
NAMIBIAN DIGITAL RIGHTS DECLARATION

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¹ Initial consultations on the zero draft of this Declaration took place on 21 and 22 September 2022 at the inaugural Namibia Internet Freedom Forum 2022 (NIFF2022) at the Protea Hotel, Furstenhof, Windhoek.

NAMIBIAN DIGITAL RIGHTS DECLARATION

We, the below-listed civil society organisations and actors, in furtherance of accessible, safe, and inclusive Internet and digital spaces in Namibia, hereby present the Namibian Digital Rights Declaration (“Digital Rights Declaration” or “Declaration”).

This Declaration details the principles which should inform the development of law, policies, and practices in the short- medium-, and long-term to ensure that the Internet and digital spaces respect and enable rights, and serve the people who use them, or intend to use them, including vulnerable and marginalised groups.

PREAMBLE

We recognise that as Namibia becomes more active in the global digital economy, the values of inclusive, non-racial, child-friendly, and feminist digital spaces² must be respected, protected, and promoted.

We note that advancements in digital technologies are rapid and that the principles in this Declaration should be interpreted widely and in a manner that protects the best interests of people in digital spaces.

We affirm that the principles in this Charter should be read with article 5 (protection of fundamental rights and freedoms), article 8 (respect for human dignity), article 10 (equality and freedom from discrimination), article 13 (the right to privacy), article 15 (children’s rights), and article 21 (fundamental freedoms) of the Constitution of the Republic of Namibia, 1991 (“Constitution”), and Namibia’s international and regional human rights commitments and obligations.

We envisage that the above-mentioned articles may need to be developed to include the right to a sanctuary (which extends the right to privacy in the home and prohibits extractive data practices, without free, full, prior, and informed consent); the right to be free from non-consensual behavioural modification through data manipulation (which extends the right to freedom of thought), the right to a digital environment free from harm to health, dignity, or wellbeing and the right to be forgotten (which extends the right to human dignity), and other emerging digital rights.

We recall the regional and international instruments and standards, which are binding on the Republic of Namibia in terms of section 144 of the Constitution, including the *Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019)* and the *African Declaration on Internet Rights and Freedoms*.

We reaffirm our solidarity with people in digital spaces in Namibia as they exercise their digital rights, empower themselves, and enable the next generation of digital rights activists.

² Digital spaces include all spaces enabled by the Internet, and any associated and ancillary online spaces.

We call on all stakeholders, including the Namibian government, its lawmakers and policymakers, technology companies, civil society actors, and individuals to meaningfully engage with the principles in this Declaration to ensure that they are progressively realised and developed over time.

PRINCIPLES

Meaningful engagement

1. In the formulation of all laws and policies relating to the Internet and digital spaces in Namibia, the Namibia government must meaningful engage³ with all relevant stakeholders to ensure that law and policy reflects the will and best interests of people in, or who intend to join, digital spaces in Namibia.

Application and access

2. Everyone has the right to universal, safe, affordable, accessible, open, meaningful, and equal access to the Internet and digital spaces.
3. Law and policy must recognise that rights which apply offline must be protected and promoted online.
4. No one on the Internet and digital spaces should be left behind, including women, girls, and marginalised and vulnerable groups, and urgent steps must be taken to reduce and remove the digital divide.
5. The Internet and digital spaces in Namibia may not be intentionally “shut down” or disabled, and access to the Internet and digital spaces may not be intentionally restricted, blocked, filtered, or throttled.
6. Everyone has the right to a digital environment that is free from harm to their health, dignity, or wellbeing.
7. The Internet and digital spaces must be safeguarded for the equal benefit of current and future generations.

Information rights⁴ and data protection

8. Privacy and the protection of personal information on- and offline must be urgently prioritised and rights-based safeguards must be enacted in legislation.
9. The right to a sanctuary, in which people without their free, full, prior, and informed consent are free from extractive data practices in their homes, should be recognised as an extension of the right to privacy.

³ Meaningful engagement means providing a reasonable opportunity to all stakeholders to engage in and influence democratic processes, including law and policy formulation.

⁴ Information rights include the rights to autonomy, equality and non-discrimination, privacy, freedom of expression, and access to information.

10. Any limitations to information rights must be necessary, justifiable, clearly prescribed by law, and allow for the right to a remedy.
11. A well-resourced, independent, and functional data protection authority must be established, with enforcement powers over both public and private actors. Alternatively, a specialised office focusing on data protection must be established within the Namibian Ombudsman.

Equality and non-discrimination

12. The discriminatory and biased patterns that technology, including artificial intelligence, may enforce must be identified, recognised, mitigated, and removed.
13. Digital rights policies and frameworks must provide nuanced and intersectional protection to people in digital spaces, and must consider race, gender, sex, sexual orientation, age, class, and disability, among others.

Identity and pseudo-identity

14. The identity and personal information of people in digital spaces should not be altered without consent.
15. People in digital spaces must be allowed to make use of a pseudo-identity, anonymity, and encryption online,⁵ provided that it is not used to incite hate, violence, or impair the rights of other people in digital spaces.
16. Everyone has the right to be forgotten and to have their personal information removed from digital spaces, including by being de-listed from online search engines, provided that there is not a countervailing public interest justification in ensuring that the information remains publicly accessible.

Online harms and surveillance

17. The right to be free from non-consensual behavioural modification through data manipulation, as an extension of the right to freedom of thought, should be recognised.
18. Technology-enabled gender-based violence and the targeting of women and girls, including women journalists, and members of the LGBTQI+ community, including through online harassment, cyberstalking, and hate speech, must be addressed in policy and prohibited by law.
19. No one may be subject to the non-consensual sharing of intimate media, including audio, images, and video.
20. Media and digital literacy campaigns should be established to educate people in digital spaces on the threats of dis-, mis-, and mal-information.

⁵ The rights to anonymity and encryption online should be by default. Any derogation from these rights, should be necessary, justifiable, clearly prescribed by law, and allow for the right to a remedy.

21. Mass surveillance,⁶ including social media monitoring, is inherently indiscriminate and unlawful and must be prohibited by law.
22. Everyone has the right to be free from unlawful targeted surveillance⁷ by public and private actors.

Protection of children

23. In the formulation of all laws and policies relating to the Internet and digital spaces in Namibia, the best interests of the child is of paramount importance.
24. Laws and policies which focus on protecting and promoting the human rights of children on the Internet and digital spaces in Namibia should be developed.

Protection of persons with disabilities

25. Accessibility measures must be prioritised to ensure that people with disabilities are able to exercise their rights in digital spaces, without undue systemic challenges.
26. The participation of people with disabilities in creating and implementing technology should be fully recognised.

Digital education and online participation

27. As Internet penetration rates increase, so should efforts to promote digital literacy and education on online safety for people of all ages.
28. Capacity-building and educational resources on information rights should be developed for lawmakers, policymakers, and judicial officers.

Environmental sustainability

29. Technological development and use must be environmentally sustainable and responsible.

Right to a remedy

30. Appropriate remedies for technology-enabled discrimination and violence must be expressly recognised in legislation, including broader public interest standing provisions, and appropriate redress measures, including access to courts, must be established and enabled.
31. A specialised online-harms court should be established, with concurrent jurisdiction with the data protection authority or the Namibian Ombudsman.

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⁶ Mass surveillance refers to the ongoing and disproportionate surveillance of a civilian population without judicial authorisation or any clearly discernible and targeted purpose.

⁷ Targeted surveillance refers to surveillance of a defined target with judicial authorisation and a clearly discernible purpose.

Endorsed by:

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ENDS.

ZERO DRAFT