



## Towards a right of access to the internet in education: Exploring emerging developments in Africa and beyond

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**Abstract:** The debate over the ‘right of access to the internet’ remains contentious among scholars, yet numerous countries have enshrined it as a means to bridge the digital divide, particularly in education. In Africa, while such initiatives are still lacking, notable progress has been achieved.

Many states in Africa, similarly to other developing regions, face a significant challenge in terms of limited infrastructure for internet access. According to [UNESCO](#), approximately 4 percent of schools in Sub-Saharan Africa possess basic internet connectivity. The proficiency required for navigating online learning platforms, coupled with technical issues, constitutes a major obstacle, particularly for students in African countries where access to quality infrastructure is constrained.

Broadband connectivity is lacking, and the exorbitant cost of internet access acts as a deterrent to the widespread use of the internet in education. Affordability is crucial for both schools and individuals to ensure unhindered access. In such a context, recognising internet access as a fundamental right holds the potential to narrow the

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digital divide and establish universal connectivity. Framing internet access as a human right can enhance equality by extending Internet access to those facing financial constraints. This, in turn, facilitates education and various other opportunities for individuals in developing countries.

### **Debates over internet access**

While [some argue](#) that internet access is a tool enabling the exercise of fundamental rights, like freedom of opinion and expression, positioning it as a civil right rather than a fundamental human right, [others](#) contend that its implicit connection to and necessity for the realisation of other fundamental human rights make an explicit recognition unnecessary.

Nonetheless, establishing a fundamental right to internet access [would empower](#) individuals to compel states to provide electronic communication services, creating a legal avenue to address inadequate internet access. It is [further argued](#) that Internet access ought to be recognised as a fundamental entitlement given its indispensable role in enabling individuals to lead minimally decent lives. In this perspective, the UN High Commissioner for Human Rights, Volker Türk, [has particularly voiced](#) in favour of reinforcing universal access to the internet as a human right rather than a mere privilege.

Proposals to designate the internet as a [public utility](#) aim to guarantee universal access, emphasising the need for a robust policy framework and substantial investment in connectivity and services to ensure meaningful and affordable internet access for educational purposes. Civil society initiatives, notably exemplified by the [African Declaration on Internet Rights and Freedoms](#), are proliferating across the continent to advance this agenda. By adopting a human rights centred approach, the declaration advocates for ‘available and affordable [internet access] to all persons in Africa’, devoid of discrimination, and enshrines the right of every individual to access online information (principle 2 of the Declaration). It also urges states to establish clear legal, regulatory, and policy frameworks while ensuring robust safeguards against violations (principle 12 of the Declaration).

### **Positive developments around the world**

It is worth considering some positive developments in this context. Estonia serves as a notable example of integrating internet access into its universal service framework, affirming it as a legal right for all citizens through the 2000 Estonia’s [Telecommunications Act](#) (article 5), underlining the nation's commitment to digital inclusion. To support this initiative, Estonia [invested](#) in digital tools and learning materials, fostering the effective utilisation of modern technology in education and research.

The Estonian government has [implemented](#) a comprehensive program ensuring that each school receives computers, internet access, and training for teachers in utilising technology for educational purposes. Additionally, the development of educational

software aims to facilitate digital learning, enhance students' IT skills, and support municipalities in establishing robust ICT structures. As of February 2024, Estonia [boasted](#) a 93.7 percent internet penetration rate, with 1.24 million of internet users. In India, a significant legal development occurred in 2019 when the High Court of Kerala [ruled](#) that the right to access the internet is an integral component of the right to education and privacy under Article 21 of the Constitution. This ruling stemmed from a petition challenging discriminatory student hostel rules restricting mobile phones and laptops. The court emphasised that denying access to digital devices disproportionately disadvantaged female students, highlighting the crucial role of digital resources in education. This precedent-setting decision could pave the way for broader recognition of internet access as a fundamental right across India. The [Supreme Court](#) subsequently ruled in 2020 that internet access is a fundamental right, in the context of the Jammu and Kashmir internet shutdowns.

Notably, the Kerala state has made strides in improving internet connectivity in schools. A 2022 [initiative](#), in collaboration with a local network operator, BSNL, resulted in a significant upgrade from 8 Mbps to 100 Mbps FTTH connections in 4,685 schools, benefitting 45,000 classrooms. According to a 2021 [review report](#), Kerala has provided internet facilities in 95.2 percent of schools, with 94.6 percent of government schools, 96.6 percent of aided schools, and 95.1 percent of private schools equipped with Internet access.

In Mexico, a constitutional amendment in 2013 officially recognised internet access as a fundamental right, obligating the government to ensure access for those unable to afford it under [article 6](#) of the Political Constitution of the United Mexican States. This constitutional mandate places internet access on par with essential services like water and public education. Subsequently, the Mexican government has [committed](#) to expanding internet access, aiming to narrow the digital divide and alleviate poverty through strategic investments.

Thus, positive developments have emerged in America, Asia and Europe, in which the legal enshrinement of access to the internet has been possible through strategic litigation, a constitutional amendment, and a recognition as public utility. However, comparable initiatives are lacking in Africa.

### **Landmark ruling in West Africa on internet access**

While legal frameworks across African states acknowledge the right to education, there is a [notable absence](#) of specific legislation addressing internet access. Nonetheless, recent developments in West Africa underscore the significance of internet accessibility. In a [landmark decision](#), the Court of Justice of the Economic Community of West African States (ECOWAS) declared the Togolese government's internet shutdown during the [protests of September 2017](#) as illegal and a violation of the right to freedom of expression. Precisely, the court asserted that internet access is a 'derivative right' as it 'enhances the exercise of freedom of expression' and any interference with it

must be legally justified. Consequently, the Togolese government was directed to compensate the affected parties and implement measures to safeguard freedom of expression. The court even recognised the applicants' submission that the shutdowns not only affected their right to freedom of expression, but also their right to work. This ruling carries broader implications beyond Togo, leading to consider internet access as pivotal for various fundamental rights, including the rights to health, education, and cultural life. It establishes a precedent within ECOWAS, underscoring that internet shutdowns can [contravene relevant rights](#), and also that the internet is an enabler of human rights, to hold governments accountable for restricting online access.

Furthermore, the ruling underscores governments' obligation to protect internet access in accordance with international human rights standards. The ECOWAS court marked a positive step against internet shutdowns in Africa, providing a reference for challenging such actions in countries like [Guinea](#) and [Senegal](#). Governments are accountable for policies that impede internet access, thereby hindering citizens' ability to fully enjoy their rights, including in education systems, as it facilitates information dissemination and learning.