

**AFRICAN
DECLARATION**
on Internet
Rights and Freedoms

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Emphasising that the Internet is an enabling space and resource for the realisation of all human rights, including the right to freedom of expression, the right of access to information, the right of freedom of assembly, the right to freedom of opinion, thought and belief, the right to be free from discrimination in all forms, the right to education, the right to culture and language, and the right of access to socio-economic services;

Emphasising that the Internet is particularly relevant to social, economic and human development in Africa;

Affirming that in order to fully benefit from its development potential, the Internet must be accessible, available, and affordable for all persons in Africa;

Affirming further that the Internet is essential to the right of all people to participate freely in the governance of their country, and to enjoy equal access to public services;

Recognising the African Charter on Human and Peoples' Rights of 1981, the Windhoek Declaration on Promoting an Independent and Pluralistic African Press of 1991, the African Charter on Broadcasting of 2001, the Declaration of Principles on Freedom of Expression in Africa of 2002, and the African Platform on Access to Information Declaration of 2011 and the African Union Convention on Cybersecurity and Personal Data Protection of 2014.

Acknowledging the roles being played by many African and international organisations including the African Union Commission, the NEPAD Planning and Coordinating Agency, Regional Economic Communities and UNESCO in promoting the Internet in Africa;

Mindful of the continuing efforts of international organisations and other stakeholders to develop principles that apply human rights to the Internet, particularly since the Joint Declaration of 2011 concerning Freedom of Expression and the Internet by the four Special Rapporteurs on Freedom of Expression; the United Nations Human Rights Council resolution of 2012 on The promotion, protection and enjoyment of human rights on the Internet; the UN General Assembly resolution of 2013 on The right to privacy in the digital age; and the UN Human Rights Council Resolution of 2014 on The Internet and Human Rights.

Concerned at the continuing inequality in access and use of the Internet, and concerned at the increasing use of the Internet by state and non-state actors as a means of violating the individual's rights to privacy and freedom of expression through mass surveillance and related activities;

Recognising the responsibility of States to respect, protect and fulfill human rights of all people, and the responsibility of Information and Communications Technology (ICT) companies and Internet intermediaries to respect the human rights of their users as consistent with the United Nations Guiding Principles on Business and Human Rights;

Convinced that it is of critical importance that all African stakeholders invest in creating an enabling and empowering Internet environment that truly serves the needs of Africans through the adoption and implementation of this Declaration.

Herein declare:

Key Principles

1. **Openness** Opportunities to share ideas and information on the Internet are integral to promoting freedom of expression, media pluralism and cultural diversity. Therefore, the Internet should have an open and distributed architecture, and should be developed based on open pluralistic standards and application interfaces and inter-

operability so as to enable a common exchange of information and knowledge. Social and economic openness, to support innovation and guard against monopolies, should be protected.

- 2. Internet Access and Affordability** Access to the Internet is essential for the full realization of human development and facilitates the exercise and enjoyment of a number of human rights and freedoms, including the rights to freedom of expression and access to information, peaceful assembly and association. For universal access to the Internet to be assured, the Internet should be widely available and affordable to enable all persons to realise their full potential.

The cutting off or slowing down of access to the Internet, or parts of the Internet, for whole populations or segments of the public can never be justified on any ground, including on public order or national security grounds.

- 3. Freedom of Expression:** Everyone has the right to hold opinions without interference. Everyone has the right to freedom of expression on the Internet; this right includes the freedom to seek, receive and impart information and ideas, regardless of frontiers.

The right to freedom of expression on the Internet should not be subject to any restrictions, except those which are provided by law, for a legitimate purpose and necessary and proportionate in a democratic society, as consistent with international human rights standards.

- 4. Right to Information** Everyone has the right to access information on the Internet. The Internet must continue to facilitate the free flow of information.

All information, including scientific and social research, produced with the support of public funds should be freely available to all.

- 5. Freedom of Assembly and Association on the Internet** Everyone has the right to peaceful assembly and association online, including through social networks and platforms. Organisers and participants of peaceful assemblies have the right to access the Internet and other new technologies at all times, without interference except those which are provided by law, for a legitimate purpose and necessary and proportionate in a democratic society, as consistent with international human rights standards.

- 6. Cultural and Linguistic Diversity** Individuals and communities have the right to use their own language or any language of their choice to create, share and disseminate information and knowledge through the Internet.

Linguistic and cultural diversity enriches the development of society. Africa's linguistic and cultural diversity, including the presence of all African and minority languages should be protected, respected and promoted, on the Internet.

- 7. Right to Development** All peoples have a right to development, and the Internet has a vital role to play in helping to achieve the full realisation of nationally and internationally agreed sustainable development goals. It is a vital tool for giving everyone the means to participate in development processes.

- 8. Privacy** Everyone has the right to privacy online including the right to control how their personal data is collected, used, disclosed, retained and disposed of. Everyone has the right to communicate anonymously on the Internet, and to use appropriate technology to ensure secure, private and anonymous communication.

The right to privacy on the Internet should not be subject to any restrictions, except those which are provided by law, for a legitimate purpose and necessary and proportionate in a democratic society, as consistent with international human rights standards.

9. **Security on the Internet** Everyone has the right to security on the Internet and to be protected from harassment, stalking, people trafficking, identity theft and misuse of one's digital identity and data.

Everyone has the right to enjoy secure connections to and on the Internet including protection from services and protocols that threaten the technical functioning of the Internet, such as viruses, malware, phishing, and D-Dos attacks.

10. **Marginalised Groups** The rights of all people, including minorities and vulnerable groups, to use the Internet as part of their right to dignity, to participate in social and cultural life, and to enhance the exercise and enjoyment of their human rights, should be respected and protected.

11. **Right to Due Process** Everyone has the right to due process in relation to any legal claims or violations of the law regarding the Internet. Standards of liability, including defences in civil cases, should take into account the overall public interest in protecting both the expression and the forum in which it is made.

12. **Democratic Internet Governance Framework** Everyone has the right to participate in the governance of the Internet. The Internet should be governed in such a way as to uphold and expand human rights to the fullest extent possible. The Internet governance framework must be open, inclusive, accountable, transparent and collaborative.

Realising these Principles on the Internet requires:

Openness

In accordance with the principle of Net Neutrality, all data on the Internet should be treated in an equal and non-discriminatory manner, and shall not be charged differentially, according to user, content, site, platform, application, type of attached equipment, and modes of communication.

The architecture of the Internet is to be preserved as a vehicle for free, open, equal and non-discriminatory exchange of information, communication and culture. There should be no special privileges for, or obstacles against, the exchange of information online or any party or content on economic, social, cultural, or political grounds. However, nothing in this Declaration may be interpreted as preventing affirmative action aimed at ensuring substantive equality for marginalised peoples or groups.

Access and Affordability

Access and affordability policies and regulations that foster unfettered and non-discriminatory access to the Internet, including fair and transparent market regulation, universal service requirements and licensing agreements, must be adopted.

Direct support to facilitate high-speed Internet access, such as by establishing necessary infrastructure and infrastructure facilities, including access to openly licensed or unlicensed spectrum, electricity supply, community-based ICT centres, libraries, community centers, clinics and schools, is crucial to making the Internet accessible to and affordable for all. Equally

important is support for the establishment of national and regional Internet Exchange Points.

The sharing of best practices about how to improve Internet access for all sectors of the society should be encouraged among African states.

These efforts should be geared towards ensuring the best possible level of Internet connectivity at affordable and reasonable costs for all with particular initiatives for unserved and underserved areas and communities.

Freedom of Expression

Filtering, blocking, removal and other technical or legal limits on access to content constitute serious restrictions on freedom of expression and can only be justified if they strictly comply with international human rights standards relating to limitations and due process requirements.

No one should be held liable for content on the Internet of which they are not the author. Furthermore, the State should not use or force intermediaries to undertake censorship on its behalf and intermediaries should not be required to prevent, hide or block content or disclose information about Internet users, or to remove access to user-generated content, including those that infringe copyright laws, unless they are required to do so by an order of a court.

To the extent that intermediaries operate self-regulatory systems, and/or make judgment calls on content and privacy issues, all such decisions should be made taking into account the need to protect expression that is legitimate under international standards. Processes developed by intermediaries should be transparent and include provisions for appeals.

Professional journalists as well as citizen journalists and others who contribute to shaping public debate and public opinion on the Internet should be recognised as agents of the larger society who enable the formation of opinions, ideas, decision-making and democracy. Attacks on them as a result of their work constitute attacks on the right to freedom of expression. Accordingly, all appropriate steps should be taken to ensure their protection in terms of both preventive measures and effective investigations and action whenever they come under attack.

In addition, guidelines for the protection of journalists and for ensuring their safety and the safety of others who carry out journalistic activity or perform public watchdog functions should be put in place. Such guidelines should be formulated with a view to harmonising legislative frameworks, practice, applicable regional and international standards, and law-enforcement processes at national level.

Actions should be initiated or intensified to implement such standards and best practices through appropriate efforts by States and other actors in a variety of areas, including through regional co-operation, and the provision of technical assistance programmes and activities.

Anti-free speech legislation, such as criminal defamation, sedition and other such laws which seek to impose criminal sanctions for journalistic activities or the exercise of the right to freedom of expression should be abolished, including their application on the Internet.

Right to Information and Open Data

The internet offers new opportunities to access official information, and for governments to communicate with people, through the use of open data. Open data and new forms of online consultation can empower people to take a more active part in public affairs.

Data and information held by government should be made publically accessible, including being released proactively and routinely, except where legitimate grounds for restricting access to such information exists in the relevant access to information legislation.

Public and relevant private bodies have a duty to collect information on their operations and activities on behalf of their citizens. They also have an obligation to respect minimum standards in relation to the management of this information to ensure that it may easily be made accessible to citizens. States and relevant non-state actors should demonstrate good practices in the management of data. The use and re-use of government held data and information should be available free of charge wherever practical, and if not, pricing should be transparent, reasonable, the same for all users, and not designed as a barrier to the use or re-use of the data.

Copyrighted materials held by public bodies should be licensed for re-use in accordance with relevant access to information laws and licensing frameworks.

The existing obligation on public bodies to share all information produced with the support of public funds, subject only to clearly defined rules set out in law, as established by the *Declaration of Principles on Freedom of Expression in Africa*, shall extend to the proactive release of such information on the World Wide Web in openly licensed, freely re-useable formats

Linguistic and cultural diversity

The cultural and linguistic diversity which exists on the African continent must be promoted and reflected online. This requires States to put in place comprehensive policies, and allocation of resources, to support the development and use of tools to facilitate linguistic diversity on the Internet. This includes the promotion of technology and content required to access and use domain names, software, services and content in all languages and scripts. Special attention should be given to promoting access in minority languages.

There is a need to promote free or low-cost training opportunities and methodologies and materials for minority-language speakers on using the Internet.

Diversity of content should also be preserved and promoted through the creation of varied information and the digitalisation of educational, scientific and cultural heritage.

The Right to Development

Developing the competencies of all in media and information literacy is essential in ensuring that consumers of media products have the skills to find, evaluate and engage with various types of information, including those relevant for their social, economic, cultural and political development.

Information and communication technologies should be designed, developed and implemented in a manner that contributes to sustainable human development and empowerment. Accordingly, policies should be adopted to create an environment which enables various actors to pursue initiatives in this regard.

Personal Data Protection

Personal data or information must only be collected and/or processed by States and non-State actors such as access providers, mail providers, hosts and other intermediaries, in compliance with well-established data protection principles, including: *first*, personal data or information must be processed fairly and lawfully; *secondly*, personal data or information must be obtained only for one or more specified and lawful purposes; *thirdly*, personal data or information must

not be excessive in relation to the purpose or purposes for which they are processed; *fourthly*, personal data or information must be deleted when no longer necessary for the purposes for which they were collected.

The collection, use, disclosure and retention of personal data or information must comply with a transparent privacy policy which allows people to find out what is collected about them, to correct inaccurate information, and protect such data or information from disclosure that they have not authorised. The public should be warned about the potential for misuse of data that they supplied. Government bodies and non-state actors collecting, processing or retaining data have a responsibility to notify people when the personal data or information collected about them has been abused, lost, or stolen.

Surveillance

Mass or indiscriminate surveillance of the people and the monitoring of their communications constitutes a disproportionate interference, and thus a violation, of the right to privacy. Mass surveillance should be prohibited by law.

The collection, interception and retention of communications data amounts to an interference with the right to privacy whether or not those data are subsequently examined or used.

In order to meet the requirements of international human rights law, lawful surveillance of online communications must be governed by clear and transparent laws that, at a minimum, comply with the following basic principles: *first*, communications surveillance must be both targeted and based on reasonable suspicion of commission or involvement in the commission of serious crime; *secondly*, communications surveillance must be judicially authorized and individuals placed under surveillance must be notified that their communications have been monitored as soon as practicable after the conclusion of the surveillance operation. *Thirdly*, the application of surveillance laws must be subject to strong parliamentary oversight to prevent abuse and ensure the accountability of intelligence services and law enforcement agencies.

Marginalised Groups

States and non-state actors should respect and protect the rights of all people to use the Internet. Special attention should be paid to the needs of marginalised groups including the elderly, young people and children; minorities, including ethnic, linguistic, sexual, and religious minorities; indigenous peoples, persons with disabilities, and rural constituencies.

Gender

To ensure the elimination of all forms of discrimination against women, women and men must have equal access to learn about, define, access, use and shape the Internet. Efforts to increase access must therefore recognise and redress existing gender inequalities.

Policies and strategies for women and girls to achieve meaningful access to ICTs need to address cultural religious, social, economic and educational barriers. This includes the need for concerted efforts to ensure that violence against women committed, abetted or aggravated online is adequately sanctioned under the law and vigorously pursued by law enforcement agencies.

The creation and promotion of online content that reflects women's voices and needs, that promotes and supports women's rights - in order to address existing gender inequalities and encourage *active* participation and empowerment of women via online spaces - should be encouraged.

Processes and mechanisms that enable the full, active and equal participation of women and girls in decision-making about how the Internet is shaped and governed should be developed and strengthened.

Access to Knowledge and Education

Media and information literacy must be promoted to enable all people to access, interpret and make informed judgments as users of information, as well as to create information. Accordingly, media and information literacy programmes should be instituted in schools and in other public institutions. Where practical school children, and other learners, should have access to Internet enabled devices.

Democratic Internet Governance Framework

It is important that multistakeholder decision-making and policy formulation are improved at the national level in order to ensure the full participation of all interested parties. Independent, well-resourced, multi-stakeholder bodies should be established to guide Internet policy at the national level.

National internet governance mechanisms should serve as a link between local concerns and regional and global governance mechanisms, including on the evolution of the internet governance regime.

Call to Action

In light of the above, we call on all stakeholders to take action alone and in collaboration towards the realisation of the rights and principles in this Declaration, as outlined below:

All African stakeholders, including regional and sub-regional bodies, national governments, civil society organisations, media institutions, relevant technology and Internet companies, should:

- Formally endorse this Declaration, the African Declaration on Internet Rights and Freedoms

National Governments in Africa should:

- Ensure that all Internet-related laws and policies are clear, transparent and in line with the principles contained in this Declaration.
- Ensure that national regulators in the telecommunications and Internet sectors are well-resourced, transparent and independent in their operations.

Pan-African and African Regional Organisations and Institutions:

- The Africa Union should recognise and promote XXXXX [TBC] as African Internet Rights Day.
- The African Commission on Human and Peoples' Rights should establish a mechanism to promote and monitor Internet rights and freedoms in Africa.
- The Africa Union should take the lead in creating a common African Programme of Action on Internet Governance, which will ensure that the rights of Africans on the Internet are promoted and upheld, and that African concerns are recognised in the global Internet governance regime.
- Other relevant Pan-African institutions should develop programmes to support national institutions (including national human rights commissions and the judiciary) to understand and protect human rights online.
- The African Telecommunications Union should recognise and promote the access and

affordability principle of this Declaration.

International Organisations:

- The United Nations Secretary General and United Nations General Assembly should support the inclusion of principles guaranteeing the public's right to information and government data, as well as access to and affordability of information and communications technology in the post-2015 Development Agenda.
- The UN Human Rights Council should consider the Declaration, which reflects resolutions taken by the Council and recommendations from Special Mandate Holders, *and draw on the Declaration* within the scope of its work on Internet-related human rights matters.
- UNESCO should integrate the Declaration into its "Priority Africa" strategies. UNESCO should promote the advancement of social and cultural rights on the Internet as well as the use of local languages and local content online. UNESCO should also develop model laws protecting online freedom of expression and privacy.
- The International Telecommunications Union should recognise and promote the Access and Affordability principle of this Declaration.

Civil Society should:

- Seek to increase public awareness of the importance of the Internet in the realisation of rights
- Advocate for Internet rights and freedoms; monitor Internet laws and regulations; and highlight abuses, including in their reports to regional and international treaty bodies and other human rights mechanisms.
- Communicate with the Special Rapporteur on Freedom of Expression and Access to Information in Africa on measures to uphold freedom of expression in relation to the Internet
- Encourage and monitor the participation of women and girls in all areas related to Internet development and governance.

Media Organisations should:

- Popularise this Declaration and the principles outlined in it.
- Improve their own understanding of Internet issues and foster awareness about the importance of the Internet to all sectors of the society, particularly among marginalised groups and disadvantaged communities.

Companies operating in Africa should:

- Internalise and apply the "Respect, Protect and Remedy" framework to fulfill their duties to uphold Internet rights.
- Respect human rights to the fullest extent possible. For example, where faced with government demands which would violate human rights, companies should interpret government demands as narrowly as possible, seek clarification of the scope and legal foundation for such demands, require a court order before meeting government requests, and communicate transparently with users about risks and compliance with government demands.
- Invest in online tools, software and applications that enhance local and intercultural content exchange, and simplify the exchange of information across language barriers.
- Publish transparency reports on government requests for user data, content removal, network disruptions, and compliance rates on a regular basis. All company policies on privacy and data protection, including data retention rates and breach notification policies, should be translated to local languages and easily accessible on the company's country-level website.

Technical communities

- Should actively respect and promote the open standards of Internet in terms of the technical architecture and the design of the Internet.
- Are encouraged to innovate and develop open source software, open data, and open educational resources relevant to African users.
- Should engage actively in the multi-stakeholder processes that deal with human rights as well as Internet governance in Africa and provide policy inputs to Internet-related issues.
- Should ensure Africa participation in the development of open standards.

Academic, research and training institutions in Africa should:

- Integrate courses on Internet rights and freedoms in their curriculum
- Promote and contribute to the development of local content particularly content that fosters the use of the Internet by marginalised groups and communities
- Proactively engage in the generation of scientific evidence on Internet rights and freedoms in Africa.
- Promote and participate in the reinforcement of Africa's capacity to contribute content and expertise in global, regional and national Internet development and policy forums

