

## **Why is an African Declaration on Internet Rights and Freedoms needed when the two International Covenants and African human rights framework set out human rights standards that apply online?**

Firstly, whilst it is acknowledged that the two International Covenants provide an excellent starting point as a framework for the protection of online rights, especially in light of reports and guidance provided by the former Special Rapporteur for Freedom of Expression (FoE), Frank La Rue, and the existence of a holistic three-part cumulative test for legitimate limitations; the reality is that **the two International Covenants are very broad in scope and in the principles that they set out**. It would be a stretch to say that they provide an adequate framework for the protection of online freedoms within the African context. The **African Charter on Human and Peoples' Rights is just as broad as the ICCPR in its framing and is insufficiently precise to provide an effective framework** for the protection of Internet freedoms at the regional or national levels. Furthermore, the African Court on Human and Peoples' Rights is a nascent institution that only delivered its first judgment in 2009. As a result, **there is very limited case law on the continent** that sets out clear interpretation and guidance on the applicability of, amongst others, the rights to freedom of expression, association and assembly online as opposed to say case law under the European regional human rights framework which is significantly more developed and holistic.

Secondly, **the Declaration is not designed to be an 'enforcement' mechanism. As a Declaration, its purpose is to set out a minimum set of standards** that stakeholders engaging in Internet governance - in particular African governments, governmental agencies/contractors and regional-level (e.g. AU, ECOWAS) institutions - should commit to upholding and referring to when developing new legislation, policy and guidance. Therefore, one of the aims of the Declaration is to guide and inform the development of more detailed and targeted legislation at the national level. It is not however meant to be a 'model' Internet law, simply a set of principles that are relevant to Africa.

Thirdly, whilst it is acknowledged internationally that the right to FoE is an enabler of economic, social and cultural rights, in Africa this connection will be best fostered within a framework that takes into account the particular needs and circumstances of the continent. **Therefore, the Declaration is designed and written in such a way that it highlights issues that are of particular importance in the African context** - for e.g. access and affordability, cultural and linguistic diversity and the right to development, amongst others. Furthermore, **the process of developing and now advocating for the Declaration goes beyond attempting to fill policy/legislative gaps in Africa**. This is a civil society initiative that is being led by African civil society groups. The initiative, and the organisations and individuals involved in its promotion, are **part of a rich heritage of FOE advocacy on the continent** that includes historic initiatives such as the Windhoek Declaration on Promoting a Pluralistic African Press of 1991, which led to the creation of World Press Freedom Day. As such, **the Declaration is aimed at serving as an example for other regions** to pursue similar initiatives and advocate for the protection of online rights and **creating a 'digital identity' for the continent as a leader on internet rights**.

Fourthly, **the Declaration also aims (and we intend to use it as a tool) to promote multi-stakeholderism as a model and raise public awareness on Internet rights on the continent**. Over 15 African organisations are currently involved in the initiative,

representing views from north, west, east and south of the continent. Two ECOWAS Commissioners (on ICTs and Communications) have been engaged regarding the Declaration and have expressed a real interest in engaging with the group and supporting the Declaration. A number of national governments have also been approached - the Ghanaian Deputy Minister for Communications has lauded the initiative and has expressed his support for it. The AU Commissioner on Human Rights has also personally been approached as has expressed an interest in the initiative – (tentatively) she has indicated that we would be welcome to present the Declaration at the next meeting of the African Commission on Human and Peoples' Rights (ACHPR) in October in Burkina Faso. Furthermore, the Deputy Director-General of UNESCO, Mr Getachew Engida of Ethiopia, also lauded the Declaration and its importance at the 2014 IGF.

It is clear from the above points that **the strategy of developing a regionally relevant Declaration for Africa is starting to pay off**. The initiative is experiencing some initial successes in terms of sensitizing politicians on the need to protect online rights and obtaining their support for the basic principles, gradually moving towards the building of a solid and contextually relevant rights framework for the continent.

It must be kept in mind that **this initiative is still very young**. Final amendments to the text are still being completed. A targeted advocacy strategy, communications strategy and campaign are also currently being developed and updates to the website are planned. Research on the Declaration is also being developed, which will address the need for the Declaration in more detail. The paper will explore the gaps in legislation/policy in Africa in more detail, highlighting how the Declaration helps plug those gaps. It will also explore practical examples of violations of internet rights on the continent and analyse how the Declaration could help prevent future violations.