework.
 - 3.3. **Third**, the scope of the Draft Regulations.
 - 3.4. **Fourth**, the imperative of universal access to the internet and ICTs.
 - 3.5. **Fifth**, access to information during emergency and disaster situations.

¹ Clockwork, 'Statistics surrounding employment of persons with disabilities in South Africa' (2018) (accessible at <https://clockworkapp.co.za/employment-statistics-persons-disabilities-south-africa/>).

² Maart, Amosun & Jelsma, 'Disability prevalence-context matters: A descriptive community-based survey' *African Journal of Disability* (2019) (accessible at <https://ajod.org/index.php/ajod/article/view/512/1115>); CIPESA, 'Governments and donors urged to advance ICT access for persons with disabilities' (2019) (accessible at <https://cipesa.org/2019/10/governments-and-donors-urged-to-advance-ict-access-for-persons-with-disabilities/>).

³ Raja, 'Bridging the disability divide through digital technologies' *World Development Report* (2016) (accessible at <http://pubdocs.worldbank.org/en/123481461249337484/WDR16-BP-Bridging-the-Disability-Divide-through-Digital-Technology-RAJA.pdf>).

3.6. **Sixth**, monitoring and reporting.

4. This is dealt with in turn below.

OVERVIEW OF MEDIA MONITORING AFRICA

5. MMA is a not-for-profit organisation that has been monitoring the media since 1993. MMA's objectives are to promote the development of a free, fair, ethical, and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are media ethics, media quality and media freedom.
6. MMA has over 25 years' experience in media monitoring and direct engagement with media, civil society organisations, state institutions and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. In all of our projects, we seek to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.
7. Throughout our work, we promote the ideals of equality and inclusion. MMA advocates that services and information must be accessible to all persons, regardless of education, disability, age, gender, and other relevant factors. MMA believes that broadcasting and electronic communications services must be available in accessible and usable formats for persons with disabilities.
8. For more information about MMA, please visit: www.mediamonitoringafrica.org.

CONSTITUTIONAL LAW FRAMEWORK

9. Section 1(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution) provides that South Africa is founded on the values of, *inter alia*, human dignity, the achievement of equality and the advancement of human rights and freedoms. The Bill of Rights is binding on the state, including organs of state,⁴ as well as on natural and juristic persons, to the extent applicable, taking into account the nature of the right and the nature of any duty imposed by the right.⁵
10. For the purposes of this submission, the following rights are of particular importance:
 - 10.1. **Right to equality:** The Constitution guarantees that every person is equal before the law and has the right to equal protection and benefit of the law.⁶ Neither the state nor any person may discriminate, either directly or indirectly, against anyone on one or more prohibited grounds, which includes on the ground of disability.⁷ In terms of the Promotion of Equality and Prevention of Unfair Discrimination

⁴ Section 8(1) of the Constitution.

⁵ Section 8(2) of the Constitution.

⁶ Section 9(1) of the Constitution.

⁷ Section 9(3) and (4) of the Constitution.

Act 4 of 2000 (PEPUDA), no person may unfairly discriminate against any person on the ground of disability, including by failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or by failing to take steps to accommodate the needs of such persons.⁸

- 10.2. **Right to dignity:** Everyone has inherent dignity, which includes the right to have their dignity respected and protected.⁹ The realisation of the right to dignity is particularly important in respect of vulnerable and marginalised groups of people, including persons with disabilities, whose dignity – and right to live a dignified life – might otherwise be jeopardised by the failure to make reasonable accommodation for their specific needs.
- 10.3. **Freedom of expression and access to information:** Everyone has the right to freedom of expression, which includes freedom of the press and other media, freedom to receive or impart information or ideas, freedom of artistic creativity, and academic freedom and freedom of scientific research.¹⁰ Furthermore, everyone has the right of access to any information held by the state, as well as any information held by another person that is required for the exercise or protection of any rights.¹¹ In order to realise the rights of freedom of expression and access to information, it is imperative that persons with disabilities are provided with the necessary means to be able to access such information, both on- and offline.
- 10.4. **Best interests of the child:** A child's best interests are of paramount importance in every matter concerning the child.¹² In line with this principle, and as stipulated in the Convention on the Rights of Persons with Disabilities (CRPD), children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children.¹³ In this regard, the CRPD requires that all necessary measures be taken to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.¹⁴
11. The Constitution requires that the state, including organs of state, must respect, protect, promote and fulfil the rights in the Bill of Rights.¹⁵ Organs of state therefore have both positive and negative obligations under the Constitution, requiring that they take proactive steps to give effect to the constitutional rights enshrined in the Bill of Rights. It is firmly established by both the United Nations and the African Commission on Human and Peoples'

⁸ Section 9(c) of PEPUDA.

⁹ Section 10 of the Constitution.

¹⁰ Section 16(1) of the Constitution.

¹¹ Section 32(1) of the Constitution.

¹² Section 28(2) of the Constitution.

¹³ Preamble to the CRPD.

¹⁴ Article 7(1) of the CRPD.

¹⁵ Section 7(2) of the Constitution.

Rights that the same rights that people have offline should be protected equally online and in accordance with international human rights law and standards.¹⁶

12. While it appears that, to some extent, the Draft Regulations seek to give effect to this underpinning, this is not made clear in the document. MMA submits that it should be made apparent in the Draft Regulations that the purpose is one that is constitutionally-mandated, in compliance with the duty on ICASA to respect, protect, promote and fulfil the rights in the Bill of Rights. This will serve to ensure that the Draft Regulations are appropriately framed and treated with the necessary import that they deserve.
13. Accordingly, and drawing inspiration from the Constitution and article 3 of the CRPD, MMA submits that the Draft Regulations should expressly state that the provisions are underpinned by the following principles:
 - 13.1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons.
 - 13.2. Non-discrimination and equality, including equality of opportunity.
 - 13.3. Full and effective participation and inclusion in society.
 - 13.4. Accessibility and access to information, both on- and offline, including access to ICTs.
 - 13.5. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.
 - 13.6. Respect for the best interests and evolving capacities of children with disabilities.

SCOPE OF THE DRAFT REGULATIONS

Duties and responsibilities of ICASA

14. The scope of the Draft Regulations is set out in regulation 2, and currently reads as follows:

“The purpose of these Regulations is to prescribe a Code for Persons with Disabilities, to be adhered to by Electronic Communications Service (“ECS”) licensees and broadcasting service licensees, aimed at ensuring that persons with Disabilities have access to services.”

¹⁶ United Nations Human Rights Council, ‘The promotion, protection and enjoyment of human rights on the Internet’ (4 July 2020) A/HRC/38/L.10/Rev.1 (accessible at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/L.10/Rev.1); African Commission on Human and Peoples’ Rights, ‘Declaration of Principles on Freedom of Expression and Access to Information in Africa’ (2019) (accessible at <https://www.achpr.org/legalinstruments/detail?id=69>).

15. MMA is concerned, however, that the Draft Regulations do not deal with the roles and responsibilities that ICASA itself has in terms of its own mandate to realise the rights of persons with disabilities. As mentioned above, as an organ of state, ICASA has a duty to respect, protect, promote and fulfil the rights in the Bill of Rights. This requires ICASA itself to take appropriate measures, within its mandate and resources, to ensure that persons with disabilities have access to services.
16. This has, for instance, been recognised by the Department of Communications (as it then was) in the Disability and ICT Strategy.¹⁷ With particular reference to articles 9 and 21 of the CRPD – relating to accessibility, including access to ICTs, and freedom of expression and opinion and access to information, respectively – the Disability and ICT Strategy notes that regulators, amongst others, should take these developments as an opportunity, rather than view them as a cost.¹⁸
17. Importantly, the Disability and ICT Strategy deals specifically with the role of ICASA. In this regard, it proposes that the Department of Communications, the Chief Directorate: Gender, Disability, Youth and Children (GDYC) and ICASA work together to ensure that ICTs are accessible, available and affordable for persons with disabilities.¹⁹ Specifically, it provides as follows:

“Some of the measuring criteria that could be used are:

- Incorporation on persons with disabilities specific Technical Standards on Infrastructure development guided by the Universal Design Standards as adopted by Local Standard bodies;
- Evaluation of Universal Service Obligations being met in collaboration with [the Universal Service and Access Agency of South Africa (USAASA)].
- Evaluation of cost factors and looking at funding ways for new initiatives.
- Enforcement of the Code on the needs of persons with disabilities and all other related codes passed by [ICASA].”

18. MMA urges ICASA to amend the Draft Regulations to specifically reflect the obligations to which ICASA itself commits in respect of persons with disabilities, which at a minimum should include the recommendations contained in the Disability and ICT Strategy.

Definition of the term “disability”

19. MMA is further concerned that the definition of term “disability”, as currently contained in the Draft Regulations, is too narrow in scope. The Draft Regulations define “disability” as “long-term or recurring hearing and visual impairment”. However, this definition is not inclusive or reflective of the domestic and international notions of disability. MMA draws attention to the following definitions and explanations:

¹⁷ Department of Communications, ‘Disability and ICT Strategy’ (undated) (accessible at https://www.gov.za/sites/default/files/gcis_document/201409/disability-and-ict-strategy.pdf).

¹⁸ Id at p 1.

¹⁹ Id at pp 17-18.

19.1. According to the Disability and ICT Strategy, quoting from article 1 of the CRPD, persons with disabilities “include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation on an equal basis with others in society.”²⁰

19.2. According to the Department of Social Development, as contained in the White Paper on the Rights of Persons with Disabilities, the term “disability” is set out as follows:²¹

“The [CRPD] does not attempt to define disability per se, but rather recognises disability as an evolving concept. Disability is imposed by society when a person with a physical, psychosocial, intellectual, neurological and/or sensory impairment is denied access to full participation in all aspects of life, and when society fails to uphold the rights and specific needs of individuals with impairments.

Persons with disabilities experience three main types of interrelated barriers:

- social (including high cost, lack of disability awareness, and communication difficulties);
- psychological (such as fear for personal safety); and
- structural (including infrastructure, operations and information).”

19.3. According to the United Nations Department of Economic and Social Affairs (UNDESA), a disability refers to a “limitation in a functional domain that arises from the interaction between a person’s intrinsic capacity, and environmental and personal factors. From this perspective, functioning occurs at three levels: body function and structures, activities and participation.”²² It notes further that “[t]he overall experience of disability is diverse as it is the combination of limitations in functioning across multiple domains (e.g. walking, seeing), each on a spectrum, from little or no disabilities to severe disabilities, either within a particular domain or across multiple domains.”²³

²⁰ Id at p 3.

²¹ Department of Social Development, ‘White Paper on the Rights of Persons with Disabilities’ (9 March 2016) (accessible at https://www.gov.za/sites/default/files/gcis_document/201603/39792gon230.pdf).

²² UNDESA, ‘Realisation of Sustainable Development Goals by, for and with Persons with Disabilities’ (2018) (accessible at <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2018/12/UN-Flagship-Report-Disability.pdf>).

²³ Id.

20. The current definition contained in the Draft Regulations gives rise to serious concerns of being exclusionary, and needs to be revisited. In MMA's view, it would be appropriate for ICASA to adopt the definition contained in the Disability and ICT Strategy, as it coheres with the terminology of the CRPD as well, which may be supplemented by the express recognition of harms as contained in the White Paper on the Rights of Persons with Disabilities.

Definition of the term "accessibility"

21. A proper understanding of accessibility is important, given that "[a]ccessible ICTs have the potential to provide persons with disabilities unprecedented levels of access to education, skills training and employment, as well as the opportunity to participate in the economic, cultural and social life of their communities."²⁴ However, as with the point above, MMA is concerned that the term "accessibility" is defined in too narrow a manner in the Draft Regulations, and does not appropriately explain the content and context that should be conveyed. In the current version, the Draft Regulations define "accessibility" as "the ability by persons with Disabilities to equally access and benefit from broadcasting and electronic communications services".
22. MMA is of the view, that while accessibility is indeed about equal access and benefit, a more nuanced understanding would be appropriate for present purposes. The South African Human Rights Commission (SAHRC) has defined "accessible", in relation to a program, as being "presented or provided in such a way that a particular individual can participate – with or without assistance."²⁵ MMA would propose going further than this, with an expanded definition that includes "the ability of persons with disabilities to meaningfully and equally access and enjoy services, including broadcasting and electronic communications services, that are inclusive, relevant, useful and safe".
23. Furthermore, drawing on the Web Content Accessibility Guidelines (WCAG) 2.1,²⁶ MMA urges ICASA to incorporate the following four principles as elements of accessibility:
 - 23.1. **Perceivable:** Information and user interface components must be presentable to users in ways they can perceive. This means that users must be able to perceive the information being presented (it cannot be invisible to all of their senses).
 - 23.2. **Operable:** User interface components and navigation must be operable. This means that users must be able to operate the interface (the interface cannot require interaction that a user cannot perform).

²⁴ Broadband Commission et al, 'The ICT opportunity for a disability-inclusive development framework' (2013) (accessible at <https://www.itu.int/en/action/accessibility/Documents/The%20ICT%20Opportunity%20for%20a%20Disability%20Inclusive%20Development%20Framework.pdf>).

²⁵ SAHRC, 'Disability Toolkit: A quick reference guide and monitoring framework' at 6 (accessible at <https://www.sahrc.org.za/home/21/files/20170524%20SAHRC%20Disability%20Monitoring%20Framework%20and%20guidelines%20Draft%205.pdf>).

²⁶ Accessible at <https://www.w3.org/TR/WCAG21/>.

- 23.3. **Understandable:** Information and the operation of the user interface must be understandable. This means that users must be able to understand the information as well as the operation of the user interface (the content or operation cannot be beyond their understanding).
- 23.4. **Robust:** Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies. This means that users must be able to access the content as technologies advance (as technologies and user agents evolve, the content should remain accessible).
24. MMA submits that the expanded definition and the incorporation of these principles will serve to ensure that accessibility is meaningfully realised for persons with disabilities.

Application to children with disabilities

25. Children with disabilities are amongst the most marginalised groups in South Africa. Accordingly, MMA submits that the Draft Regulations should ensure that the special needs and considerations of children with disabilities are considered in each of the key areas highlighted. What may work for adults with disabilities may well not be appropriate for children with disabilities, and programmes and practices overseen by ICASA through its licensees need to recognise and ensure that the nuanced differences are appropriately addressed.

Application to elderly persons

26. Many elderly persons suffer from hearing or visual impairment as a product of age, and consequently have difficulties in accessing broadcasting and electronic communication services. There is a direct overlap in the experiences between persons with disabilities and elderly persons. This has been recognised by other regulators globally, such as the United Kingdom's Office of Communications (Ofcom), which has established a joint Advisory Committee for Older and Disabled People.²⁷ This is important because elderly persons may not be considered as having a disability as such, and may therefore be excluded from the ambit of the Draft Regulations.
27. MMA submits that the Draft Regulations should make clear that, in addition to persons with disabilities, the provisions also apply to elderly persons as well.

²⁷ Ofcom, 'Terms of reference for the Advisory Committee for Older and Disabled People' (6 February 2019) (accessible at https://www.ofcom.org.uk/data/assets/pdf_file/0016/143035/terms-of-reference-acod.pdf).

IMPERATIVE OF UNIVERSAL ACCESS TO THE INTERNET AND OTHER ICTS

Importance of universal access to the internet and other ICTs

28. While the Draft Regulations contain certain provisions to facilitate the use of ICTs by persons with disabilities, MMA is concerned that the Draft Regulations appear silent on universal access to the internet and other such ICTs. This is a critical aspect that is missing from the Draft Regulations, and that should be included.

29. It is by now well-established that the internet has transformed the free flow of information between individuals by offering anyone with an internet connection the ability to gather and share information and ideas. This, in turn, has had a profound effect on the exercise and protection of the triad of information rights, namely the right to freedom of expression, access to information and privacy. Accordingly, access to information, through broadcasting and ICTs, presents innumerable opportunities to engage, learn, express views and participate. As MMA has previously noted:²⁸

“Universal access to online information can, should and must be made accessible for all persons in South Africa. This is necessary for the realisation of the full array of fundamental rights guaranteed under the country’s constitutional and international human rights commitments. Further, this is central to achieving a more equitable and informed society, in which all persons in the country are able to unlock the potential that access to the internet, ICTs and other online information can offer.”

30. However, for persons with disabilities, there are barriers to access that can hinder their abilities to use these services in a way that is meaningful, relevant and useful to them in their daily lives.²⁹ Services are often not designed, developed, produced and distributed with persons with disabilities in mind, hindering their access, use and enjoyment of important and empowering services, and risking leaving persons with disabilities further behind.³⁰ It is necessary to note that “[f]or most people, technology makes things easier. For people with disabilities, technology makes things possible”.³¹

31. In order to achieve universal access to the internet and ICTs, MMA together with a coalition of organisations – the South African National Editors’ Forum, the Interactive Advertising Bureau of South Africa and the Association for Progressive Communications – put together a seven-point plan for South Africa, which proposes the following initiatives:³²

²⁸ MMA et al, ‘Universal access to the internet and free public access in South Africa: A seven-point implementation plan’ (2019) (accessible at <https://internetaccess.africa/wp-content/uploads/2019/10/UA-Report.pdf>).

²⁹ United Nations Human Rights Council, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (2011) A/HRC/17/27 (accessible at https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf).

³⁰ UNDESA, above n 22.

³¹ Bryant & Seok ‘Introduction to the special series: Technology and disabilities in education’ 29 *Assistive Technology* (2019) (accessible at <https://www.tandfonline.com/doi/pdf/10.1080/10400435.2016.1230154?needAccess=true>).

³² Accessible at <https://internetaccess.africa/universal-access/>.

- 31.1. Free public access to the internet at government facilities.
 - 31.2. Zero-rated access to government websites.
 - 31.3. Free wi-fi in public spaces.
 - 31.4. Access to the internet as a basic municipal service.
 - 31.5. Digital literacy and skills development programmes.
 - 31.6. Minimum protections in the provision of free access to the internet.
 - 31.7. Oversight and monitoring of the progressive realisation of free access to the internet.
32. MMA submits that ICASA should consider incorporating the commitments contained in the seven-point plan into the Draft Regulations, to the extent applicable, as these align with South Africa's domestic and international law obligations in respect of persons with disabilities.

Commitments to universal access under domestic law

33. The Disability and ICT Strategy acknowledges that access to ICTs is "central to the country's strategies for achieving social upliftment and improving the quality of life of all people, including those who have disabilities and address the digital divide."³³ Notably, the Disability and ICT Strategy was guided by the principles of universal access and universal design, accessibility, equal participation and self-representation.³⁴ As mentioned above, it identifies ICASA's role as being to ensure that ICTs are accessible, available and affordable for persons with disabilities.³⁵
34. Additionally, the National Development Plan 2030 (NDP): Persons with Disabilities as Equal Citizens contains further policy commitments in respect of persons with disabilities.³⁶ Importantly, in respect of access to ICTs and the ICT sector, it provides for the following targets to be achieved by 2020 and improved on by 2030:³⁷
- 34.1. The number of persons with disabilities with access to ICT will have increased, alongside benefits from the information society and knowledge economy on an equal basis with other population segments of South Africa.

³³ Department of Communications, above n 17 at p 6.

³⁴ Id.

³⁵ Id at pp 17-18.

³⁶ Department of Social Development et al, 'National Development Plan 2030: Persons with Disabilities as Equal Citizens' (2015) (accessible at <http://www.women.gov.za/images/Disability-Analysis-of-the-National-Development-Plan-2030.pdf>).

³⁷ Id at pp 27-28.

- 34.2. The needs of persons with disabilities from all race groups, with gender balance and distribution across all different segments of disability and in all provinces, will be mainstreamed in a national e-strategy; public and private ICT investment; open-access policies; literacy; ICT rebates and incentives when developing ICT applications; regional integration and harmonisation; plans to extend broadband penetration; and strategies for benchmarking South Africa's performance against other countries.
- 34.3. At least 7% by 2020, and 10% by 2030, of both unskilled and skilled job opportunities in the ICT sector will be persons with disabilities from all race groups, with gender balance and distribution across all different segments of disability and in all provinces, in line with set employment targets.
- 34.4. Provisions of the Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) and broad-based black economic empowerment (BBBEE) that relate to the inclusion of persons with disabilities will be implemented during procurement processes.
35. MMA submits that the Draft Regulations should expressly incorporate these targets for universal access for persons with disabilities, and ensure that they also include children with disabilities. The Draft Regulations should make clear that universal access to the internet and other ICTs is an overarching objective, and that there is a clear and targeted responsibility on both ICASA and ECS licensees to ensure that this is achieved.

Commitments to universal access under international law

36. The CRPD (which has been signed and ratified by South Africa) provides useful guidance on the state's obligations to persons with disabilities. For example, article 4 of the CRPD provides that states must:

“[U]ndertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

provide accessible information to persons with disabilities about mobility aids, devices, and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.”

37. The CRPD provides further, at article 9, that 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 ... information and communications, including information and communications technologies and systems”. This includes “new information and communications technologies and systems, including the Internet”. Importantly, states are required to “promote the design, development, production and distribution of accessible information and communications

technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.”

38. In respect of freedom of expression and access to information, the CRPD requires states to “take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice”, including by:
 - 38.1. Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost.
 - 38.2. Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes, and formats of communication of their choice by persons with disabilities in official interactions.
 - 38.3. Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities.
 - 38.4. Encouraging the mass media, including providers of information through the internet, to make their services accessible to persons with disabilities.
 - 38.5. Recognising and promoting the use of sign languages.
39. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (which has been signed by South Africa) promotes the accessibility of information and inclusion in the use of communications technologies and systems, requiring states to take reasonable and progressive steps to facilitate “barrier-free access which includes the provision of information, communications, sign languages and tactile interpretation services, braille, audio and other services, including electronic services and emergency services.”³⁸
40. MMA urges ICASA to incorporate these international obligations into the Draft Regulations, as they serve a crucial role in ensuring the realisation of the fundamental rights of persons with disabilities. These obligations expressly recognise the need for states to engage with the private sector to realise these rights, and the Draft Regulations are a prime opportunity for ICASA to foster engagement with licensees to facilitate the implementation of these international law commitments.

³⁸ Article 15 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (2018).

Need for media and information literacy skills

41. In the NDP: Persons with Disabilities as Equal Citizens, the rationale for the targets is explained as follows:³⁹

“This is as per the NDP target to ensure that persons with disabilities have ‘equal opportunities for their productive and gainful employment’. Improving equitable access to ICT services will require action to stimulate demand and mainstream disability. At the most fundamental level, e-literacy needs to be improved among persons with disabilities as this might be essential for achieving the objectives of the NDP.”

42. Indeed, beyond access and connectivity, persons with disabilities need a set of necessary skills for using the internet and other ICTs. Unfortunately, a lack of digital literacy is emerging as a significant barrier to internet use.⁴⁰ Media and information literacy skills include digital literacy, and speak to the ability of persons with disabilities to have appropriate digital and technical skills. It further envisages a set of competencies, ranging from finding, evaluating and managing information; interacting, sharing and collaborating; developing and creating content; safely using protection features; and knowing how to solve problems and be creative.
43. Media and information literacy skills facilitate meaningful and active participation with online services. This includes making informed choices regarding the personal content being communicated, understanding the importance of privacy and avoiding risk, all while exercising the right to freedom of expression online. Being digitally literate allows persons with disabilities to develop an appreciation of the many opportunities of the online world.
44. Some key competencies have been identified for children to be digitally literate include the following:⁴¹
- 44.1. Access and operate in digital environments safely and effectively.
 - 44.2. Critically evaluate information.
 - 44.3. Communicate safely, responsibly and effectively through digital technology.
 - 44.4. Create digital content.
 - 44.5. Respect others online.
 - 44.6. Participate online and contribute to online civic engagement.

³⁹ Department of Social Development et al, above n 36 at p 27.

⁴⁰ MMA, ‘Submissions on the Draft National Youth Policy for 2020-2030 (NYP2030)’ (2020) (accessible at <http://mediamonitoringafrika.org/wp-content/uploads/2020/03/200316-MMA-Submission-on-the-NYP2030.pdf>).

⁴¹ Id.

45. In the current digital era, media and information literacy skills are central to leading a complete and meaningful existence, and being active participants in matters of democracy, governance and other civic engagements. Furthermore, actions need to be taken to foster other appropriate digital skills, including digital safety, the ability to engage with media content and spot disinformation, and an awareness of how technology, big data and algorithms shape society.
46. The Draft Regulations should expressly recognise the role to played by ICASA and licensees in fostering these skills for persons with disabilities. This should be included int the targets that are set, and should be part of the reporting and compliance frameworks that are developed.

ACCESS TO INFORMATION DURING EMERGENCY OR DISASTER SITUATIONS

47. The Draft Regulations provide that “[a] television broadcasting service licensee must provide for a news text strapline, in case of breaking news across channels.” MMA submits that, while this is an important inclusion, this provision should go further to cater for the imperative need to access information during emergency or disaster situations. In this regard, it has been noted that:⁴²

“Access to instant, current, reliable, and relevant information and communication before, during, and after an emergency or disaster situation saves lives and reduces injuries and damage to property. ICTs can improve the capacity of persons with disabilities and their families as well as response personnel, community workers, and disaster management authorities to prepare better, respond quickly, and access disaster relief services more easily.”

48. The current global health crisis has illustrated that this need, is more urgent now than ever before. There are mounting concerns that “critical messages about the disease that are disseminated by health authorities, telecom companies, and broadcasters are not reaching persons with visual and hearing impairments.”⁴³ CIPESA explains that:⁴⁴

“[C]oncern is growing that some persons with disabilities are being left behind in accessing information on COVID-19. This is because, despite the recent expansion in the usage of ICT in the region, a large section of persons with disabilities faces digital exclusion due to lack of access and affordability of the requisite ICT tools and equipment, as well as failure by broadcasters and telecom operators to provide information and services in disability friendly formats.”

⁴² Raja, above n 3 at p 19.

⁴³ Kimumwe, ‘Why access to information on COVID-19 is crucial to persons with disabilities in Africa’ *CIPESA* (2020) (accessible at <https://cipesa.org/2020/04/why-access-to-information-on-covid-19-is-crucial-to-persons-with-disabilities-in-africa/>).

⁴⁴ Id.

49. The World Health Organisation (WHO) has published guidelines on disability considerations during the COVID-19 outbreak, in which it recognised the importance of ensuring that health information and communication is accessible.⁴⁵ The WHO advised the following actions for states:⁴⁶
- 49.1. Include captioning and sign language for all live and recorded events and communications. This includes national addresses, press briefings, and live social media.
 - 49.2. Convert public materials into “Easy Read” format so that they are accessible for people with an intellectual disability or cognitive impairment.
 - 49.3. Develop accessible written information products by using appropriate document formats, (such as “Word”), with structured headings, large print, braille versions and formats for people who are deafblind.
 - 49.4. Include captions for images used within documents or on social media. Use images that are inclusive and do not stigmatise disability.
 - 49.5. Work with disability organisations, including advocacy bodies and disability service providers to disseminate public health information.
50. MMA submits that the Draft Regulations should include disability-inclusive responses to emergency and disaster situations, including in the context of health or natural disasters that may arise. On matters of such significant public importance, MMA is of the view that persons with disabilities are at risk of being excluded from the public narrative and discourse, which would thereby violate their right to receive and impart information in the public interest. Considerations in this regard might include the following:⁴⁷
- 50.1. Audio and visual alerts on television accompanied with captions and sign language interpretation;
 - 50.2. Cell broadcasts that generate audio and visual alerts;
 - 50.3. Email and desktop alerts;
 - 50.4. Web-based portals and multimedia content; and
 - 50.5. Dedicated mobile apps.

⁴⁵ WHO, ‘Guidelines on disability considerations during the COVID-19 outbreak’ (2020) (accessible at https://www.who.int/docs/default-source/documents/disability/eng-covid-19-disability-briefing-who.pdf?sfvrsn=963e22fe_1)

⁴⁶ Id.

⁴⁷ Raja, above n 3 at p 20.

MONITORING AND REPORTING

51. MMA notes that the Draft Regulations require that a television broadcasting service licensee must prepare a three-year accessibility plan setting out measures for that licensee to promote accessibility for persons with Disabilities to its broadcasting service. MMA welcomes the notion of an accessibility plan, but is concerned that the same requirement is not applied to ECS licensees. While ECS licensees have requirements regarding universally designed products, assistive devices and the national relay system, which is inclusive of some time frames, and are required to submit annual reports, MMA submits that ECS licensees should equally be required to provide accessibility plans.
52. Furthermore, MMA submits that the Draft Regulations should be clearer in terms of the targets to be achieved, including in respect of universal access to the internet and ICTs. In this regard, the Draft Regulations could draw on the targets contained in, for example South Africa Connect, to set out the obligations on ECS licensees to progressively realise the right to universal access for persons with disabilities.
53. A clear monitoring framework, coupled with appropriate targets, will serve to ensure that the impact of the Draft Regulations can be evaluated in an effective manner to ensure that the desired outcomes are being achieved.

CONCLUDING REMARKS

54. Access to broadcasting and electronic communication services, including universal access to the internet and ICTs, is central to ensuring that persons with disabilities are not left behind, are afforded equal opportunities to realise their rights, and are empowered to participate and contribute to society. All persons, including persons with disabilities, must be afforded the opportunity to enjoy the benefits of being able to receive and impart this information, learn, associate, educate and innovate. In order for this to be realised, the regulations that guide those responsible for this access need to be inclusive, clear and representative of current and future needs.
55. MMA remains available to assist and contribute further to the processes relating to the Draft Regulations, including to present oral submissions at any public hearings and to make further written submissions on amended versions of the Draft Regulations. Please do not hesitate to contact us should you require any further information.

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