



## **International Mechanisms for Promoting Freedom of Expression**

### **JOINT DECLARATION ON THE PROTECTION OF FREEDOM OF EXPRESSION AND DIVERSITY IN THE DIGITAL TERRESTRIAL TRANSITION**

**The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,**

*Having met in Pretoria on 5 April 2013 and having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression and the Centre for Law and Democracy;*

*Recalling and reaffirming* our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010, 1 June 2011 and 25 June 2012;

*Emphasising*, once again, the fundamental importance of freedom of expression both in its own right and as an essential tool for the defence of all other rights, as a core element of democracy and as indispensable for advancing development goals;

*Recognising* the potential of a robust, diverse media to promote the free flow of information and ideas in society, through both providing voice opportunities and satisfying information needs and other interests, thereby contributing to democracy, social cohesion and broad participation in decision-making;

*Concerned* about the fact that, in many countries, commercial and political considerations have dominated discussions and policy making regarding the transition to digital terrestrial broadcasting (switchover or digital transition), to the detriment of human rights, and particularly freedom of expression considerations, including diversity, and the protection of the rights of viewers and listeners;

*Recalling* that the airwaves are a public and freedom of expression resource, and that States are under an obligation to manage this resource, including the 'digital dividend', carefully so as best to give effect to the wider public interest;

*Stressing* that States have an obligation to promote and protect the right to freedom of expression, and equality and media diversity, and to provide effective remedies for violations of these rights, including in the digital transition process;

*Noting* that, if not carefully planned and managed, the digital transition can exacerbate the risk of undue concentration of ownership and control of the broadcast media;

*Mindful* of the risk that a poorly managed digital transition process may result in diminished access to broadcasting services by less advantaged segments of the population (a form of digital divide) and/or

in the inability of less well-resourced broadcasters, in particular local and community services, to continue to operate, undermining media pluralism and diversity;

*Cognisant* that, while a planned approach to overall spectrum allocation is always important, it takes on even greater importance in the context of the digital transition, given the increasing competition for spectrum resources, including for mobile uses, as well as the distribution of channels via multiplexes;

*Stressing* the need for decision-making processes relating to the digital transition to be as transparent and participatory as possible, given the broad impact of these decisions, including on freedom of expression;

*Aware of* the enormous complexity of the choices that need to be made in the context of the digital transition, which involve human rights, commercial, technological, public resource, consumer interest and other public interest considerations, which vary considerably from State to State, thereby precluding a one-size-fits-all approach;

*Cognisant of* a number of relevant international standards on freedom of expression, as well as specific international and regional standards and recommendations on the digital transition;

*Adopt*, in San José, Costa Rica, on 3 May 2013, the following Joint Declaration on Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition:

#### 1. General Principles

- a. States should ensure that respect for freedom of expression, including diversity in the airwaves, is ensured in the digital terrestrial transition process.
- b. States should ensure that decision-making processes relating to the digital terrestrial transition take place in a transparent and fully consultative manner, allowing for all stakeholders and interests to be heard. One option here is to create a multi-stakeholder forum to oversee the consultative process.
- c. States should make sure that the digital terrestrial transition takes place in a planned, strategic manner which maximises the overall public interest, taking into account local circumstances. This may include decision-making which involves trade-offs between quality (such as the availability of high definition television) and quantity (such as number of channels), depending on the degree of pressure on the spectrum.
- d. While key policy decisions regarding the digital terrestrial transition need to be taken by government, implementation of those decisions is legitimate only if it is undertaken by a body which is protected against political, commercial and other forms of unwarranted interference, in accordance with international human rights standards (i.e. an independent regulator).
- e. The process for allocating broadcasting licenses should be strictly regulated by law and be guided by clear, objective, transparent and democratic criteria. This includes the need for the legal framework to be sufficiently clear to prevent arbitrary actions, including actions based on the editorial line of a broadcaster, to require decisions to be justified and published, and to allow for judicial review of decisions.
- f. While the International Telecommunications Union (ITU) has set indicative switch-off deadlines for analogue terrestrial television, no such global process is in place for analogue radio services. States should consider whether the broader public interest would be served by putting in place a digital transition process, and specifically a process leading to an analogue switch-off, for radio broadcasting services, whether this should be left to be considered in due

course, or whether part of the spectrum should be reserved for analogue radio broadcasting for at least the near future.

## 2. Core Policy Processes

- a. Core policy decisions – such as what technological backbone to use for digital terrestrial transmission, overall spectrum planning, the approach towards the allocation of multiplexes, and the respective roles played by the regulator, existing broadcasters and free market forces – should ensure respect for freedom of expression and a balance between the various competing interests, taking into account national circumstances.
- b. Regulators should have the necessary mandate and resources – in terms of human and technological capacity, and monitoring and enforcement powers – to implement core policy decisions.
- c. Whether multiplexes are run by content service providers or independent operators, clear rules should be in place regarding the allocation of capacity (or additional capacity) on the multiplex, including, as appropriate, to ensure that this is done in a fair, transparent and non-discriminatory manner. This takes on particular importance in countries with only one multiplex.

## 3. Promoting Diversity and Related Goals

- a. State policies and licensing processes relating to the digital terrestrial transition should promote media diversity.
- b. As a general principle, the digital terrestrial transition should enable the continued provision of existing broadcasting services. Reasonable and proportionate must-carry and must-offer rules for multiplexes should, as necessary, be put in place to promote this goal.
- c. States should ensure that independent public service broadcasters are able to continue to distribute their existing services terrestrially through and after the digital transition (and that any government or State broadcasters are transformed into public service broadcasters). This should include measures to ensure that they have the necessary legal, technological, financial and organisational resources for this. Where necessary, special financial or other measures may be needed to ensure that public service broadcasters are able to obtain or use the necessary equipment to disseminate their signals digitally.
- d. States should also ensure that community and local broadcasting services are able to continue through and after the digital terrestrial transition. Consideration should be given to various measures to this end, as necessary, including the following:
  - i. Allowing certain types of broadcasters – in particular low power local and community services – to continue to distribute via analogue terrestrial signals, insofar as this is consistent with international standards.
  - ii. Allowing certain types of broadcasting services to be provided without a licence in certain designated spectrum bands.
  - iii. Regulatory measures to reduce and/or spread the costs of digital terrestrial dissemination, for example by prescribing shared or otherwise more efficient distribution networks.
  - iv. The provision of subsidies or other forms of support to assist community and local broadcasters to obtain the necessary equipment to be able to distribute their terrestrial signals digitally, provided that subsidies should be allocated by an independent body, based on objective criteria.
  - v. Measures to use the resources generated by the digital dividend to defray infrastructure costs.

- e. The promotion of diversity should be a mandatory criterion to be taken into account in decision-making in relation to the specific services that are provided on digital multiplexes, whether, or to the extent, that these decisions are taken by multiplex operators or regulators.
- f. The potential of digital broadcasting to improve access for people with hearing and visual disabilities should be given due priority in the planning and decision-making process for the digital terrestrial transition.
- g. The need to promote diversity in broadcasting should be an important consideration to be taken into account in decision-making in relation to the broad reallocation of the spectrum freed up by the switch-off of analogue broadcasting (the digital dividend). Considerations to be taken into account in this regard include:
  - i. The extent to which the broadcasting environment caters to the interests of all groups in society, including cultural and linguistic minorities, and people living in different areas and regions.
  - ii. The diversity of types of content which are available through the broadcasting system.
  - iii. The interest in and capacity of existing and aspirant broadcasters to provide new channels.
  - iv. The financial resources available within the broadcasting system as a whole, including any public or cross-subsidies, to support new content production.
  - v. The diversity benefits of requiring multiplex operators to carry local, community and/or independent broadcasting services.
  - vi. The diversity benefits of allocating new channel and other capacity to public service broadcasters.
  - vii. The possibility of providing public funding for the development of new broadcast content or channels.
- h. Special measures should be put in place, as necessary, to prevent the digital terrestrial transition from promoting greater or undue concentration of media ownership or control. This might include regulatory measures regarding the way in which multiplexes are run, clear pricing and competition rules regarding multiplexes and distribution networks, and the separation of distribution and content operations within the same business, among other things.

#### 4. Cost Considerations and Universal Access

- a. States should put in place measures to limit the cost to end users of the digital terrestrial transition, specifically with a view to limiting the number of individuals and households which are unable to afford to make the transition and to ensuring that these costs do not lead to a 'digital divide' between those who can afford to access new services and those who cannot. These measures may include:
  - i. The imposition of technical standardisation to lower the production costs of devices such as set top boxes (STBs).
  - ii. Regulatory measures to ensure the interoperability and compatibility of reception, decoding and decryption devices.
  - iii. Subsidy programmes for poorer households.
  - iv. Appropriate trade-offs between, and technological solutions for, meeting the interests of better and less well off end users.
- b. Regulatory approaches and decisions regarding free and pay services should strike an appropriate balance between commercial needs and ensuring broad access to a core platform of services.

- c. States should create and support a multi-strand public educational outreach programme throughout the digital transition process to ensure that end users are aware of the process and of what they need to do to prepare for it, and have at least the basis technical knowledge they need. As part of this outreach programme, consideration should be given to the following elements:
  - i. Special outreach efforts to ensure appropriate information is provided to hard-to-reach end users.
  - ii. Special outreach efforts to ensure that end users who may be technologically challenged – for example elderly or rural users – have the knowledge and understanding they need.
  - iii. Support programmes, such as call centres or training programmes, for people who need help.
  - iv. More intensive outreach as the analogue switch-off approaches.
- d. States should make an effort to ensure that, by the time the switch-off takes place, the geographic reach of digital services is, overall, at least comparable to and preferably greater than the reach of pre-existing analogue services.
- e. Support services, including electronic programme guides, should be available in user-friendly and non-discriminatory formats, including availability in different languages spoken in the coverage area.

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