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THE AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOMS: A Positive Agenda For Human Rights Online

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THE AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOMS:

A POSITIVE AGENDA FOR HUMAN RIGHTS ONLINE

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OVERVIEW AND CONTEXT

By fundamentally changing the way in which people interact, trade, learn and communicate, the Internet presents an array of opportunities and challenges; not least for the African continent, which holds enormous potential but also faces significant economic, social and political challenges.

Of the ten economies in the world with the fastest growing Gross Domestic Product (GDP), five are in Africa.¹ Entrepreneurship in the development of new Information and Communications Technologies (ICTs) and e-commerce, including the sale of goods and services online, is contributing to economic growth on the continent and has the potential to play an even greater role in Africa's future as Internet use on the continent increases.² Future access to the Internet in Africa will primarily be mobile-driven and is set to increase twentyfold between 2013 and 2019.³ This transformation is being fed by greater numbers of low-cost smartphones and tablets entering the market, with these cheap but powerful technologies already "acting as a catalyst for the growth of diversified [African] mobile content."⁴ Moreover, the Internet in Africa is contributing to socio-political development efforts and is being used as a tool for women's empowerment,⁵ to help fill gaps in public sector capacity, to strengthen the voice of marginalised and otherwise disenfranchised groups and to increase political participation.⁶

As more Africans come online, decision-makers on the continent face both opportunities and challenges in creating new markets for digital goods and services and speeding up the continent's social, economic and political development. As the Alliance for Affordable Internet (A4AI) has recognised, "the unprecedented potential of the Internet to empower marginalised groups and deliver social change and economic benefit has not gone unnoticed by policy makers."⁷ Several African countries have already recognised and embraced this economic and developmental potential, and have taken steps to create enabling environments for Internet users.⁸

In order for this digital potential to be fully and equitably realised, enabling regulatory and policy environments should exist at the regional and national level. Most African states are just beginning to develop regulatory frameworks for the Internet and particular areas of online behaviour. Unfortunately, in the majority of cases the focus is on prohibiting and punishing undesirable online behaviour rather than fostering a positive, rights-based environment. As a result of this approach, and poor enforcement of existing human rights standards, violations of human rights online are common in countries across the continent.

The [African Declaration on Internet Rights and Freedoms](#) ("the Declaration") was drafted by African civil society organisations to guide the creation of a positive,

rights-based and democratically governed Internet policy environment in Africa. The initiative is part of a rich heritage of freedom of expression advocacy by civil society in Africa and also builds on the continent's innovative and inclusive approach towards the development of human rights instruments, first pioneered by the drafters of the [African Charter on Human and Peoples' Rights](#) and the Declaration of Principles on Freedom of Expression in Africa ⁹.

This brief aims to provide an overview of how the Declaration can spur the development of rights-based Internet policy regimes in the region. It is designed primarily for use by African civil society advocates and digital rights defenders who are seeking to engage with the wider Internet policy stakeholder community within their own countries and regions. A further objective is to inspire digital rights advocates in other parts of the world to take proactive steps to develop normative standards for the protection of human rights online in their own contexts, learning from the lessons and approach of the Declaration initiative to date.

Part 1 examines the need for a regulatory environment for the Internet in Africa, the challenges facing existing frameworks and the current gaps in international and regional frameworks. **Part 2** explains what the Declaration initiative is, how it has evolved, and explores why it can be part of the solution to these challenges. Finally, **Part 3** reflects on lessons that can be learned by digital rights defenders from this initiative.

#1

THE NEED FOR AN ENABLING ENVIRONMENT FOR A RIGHTS-BASED INTERNET IN AFRICA

1.1 THE DIGITAL DIVIDE, HUMAN RIGHTS VIOLATIONS AND REGULATORY CHALLENGES

“ICTs will play an even more significant role in the post-2015 era and in achieving the future Sustainable Development Goals as the world moves faster and faster towards a digital society.”

Brahima Sanou, Director, ITU Telecommunication Development Bureau¹⁰

Some of the most pressing challenges preventing the establishment of an enabling Internet environment on the continent are the digital divide, violations of human rights online, and the current regulatory environment. Currently, just 10.7% of African households have access to the Internet, compared to an average of 34.1% across developing countries overall. Only 20.7% of Africans use the Internet at all, compared to an average of 35.3% across developing states and 82.2% in developed states. Although 70% of users in Africa access the Internet via smartphones, the continent lags significantly behind in mobile broadband subscriptions with a penetration rate of just 17.4% compared to a global average of 46.1%.¹¹

There are numerous interrelated factors that contribute to the perpetuation of the digital divide in Africa. Significant gaps in core infrastructure on much of the continent, particularly in electricity generation and delivery, limit Internet distribution and adversely affect access and cost. Access is further limited and costs increased by a shortage of fibre-optic backbone infrastructure across much of the continent.¹² Although infrastructure is improving, with electricity generation set to grow and a number of initiatives to improve backbone infrastructure underway, it is not improving uniformly across the continent. Research undertaken by the Oxford Internet Institute (OII) indicates that within the sub-Saharan region, the digital divide may in fact be increasing.¹³ Moreover, monthly fixed-broadband prices¹⁴ are approximately three times higher in developing countries (including most African states) than in developed countries, with mobile broadband twice as expensive.¹⁵ As a result, the poorest and most marginalised Africans do not have access to Internet services. Low levels of computer literacy also mean that internal divides within African states are exacerbated and many users are left vulnerable to online fraud and exploitation.

In addition to the above challenges, the continent faces a lack of robust participatory approaches to policy development to help ensure that the Internet is beneficial to all Africans and acts as an effective tool for equitable growth and sustainable development. These processes should take into account citizens' needs and conform to international human rights standards, with effective protective legislation and enforcement mechanisms put in place. Without adequate mechanisms, the Internet in Africa risks becoming “a technological tool that is

accessible only to a certain elite while perpetuating the 'digital divide'.¹⁶ Such an eventuality would not only deprive individuals of access to the Internet but would also restrict future development and economic growth on the continent.

In order to bridge the digital divide, secure greater access to the Internet for Africans and ensure the protection of human rights, it is also necessary to have the right kind of regulatory framework. As it stands, there are numerous examples from across the continent of unlawful restrictions on freedom of expression online being imposed - with access to social media being curtailed and either all, or parts, of the Internet being shut down within states. Recently, for instance, mobile Internet was completely disabled during political unrest in Burundi.¹⁷

The government of the Democratic Republic of Congo (DRC) took similar action in January 2015.¹⁸ There are also numerous instances from across the continent of bloggers and social media commentators being harassed and imprisoned for exercising their right to free speech online, including particularly serious examples from Ethiopia¹⁹, the Gambia,²⁰ and Malawi,²¹ amongst others.²² In addition to breaching individuals' right to free expression, such actions often precede further serious human rights violations, including unlawful deprivation of liberty and due process violations.

Criminalising online defamation in Sierra Leone: the case of Mamoud Tim Kargbo

On 28 February 2015, Mamoud Tim Kargbo forwarded on a WhatsApp message that he had received but not authored in which the Sierra Leonean President was referred to as a "wounded beast". Mr. Kargbo was subsequently arrested and on 8 April 2015, charged with five counts under the Public Order Act of 1965 including: one count of calling a person by description other than his name contrary to section 3; two counts of knowingly publishing a false defamatory libel contrary to section 26; and a further two counts of defamatory libel contrary to section 27 of the Act. According to the particulars of the charges, Mr. Kargbo had published the text with the "intent" to "annoy" His Excellency, the President of the Republic of Sierra Leone. Mr. Kargbo was initially denied bail and was remanded in custody until 7 May 2015, when he was finally granted conditional bail. At the time of writing his case has yet to be tried.

Source: Media Foundation for West Africa (MFWA)

Regional and national level policy initiatives that attempt to regulate areas of online behaviour are also frequently falling short of international human rights standards. In several countries, proposed or recently adopted legislation aimed at combatting cybercrime has been criticised for breaching international standards on the protection of freedom of expression and privacy.²³ For example, although the AU has taken steps to establish a common African framework - [the African Union \(AU\) Convention on Cybercrime and Personal Data Protection](#) - to regulate e-commerce, cybersecurity, cybercrime and the protection of personal data in Africa, civil society groups have expressed serious concerns about its compatibility with international human rights standards. Particularly troubling aspects of the Convention include broad exceptions to the right to privacy of personal data and the unqualified limitation on the right to freedom of association online.²⁴

Excessive cybercrime laws: the case of Tanzania

On 1 April 2015, the Tanzanian legislature adopted the Cybercrimes Act 2015. The Act has drawn criticism from political opposition parties within Tanzania and also from the human rights community more broadly. In particular, the Act's unclear structure, lack of procedural safeguards, disproportionate and excessive sanctions regime, insufficient protection for whistleblowers and excessive police powers have raised serious human rights concerns. One of the Act's more troubling provisions is Section 20, which criminalises the initiation, relay, retransmission and falsification of headers of unsolicited messages. The broad wording of the provision makes it in effect a criminal offence for any person to contact anyone that they do not know via any electronic means. A further troubling aspect of the Act is that it imposes an austere set of minimum fines and custodial sentences for each offence it lists. This approach to sanctioning has the effect of stripping the judiciary of its discretion in the application of criminal sentences, taking into account the seriousness of any harm that may have been caused or the availability of a public interest defence. A further concerning aspect of the Act is Part IV, which covers search and seizure procedures. As it stands, Part IV confers excessive unchecked powers on relatively low-ranking police officers to search for and seize electronic equipment without having to obtain a court order. During the most recent election, which was concluded in October 2015, eight people were charged under Section 16 of the Act for communications on social media.

[Source: Article 19 Analysis](#)

1.2. GAPS IN TRADITIONAL HUMAN RIGHTS MECHANISMS

The Internet is one of the most powerful instruments of the 21st Century [...] As such, facilitating access to [it] for all individuals, with as little restriction to online content as possible, should be a priority for all States.”

[Frank la Rue, former UN Special Rapporteur for Freedom of Expression](#) ²⁵

One of the major challenges facing the establishment of effective Internet policy regimes in African states is that traditional international and regional human rights mechanisms are unable to provide adequate protection to individual victims of online human rights abuses.

At the international level, both [the International Covenant on Civil and Political Rights \(ICCPR\) 1966](#) and [the International Covenant on Economic, Social and Cultural Rights \(ICESCR\) 1966](#) are binding in principle on state parties. They both have corresponding oversight bodies, [the Human Rights Committee \(HRC\)](#) and [UN Committee on Economic, Social and Cultural Rights \(CESCR\)](#) that permit individuals to directly file complaints against state parties whom they accuse of violations.²⁶ Although these quasi-judicial bodies do provide avenues of complaint for citizens of state parties, they are designed to be mechanisms of last resort and do not have the power to issue binding decisions in individual cases or enforce the rights that they protect.²⁷ Furthermore, over 12 states in Africa have yet to sign up to the Optional Protocol to the ICCPR, meaning that citizens of these states cannot directly bring complaints to the HRC for consideration.²⁸

At the regional level, [the African Charter on Human and Peoples' Rights \(ACHPR\) of 1981](#) (“the Charter”) is a progressive instrument that reflects the diversity of African culture and tradition and covers a broad range of individual, peoples’

and collective rights. This combined approach, “enhances indivisibility, and demonstrates the interdependence attaching to all human rights.”²⁹ Despite its progressive character however, the Charter is vaguely drafted and contains broad ‘claw-back’ clauses that limit a number of fundamental rights, including Article 9(2) on the right to freedom of expression. A yet more serious concern is that it grants governments substantial leeway in the application of its provisions within domestic jurisdictions, thus diminishing its effectiveness at national level.³⁰

The Charter also has a corresponding oversight body, the [African Commission on Human and Peoples’ Rights](#) (“the Commission”) that is mandated with interpreting, protecting and promoting the rights set out within the Charter. Similarly to the HRC and CESCR, the Commission is a quasi-judicial body of last resort with the power to receive individual complaints but, again, has no power to issue binding decisions or enforce the rights it protects.³¹ Moreover, although the African Court on Human and Peoples’ Rights (“the Court”) that was established in 2004 has the power to issue binding decisions upon state parties, its jurisdiction currently extends to just 27 states.³² Furthermore, individuals from just six countries³³ are able to directly file applications with the Court as only these countries have made the prerequisite declaration under Article 5(3) of the [Court Protocol](#). As the Court is still (in relative terms) nascent, and its jurisdiction so limited, it has yet to develop a broad body of case law and at the time of writing has only decided a handful of cases,³⁴ just two of which relate to a right (freedom of expression) that is directly relevant to the online environment.³⁵

Of the major sub-regional treaty structures that exist in Africa, only the Economic Commission of West African States’ (ECOWAS) Community Court of Justice (CCJ) has the power to issue binding decisions in relation to human rights abuses. However, its jurisdiction is limited to ECOWAS member states and access to the court is time consuming and costly.³⁶ In East Africa, the jurisdiction of the East African Court of Justice does not currently cover human rights violations,³⁷ and although the Southern African Development Community (SADC) used to have a tribunal attached to it, it was disbanded in 2012. Notwithstanding this, the SADC’s [Declaration on Information and Communications Technology](#) of 2001 is the only instrument that attempts to create a unified approach, setting out three broad commitments in relation to ICT development for its member states. Although the SADC Declaration is broad in its scope and applies only to SADC’s limited membership, its Preamble acknowledges the major gap that exists on the continent, expressing “concern about the lack of regional policy and strategy on ICT”.³⁸

Whilst these established mechanisms have a crucial role to play – particularly in the monitoring of abuses, provision of guidance for human rights defenders and advocacy – without effective regional and national level laws and policies they do not provide a sufficiently robust framework for the development of an enabling and rights-based Internet policy environment in Africa. There is therefore a need to create a continent-wide, coherent and comprehensive Internet policy framework that respects human rights and complements existing international mechanisms. The African Declaration on Internet Rights and Freedoms is the first step in achieving this.

#2

PROVIDING THE FOUNDATION FOR A RIGHTS-BASED INTERNET: THE AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOMS

2.1. TAKING THE LEAD: A CIVIL SOCIETY-LED INITIATIVE

“It is recognised that the challenges of translating commitments to human rights at the regional level into tangible rights for individuals requires changing the attitudes of those in decision-making positions, teaching people about the existence and content of these rights, and being creative with solutions – be they legal or non-legal.”

Sheila Keetharuth, UN Special Rapporteur on the situation of Human Rights in Eritrea ³⁹

The [African Declaration](#) is a progressive, civil society-led initiative that seeks to promote the inclusion of democratic governance and human rights standards in the development of Internet policy in Africa.

African civil society organisations have a long history of contributing to, and proactively developing, normative standards in areas relating to free expression, the media and the use of ICTs - both on the continent and internationally. The Declaration initiative is led by a coalition of African advocates who were inspired by the legacy of the [Windhoek Declaration on Promoting an Independent and Pluralistic Media](#). The Windhoek Declaration was drafted by African newspaper journalists during a UNESCO seminar in Windhoek, Namibia in 1991 and subsequently resulted in May 3rd being internationally recognised as [World Press Freedom Day](#). African civil society advocates, including many who are involved in the current initiative, played a crucial role in the development and adoption of the [African Charter on Broadcasting](#), which was adopted in 2001 at a Windhoek +10 event, the [Declaration of Principles on Freedom of Expression in Africa 2002](#) and the [African Platform on Access to Information \(APAI\)](#) that was adopted in 2011 at a Windhoek +20 event in Cape Town.

The African Declaration on Internet Rights and Freedoms initiative is a continuation of this rich heritage of civil society leadership in standard-setting and advocacy. The objective of the initiative is for the Declaration to be adopted and used by African states and international bodies as a guide to formulating and establishing a rights-based and enabling Internet policy environment in Africa; both at the national and regional level. By laying out a set of comprehensive principles and incorporating an explanatory part within the text, the Declaration is designed to help decision-makers develop harmonised, rights-based policies that complement existing human rights standards.

The idea of a regional Declaration specifically focused on human rights online was first discussed by African civil society organisations during the 2013 African

Internet Governance Forum in Nairobi. Organisations discussed the benefits of adopting a common set of Internet policy principles that responded to the African context and could act as a fundamental framework for advocacy on Internet rights and freedoms on the continent. Guided by the experience of the preceding continental initiatives, the groups agreed to an initial roadmap, which included the holding of two further stakeholder meetings to broaden buy-in and start developing the initiative.

“The initiative began with a conversation between myself and Kwame Karikari (former executive director of the Media Foundation for West Africa) at an event at Wilton Park on Freedom of Expression Online. It was clear that the Internet could have huge potential in Africa – the Internet could deliver a huge boost to development whether social, political or economic – but that there are barriers that must be overcome, not just in terms of access but also growing fear on the part of our governments about this new medium and attempts to enclose and control it. We had both been involved in successful regional efforts to define and raise regional standards in the past – with the Windhoek Declaration, the African Broadcasting Charter, the Declaration of Principles on Freedom of Expression in Africa and most recently the African Platform of Access to Information. These initiatives had enormous impacts in terms of building movements, raising issues across the agenda and getting political buy-in at the highest levels. We decided that the time had come to explore whether the Internet in Africa needs a similar initiative. In September 2013 we brought together some of the key regional groups including the Association of Progressive Communications, Article 19 and Global Partners Digital at the 2013 Africa Internet Governance Forum. At the meeting we decided that we need a much broader discussion about the purposes of and strategies for developing an African Declaration on Internet Rights and Freedoms. The event in Johannesburg [February 2014] was an opportunity to do exactly this, and kick off a shared civil society campaign to make this goal a reality.”

Edetaen Ojo, Executive Director, Media Rights Agenda, Declaration
Secretariat member

At the first dedicated ‘Declaration meeting’⁴⁰ held in February 2014 in Johannesburg, 21 regional organisations came together to discuss the idea and initiate the drafting process of the Declaration. Gaps in existing policies and legal frameworks were identified and a timetable for drafting the Declaration was agreed upon. Five broad priority areas of concern and the challenges associated with them were identified, namely: Access to the Internet; Freedom of Expression and Freedom of Assembly; Surveillance and Privacy; Democratic Governance Processes; and Linguistic Diversity. These areas formed the basis of the Declaration’s core structure and content.

The first challenge identified was lack of access. This was considered to be one of the most serious issues affecting the future of the Internet on the continent, with affordability and the lack of infrastructure highlighted as major factors inhibiting access and perpetuating the digital divide. Suggestions that were made and later incorporated into the Declaration included promoting cheaper access by creating competitive markets for Internet Service Providers (ISPs), constructing more national and regional level Internet Exchange Points (IXPs), and promoting digital literacy on the continent.



The principles of the Declaration

The second challenge identified was the insufficient and ineffective protection of key political and civil rights online in Africa, including freedom of expression, association and assembly. Increasing numbers of arrests, overly severe penalties and due process abuses were identified as particular issues that needed to be addressed. Although interrelated, these rights were broken down into their composite parts and were incorporated into the Declaration as individual Principles, each representing a fundamental human right.

Mass online surveillance, with the consequent breach of users' privacy, was identified as a third serious area of concern in Africa. The lack of safeguarding mechanisms to provide oversight to surveillance activities within African states was identified as particularly worrisome. As privacy is also a stand-alone human right, the principles were laid out separately within the Declaration.

Fourthly, the accessibility of content in relevant languages and formats was identified as a major inhibitor to access in Africa that merited special attention within the Declaration. The existence of local language content was recognised as a prerequisite to Africa further developing its online footprint and maximising its digital potential. As a result, cultural and linguistic diversity is recognised as a standalone right within the Declaration, which calls for the establishment of comprehensive policies and resources to support the development of tools to facilitate linguistic diversity on the Internet.

Finally, whilst there was recognition of the value of recent African government initiatives to develop laws and policies to regulate the Internet, there was concern that these initiatives often materialised in ways that gave governments greater control of the Internet, rather than developing open, enabling environments. It was agreed that in addition to containing human rights standards, the Declaration must also contain provisions relating to the governance of the Internet to embed democratic processes at the heart of Internet policy making in Africa.

2.2. A MULTISTAKEHOLDER APPROACH

"What stands out for me is the collective approach by contributors; especially those from African countries. The participatory approach adopted right from the formative stage has been exceptional. The content has largely been informed by practical experiences from different countries which to me represents authentic voices. The learning experience throughout the whole process has been outstanding."

Franc Mwangi, Institute for Social Accountability (TISA), Kenya, Declaration Working Group member

One of the Declaration's key strengths is that it has been initiated and developed by African civil society groups through an open consultative process, allowing for an Africa-focused solution that helps plug existing gaps in international and regional human rights mechanisms and facilitates the development of enabling and positive Internet policy regimes.

Between February and June 2014, a drafting group⁴¹ led by Edetaen Ojo and Alimi Adamu developed several drafts of the Declaration. A first draft was prepared

and was subsequently amended several times following receipt of feedback from participants that took part in the meeting in Johannesburg. Feedback from international experts at UNESCO and the Media Legal Defence Initiative was also received and incorporated. Following this internal drafting process, the group agreed upon the wording of the first public draft of the Declaration. This was subsequently made available for public consultation between June and August 2014. During this time, the draft Declaration was presented at a series of events across Africa including the South Africa Internet Governance Forum (IGF), the Africa IGF and the Web We Want Nigeria meeting.

Around 40 submissions from a range of stakeholder groups were collected during the consultation process, including from legal experts, human rights activists and the online technical community. The drafters group consolidated feedback in August 2014 and a comprehensive draft of the Declaration was produced in English, French, Portuguese and Arabic. Following completion of the drafting phase, the Declaration went live online (at: www.africaninternetrights.org) in September 2014 and was successfully launched at the 2014 IGF in Istanbul and the Highway Africa Conference 2014 at Rhodes University in South Africa.

By building on the strengths of the region's existing human rights framework, the Declaration echoes the African Charter's progressive character, incorporating a myriad of core Internet policy principles: civil and political; social, economic and cultural; and collective rights. Moreover, the broad range of organisations that were involved in the drafting stage of the initiative and continue to engage with the Declaration understand the difficulties that African Internet users face on a day-to-day basis, and the effects that poor Internet policy environments have on political, social, economic and cultural development. They also possess specialised knowledge and understanding of the complex world of international Internet governance, which African decision-makers often lack. As such, they are best placed to work together with other stakeholder groups, including governments, international organisations, and industry to collaboratively develop enabling policies.

The benefits of the initiative have been already recognised by other stakeholders including UN and African government representatives. At the soft launch during the 2014 IGF in Istanbul, UNESCO's Deputy Director General, Mr. Getachew Engida of Ethiopia, commended the Declaration initiative, calling it a, "significant milestone in this digital era"⁴² and welcomed, "the call for UNESCO to integrate the Declaration into [their] Priority Africa strategies."⁴³ In response to an open invitation by Mr. Engida, the Declaration initiative was submitted as a contribution to the [UNESCO Internet Study](#) consultation process and featured in the [UNESCO CONNECTing the Dots Conference outcome document](#), (March 2015). Furthermore, the Ghanaian Deputy Minister for Communications hailed the Declaration as a significant initiative and committed to working together with civil society groups and other stakeholders in the future development of Internet-related policies in the country during a meeting held in Accra in April 2015, at which he was the keynote speaker. High-ranking officials from within the AU, ECOWAS and other international organisations have also expressed their personal support for the initiative. It is now hoped that institutional and individual state support will follow.

#3

BUILDING A REGIONAL INITIATIVE: REFLECTIONS FROM THE DECLARATION EXPERIENCE

Each region faces different challenges when it comes to the development of enabling Internet policies and regulations. To be effective and sustainable, approaches in the development of regional civil society initiatives benefit from an approach that is context-relevant and based on local needs. Notwithstanding this, the protection of fundamental human rights principles online underpins the work of many digital rights advocates globally. Within the context of a global trend of increasing state regulation and control of the Internet, it is imperative that civil society advocates reaffirm why multi-stakeholderism is necessary in the governance of the Internet. This involves leading the way in policy formulation and taking proactive steps to develop relevant normative standards such as the African Declaration. In the African context, the Declaration is just the first step in building an effective, democratic and enabling Internet policy environment on the continent. It is not a panacea that will overcome all existing challenges. Rather, it is an initiative that forms part of broader efforts to foster an enabling rights-based Internet environment in Africa.

The Declaration initiative not only builds on previous African initiatives by identifying a major current policy gap and proactively striving to fill it, but also incorporates strategic and organisational lessons learned from the historical processes mentioned in Part 2. Broadly, these lessons are:

1. Clearly identify the need

Regional initiatives can only be effective and successful if they respond to contextual needs that are collectively and locally identified and agreed upon. Externally imposed initiatives that do not respond to self-identified needs or do not take regional contexts into account will struggle to galvanise crucial support from local organisations. Within the context of the African Declaration initiative, the first step was comprised of an informal conversation between several civil society representatives. In this instance, the need for a continent-wide Declaration of Principles relevant to the Internet was clear and this facilitated the initial identification of the initiative's aims. The next stage was to discuss and agree upon the scope and objectives of the initiative to ensure that they were clear and achievable; this took place at the meeting during the 2013 African IGF.

2. Conduct thorough background research into existing frameworks and gaps

Whether at a regional or international level, numerous Internet policy and human rights frameworks exist. Understanding their scope and limitations is crucial to identifying the gaps that need to be filled, strengthens new initiatives by providing a solid evidence base and helps avoid a duplication of efforts. A key moment during

the Declaration initiative process was the first meeting held in Johannesburg in February 2014. It was at this meeting that collective experience and knowledge of existing frameworks and gaps were shared and that a roadmap for the structure and drafting of the Declaration was agreed upon. Although the gap in policy was clear, it was important that the Declaration did not replicate existing standards. There was also collective recognition of the need to engage with committed funders to guarantee the longer-term sustainability and success of the initiative.

3. Jointly agree on scope and objectives

It is essential to identify early on what changes and objectives the initiative will call for in order to guide its early outreach activities and identify the key actors and approaches necessary for its success. In the early stage of the Declaration initiative, the groups involved jointly outlined the initiative's objectives and whether or not the initiative would 'Call' on other stakeholders to commit to actions. In this instance it was agreed that a Call on other stakeholders was necessary to ensure that the initiative would have a tangible impact and this is now reflected in the text and structure of the Declaration. The initiative also collectively agreed that it would seek political 'endorsement' of the Declaration – a commitment by policy stakeholders that future laws and policies would be underpinned by Declaration principles. This decision also guided development of the Declaration's advocacy strategy, which clearly identifies key actors in the policy field and potential allies across all stakeholder groups.

4. Ensure effective regional ownership and maintain open and transparent opportunities for multistakeholder consultation and coalition-building

The drafting of a new normative text from scratch is a complex process that requires a balance between ownership on the one hand and ensuring that as many viewpoints as possible are taken into account on the other. Pairing strong local ownership with an open consultation process and external expert input can strengthen an initiative and increase its chances of success. These considerations guided the development of the Declaration's structure, which echoes the comprehensive approach of the African Charter. The initiative also benefitted immensely from the breadth of experience of its composite members, with seasoned Internet governance experts working closely together with more traditional human rights and media rights defenders to share knowledge and ideas. Having a broad and varied group of contributors was crucial to ensuring that the Declaration's content addressed all core issues relevant to the African context. The open consultation process for the wider stakeholder community as part of the drafting phase was an important step as it helped solidify the Declaration's content and structure, helped secure broader stakeholder buy-in and also strengthened the initiative's credibility as an inclusive movement. This commitment to working collaboratively and constructively with all willing stakeholders – including governments – to bring about real change, has underpinned the coalition's approach to date and has been very successful.

5. Clearly demark a development stage in which consultation, drafting and initial outreach can take place

Given the large number of organisations that are involved in the initiative, ensuring that momentum is maintained is an important consideration. The breaking up of the initiative into clearly demarked stages has proved vital in securing continued momentum as it has helped to target individuals' and organisations' activities. Identifying group members to lead on individual phases of work can be a useful way of reducing individuals' workload and utilising the individual abilities of coalition members.

6. Establish a clear and effective organisational structure to drive advocacy efforts

It is essential that organisational structure is agreed upon and a coordination mechanism that takes organisational capacity into account is established. Following the drafting stage of the Declaration initiative a Working Group and Secretariat structure was adopted, drawing on the experiences of advocates who had been involved in the earlier APAI campaign, with the aim of strengthening the initiative's strategic direction. The Secretariat now facilitates internal coordination and information sharing amongst the Working Group to meet the increased needs for closer communication, collaboration and strategic planning. Furthermore, to promote co-ownership, leadership on key strands of the initiative (advocacy, communications and social media) has been delegated to Working Group member organisations by consensus. These developments have helped push the Declaration forward and ensure that there is cohesion, collaboration and shared responsibility for the initiative.

7. Follow-up through the implementation stage in securing political commitment and lobbying for implementation

As mentioned in the previous Part, initial responses to the initiative from decision-makers have been overwhelmingly positive. As the initiative's engagement with decision-makers and governments develops, there will be a greater need for the initiative to ensure that the Declaration is used appropriately in the development of future Internet policy in Africa.

CONCLUSION

The African Declaration on Internet Rights and Freedoms initiative provides a set of principles to guide inclusion of democratic governance and human rights standards in the development of Internet policy in Africa. The African continent is facing rapid growth and expansion of digital technologies, which have the potential to drive socioeconomic development, thus benefitting millions. Yet, the internet can also be used to violate human rights, exacerbate inequality and undermine development. As has been shown, existing regulatory mechanisms in the region do not adequately address the challenges and opportunities that the fast growth of the internet presents.

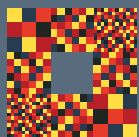
The Declaration is a result of the collaborative work of a diverse set of civil society groups from across the continent, for whom the creation of a rights-based regulatory environment is key to the effective harnessing of the internet for equitable socio-economic development. By proactively enumerating this set of principles and by providing a set of normative standards the Declaration presents a way forward for policy formulation, as part of broader efforts to foster an enabling rights-based Internet environment in Africa. The civil society advocates at the centre of the Declaration initiative continue to engage with all relevant stakeholders to realise this vision for a rights-based Internet. Finally, it is hoped that the account of the development of the Declaration provides a useful resource for civil society advocates in other regions to develop their own normative standards for the protection of human rights online.

If you'd like to endorse the African Declaration, visit africanrights.org.

NOTES

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1. The Democratic Republic of Congo (DRC), Congo-Brazzaville, Ivory Coast, Mozambique and Tanzania; source: The Economist. 5 January 2015. Gauging growth in 2015. Economist Homepage (online at: <http://www.economist.com/blogs/graphicdetail/2015/01/daily-chart>), accessed: 21.07.15.
 2. Some market analysts have predicted that the value of e-commerce in Africa will reach US\$50 billion by 2018 from a base of just US\$8 billion in 2013; source: TNW News. 23 December 2014. Why success in e-commerce in Africa is all about scale and bidding your time. TNW Homepage (online at: <http://thenextweb.com/insider/2014/12/23/success-african-e-commerce-scale-bidding-time/>), accessed: 21.07.15.
 3. Ericsson. June 2014. Sub-Saharan Africa: Ericsson Mobility Report Appendix. Ericsson homepage (online at: <http://www.ericsson.com/res/docs/2014/emr-june2014-regional-appendices-ssa.pdf>), accessed: 21.07.15.
 4. Ibid.
 5. See for example: [HerZimbabwe](#) - a virtual platform through which Zimbabwean women (and men) can come together and share perspectives on gender-related issues; [Wougnet](#) - a Ugandan platform aimed at promoting and supporting women's use of the Internet in Uganda; and, [Protégé QV](#)'s initiative in Cameroon to provide training on the use of ITCs to women who own small businesses.
 6. See for example: the [MedAfrica](#) medical services platform that provides individuals with public health updates directly to their mobiles; and, the range of projects being undertaken by Africa-based ICT innovators such as [HeHe Labs](#) and [Nyaruka](#).
 7. Alliance for Affordable Internet (A4AI). 2014. Affordability Report 2014. A4AI homepage (online at: <http://a4ai.org/affordability-report/report/>), accessed: 11.08.15.
 8. See for example the [Ghana Multimedia Incubator Centre](#) (GMIC).
 9. <http://www.achpr.org/sessions/32nd/resolutions/62/>
 10. ITU (2015, May 26) "ITU releases 2015 ICT figures"
 11. All statistics from: ITU. 2015. ICT Facts and Figures: The world in 2015. ITU homepage (online at: <http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2015.pdf>), accessed: 21.07.15.
 12. The Infrastructure Consortium for Africa. July 2015. Backbone Infrastructure. ICA homepage (online at: <http://www.icafrica.org/en/topics-programmes/ict/backbone-infrastructure/>), accessed: 21.07.15.
 13. Straumann, R. 2015. Growing Digital Divides? Measuring Regional Changes in Internet Penetration. Oxford Internet Institute (online at: <http://geonet.oii.ox.ac.uk/blog/regional-perspectives-on-internet-penetration/>), accessed: 11.08.15.
 14. In US\$ Purchasing Power Parity terms
 15. Supra at 10.
 16. United Nations. 16 May 2011. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27, paragraph: 60 (online at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf), accessed: 21.07.15.
 17. Access. 29 April 2015. Access urges UN and African Union experts to take action on Burundi internet shutdown. Access Now homepage (online at: <https://www.accessnow.org/blog/2015/04/29/access-urges-un-and-african-union-experts-to-take-action-on-burundi-interne>), accessed: 22.07.15.
 18. Committee to Protect Journalists. 22 January 2015. DRC halts Internet access and cellphone services amid protests. CPJ homepage (online at: <https://cpj.org/2015/01/drc-halts-internet-access-and-cellphone-services-a.php>), accessed: 22.07.15.
 19. Human Rights Watch (HRW). 23 April 2015. Ethiopia: Free Zone 9 Bloggers, Journalists. HRW homepage (online at: <http://www.hrw.org/news/2015/04/23/ethiopia-free-zone-9-bloggers-journalists>), accessed: 22.07.15.
 20. Greenslade, R. 3 July 2014. Gambian journalist arrested for his story on human trafficking. The Guardian Online (online at: <http://www.theguardian.com/media/greenslade/2014/jul/03/press-freedom-gambia>), accessed: 22.07.15.
 21. Global Voices. 17 October 2012. Malawi: Online journalist arrested for allegedly insulting the President. Global Voices Homepage (online at: <https://globalvoicesonline.org/2012/10/17/malawi-online-journalist-arrested-for-allegedly-insulting-the-president/>), accessed 22.07.15.
 22. More examples of violations of human rights online can be found at: <http://www.opennetfrica.org/category/violations/>, <http://www>.

- misa.org, and: <https://www.apc.org/en/projects/internet-rights-are-human-rights>, accessed: 23.07.15
23. At the time of writing Kenya, Madagascar, Mauritania, Morocco, Tanzania, Tunisia and Uganda are developing their own Cybercrime laws, all of which have been criticised for their punitive nature and incompatibility with international human rights standards, see for example: Council on Foreign Relations (CFR). 22 June 2015. The African Union Cybersecurity Convention: a missed human rights opportunity. CRF homepage (online at: <http://blogs.cfr.org/cyber/2015/06/22/the-african-union-cybersecurity-convention-a-missed-human-rights-opportunity/>), accessed: 22.07.15.
 24. Ibid.
 25. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), Frank La Rue to the Human Rights Council 17th session
 26. See: [Optional Protocol to the ICCPR](#) and [the Optional Protocol to the ICSECR](#).
 27. UN. 2002. Selected Decisions of the Human Rights Committee under the Optional Protocol Volume 3. CCPR/C/OP/3, para. 7. The OHCHR Homepage (online at: <http://www.ohchr.org/Documents/Publications/SDecisionsVol3en.pdf>), accessed: 22.07.15.
 28. A useful map indicating states that have/have not taken action to sign the ICCPR Optional Protocol is available here: http://www.ohchr.org/Documents/HRBodies/CCPR/OHCHR_Map_ICCPR-OP1.pdf, accessed: 22.07.15; and, a full list of states that have signed the Optional Protocol to the ICCPR is available here: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en, accessed: 22.07.15.
 29. Keetharuth, Sheila. 2009. Major African legal instruments; in Anton Bosl and Joseph Diescho (Eds.) 2009. Human Rights in Africa: Legal Perspectives on their Protection and Promotion. Konrad Adenauer Foundation & Macmillan Education Namibia. Namibia, p. 166. Online at: http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/7_Keetharuth.pdf, accessed: 22.07.15.
 30. Ibid, p.168.
 31. Grievance Mechanisms. 2015. The African Commission on Human and Peoples' Rights. Grievance Mechanisms homepage (online at: <http://grievancemechanisms.org/resources/brochures/the-african-commission-on-human-and-peoples2019-rights>), accessed: 22.07.15.
 32. Ibid.
 33. Ghana, Tanzania, Malawi, Rwanda, Mali and Burkina Faso.
 34. The list of Decided cases can be found here: <http://www.african-court.org/en/index.php/2012-03-04-06-06-00/all-cases-and-decisions>, accessed: 22.07.15.
 35. [Lohe Issa Konate v. Republic of Burkina Faso \[Burkina Faso\] 5 December 2014 App. No. 004/2013; Madanhire v. Attorney General \[Zimbabwe\] 12 June 2014 \[2014\] ZWCC 2.](#)
 36. IHRDA. 2015. Court of Justice of the Economic Community of West African States. IHRDA homepage (online at: <http://www.ihrda.org/court-of-justice-of-the-economic-community-of-west-african-states/>), accessed: 22.07.15.
 37. For more details see: http://eacj.org/?page_id=27, accessed: 22.07.15.
 38. SADC Declaration Preamble, available here: http://www.sadc.int/files/7813/5292/8380/Declaration_on_Information_and_Communication_Technology2001.pdf, accessed: 22.07.15.
 39. Keetharuth, Sheila B "Major African legal instruments", accessed: 02.10.2015
 40. Participants included representatives from: the Africa Centre for Open Governance, Article 19, the Association for Progressive Communications (APC), CIVICUS, Collaboration on Internet ICT Policy in East and Southern Africa (CIPEA), the Commission on Human Rights and Good Governance, DotAfrica, Eduardo Mondlane University, Global Partners Digital (GPD), the Institute for Social Accountability, the Internet Society Ghana, the Kenyan Human Rights Commission, Kictanet, the Media Foundation for West Africa (MWFA), the Media Institute of Southern Africa (MISA), Media Rights Agenda (MRA), Paradigm Initiative Nigeria (PIN), Protégé QV, the South African Human Rights Commission, Support for Information Technology and the Web We Want Foundation.
 41. Edetaen Ojo (Media Rights Agenda), Sulemana Braimah (Media Foundation for West Africa), Charles Sanches (Article 19), Andrew Puddephatt (Global Partners Digital), Stephanie Muchai (Article 19), Beryl Aidi (Kenya Human Rights Commission), Joy Liddicoat (Association for Progressive Communications), Nnenna Nwakanma (Web We Want), Anriette Esterhuysen (Association for Progressive Communications) and Dixie Hawtin (Global Partners Digital).
 42. UNESCO. 8 September 2014. UNESCO Deputy-General commends African Internet Declaration. UNESCO homepage (online at: http://www.unesco.org/new/en/media-services/single-view/news/unesco_ddg_commends_african_internet_declaration/#:VBF-%20UmPXTDc), accessed: 22.07.15.
 43. Ibid



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