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|  | **Document EG-ITRs-2/17** |
| **17 January 2024** |
| **English only** |
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| Contribution from Ghana, Kenya (Republic of), South Africa (Republic of), and Tanzania (United Republic of) |
| EMPIRICAL DATA ON THE CURRENT USE OF THE ITRS BY OPERATING AGENCIES AND/OR ADMINISTRATIONS AND THE PROPORTION OF GLOBAL TELECOMMUNICATION SERVICES WHICH NOW RELY ON THE ITRS |
| **Purpose**The purpose is to provide empirical evidence regarding the use of the International Telecommunications Regulations 1988/2012.**Action required**This document is submitted to EG-ITRs **for consideration** and **to also note** the continued relevance of some of the provisions/principles contained in the ITRs. |

**1. Current Application of the ITRs by some African Countries:**

This contribution highlights the use of the ITRs by some African countries. It is the intention of the contributors, as the EG-ITRs continues to hold meetings and perform its duties in line with the TORs, to provide additional information regarding African countries that implements and/or relies on the ITRs.

**South Africa:**

**Articles 3 & 4 of the 1988/2012 ITRs -**

**The Electronic Communications Act, 2005 (Act No. 36 of 2005):**

The objects of the Electronic Communications Act, 2005 (ECA), amongst others, is to:

(a) promote and facilitate the development of interoperable and interconnected electronic networks;

(b) promote the universal provision of electronic communications networks and electronic communications services and connectivity for all;

(c) promote an environment of open, fair and non-discriminatory access to electronic communications networks and to electronic communications services;

(d) ensure the provision of a variety of quality electronic communications services at reasonable prices; and

(e) promote the interests of consumers with regard to the price, quality and the variety of electronic communications services.

Section 37 (6) of the ECA provides that “ The interconnection agreement entered into by a licensee … must, unless otherwise requested by the party seeking interconnection, be non-discriminatory as among comparable types of interconnection and not be of a lower technical standard and quality than the technical standard and quality provided by such licensee to itself or to an affiliate or in any other way discriminatory compared to the comparable network services provided by such licensee to itself or to an affiliate.”

The objects of the ECA and the provisions of section 37 (6) facilitate the provision of international telecommunications services and international network.

Section 43 (1) of the ECA provides that “… electronic communications network service licensee must, on request, lease electronic communications facilities to any other person licensed in terms of this Act and persons providing services pursuant to a licence exemption in accordance with the terms and conditions of an electronic communications facilities leasing agreement entered into between the parties, unless such request is unreasonable”.

Section 43 (1) of the ECA is very useful in circumstances where an individual licensee does not have coverage in certain geographical areas in the Republic.

Further to the above, section 43 (10) of the ECA provides that “An electronic communications network service licensee may not enter into any agreement or other arrangement with any person for access to, or use of, any international electronic communications facilities, including submarine cables and satellites, that –

*(a) …*

*(b) contains provisions that create undue barriers to access to and use of such international communication facilities; or*

*(c) otherwise restricts any party to such agreement or other arrangement from –*

*i. leasing;*

*ii. selling; or*

*iii. otherwise entering into an agreement with any licensee under this Act or person providing services pursuant to a licence exemption for access to, and use of, such international electronic communications facilities.”*

Section 43 (10) of the ECA ensures that there is provision for sufficient telecommunications facilities to meet the demand for international telecommunications services.

**2. Consultation with Operating Agencies in Africa Regarding the Usage of ITRs -**

The Operating Agencies in some African countries were asked the following questions regarding the use and implementation of the ITRs:

(a) What benefits have accrued to the operator as a result of the use/implementation of the ITRs?

(b) To what extent does the operator utilise the ITRs?

It is the intention of the contributors, as the EG-ITRs continues to hold meetings and perform its duties in line with the TORs, to provide additional information regarding the usage and reliance by some of the operating agencies operating in Africa, on the principles contained in the 1988 and/or 2012 ITRs.

**South Africa:**

Responses by Operators can be found in **Annex 1** of the contribution.

**ANNEX 1**

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| **Benefits realised by Operating Agencies** |
| * The 2012 ITRs have enabled Member States to promote the development of international telecommunication services in a more competitive environment in which South Africa, like many Member States, has liberalised markets for the provision of telecommunications services. Some operators have implemented ITU-T Recommendations relating to quality of services, Caller Line Identification (CLI), numbering etc.
* Operators align with the decisions of the Regulator in terms of regulatory requirements based on ITU-T Recommendations e.g. Child Help Line 116, national emergency service number 112, the proposed development of the SADC National Emergency Telephone Plan (NETP) requirements, etc.
* Some operators have seen the increase in undersea cable capacity and considering that international networks are implemented based on commercial considerations. For example, implementation of the ITU-T Recommendations throughout their networks based on commercial and business requirements.
* Some operators have not accrued significant direct benefits from the ITRs. Nonetheless they believe that the broad principles of the ITRs that cover charging and accounting for the provision of international telecommunications services, provide a framework for fair and efficient trade in such services across jurisdictions.
* Some operators are of the view that while Interoperability and interconnectivity are essential and are at the very core of network and services. These are implemented and bound by country specific regulatory regime and country specific environment. This means that ITRs can serve as guidelines only.
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| **Utilisation of the ITRs** |
| * The 2012 ITRs introduced a more relaxed regime for international voice termination rate.
* On 6 Oct 2017 the Regulator issued a notice that international termination rates are not regulated by the 2017 call termination rate regulations. Operators proceeded to de-link their international termination rate from its regulated national termination rate. Operators increased their international termination rates, to off-set against declining international call volumes due to alternative voice services (such as WhatsApp) and competition in the international telecommunication services market.
* Article 4 requires that Member States foster measures to ensure that authorized operating agencies provide free-of-charge, transparent, up-to-date, and accurate information to end users on international telecommunication services, including international roaming prices and the associated relevant conditions, in a timely manner. This transparency provision has been adopted by some operators and has assisted in enabling users to avoid bill-shock and thus has supported the maintenance of international roaming services in a sustainable manner. The other provisions relating to roaming in Article 4 have also assisted in maintaining network resilience and competition.
* Some operators believe the ITRs are important because, as the Regulator acknowledged in its Discussion Document on Call Termination Regulations (GG45426 on 5 November 2021), that it does not have legislative powers to directly control the international termination rates charged by terminating licensees for voice calls that originate in SA. This is where ITRs have a role to play to provide guidance to avoid South African subsidising the tax base of foreign countries.
* Some operators are not utilising the ITRs. ITRs only serve as a guiding framework.
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