
Meeting Report

*Regional Meeting
towards an African
Declaration on
Internet Rights and
Freedoms*

Regional Meeting towards an African Declaration on Internet Rights and Freedoms

The Wedgewood, Johannesburg. February 12 and 13, 2014



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“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 event 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 and 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 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 that 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 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 of Media Rights Agenda

Drawing on Existing Declaration and Principles: Lessons from Previous African Experiences

Windhoek Declaration (1991)

The Windhoek Declaration is a statement of press freedom principles devised by African newspaper journalists. It was adopted on May 3 1991 at a UNESCO meeting in Windhoek (in newly liberated Namibia). The date of the Declaration's adoption was subsequently declared to be World Press Freedom Day. Zoe Titus from the Media Institute of Southern Africa outlined the main lessons learned from the Windhoek Declaration process:

- The principles and standards in the declaration were targeted to the African context.
- Established media groups were engaged to contribute their expertise and assist with outreach.
- The process required a great deal of financial support.
- Adopting the Declaration should not be seen as the end of the process – ongoing research is needed as the environment changes.
- After the Declaration was adopted there was a protracted process of face-to-face advocacy with key decision-makers.

African Charter on Broadcasting (2001)

Because the Windhoek Declaration was overwhelmingly directed at the printed media, the celebrations of the tenth anniversary of the declaration – also held in Windhoek - were used by activists to propose and adopt a new document addressing issues specific to broadcasting. Zoe Titus from the Media Institute of Southern Africa, outlined the main lessons learned from the African Charter on Broadcasting:

- Relied on committed funders who were prepared to support the full length of the process.
- Collaboration is extremely important – identifying and involving key actors from different stakeholder groups. The involvement of UNESCO was critical.
- Requires leadership – it needs to be clear who is leading and that person/group must be dedicated.
- Needs a clear advocacy strategy, as well as a degree of flexibility.

Declaration of Principles on Freedom of Expression in Africa (2002)

The Declaration of Principles on Freedom of Expression in Africa was adopted by the African Commission on Human and Peoples' Rights (ACHPR) at its 32nd Ordinary Session held in October 2002. The Declaration was an important milestone for freedom of expression and access to information across the continent. Stephanie Muchai from Article 19, presented the main lessons from the process:

- At the beginning of the process, a key stage was taking stock of the freedom of expression trends at the national and regional levels, in order to determine exactly what problems needed to be addressed in the Declaration.
- A key decision was which mechanism to work with. They decided to work with the African Commission rather than the African Union because it was more sympathetic to the cause. They were able to leverage the role of the Commission in advising other regional groupings such as ECOWAS.
- They conducted a regional comparative analysis to learn from similar initiatives in other regions.
- A key factor was having a clear strategy, with buy-in from other civil society groups, at an early stage. Inclusivity was very important – they involved as many groups as possible, they had a clear understanding of the capacity of the groups they worked with, and were actively aware of the rationale for engaging them.
- The process involved regional consultations, both in person and online.
- The work was always conducted with the understanding that they were developing a standard-setting document, not a binding one.
- A vigorous outreach program was critical, and this requires resources.
- The necessity of perseverance and always keeping an eye on the prize! The Declarations process begun in 1999, but even though they were adopted in 2002, the process of applying them is continuous.

Some of the most important outcomes of the Declaration process were: the mandate of the office of the African Special Rapporteur on Freedom of Expression and Access to Information developed out of the Declaration. The Declaration is referenced in many other standard setting documents and is used in state reporting on human rights

implementation. Through the process too, many more civil society organisations in Africa became more involved in the work of the Commission.

African Platform on Access to Information Declaration (2003)

The African Platform on Access to Information was adopted at the Pan African Conference on Access to Information in Cape Town, South Africa, from 17 to 19 September 2011. The Conference was convened by the Windhoek + 20 Working Group, in commemoration of the 20th anniversary of the Windhoek Declaration. Edetaen Ojo from the Media Rights Agenda presented the main points of APAI as follows:

- APAI was motivated by the realisation that Africa was lagging behind other regions in access to information, even 20 years after the Windhoek Declaration.
- The process was implemented by a working group of 9 partners that conducted 3-4 working meetings per year to review the strategy and plan.
- There was a dedicated funder throughout the whole process.
- Drafting took place over four months during which time the text was continually and rapidly revised (there were six drafts over the four months!). There was a wide range of inputs from civil society and from the African Union, UNESCO, African Commission, ACHPR, and the Special Rapporteur on Freedom of Expression.
- The Declaration has a lengthy preamble providing context and referencing related documents. The final section is a Call to Action to numerous stakeholders including: UNESCO, African Union, other African regional organizations and institutions, national governments, civil society, media, private sector and donors.
- It called for 28 September to be recognized as an African and International Right to Information Day.
- The Declaration was endorsed by the UN and Africa Special Rapporteurs on freedom of expression and the African Commission adopted it by Resolution.

Drawing on Existing Declaration and Principles: International Charters

There are many, and varied examples of existing declaration and principles for the internet at the international level. Some inter-governmental, some multi-stakeholder, some civil society. Some national, some international. Examples include: the OECD Internet Policy Making Principles, the Council of Europe Internet Governance Principles, the Association for Progressive Communications Charter, the Internet Rights and Principles' Charter, and the Brazilian Internet Steering Committee's Principles for the Governance and Use of the Internet. There are two main inter-related drivers behind different sets of principles:

- To enable harmonization of policy and governance processes within the inevitably dispersed governance of the global internet.
- To articulate a strong positive agenda for the internet and so push back against growing threats to internet rights.

According to Anriette Esterhuysen from the Association for Progressive Communications, there are three main "types" of Charter at the international level. The type of Charter being aimed for has a big impact on the shape of the resulting document and the strategies for achieving it. The three main "types" of Charter are:

- 1) Interpretive: These Charter attempt to interpret existing standards to apply to the Internet.
- 2) Consensus: This is where a community agrees to a new set of standards which may go further than what already exists.
- 3) Communities of Practice: Where a community sharing a common craft agree to be bound by certain standards.

CGI.Br

CGI.br is the Brazilian Internet Steering Committee which is responsible for coordinating and integrating all Internet service initiatives in Brazil, and promoting technical quality and innovation. It is multi-stakeholder with members from government, the private sector, civil society and the academic community. The CGI.br developed a set of 10 Principles for the Governance and Use of the Internet based on extensive input from citizens and other stakeholders.

The document is an example of a “consensus” charter because it mixed existing standards like human rights, with new standards such as neutrality and unaccountability of the network. The topics covered are:

- Freedom, privacy and human rights
- Democratic and collaborative governance
- Universality
- Diversity
- Innovation
- Neutrality of the network
- Unaccountability of the network
- Functionality, security and stability
- Standardization and interoperability
- Legal and regulatory environments

Charter of Human Rights and Principles for the Internet

The Charter was developed by the Internet Rights and Principles Coalition: a global Coalition housed at the Internet Governance Forum. The Coalition is officially multi-stakeholder although the majority of members are from civil society or academia. The Coalitions Charter was developed by going through the Universal Declaration of Human Rights and for each article interpreting it in light of the Internet. The Charter went through a number of stages – a first version was developed through an online wiki that was open for all input; then a group of six human rights experts from across the world processed that wiki into Version 1.0 which was launched at the 2010 Internet Governance Forum in Lithuania. There was a great deal of feedback and over the next 2 months this was integrated into the Charter and a series of conference calls were held on the most contentious issues (including access to internet as a stand alone right and network neutrality). The second version was launched at the 2011 Internet Governance Forum in Kenya as a “living document”. Many elements of the process worked extremely well:

- The process was very open, anyone could participate and many people did. It is today arguably the most globally representative set of internet principles.
- Grounding the document in the Universal Declaration of Human Rights gave it some legitimacy and gravitas.
- All was achieved through volunteers – the process has no financial resources.
- The Charter achieved a number of things: it contributed to raising human rights high on the Internet Governance Forum agenda; it has become a valuable learning document for students, civil society and civil servants wishing to learn about the internet and human rights; the Council of Europe is using the Charter as a basis for a Guide for Internet Users on their Rights.

There are also a number of elements that worked less well and can be learned from:

- The aim was never well defined. There were two camps in the Coalition – one camp saw it as a legal exercise that should stay carefully within the confines of existing standards and their existing interpretations; the second camp saw it as an aspirational document that should go beyond current standards. This was never adequately resolved and this has led to some inconsistencies both in the text of the Charter and in the narrative which surrounds it.
- The Charter has not yet been finalized. Some people see this as a positive feature because the internet is evolving and if the Charter was finalized it would risk going out-of-date. However, the lack of finalization meant it could never be opened up for endorsements. This, together with the fact that the Charter is still referred to as a beta version, undermines its value as an advocacy document.

Priorities for an African Declaration on Internet Rights and Freedoms

Participants divided in to sub-regional groupings to determine their top priorities for a Declaration. The results were as follows:

<p><u>West Africa (Anglophone)</u></p> <ul style="list-style-type: none"> • Violations of freedom of expression and privacy online. • High cost of internet access. • Absence of local language content. • Absence of judicial oversight of internet monitoring and censorship. • Outsourcing of interception and censorship. • Absence of a multi-stakeholder approach. • Law enforcement agency approach to internet law and policy. 	<p><u>West Africa (Francophone)</u></p> <ul style="list-style-type: none"> • Access to the internet and specifically broadband. • Local language and local content. • Internet as a tool for social, economic and cultural development (needing a positive agenda). • Governance - ensuring institutions involved in internet governance and implementing laws and policies online are transparent and multi-stakeholder. • Emphasise the rights to freedom of expression and privacy.
<p><u>East Africa</u></p> <ul style="list-style-type: none"> • To emphasise the importance and impact of internet (and the corresponding need to prioritise internet rights). • Define internet rights. • Challenge current surveillance practices. • Define legitimate restrictions of freedom of expression. • Define the rights & responsibilities of different stakeholders. 	<p><u>Southern Africa</u></p> <ul style="list-style-type: none"> • Access, affordability and availability of internet • Violations of freedom of expression, different forms of censorship. • The importance of content which is locally relevant and in local languages. • Surveillance. • Violations of freedom of assembly exercised through the internet. • Violence against women online. • The need to use the internet for development, for economic & social rights, and for deepening democracy.

Issue-based Standards and Demands

Based on the priorities identified above, participants broke into issue-based groups. Each group picked a priority issue from the lists developed and explored the challenges associated with that right which could be addressed in a Declaration; existing standards in relation to that issue; and what demands should be included in any Declaration with regards to that issue. The results of these discussions were as follows:

Access to the Internet

Challenge:

- Affordability of quality internet access
- Lack of infrastructure
- Lack of standards
- Sabotage (e.g. cable theft)
- Accessibility of content (including language, literacy, relevance)

Standards: some relevant standards from the UN Broadband Commission, from the UN Special Rapporteur for Freedom of Expression's report on access to the internet, from the Alliance for Affordable Internet.

Demands

- Independent regulator

- Reduced cost
- Competitive environment for internet service providers and telecoms in service provision
- Transparency in the use of the universal access fund
- Universal accessibility – need understanding that access and human rights are interlinked (including by corporates).
- Free public access must be made available in public spaces
- Digital literacy in schools (including how to be safe online)
- Take advantage of existing infrastructure (e.g. use and management of TV White Space, laying fiber optic cables when laying telephone cables)
- Community wireless internet services - community ownership?
- Enabling free and open source software (FOSS)
- Fostering innovation and creating an environment that promotes local content.
- Access to information – providing information of public services
- Reduction of gender gap in access
- Improve basic literacy levels
- Establish local/national and regional internet exchange points

Civil society should conduct research into issues related to access (to enable evidence-based advocacy). Civil society should curate the issues (make a case for what internet access means for each sector e.g. agriculture, public health, banking. Civil society need to identify the advocacy targets.

Freedom of Expression and Freedom of Assembly and Association

Challenges

- Increasing arrests and severe penalties against those exercising their freedom of expression online
- Abuse of judicial processes and legal frameworks

Standards: Relevant standards can be found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and in many African countries' Constitutions

Demands

- States must observe the established three-part test for any restrictions on freedom of expression.
- States should undertake legislative steps to protect rights.
- States should ensure existing laws are in line with international standards.
- States should prosecute violations of freedom of expression and publish findings.
- States should ensure independence of institutions within the criminal justice system.
- States must ensure that censorship is not privatized – including by ensuring intermediaries have immunity from liability related to user-generated content.
- States must build the capacity of institutions, such as national human rights commissions and courts, to understand and protect human rights online.

Surveillance and Privacy

Challenges: Mass surveillance with a lack of any oversight; and expanding role of companies in collecting, using and sharing user data.

Standards: Privacy standards exist in various documents including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and in many African countries' Constitutions. Privacy is not covered in the African Charter on Human and Peoples' Rights.

Demands

- There must be no mass surveillance. Surveillance must only happen in targeted cases which are: based on

reasonable suspicion, sanctioned by a judge, subject to oversight.

- Demand clear and unambiguous laws on data protection and surveillance, which reference human rights laws.
- Strong parliamentary and legislative oversight of data protection and surveillance laws
- Service providers must not be involved in the surveillance regime.
- All internet companies should issue transparency reports detailing government requests for user information.
- Anonymous speech should be protected.
- At a minimum we want personal use of encryption to be legal.

Governance Approaches

Challenge: At the moment governments in Africa either seem to be attempting to exercise greater and greater control over the internet, or are neglecting it and allowing the private sector to define the internet environment. The challenge is for African governments to create an enabling environment – not just for economic development, but also for increasing rights, increasing public participation, delivering social services etc.

Standards: There are relevant standards in the African Declaration on Internet Governance from the September 2013 Africa Internet Governance Forum.

Demands:

- A permanent, well resource and multistakeholder at the national level with mandate for internet governance issues. Governments should look at the Brazilian example of the Internet Steering Committee and adapt it to their local context.
- In particular, more transparency is needed in the management of universal access funds.

Suggested text: “Considering that Internet governance is an important lever and contributes to sustainable human development, the signatories to this declaration invite African states to better control the quality of service, to reinforce the capacity of service providers and users and establish a national dynamic and permanent platform that will take in all the paradigms and expertise on internet. This body shall be well resources, and will be given mandate to coordinate ICT governance at national level, to advise government action, and serve as focal point for processes and initiatives at national and international levels.”

Local Language Content

Challenge:

- There is a need to develop a much stronger African presence and identity on the internet.
- Local scripts need to be supported in software and hardware.
- Locally relevant content creation needs to be stimulated. One option could be to build a relationship between the market and local content. For example, digitizing local historical information could increase tourism.
- The challenge of local content is closely linked to the problem of access – increasing access will contribute to stimulating locally-relevant content.
- Need more in-country IXPs.

Demands:

- Open standards in hardware, software and data. All three is necessary to build a vibrant internet community.
- States should adopt an open educational resources policy.
- States should incentivize local language and local-relevant content creation though supporting capacity development, committing research funds, technology transfer etc.

Multistakeholder Allies

Participants developed lists of the key allies to engage throughout the Declaration process and strategy. At a more general we discussed involving media (particularly those that are strong on IT issues), bloggers communities and associations, social media personalities; and techies/developers communities including open source, open data and open content communities, co-creation spaces, IT companies and IT associations; parliamentarians; women's groups and sexual rights groups (especially through Association for Progressive Communications networks); trade unions; youth engagement groups (such as the Arab Digital Expression Foundation in Egypt); and religious groups. The latter was said to be problematic, but that certain religious groups (such as the Christian Council of Churches) had been strong on other rights issues and could be a very valuable ally. At a more specific level, participants identified the following potential allies:

Key allies:

African Special Rapporteur for Freedom of Expression and Opinion (Pansy Tlakula)
UNESCO Chair in Media and Democracy (Dr Fackson Banda)
UN Special Rapporteur for Freedom of Expression and Opinion (Frank La Rue)
African Union Commission – Information and Communication (Habiba Mejri Cheikh)

African networks:

The Federation of African Journalists (and national chapters)
African Editor's Forum (and national chapters)
Highway Africa Network
Association of African Universities
African Research Network
Africa Network Operators' Group
African Internet Associations, the AF*s, such as AFRINIC and AfTLD)
AMARC Africa
African media Initiative
AfroBarometer

Intergovernmental organisations:

International Organization of Francophonie (OIF)
UNESCO – Africa Group
African Union - Information Society Division
Economic Community of West African States
Common Market for Eastern and Southern Africa (COMESA)
East African Community (EAC)
Southern African Development Community
Economic and Monetary Community of Central Africa (CEMAC)
Open Government Partnership
New Partnership for Africa's Development (NEPAD)

Funders/donors:

Mo Ibrahim Foundation
Open Society Foundation
Google
Omidyar Network
Hivos

FORD Foundation
International Development Research Centre
Internet Society
Open Knowledge Foundation
Internews
infoDev (World Bank)

International supporters:

Electronic Frontier Foundation
Citizen Lab
Creative Commons

“Next Steps” and Milestones towards Adopting an African Declaration on Internet Rights and Freedoms

The title of “African Declaration on Internet Rights and Freedoms” was decided upon, together with a program at the session and a schedule of work for the next 7-12 months.

A final draft of the Declaration will be available for public comment in English and French by mid-Spring this year, with a public launch and call for public endorsements hopefully at the African Internet Governance Forum in Nigeria in July, Global Internet Governance Forum 2-5 September 2014 and Highway Africa in September.

There will also be kits for mini launches by bloggers, individuals and others as part of the outreach and launch.

Regional Meeting towards an African Declaration on Internet Rights and Freedoms

AGENDA

Goals

- To explore the possibility of developing an **African Declaration on Internet Rights and Freedoms** – including the rationale for the Declaration, the issues that would need to be covered by the Declaration and a strategic plan for achieving this goal.
- To examine in detail some of **the internet policy challenges** on the continent and the issues that would be included in any Declaration on Internet Rights, such as access to the internet, and cybersecurity.
- To develop strategies for **engaging traditional human rights groups in internet policy advocacy** – particularly in the context of a potential Declaration.

Wednesday, February 12th

DAY 1: ISSUE FOCUS

9.00-9.30	Registration and coffee
9.30-10.30	Welcome and Introductions: Backdrop and the Need for an African Declaration on Internet Rights and Freedoms Edetaen Ojo, Anriette Esterhuysen and Dixie Hawtin
10.30-11.30	Regional Breakouts: Mapping the Internet Rights Challenges in Africa Moderator: Anriette Esterhuysen Breakout session with regional groups: Southern Africa, East Africa, English-speaking West Africa and North Africa, and French-speaking West Africa. Each group to brainstorm a list of key internet rights challenges in their regions and to agree a list of the top 5 issues that need urgent addressing, and which could be addressed through a Declaration.
11.30-11:55	Break
11.55-12.00	Reporting Back: Summary of Participant Expectations
12.00-13.00	Drawing on Existing Declarations and Principles a) Lessons from Previous African Experiences Speakers: Stephanie Muchai, Zoe Titus, Edetaen Ojo Moderator: Sulemana Braimah A reflection on experiences in developing the African Platform on Access to Information Declaration (2011), Declaration of Principles on Freedom of Expression in Africa (2002) African Charter on Broadcasting (2001) and the Windhoek Declaration (1991).

13.00-14.00	Lunch
14.00-15.00	<p>Drawing on Existing Declarations and Principles Continued b) Existing Internet Principles and Charters</p> <p>Speakers: Anriette Esterhuysen and Dixie Hawtin Moderator: Beryl Aidi</p> <p>Over the past 5-10 years there have been a number of international initiatives to define internet rights and principles. This session will discuss those initiatives and any lessons/material that we can draw on.</p>
15.00-15.30	Short break
15.30-17.00	<p>Breakouts: Issue focus</p> <p>Moderator: Sulemana Braimah</p> <p>Following up on the key internet rights challenges identified during the morning session; participants will break out in to groups and each group will focus on 1-2 of the issues identified during the morning. The groups will develop a positive policy agenda/objectives for each issue by working through the following questions –</p> <ul style="list-style-type: none"> ○ What are the key concerns relating to this issue? ○ What are positive aspirations relating to the issue? ○ How does internet policy and regulation impact on this issue? ○ How could this issue be addressed in a Declaration?
16.55-17.00	Temperature check
17.00-17.15	<p>Wrap up of the day</p> <p>Anriette Esterhuysen and Edetaen Ojo</p>

Welcome Reception

Location TBC

Thursday, February 13th

DAY 2: STRATEGY & DRAFTING

9.00-9.30	Coffee
9.30-11.00	Group 1: Declaration Drafting Group (separate agenda for entire morning)
	Group 2: African Union Cybersecurity Convention (led by Gbenga Sesan and Grace Githaiga)
	Group 3: Broadening the Internet Rights Constituency (Led by David Kode)
	Group 4: Access and Affordability (Led by Lillian Nalwoga and Emilar Vushe)
11.00-11.30	Break
11.30-12.15	<p>Web We Want – Brown Bag Session</p> <p>Moderator: Nnenna Nwakanma</p>
12.15-13.15	Lunch
13.15-13.30	<p>Developing a Strategy: Brainstorming Allies and Adversaries</p> <p>Moderator: Dixie Hawtin</p>

13.30-14.30	<p>Report Back from the Drafting Group</p> <p>The Drafting Group will report back on their progress developing a Draft Declaration, and on developing an action plan towards achieving a Declaration.</p>
14.30-15.00	Break
15.00-16.30	<p>Developing a Strategy: Reviewing and Building on the Draft Strategy</p> <p>Moderator: Edetaen Ojo</p> <p>Participants will break out into groups, each with a copy of the draft strategy for achieving an African Declaration on Internet Rights and Freedoms. Each group to critique, review and add to the strategy.</p>
16.30-17.00	Break
17.00-17.45	<p>Future Coordination & Next Steps</p> <p>Moderators: Anriette Esterhuysen</p> <p>This session will set out next steps (both immediate and long-term) for the Declaration drafting group and wider action plan. Participants will be invited to volunteer to lead or contribute to specific tasks and a draft timeline will be set.</p>
17.45-18.00	Thank You and Goodbyes

Annex 2: Participating Organisations

Africa Centre for Open Governance

Article 19

Association for Progressive Communications

CIVICUS

Collaboration on Internet ICT Policy in East and Southern Africa

Commission on Human Rights and Good Governance

DotAfrica

Eduardo Mondlane University

Global Partners Digital

The Institute of Social Accountability

Internet Society Ghana

Kenya Human Rights Commission

Kictanet

Media Foundation for West Africa

Media Institute of Southern Africa

Media Rights Agenda

Momoh, Momoh, Adamu & Co.

Paradigm Initiative

Protégé QV

South African Human Rights Commission

Support for Information Technology

Web We Want Foundation