

Human Rights and Digital Rights: A Regional Perspective

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Introduction

- What did the legal / policy environment for Internet Governance / Digital Rights in Africa look like back in 2012 – just 13 years ago?

Introduction

- Early in 2012, the policy environment / legal landscape for digital rights / IG in Africa was still in its formative stages
- Some awareness of issues of digital rights had started emerging
- But there were fragmented approaches in addressing some key IG issues
- We had very limited regulatory frameworks.
- There was very little uptake in the concept of a multi-stakeholder approach to IG



Introduction

- The main human rights framework then was the African Charter on Human and Peoples' Rights (AChHPR) - our foundational human rights instrument.
- Article 9 of the AChHPR is what guarantees the rights to FOE and ATI
- But even before we entered the digital age, it was clear that Article 9 was inadequate in providing us with sufficient clarity as a normative framework to navigate all the complexities of the rights to FOE, media freedom and ATI.



Introduction

- The gaps led to the development and adoption of the ***Declaration of Principles on Freedom of Expression and Access to Information*** in 2002.
- As we entered the digital age, we experienced a radical transformation in how people access, share and consume information.
- These developments are happening alongside a threat landscape that is constantly evolving.
- The landscape is complicated by issues such as surveillance, data breaches, censorship, disinformation, digital exclusion, among others.



Introduction

- In this environment, both Article 9 and the 2002 Declaration became quickly obsolete.
- This situation has led to a series of efforts since 2013 to develop norms and standards.
- Two key frameworks that have emerged from such efforts are:
 - ➡ The African Declaration on Internet Rights and Freedoms
 - ➡ The AChHPR's Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019)

African Declaration on Internet Rights and Freedoms

AFRICAN
DECLARATION
on Internet
Rights and Freedoms

Data
Openness
Diversity
Privacy
Access
Equality
Development
Freedom
Security



Motivation for the African Declaration

- The *African Declaration on Internet Rights and Freedoms* was developed by a coalition of African CSOs to guide the creation of a positive, rights-based and democratically governed Internet policy environment in Africa.
- The initiative was built on a rich heritage of CSO freedom of expression advocacy & standard setting in Africa.
- It was first launched in 2014



Context of the African Declaration

- The process of developing it began in 2013, when many African countries were beginning to develop and adopt laws & regulations governing adoption either through the legislative process or through administrative mechanisms.
- These instruments regulated or sought to regulate the Internet, the use of the Internet or other digital communication in the respective countries.



Context of the African Declaration

- Many governments did not (perhaps, still do not) have the technical & legal competence to legislate on such a complex issue like the Internet that transcended national borders.
- They therefore often depended on other countries to pass their own laws.
- But in their efforts to regulate the Internet & online activities, such governments appeared to be adopting the worst examples & replicating bad laws.



Context of the African Declaration

- The tendency was for many African governments to take laws from other countries or regions & adapt them with little or no changes.
- Usually, the contexts & local conditions in these countries were very different.
- In most cases, many critical stakeholders were unable to participate in the policy or legislative processes.

Context of the African Declaration

- It is important to acknowledge that there was a legitimate desire by governments to curb criminal activities online, particularly financial crimes & terrorist activities.
- But there were also clear instances where the pursuit of these apparently legitimate objectives, were used to introduce provisions which had no direct relevance to these goals
- Such efforts were sometimes designed to curtail criticism of governments.



Goal of the Declaration

- The Declaration therefore sought to provide human rights standards & principles of openness in internet policy formulation on the continent.
- The Declaration was intended to elaborate on the principles which are necessary to uphold human & people's rights on the internet
- It was also aimed at cultivating an internet environment that could best meet Africa's social & economic development needs



Process of Developing Declaration

- The development of the Declaration was guided by:
 - ↓ Established human rights principles
 - ↓ Relevant regional & international instruments
 - ↓ Decisions of international courts & tribunals; and
 - ↓ The opinions of experts, e.g. the UN Special Rapporteur on the Right to Freedom of Expression.

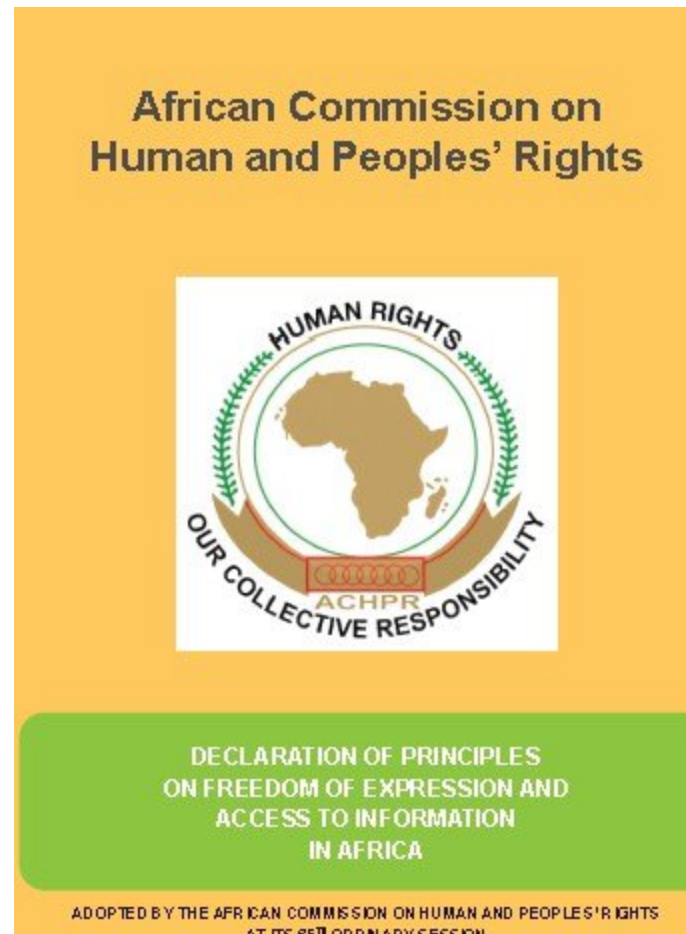
Process of Developing Declaration

- The Declaration built on & was inspired by earlier documents & standards such as:
 - ↓ The African Charter on Human & Peoples' Rights
 - ↓ The Windhoek Declaration on Promoting an Independent and Pluralistic African Press, 1991
 - ↓ The African Charter on Broadcasting, 2001
 - ↓ The Declaration of Principles on Freedom of Expression in Africa, 2002
 - ↓ The African Platform on Access to Information Declaration of 2011, etc.

Key Elements of the Declaration

- The Declaration has four main sections, namely:
 - ↓ Preamble
 - ↓ Key Principles
 - ↓ Application of the Principles
(Realising the Principles)
 - ↓ Call to Action

Declaration of Principles on FOE & ATI in Africa



Declaration of Principles, 2019

- The “*Declaration of Principles on Freedom of Expression and Access to Information in Africa*” was adopted in November 2019
- It was adopted by the African Commission on Human & Peoples’ Rights (AComHPR) at its 65th Ordinary Session held in The Gambia
- It replaced the *Declaration of Principles on Freedom of Expression in Africa* earlier adopted by the Commission at its 32nd Ordinary Session in October 2002.



Declaration of Principles, 2019

- The Declaration was adopted pursuant to Article 45(1) of the AChHPR
- The development of the Declaration was guided by hard-law & soft-law standards in the area of FOE.
- The standards are drawn from African & international human rights instruments & standards, including the jurisprudence of African judicial bodies.

Declaration of Principles, 2019

- The Declaration contains a number of principles relevant to Internet Governance as well as digital rights & Internet freedom.
- The most relevant principles are:
5, 17, 37, 38, 39, 40, 41 & 42.

Declaration of Principles, 2019

- Principle 5 provides that the exercise of the rights to FOE and ATI shall be protected from interference, both online and offline.
- Principle 17 requires that public regulatory authorities that exercises powers in the areas of broadcast, telecommunications or internet infrastructure should be independent and adequately protected against interference of a political, commercial or other nature.

Declaration of Principles, 2019

- Principle 17 also stipulates that a multi-stakeholder model of regulation should be encouraged to shape the use and evolution of the internet.
- Principles 37 to 42 provides, among other things, that States should:
 - ➡ Facilitate the rights to FOE and ATI online and the means necessary to exercise these rights.

Declaration of Principles, 2019

- ↓ Recognise that universal, equitable, affordable and meaningful access to the internet is necessary for the realization of FOE, ATI and the exercise of other human rights.
- ↓ Cooperate with all relevant stakeholders, to adopt laws, policies and other measures to provide universal, equitable, affordable and meaningful access to the internet without discrimination

Declaration of Principles, 2019

- ⬇ Not to engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population.
- ⬇ Require that internet intermediaries enable access to all internet traffic equally without discrimination on the basis of the type or origin of content or the means used to transmit content, and that internet intermediaries shall not interfere with the free flow of information by blocking or giving preference to particular internet traffic.



Declaration of Principles, 2019



To ensure that the development, use and application of AI, algorithms and other similar technologies by internet intermediaries are compatible with international human rights law and standards, and do not infringe on the rights to FOE, ATI and other human rights.



Only engage in targeted communication surveillance that is authorised by law, conforms with international human rights law and standards, and is premised on specific and reasonable suspicion that a serious crime has been or is being carried out or for any other legitimate aim.



Adopt laws for the protection of personal information of individuals in accordance with international human rights law and standards.



THANK
YOU