

Human Rights and Digital Rights: A Regional Perspective

Edetaen Ojo
Media Rights Agenda, Nigeria



Scope of Presentation

- The presentation will focus primarily on 2 key documents, namely:
 - ⇒ The African Declaration on Internet Rights and Freedoms
 - ⇒ The ACHPR's Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019)

Introduction

- What was the legal/policy environment for Internet Governance/Digital Rights like in Africa back in 2012 – about 12 years ago?

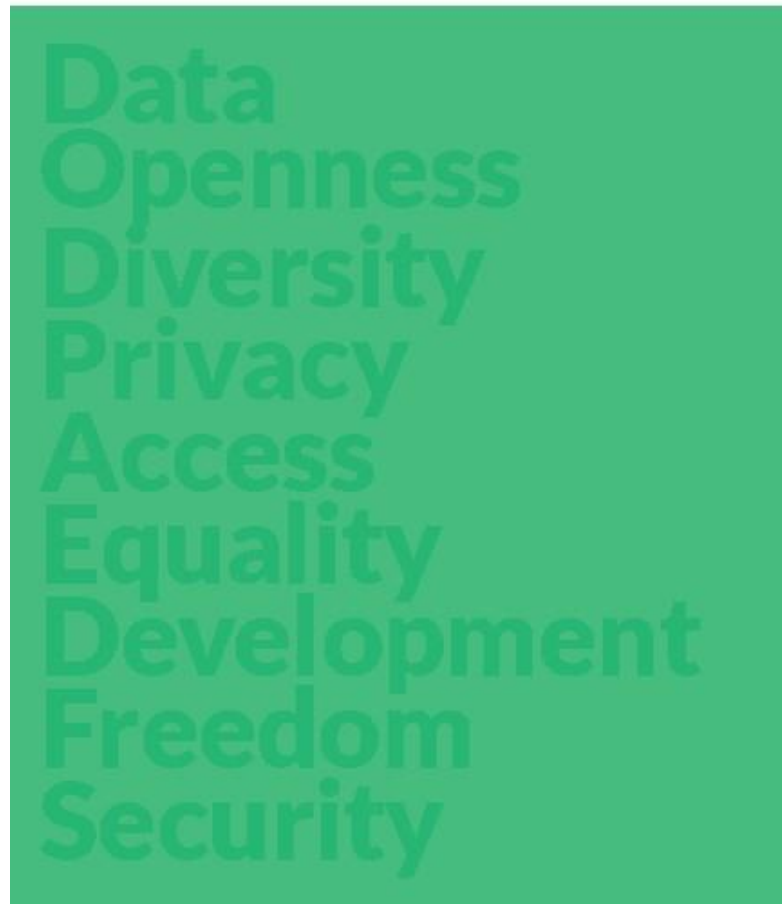
Introduction

- 12 years ago, 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
- Very limited regulatory frameworks.
- There was very little uptake in the concept of a multi-stakeholder approach to IG



African Declaration on Internet Rights and Freedoms

AFRICAN
DECLARATION
on Internet
Rights and Freedoms



Motivation for the African Declaration

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



Context of the African Declaration

- African countries were beginning to adopt policies, regulations or laws to control or regulate the Internet.
- So African countries were transiting from low regulatory Internet environments to what was becoming very heavily regulated environments.
- But there was a huge concern with the way that some countries were adopting Laws to regulate the Internet.



Context of the African Declaration

- In many African countries, Bills, draft laws & regulations were awaiting adoption either through the legislative process or through administrative mechanisms.
- A few countries had already passed such laws.
- 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

- The regulatory approach was essentially aimed at prohibiting certain types of behaviours online
- In many cases, online behaviour was prohibited with punitive sanctions, such as imprisonment or fines or both.
- There was usually no attempt by these laws or regulations to affirm the rights of people.
- In many cases, they violated established human rights without adequate safeguards.



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.
- Many of the instruments tended to invade privacy, repress freedom of expression online & violate other rights.



Context of the African Declaration

- Clearly, 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 promote human rights standards & principles of openness in internet policy formulation & implementation 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.

- 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

Key Principles

- The Declaration contains 12 “Key Principles”, around:
 - ⇒ Openness
 - ⇒ Internet Access and Affordability
 - ⇒ Freedom of Expression
 - ⇒ Right to Information
 - ⇒ Freedom of Assembly and Association on the Internet
 - ⇒ Cultural and Linguistic Diversity

Key Principles

- ⇒ Right to Development
- ⇒ Privacy
- ⇒ Security on the Internet
- ⇒ Marginalized Groups
- ⇒ Right to Due Process
- ⇒ Democratic Internet Governance Framework

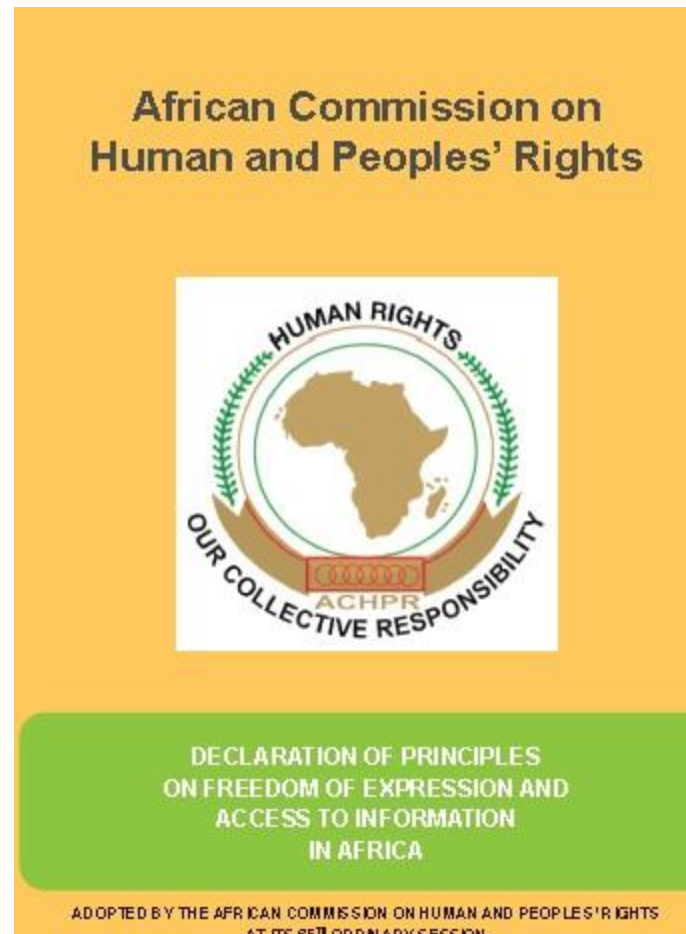
Application of Principles

- In this section, which deals with realising the principles on the Internet, the Declaration touches upon the following issues:
 - ⇒ Openness
 - ⇒ Access and Affordability
 - ⇒ Freedom of Expression
 - ⇒ Right to Information and Open Data
 - ⇒ Linguistic and Cultural Diversity
 - ⇒ The Right to Development

Application of Principles (Contd.)

- ⇒ Personal Data Protection
- ⇒ Surveillance
- ⇒ Marginalised Groups
- ⇒ Access to Knowledge and Education
- ⇒ Gender
- ⇒ Access to Knowledge and Education
- ⇒ Democratic Internet Governance Framework

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 at its 65th Ordinary Session held in Banjul, The Gambia
- It replaced the Declaration of Principles on Freedom of Expression in Africa earlier adopted by the Commission at its 32nd Ordinary Session held in October 2002.



Declaration of Principles, 2019

- The Declaration was adopted pursuant to Article 45(1) of the AChHPR
- It elaborates Article 9 of the Charter.
- The development of the Declaration was guided by hard-law & soft-law standards in the area of freedom of expression.
- The standards are drawn from African & international human rights instruments & standards, including the jurisprudence of African judicial bodies.



Declaration of Principles, 2019

- On February 16, 2024, a Federal High Court in Abuja ruled in its judgment delivered in *Media Rights Agenda v. The Attorney-General of the Federation*, that the Declaration is binding on the Nigerian Government.
- Prior to this Nigerian Court judgment, in its judgment in *Lohe Issa Konate v Burkina Faso*, delivered on December 5, 2014, the African Court of Human and People's Rights held that the predecessor instrument – the Declaration of Principles on Freedom of Expression in Africa (2002) – is binding on Burkina Faso.



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 freedom of expression and access to information 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 further stipulates that a multi-stakeholder model of regulation should be encouraged to develop shared principles, rules, decision-making procedures and programmes to shape the use and evolution of the internet.
- Principles 37 to 42 provides, among other things, that States should:
 - ⇒ Facilitate the rights to freedom of expression and access to information 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 freedom of expression, access to information 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
- ⇒ Adopt laws, policies and other measures to promote affordable access to the internet for children that equips them with digital literacy skills for online education and safety, protects them from online harm and safeguards their privacy and identity.



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.
- ⇒ Not require internet intermediaries to proactively monitor content which they have not authored or otherwise modified.



Declaration of Principles, 2019

- ⇒ To ensure that the development, use and application of artificial intelligence, 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 freedom of expression, access to information 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