
The African Union: a guide for human rights defenders in the digital age

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Glossary

AEC

African Economic Community

AFDB

African Development Bank

ACHPR

The African Commission on Human and Peoples' Rights

AMCOST

Conference of Ministers Responsible for Science and Technology

AMCOMET

Conference of Ministers Responsible for Maritime Transport Conference of Ministers Responsible for Meteorology

APRM

African Peer Review Mechanism

AU

African Union

AUCIL

African Union Commission on International Law

CEMA

Conference of Energy Ministers of Africa

CIDO

African Citizens' and Diaspora Directorate (of the AU Commission)

COMEDAF

Conference of Ministers Responsible for Education

CSO

Civil Society Organisations

ECOSOCC

Economic, Social and Cultural Council

EU

European Union

G8

Group of eight industrialised countries

ICT

Communication and information communications technology

NGO

Non Government Organisation

NEPAD

New Partnership for Africa's Development

OAU

Organisation of African Unity

PAP

Pan African Parliament

PRC

Permanent Representatives Committee

PRC

Permanent Representatives Council

PSC

Peace and Security Council

STC

Specialised Technical Committees

RECs

Regional Economic Communities

UNECA

United Nations Economic Commission

UN

United Nations

Internet Shutdown

An Internet shutdown can be defined as an "intentional disruption of Internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location often to exert control over the flow of information" ¹

1. About this tool

Rapidly growing internet penetration rates in Africa have provided an unprecedented platform for the realisation of the right to freedom of expression and other human rights.

However, in many cases the response from governments has been to stifle dissent and enforce law and order, by imposing internet shutdowns and curfews.² In 2017 alone, 11 African countries shut down³ internet access ahead of elections or anti-government protests. Human rights defenders in Africa can challenge this trend by using the systems of the African Union (AU).

This guide is designed for CSOs in Africa who want to use the AU system to advance human rights in the digital age. It has two core aims. The first is to help human rights defenders understand how the AU works – exploring the key structures and processes, and opportunities for civil society to influence outcomes. The second aim is to offer some first thoughts on potential CSO strategies to use the AU system to defend human rights in this digital age.

2.

Why Should I Care About The African Union?

The AU is now perceived as a regional interlocutor in the international arena. There is an understanding among states and non-state actors that the AU provides a platform to advance collective action that promotes the continent's collective interests.

In addition:

- CSOs have legitimacy – their role of influencing and aiding AU processes is recognised and accepted.
- AU systems have monitoring and follow-up built in to them, which allows for long term influence and change.
- There is potential for continent-wide changes and collective action.
- Africa's core human rights instrument, the African Commission for Human and People's Rights (ACHPR) is part of the AU system.

Declining internet freedom in Africa

Internet shutdowns started gaining global attention during the Egypt uprising in 2011, when authorities shut down the internet for nearly a week to disrupt communications of protestors. In fact there has been a steady decline of internet freedom over several years. In Gabon and the Gambia, the internet was shut down during and after elections. Ethiopia and the Democratic Republic of the Congo have closed off internet access ahead of anti-government demonstrations. On January 17, 2017, the Cameroonian government cut off access to the internet for up to 93 days in the English-speaking Northwest and Southwest regions of the country in a bid to control the protest of citizens alleging marginalisation of the minority English-speaking population by the government of a largely francophone Cameroon.

These repressive actions are happening at a time when governments all over the world are committed to leveraging the power of the internet and ICTs to reach the United Nations Sustainable Development Goals in areas such as education, health and economic growth.

According to Access Now, the number of shutdowns increased from 55 in 2016 to 61 in 2017. A report released by CIPESA disclosed that countries in Sub-Saharan Africa have lost up to 237 million USD as a result of internet shutdowns since 2015.

3.

How it Works

3.1. History

The AU was established in Durban⁴ in 2002. Its origins lie nearly 40 years earlier, with the creation of the Organisation of African Unity (OAU).

The OAU was created on 25 May 1963 in Addis Ababa with 32 signatory governments. Over its lifetime it came to include all African states (although Morocco removed itself in 1984 and at the time of writing was in the process of rejoining). The original aims of the OAU were to promote cooperation among African states, to defend the sovereignty, territorial integrity and independence of those states, and to eradicate all forms of colonialism and white minority rule. Human rights were only a passing reference in the OAU charter.

Even without a strong mandate on the topic, the OAU was instrumental in creating the 1981 African Charter on Human and Peoples Rights and the 1999 Grand Bay Declaration and Plan of Action on Human Rights. These texts are now fundamental to Africa's human rights framework. In 2001 the New Partnership for Africa's Development (NEPAD) was inaugurated, an economic development programme which also places human rights at the centre of development.

Despite these achievements the OAU's limited power and policy of non-interference in the affairs of Member States contributed to its reputation as a bureaucratic talking shop. Eventually something had to change.

In October 1999, the Sirte Declaration formalised a plan to create a new body, the African Union. This signalled a change in approach, from a position of non-interference to one of non-indifference. The AU's mandate aims to accelerate the process of economic integration of African states, and address multifaceted social, economic and political problems across the continent. Upholding human rights forms an explicit part of its mandate. When the AU was created in 2002, the OAU was dissolved.

3.2. Mandate

The establishment of the AU was hailed as a welcome opportunity to put human rights firmly on the African agenda.

The AU claimed the right to intervene in any Member States' affairs on human rights grounds. The AU Constitutive Act⁵ reaffirms Africa's commitment to promote and protect human rights.

3.3. Structure

The highest decision-making organ of the AU is the Assembly of Heads of State and Government⁶ (AU-AHSG, or the Assembly).

The Executive Council, made up of the Foreign Ministers of AU Member States, prepares decisions for the Assembly and is extremely influential. The AU Commission (AUC) is the most visible and active of the AU organs, and functions as the secretariat.

A number of other AU agencies are particularly relevant to human rights defenders concerned with digital rights and freedoms. These include the African Commission on Human and Peoples Rights (ACHPR), the African Court on Human and Peoples Rights and the Economic, Social and Cultural Council (ECOSOCC), which has a membership drawn exclusively from CSOs. These other AU organs have varying mandates and powers (outlined below), but ultimately all decisions must be passed by the Assembly or the Assembly in order to be formally adopted. It is however important to note that certain organs of the AU like the Pan African Parliament and the Peace and Security Council make their own decisions in their respective spheres of jurisdiction and do not require these decisions to be approved by these two arms of the African Union.

4.

Who's who

4.1. The decision-making bodies

The Assembly

The Assembly is the AU's ultimate decision-making body. It determines the AU's policies, establishes its priorities, adopts its annual programme and monitors the implementation of its policies and decisions. The Assembly is mandated to accelerate the political and socio-economic integration of the African continent, and may issue directives to the AU Executive Council and Peace and Security Council on the management of conflicts, war, and acts of terrorism, emergency situations and the restoration of peace.

In 2004 the Assembly delegated its mandate to decide on intervention in or sanctions against Member States⁷ to the Peace and Security Council⁸ (not covered in this guide).

Each year the Assembly selects a new Chairperson of the AU. This is the ceremonial head of the AU, and the Chair of the Assembly for that year. The appointment is made from each of the five regions of Africa, in rotation. The same Member State that chairs the Assembly also chairs the Executive Council.⁹ Important appointments in other AU agencies are often also made by the AU (including appointment of ACHPR Commissioners).

The Executive Council

The Executive Council is tasked with preparing decisions and reports for presentation to the Assembly. All Member States have a single representative on the Executive Council, usually the Minister for Foreign Affairs but specific appointments are at the discretion of each government.¹⁰

The Executive Council meets at least twice a year in Ordinary Session, following the Assembly meeting schedule and location. The Executive Council bureau consists of a Chairperson, three Vice-Chairpersons and a Rapporteur. Representatives on the Executive Council generally serve only one term, lasting a year. When nominations for replacements are delayed, this can affect Executive Council operations.

All sessions are closed to the public unless the Council decides otherwise. Extraordinary sessions are held at AU Headquarters in Addis Ababa, Ethiopia, unless a Member State invites the Council to meet in its country. Where the Executive Council accepts an invitation from a Member State to host a meeting away from Headquarters, the host country has the right to co-chair the Council.

African Union Commission (AUC)

The AUC¹¹ is the AU's secretariat, mandated to represent and defend the interests of the AU under the direction of the Assembly and the Executive Council. The AUC initiates proposals and draft positions to be submitted

to the Assembly, and also takes a leading role in implementing the decisions taken by various AU agencies. It also provides assistance to Member States in implementing the AU's programme of work, and helps to coordinate Member States in international negotiations, including working to harmonise AU programmes and policies with those of the Regional Economic Communities (RECs).

The AUC is composed of a Chairperson, Deputy Chairperson and eight Commissioners, plus staff.¹² The Assembly elects the chairperson and deputy Chairperson, while the Executive Council appoints the eight Commissioners. Each Commissioner has a portfolio of responsibilities, and are responsible for implementing all decisions, policies and programmes related to those portfolios.

The AUC is also the main executive arm of the Africa-EU Partnership, which aims to “strengthen economic cooperation and promoting sustainable development, with both continents co-existing in peace, security, democracy, prosperity, solidarity and human dignity”. The Partnership is driven through formal dialogue and meetings, at various levels, between African and European counterparts, and culminates with the AU-EU Summits.¹³

At these Summits, which take place every three years, the Heads of States and Governments of Africa and the EU meet to provide political guidance on the cooperation. Annual meetings between the commissions of the African Union (AU) and the European Union (EU), as well as ad-hoc meetings at ministerial, parliamentary or committee level also take place.

The partnership also includes stakeholder dialogue events which aim to bring the views and recommendations of key African and European actors in different sectors to the partnership. This includes the Africa-EU civil

society forum and which takes place in the run-up to Summits of Heads of State and Government. It is facilitated by two steering committees from Africa and the EU, supported by the African Union and the European Commission.¹⁴

Specific thematic dialogues or expert meetings make an important contribution to the Partnership and include the AU-EU Human Rights Dialogue, the objectives of which are to strengthen exchanges of experience on issues related to human rights, democratic principles and the rule of law, and to collaborate on the effective implementation of continental and international human rights instruments. Annual meetings so far have resulted in political declarations and have also been preceded by meetings of AU-EU Civil Society Organisations (CSOs) Seminar on Democratic Governance and Human Rights.¹⁵

The Chairperson of the AUC also co-chairs the AU and United Nations (UN) High Level Dialogue on Human Rights, the first of which was convened in April 2018. The AU and the UN committed to closely working together towards the development, adoption and implementation of a joint AU-UN Framework on Human Rights and signed a Joint Communiqué of the High Level Dialogue on Human Rights.¹⁶

The AUC also manages other multilateral partnerships, for example with the Council of Europe. The African Union Commission and the Council of Europe jointly organised a workshop in April 2018 on cybersecurity and cybercrime policies as part of the ongoing collaboration between the two institutions, with the view to organising an African Forum on Cybercrime, in the same year. The Forum's main objective will be to promote a coherent approach on cybercrime and related criminal justice issues in Africa.¹⁷

Finally, the AUC may enter into short term partnerships with non-governmental institutions, such as to develop guidelines on certain topics. In 2017 the AUC partnered with the Internet Society to develop guidelines on internet infrastructure security,¹⁸ and the following year it partnered with the same organisation to release guidelines on personal data protection.¹⁹

Specialised Technical Committees (STCs)

Article 14 of the AU Constitutive Act²⁰ provides for the establishment of Specialised Technical Committees (STCs) across a range of thematic areas, to work in close collaboration with AUC departments and ensure AU projects and programmes are harmonised. STCs are responsible to the Executive Council.

At the time of writing, there are 14 STCs, consistent with the AUC portfolios²¹ structure. Each STC is composed of Member States' ministers and senior officials responsible for sectors falling within their respective areas of competence. Some of the key committees for human rights defenders concerned with digital rights and freedoms, might be Communication and Information Communications Technology (ICT); Gender and Women Empowerment; Justice and Legal Affairs.

Most STCs are supposed to meet at ministerial and expert level every two years, with the exception of the STCs for Gender and Women Empowerment, Finance, Monetary Affairs, Economic Planning and Integration, and the STC for Defence and Security. These meet every year.

The Permanent Representatives Committee (PRC)

The Permanent Representatives Committee²² (PRC) conducts the day-to-day business of the AU on behalf of the Assembly and Executive Council. It reports to the Executive Council,

prepares the Council's work and acts on its instructions. All AU Member States are members of the PRC, represented by the ambassador/permanent representative of each Member State based in Addis Ababa.

The PRC acts as an advisory body to the Executive Council, and facilitates communication between AU Commissioners and Member State capitals, among other functions. It meets at least once a month, and essentially ensures the AU is able to function between AU and Executive Council sessions. The PRC also sets up sub-committees and temporary working groups as it deems necessary.

4.2 Other organs of the AU

Regional Economic Communities (RECs)

The Regional Economic Communities (RECs) are considered to be the 'building blocks' of the AU and instruments for the further integration of Africa. Many African states remain economically and politically fragile. The AU recognises eight RECs: the Arab Maghreb Union (UMA); Common Market for Eastern and Southern Africa (COMESA); Community of Sahel-Saharan States (CEN-SAD); East African Community (EAC); Economic Community of Central African States (ECCAS); Economic Community of West African States (ECOWAS); Intergovernmental Authority on Development (IGAD); and Southern African Development Community (SADC). These bodies also have their own institutions and mechanisms which may be relevant to human rights defenders, such as the EAC Court, the EAC's EALA Parliament (which recently drafted the Electronic Transactions Act), the ECOWAS Court of Justice and the SADC Tribunal. In addition, they may have mechanisms for civil society input: the EAC for example hosts annual stakeholder dialogues.²³

The RECs have developed individually and have differing roles and structures that are used to facilitate regional economic integration between Member States of the individual regions through the wider African Economic Community. RECs are increasingly involved in coordinating the AU Member States interests in wider areas such as peace and security, development and governance. The relationship between RECs and AU provides for a coordination framework that is made of two elements: the Committee on Coordination and the Committee of Secretariat Officials. The Committee on Coordination provides policy and advice and oversight of implementation of the protocol, coordinating and monitoring progress made by RECs in meeting the regional integration goal stages detailed in Article 6 of the Abuja Treaty. The Committee of Secretariat Officials prepares reports for consideration by the Committee on Coordination.

The Pan African Parliament

The Pan-African Parliament²⁴ (PAP) was one of the nine organs proposed in the 1991 treaty establishing the African Economic Community. Its function and purpose is to ensure the full participation of African people in the development and economic integration of the continent.²⁵ Currently its role is only advisory and consultative.

The PAP has up to 250 members representing the 50 AU Member States that have ratified the Protocol establishing it. PAP members are nominated from the national parliaments, meaning that for now anyway, they are more like representatives of governments than direct representatives of the citizens of the AU Member States.

PAP has nine permanent committees and one ad hoc committee, all of which discuss thematic issues. These permanent committees meet twice a year for statutory meetings although they can meet more often during parliamentary sessions or for non-statutory meetings. The committee on justice and human rights assists the Parliament in its role of harmonising and coordinating Member States laws. It advocates for respect within the AU of the principles of freedom, civil liberties, justice, human and people's rights and fundamental freedoms. The Pan African Lawyers Union (PALU) in particular has experience engaging with and influencing the Pan African Parliament.

African Union Commission on International Law

The African Union Commission on International Law²⁶ (AUCIL) was established in 2009 as an independent advisory organ. It undertakes activities relating to codification and progressive development of international law in Africa with particular attention to the laws of the AU. The major challenge lies in enforcing the laws developed.

The 11 members of the AUCIL are appointed by the Executive Council, and serve in their personal capacities usually for a five year term (renewable once). This Commission meets twice a year²⁷ in Ordinary Session at the AU headquarters and may meet elsewhere. It may meet in Extraordinary Session at the request of the Chairperson or two thirds of the members.

The Economic, Social and Cultural Council (ECOSOCC)

The Economic, Social and Cultural Council (ECOSOCC)²⁸ is an advisory organ to the AU. It is mandated to contribute to 'the promotion and realisation of the AU's vision and objectives by undertaking studies, making recommendations, and fostering partnership between CSOs and the AU.

Each AU Member State contributes two CSOs to ECOSOCC. Another 48 seats are filled by CSOs that operate regionally (10 seats), across the entire continent (eight seats), or within the African Diaspora (20 seats). Finally the AUC nominates six CSOs to join ECOSOCC based on 'special considerations.' ECOSOCC members are drawn from many different kinds of CSO. Social interest groups, community-based organisations, professional associations and private sector interest groups are represented.

All ECOSOCC members sit at its General Assembly, the highest decision-making body of this AU organ. The major strength of ECOSOCC is that it provides a platform for several CSOs to engage with policy and advisory issues that are submitted to AU Member States. However, with so many seats it can be difficult for individual CSOs to influence the advice ultimately submitted to the AU.

African Commission on Human and Peoples' Rights (ACHPR)

The African Commission on Human and Peoples' Rights (ACHPR) was established in 1987 to oversee and interpret the African Charter on Human and Peoples' Rights (also known as the Banjul Charter, or The African Charter). The ACHPR has three major functions: promotion of human and peoples' rights, protection of human and peoples' rights and interpretation of the Charter.

The ACHPR consists of 11 Commissioners elected by the Assembly from experts nominated by State Parties to the Charter, and with considerable given to equitable geographical and gender representation. Commissioners serve renewable six year terms, in their personal capacity (i.e. not as representatives of State Parties). A bureau of Chairperson and vice-Chairperson is empowered to take decisions between sessions on matters of emergency. The Secretariat

provides administrative, technical and logistical support to the ACHPR.

State Parties to the African Charter are required to submit a report every two years on measures taken to give effect to the rights and freedoms guaranteed by the Charter. These reports are reviewed by the ACHPR. There is also a 'communication procedure' under which states, organisations and individuals can take a complaint to the ACHPR alleging that a State Party has violated one or more of the rights contained in the Charter. Once the complaint is accepted, the ACHPR invites parties to reach an amicable resolution, offering its 'good offices' to help reach a friendly settlement at any stage. If that is not possible, an ACHPR Commissioner proceeds with an investigation. ACHPR final recommendations are not legally binding, and there is no mechanism to compel states to comply. In emergency situations, where the life of a victim is in imminent danger, the ACHPR can invoke provisional measures under rule 111 of its Rules of Procedure requesting the state to delay any action pending its final decision on the matter.

The ACHPR holds two Ordinary Sessions a year, usually for 10 to 15 days each in March/April and October/November. The working sessions may be open or closed to the public. States, national liberation movements, specialised institutions, national human rights institutions (NHRIs), non-governmental organisations (NGOs) or individuals may all be invited to take part in its sessions. Ordinary Session agendas are usually drawn up by the ACHPR Secretariat in consultation with the ACHPR Bureau. Apart from the Ordinary Sessions, the Commission may also meet in Extraordinary Sessions, either to respond to human rights crises or for more procedural matters.

The ACHPR submits a report of its activities to all AU Assembly Ordinary Sessions, although

in fact they are considered by the Executive Council. The ACHPR may publish information about its protective activities only after the Executive Council and Assembly have adopted the report. The Executive Council can withhold authorisation for publication of these reports and has done so.

For more information on the specific outcomes of the ACHPR, see section five.

African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter. The Court was established in 1998 to complement and reinforce the functions of the ACHPR. Unlike the ACHPR the Court can make binding decisions, including orders of compensation or reparation. It only has jurisdiction over those states which are party to the protocol which established the court.

In 2008, the African Union took a decision to merge the African Court of Justice with the African Court on Human and Peoples Rights. In 2014 (via the Malabo Protocol), the African Union took another further decision to extend the jurisdiction of the jurisdiction of the African Court of Justice and Human Rights to cover international and transnational crimes. However, the 2008 merge and the 2014 decision to extend the jurisdiction has not come into force yet because the requisite number of signatures required for ratification by states has not been obtained. In reality, only the African Court on Human and Peoples Rights is operational.

As of 1 September 2014, 27 states had ratified the Protocol.²⁹ Cases can be submitted to the court by State Parties to the Protocol that established the Court, African

intergovernmental organisations, NGOs with observer status before the ACHPR and individuals from State Parties to the Protocol.

The Court consists of 11 judges elected by the Assembly from African jurists nominated by State Parties to the Protocol. No two judges may be of the same nationality. The judges elect a president and vice-president who serve two-year terms, renewable once. The Court sits four times a year in two-week Ordinary Sessions. Extraordinary Sessions may also be held.

The challenge that has bedevilled this Court since its establishment is that its decisions are usually difficult to enforce.

NEPAD

NEPAD is a programme for Africa's economic development. The NEPAD secretariat reports to the NEPAD Heads of State and Government Implementation Committee (HSGIC), that in turn meets on the margins of AU Summits and reports to the AU Assembly. It works with the RECs, which are primarily responsible for implementing the NEPAD programmes, to promote effective cross-border collaboration on infrastructure, trade and other economic initiatives. NEPAD has an "E-Africa programme" which "aims to build ICT capacities across the continent and is advocating on topics related to cybersecurity and cybercrime as well as the social and economic benefits of ICTs for Africa".

African Peer Review Mechanism (APRM)

The African Peer Review Mechanism (APRM) was established in 2003 by NEPAD to monitor performance on good governance among Member States. The APRM is a self-monitoring instrument and its membership is voluntary. By joining the APRM, Member States agree to voluntarily and independently review their compliance with African and international governance commitments. The first review is

meant to be carried out within 18 months of a Member State joining the APRM and then every two to four years, although in actual practice they can take as long as seven years. Thirty-six of the 55 AU Member States have joined the APRM and 21 have been peer-reviewed. The APRM has suffered from a lack of commitment and resources but it remains a functioning mechanism and there are renewed hopes that it might be reformed.³⁰

5.

Key Processes

5.1 The AU policy cycle and how civil society can engage

There are four main ways in which CSOs engage the AU. They include through institutional spaces (members of ECOSOCC have an official place in AU structures), through invited spaces (any organisation may be invited to attend AU activities), created spaces (organising autonomous activities related to AU issues and processes) and through organising joint activities with AU organs.

In addition to being members of the ECOSOCC, NGOs may also apply for observer status with the AU (see annex). Others have followed a different route and have signed memorandums of understanding with the AUC to provide technical assistance. Among these organisations are the International Institute for Democracy and Electoral Assistance (International IDEA), the European Centre for Development and Policy Management (ECDPM), The Internet Society and Oxfam. Perhaps the most powerful initiatives, however, have been the independent advocacy efforts organised by civil society coalitions on particular policy concerns.

To get digital rights and freedoms on the agenda at the AU and to secure positive outcomes, there are a number of concrete steps we can take.

The outcomes or 'decisions' of the African Union are adopted twice a year by the Assembly, which is made up of the Member States Heads of State (see page 14).

Each of these start as a policy proposal. There are two types of proposal that can be adopted by the Assembly at its either one of its two annual Ordinary Sessions:

- **Decisions:** These are binding on Member States. These include treaties (Conventions and Charters) but only enter into force after they've been ratified. Protocols to treaties can also be adopted by the AU Assembly.
- **Declarations:** These are not binding, but rather are intended to guide the viewpoints of Member States.

The two most important policy proposals that the AU Assembly has adopted with regards to digital rights are the AU Convention on Personal Data Protection and Cybersecurity (2014) and the AU Declaration on Internet

Governance and Development of Africa's Digital Economy (2018). The AU also has partnerships with other organisations, including multilateral institutions like the EU, the UN and the Council of Europe, which have their own, separate outcomes (see pages 14 - 15).

Policy proposals can be tabled by the AUC or one of its departments, another organ of the AU (for instance the ACHPR), or by an AU Member State (or States). After a policy proposal has been raised the issue is discussed in expert meetings, with specialists appointed by Member States. Their suggestions are subsequently scrutinised in a meeting of the relevant ministers of Member States. If the proposal has any budgetary implications it has to be discussed by the PRC before being passed to the Executive Council. For some proposals, the Executive Council makes a final decision. Any politically sensitive proposals are passed to the Assembly for final adoption. The timeline of this process is dependent on the frequency of the sittings by the relevant bodies and organs of the AU discussed above. Occasionally, special and extraordinary meetings can be convened with the required support of members.

Each stage of this policy making process is described in more detail in section six below.

When it comes to human rights online, the most relevant meeting where a proposal is likely to be first discussed is the African Union Specialised Technical Committee (STC) on Communication and ICT (CCICT), which convenes Ministers responsible of ICT and Post as well as Ministers in charge of Communication and Information from AU Member States, AU Specialised Institutions and International Organisations, African and International Partners of Africa dealing with Communication and Information Technologies. The STC replaced the previous ICT Ministerials in 2015.

The ICT Ministers will include any decisions agreed in a report to the AU's Executive Council. They may also issue declarations which make recommendations to the Executive Council. For example, in 2010 the ICT Ministers adopted the Abuja Declaration, which requested the AU Commission to "jointly finalise with the United Nations Economic Commission for Africa, within the framework of the African Information Society Initiative (AISI), the Draft Convention on Cyber legislation and support its implementation in Member States by 2012".

In 2008 the ICT Ministers adopted a Reference Framework for Harmonization of the telecommunication and ICT Policies and Regulation in Africa (HIPSSA) at the second ICT Ministerial Summit. The Reference Framework adopted had the aim to: "...Establish harmonized policy, legal and regulatory frameworks at the regional and continental levels to create an enabling environment that will attract investment and foster the sustainable development of competitive African Telecommunication/ICT regional markets, infrastructures, and to increase access of its people to the related services..."

Then in 2009 the ICT Ministers adopted the Oliver Tambo Declaration, which called on the AU to "develop a convention on cyber legislation based on the Continent's needs and which adheres to the legal and regulatory requirements on electronic transactions, cyber security, and personal data protection". This led to the drafting and the passing of the AU Convention on Personal Data and Cybersecurity in 2014.

In 2017, one of the outcomes of the STC on CCICT was the "Draft African Union Declaration on Internet Governance". The "Declaration on Internet Governance and Africa's Digital Economy" was later adopted by the AU at its 30th Ordinary Session in January 2018.³¹

Of course, not all proposals make it from the first stage to the final stage, or adoption by the AU Assembly. The policy proposal process is relatively fluid, and proposals can get proposed and dropped at any point along the way of the process, although generally they will be dropped at the first or second stage of the six stage process. That's why it is particularly

important to develop a strong statement and take the actions identified under each stage of the process below for CSOs. Below we have included a proposed template for suggesting a proposal for consideration. Policy proposals can also be taken directly to the Chairperson of the AUC.

Possible template to suggest a policy proposal on network disruptions

[1] Summary of the problem being addressed by this policy proposal

Provide an explanation of the problem being addressed, and include statistics to demonstrate the impact the problem has on socio-economic development, human rights, etc

In 2017, as many as 11 African countries shut down internet access. In Gabon and the Gambia, internet was shut down during and after elections while, Ethiopia and the Democratic Republic of the Congo closed off internet access ahead of anti-government demonstrations. On January 17, 2017, the Cameroonian government cut off access to the internet for up to 93 days in the English-speaking Northwest and Southwest regions of the country.

[2] Reference to relevant texts

Make reference to any relevant text from AU bodies

These disruptions to internet access contravene the commitments and affirmations made by the AU and its organs with regards to the importance of access to ICTs, both for the realisation of human rights and for social and economic development. For example:

In its 2017 Addis Ababa Declaration, the STC – CCICT 2 reaffirmed “that Communication and ICT are key to Africa’s development and economic competitiveness and in the attainment of the African Union Vision and the goals of the Agenda 2063”.

In November 2016, the African Commission on Human and Peoples’ Rights (ACHPR) reaffirmed the Declaration of Principles on Freedom of Expression in Africa, and specifically that “everyone shall have an equal opportunity to exercise the right to freedom of expression and to access to information without discrimination,” through the adoption of the Resolution on the Right to Freedom of Information and Expression on the Internet in Africa (ACHPR/Res. 362(LIX) 2016).

In January 2018, the Declaration on Internet Governance and the Development of Africa’s Digital Economy at the 30th Ordinary Session of the AU Assembly in Addis Ababa recalled “the commitment of Member States to promote and protect fundamental freedoms, especially the right to freedom of expression and access to information (on and offline) and human and peoples’ rights enunciated in instruments of the African Union and of the United Nations and recognising that these rights must be upheld online as well as offline”.

[3] Concrete proposal

Suggest a concrete recommendation/s

We therefore urge the *insert addressee of the policy proposal* to consider including the disruption of access to the internet as an issue on its agenda.

5.2 The stages of the AU policy cycle

Stage One:

Policy Proposal

A policy proposal is put forward by one of:

- The AUC or one of its departments
- An organ of the AU
- AU Member State or States (relevant bodies for digital rights include ICT ministries, Justice/ Legal Affairs and Gender ministries).

The sponsoring party prepares all the necessary documents including the agenda and programme of work. This involves the identification of key issues, analysis of regional issues and development of the draft policy for consideration.

At this stage, CSOs have the opportunity to acquaint themselves with annual plans and Summit decisions in order to suggest proposals to Member States (see template above). CSOs can offer technical assistance and relevant information to draft documents and also convene strategic meetings to explore how to engage with Member States or relevant AU organs.

Stage Two:

Experts Meetings

Upon receipt of a proposal, the AUC convenes a meeting of relevant experts from the Member States, which typically lasts four to five days. Non-state actors including CSOs are invited to contribute. This is where most AU policy documents, treaties and programs of action are scrutinised. The resulting recommendations are incorporated in a draft policy, which is submitted to the Ministers' meeting.

At this stage, CSOs can seek invitations or nominate experts to take part, interact with individual experts, offer short briefing papers (see template above), facilitate meetings, and volunteer to draft reports and brief ACHPR special rapporteurs.

Stage Three:

Ministers' Meetings

The relevant ministers from each Member State meet to discuss, approve, or amend the experts' proposals through the Specialised Technical Committees. For instance, there is an STC on Communication and ICT that is relevant to civil society working on digital policy. The policy and the meeting are passed to the PRC or, in cases where there are no budgetary implications, directly to the Executive Council.

At this stage, CSOs can seek invitations to be part of a specific Member State delegation or lobby in the meeting margins. They can brief ministers and officials while in their home country, share position papers and constructively engage with the media on some of these issues.

Stage Four:

Permanent Representative Council

This stage applies only to policy proposals that have budgetary implications for the AU. The PRC meets at least once a month usually at the AU headquarters in Addis Ababa. Extraordinary meetings may also be held.

The report of the Ministers' meeting and associated policy proposal will be considered either in a PRC full meeting or in a specific sub-committee. The PRC will then determine items that should be on the agenda of the Executive Council.³² At this stage, CSOs can brief the Chair, members and regional caucuses, offer suggestions on ways to fund the proposal, and give regular briefings on policy issues to PRC members to establish credibility.

Stage Five:

Executive Council

Executive Council meetings are usually held immediately prior to the Assembly Summit, although the Council can also hold an Extraordinary Session in specific exceptional circumstances. All sessions are closed to the public unless the Council decides otherwise (by simple majority).

The Executive Council makes decisions by consensus or, where consensus is not possible, by a two-thirds majority. Procedural matters, including the question of whether a matter is one of procedure or not, are decided by a simple majority. Two-thirds of AU members are required to form a quorum at any Executive Council meeting.³³

Once the Executive Council reviews and approves the recommendations from the Ministers' meeting, they are then sent to the Assembly for final adoption.

At this stage, CSOs have an opportunity highlight the consequences of not adopting the proposal, and brief the press on why the issues are important. They can also brief regional caucus meetings.

Stage Six:

Assembly

The Assembly has the power to finally adopt the decision or resolution on behalf of the AU. This happens at a meeting of the Assembly called the Heads of State Summit. The majority of proposals presented to the Assembly at the Summit have already been largely agreed before they are tabled. Some

proposals are even adopted without any further discussions.

The Assembly meets in Ordinary Session twice a year, in January-February and in June-July. However, the Chairperson of the AU or any Member State can call an Extraordinary Session with the consent of at least two-thirds of all Member States.³⁴ The Assembly adopts

decisions by majority vote.

At this stage, CSOs have a couple of different options. If the issue has not been decided, CSOs can continue to gather support for their position. If it has been agreed, congratulate governments for taking bold and positive steps and set up a monitoring mechanism.

Basic steps for civil society organisations seeking to lobby the AU

- Find out which countries are members of the bureau elected to guide AU processes during the year. Meet with them and present your arguments for your issue to be on the agenda of the planned Summit. Ask advice on what would be needed for an agenda item to be accepted.
- Find out which country is the current dean of each regional group and the position of the region on critical issues. Meet with the ambassador of that country in Addis Ababa, together with representatives of NGOs from that region, present your viewpoint and find out where you stand.
- Make sure that you express your advocacy messages within the framework of AU policies and standards – and not only the international ones.
- Try to identify which countries are likely to wield the greatest influence for and against an issue of concern. Make contact with NGOs in those countries to strategise on ways to influence their positions or the issues that they seek to address.
- Where there are divided opinions among AU Member States, consider which countries might be able to broker a compromise, given their historical position, current influence or other factors. Meet with that country's ambassador and see what may be done.
- Find out what is the position of the 'big five' budget contributors (South Africa, Libya, Nigeria and Egypt). These five countries together contribute 75 per cent of the AU budget. If they are hostile, seek to mobilise other countries which may have influence with them. Or work even harder to create a critical mass of smaller countries whose opinion they will find hard to oppose.
- Map out the positions taken by Member States and regions on important issues to help identify the most important countries to target and use to strategise with your allies.
- Establish and maintain cordial relations with staff of the AUC and diplomatic representatives of Member States based in Addis Ababa, or work with organisations which have established relations.

6. Key outcomes of the ACHPR

Of all the AU organs, human rights defenders may be most immediately interested in the ACHPR. Engaging with the ACHPR could produce a number of different outcomes, each with potential for a different kind of impact.

ACHPR Guidelines

The ACHPR can develop guidelines in accordance with the relevant provisions of the African Charter. Through a constant and evolving interpretation of human rights, the guidelines are aimed at crystallising human rights standards, understanding and addressing new challenges that may emerge from time to time. The ACHPR could exercise its mandate to develop guidelines on digital rights.

Directives

The ACHPR may issue specific directives calling on AU Member States to address certain human rights issues within their jurisdictions. Directives can be addressed to any or all Member States, undertakings and individuals. They bind Member States to the objectives, while leaving national authorities to determine the form and the means of implementation.

Recommendations

The ACHPR usually makes recommendations to address pertinent human rights issues affecting people. These recommendations may be made in a final communication after the Ordinary Sessions of the ACHPR. ACHPR Working Groups and Special Rapporteurs will sometimes make informal recommendations to a state party in their press statements.

CSOs can also make recommendations when they submit statements on the state of human rights in their respective countries during an ACHPR Ordinary Session.

Resolutions

The ACHPR adopts resolutions to address diverse human rights issues. These resolutions generally come in three forms:

Thematic resolution

A thematic resolution elaborates in greater detail specific human right themes or a particular substantive right covered in the Charter. It defines the States' obligations in respect of such rights. A thematic resolution from the ACHPR can be thought of as similar to the 'General

Comments' of UN treaty bodies. The ACHPR has passed a number of thematic resolutions covering topics including the death penalty, indigenous peoples, the situation of women and children, socio-cultural rights, HIV/AIDS, electoral process and good governance, prisons, freedom of association, and fair trial.

Administrative resolution

Administrative resolutions deal with ACHPR procedures, internal mechanisms and the relationship between the ACHPR and other entities.

Country-specific resolution

Country resolutions address pertinent human rights concerns in Member States. This genre of resolution has proven very useful whenever there are widespread violations in a Member State but no individual has submitted any communications to the ACHPR in respect of those violations.

Advisory Opinions (African Court)

State parties and CSOs can request the African Court on Human and Peoples Rights for an Advisory Opinion on a specific human rights issue or issues against a state party. The Court has since its establishment issued numerous advisory opinions to both state and non-state parties.³⁵

Charters and Protocols

Since its establishment, the ACHPR has developed several legal instruments like the African Charter on Democracy and Elections and the African Charter on the Welfare of a Child amongst others. This tool could therefore be used to engage with the ACHPR with a view of coming up with protocols that can address digital rights issues.³⁶

ACHPR subsidiary mechanisms

The ACHPR may create subsidiary mechanisms such as Special Rapporteurs, Committees, and

Working Groups. Each subsidiary mechanism presents a report on its work at each ACHPR Ordinary Session.

Special Rapporteurs

Currently, the Commission has Special Rapporteurs on Prisons and Conditions of Detention in Africa, Rights of Women in Africa, Refugees, Asylum seekers, Migrants and Internally Displaced Persons, Human Rights Defenders in Africa, Extra Judicial, Summary and Arbitrary Arrests in Africa and, of particular interest to digital rights defenders, the Special Rapporteur on Freedom of Expression and Access to Information in Africa.

Expert Working Groups

Expert working groups are different to the Special Rapporteurs in that they can appoint external experts, and can often have a broad mandate to study, research, raise awareness and publish reports on emerging human rights issues. Working groups usually require the technical and financial support of NGOs in Africa to effectively discharge their specific mandate for which they have been established. Funds provided by NGOs are usually used to assist in organising seminars, investigative missions and production of reports highlighting the work of the subsidiary mechanisms.

Other

The ACHPR can also release press releases to highlight particular incidents or situations of concern in member state countries, making reference to relevant ACHPR instruments and may call on the State/s in question to address the situation through concrete recommendations. For example, in July 2018, it released a press release of particular relevance to human rights online, on "the growing trend of stringent regulation of the internet in East Africa".³⁷

7.

What we can do at the ACHPR and how

Build working relationships with other NGOs and ACHPR commissioners

CSOs and human rights defenders working on digital rights may be able to establish a working relationship/platform with the relevant organs of the ACHPR. The NGO Forum that precedes the Ordinary Sessions of the ACHPR is an opportunity to network, seek joint meetings with the relevant Commissioners and also organise joint side events, all of which can be used to influence positions.

The persistent problem of internet shutdowns in Africa is a cause around which a coalition of stakeholders working in the digital rights community may be able to use AU processes to compel Member States to find solutions.

Participate in submission of country-specific reports to ACHPR or submit alternative reports to the ACHPR

CSOs can engage in each phase of a Member State's submission of its country-specific report to the ACHPR. CSO engagement can play an important role in improving the reporting process, both by providing information to governments and the ACHPR, and by following up on the implementation of recommendations.

When a Member State reports to the ACHPR, CSOs can opt to give additional information about human rights in their country via an alternative report. In practice this mechanism has not been used extensively at the ACHPR, as CSOs have been given very little time to review State reports.

For example, civil society could make a recommendation regarding digital rights issues such as network disruptions or surveillance practices, or a recommendation that their country adopt strong data protection legislation.

Call on Member States to audit their human rights measures

CSOs could call on their respective government to undertake to audit the measures that they have put in place to enhance the protection and promotion of human rights in the digital age and submit these to the ACHPR. This would create a mechanism that would prevent violations of the right to privacy and to ensure that relevant national legislation, procedures and practices regarding the surveillance of communications, their interception and collection of personal data comply with international human rights law.

Bring a complaint to the ACHPR

CSOs often play a role in bringing cases to the ACHPR (under the complaints procedure). They can also propose agenda items for ACHPR sessions and often provide logistical and

other support to the Special Rapporteurs, Working Groups and Country Missions, as well as developing resolutions and new protocols to the African Charter.

The complaint must include reference to how the Charter has been violated. Freedom of expression and access to information are enshrined in Article 9 of the African Charter, which states:

- Every individual shall have the right to receive information.
- Every individual shall have the right to express and disseminate his opinions within the law.

Therefore CSOs could submit a complaint with regards to network disruptions, which directly violate the right to freedom of expression. Observer status is not needed to submit a complaint. However, it may take years for the ACHPR to decide whether the incidents in a submission violate the Charter. More information on the process for submitting a complaint is included in the IFEX guide to the ACHPR.³⁸

Get the ACHPR to adopt a thematic resolution on the right to privacy in a digital age

The ACHPR could adopt a thematic resolution in line with the United Nations General Assembly Resolution 68/167 on the right to privacy in the digital age. Strategically this may best be achieved by targeting the AU Member States first, by recommending ways they can promote and protect digital rights.

Get more Member States to adopt the ACHPR optional protocol to recognise the right to privacy

CSOs are already advocating for Member States to sign up to an ACHPR optional protocol recognising the right to privacy. More pressure on multiple Member States would assist these advocacy efforts.

Annex

NGO observer status with the AU

The July 2005 AU Summit held in Sirte, Libya revised the criteria and procedures for granting observer status with the African Union to non-governmental organisations (NGOs).

NGOs seeking observer status must be registered in an African state, managed by a majority of African citizens or diaspora, and must derive at least two-thirds of their income from membership contributions.

NGOs with observer status undertake to hold regular consultations with the AU and submit a report every three years on their cooperation with the AU. They have access to the open sessions of Summit meetings, and may be invited to participate in sessions of closed meetings relevant to their area of interest. So far, 49 African NGOs have been granted observer status with the AU.³⁹

NGOs have called for the amendment of these rules, particularly the requirement that organisations seeking observer status must have two thirds funding from their own members. CIDO has been tasked to review the observer status procedures.

Requirements to obtain observer status with the African Union

- Registration in an AU Member State.
- In operation for at least three years.
- A democratically adopted constitution.
- Management made up of a majority of African citizens or members of African diaspora.
- Basic resources derived at least two-thirds from membership contributions.
- Respect and application of non-discrimination principles.

Application Procedure

- Applications must be submitted six months prior to the Executive Council meetings.
- Diaspora organisations require references from two Member States and an NGO recognised by the AU.
- Organisations working on similar issues are encouraged to apply for observer status as a coalition or joint committee.

Criteria for granting African Union Observer Status to Non-Governmental Organisations (NGOs)

In terms of resolution 5 adopted by the Commission during its 25th Ordinary Session held in Bujumbura, Burundi, from 26 April 5 May 1999, the Commission subjects the granting of observer status to a set of criteria.⁴⁰ These criteria are as follows:

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1. All NGOs applying for observer status with the Commission shall be expected to submit a documented application to the Secretariat of the Commission, with a view to showing their willingness and capability to work for the realisation of the objectives of the Charter;
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- 1a. All NGOs applying for observer status with the Commission shall consequently:
 - i. Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the OAU Charter (now the Constitutive Act of the African Union) and in the Charter;
 - ii. Be NGOs working in the field of human rights
 - iii. Declare their financial resources
-
- 1b. To this effect, such an NGO shall be requested to provide:
 - i. Written application addressed to the Secretariat stating its intentions, at least three months prior to the Ordinary Session of the Commission which shall decide on the application, in order to give the Secretariat sufficient time to process the said application
 - ii. Its statutes, proof of its legal existence, a list of its members, its constituent organs, its sources of funding, its last financial statement, as well as a statement on its activities.
 - iii. The statement of activities shall cover the past and present activities of the NGO, its plan of action and any other information that may help to determine the identity of the organisation, its purpose and objectives, as well as its field of activities.
-
- 1c. No application for Observer Status shall be put forward for examination by the Commission without having been previously processed by the Secretariat.

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- 1d. The Commission's Bureau shall designate a rapporteur to examine the dossiers. The Commission's decision shall be notified without delay to the applicant NGO.
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What observer status entails

According to the said resolution, all observers shall be invited to be present at the opening and closing sessions of all sessions of the Commission.

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- a) An observer accredited by the Commission shall not participate in its proceedings in any manner other than as provided for in the Rules of Procedure governing the conduct of sessions of the African Commission. Amongst others, NGOs with observer status can prepare "shadow" reports on the human rights situation in their countries. These "shadow" reports enable the Commission to have a constructive dialogue with a state representative when that country's periodic report is being considered.
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- b) All observers shall have access to the documents of the Commission subject to the condition that such document:
- i. Shall not be of a confidential nature;
 - ii. Deal with issues that are of relevance to their interests.
-
- c) The distribution of general information documents of the Commission shall be free of charge; the distribution of specialised documents shall be on a paid for basis, except where reciprocal arrangements are in place.
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- d) Observers may be invited specially to be present at closed sessions dealing with issues of particular interest to them. Observers may be authorised by the Chairman of the Commission to make a statement on an issue that concerns them, subject to the text of the statement having been provided, with sufficient lead time, to the Chairman of the Commission through the Secretary to the Commission.
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- e) The Chairman of the Commission may give the floor to observers to respond to questions directed at them by participants.

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- f) Observers may request to have issues of a particular interest to them included in the provisional agenda of the Commission, in accordance with the provisions of the Rules of Procedure.

The other opportunities that come with having an observer status the opportunity to convene side events at the margins of the African Commission on Human and Peoples Rights sessions. Side events can be used as a platform to discuss the critical issues that affect the realisation of human rights online like repressive legislation, systemic clamp down of social media platforms in different jurisdictions and also how CSO's can enhance the realisation of these rights.

The NGO forum, that usually precedes every Ordinary Session of the African Commission on Human and Peoples Rights is another platform where CSO's can constructively discuss the critical issue of shutdowns and advocate for the realisation of human rights online.

Relations between the Commission and Observers

Organisations enjoying observer status shall undertake to:

- Establish close relations of cooperation with the Commission and to engage in regular consultations with it on all matters of common interest;
- Present their activity reports to the Commission every two years.

Administrative arrangements shall be made, whenever necessary, to determine the modalities of this cooperation.

The Commission reserves the right to take the following measures against NGOs that are in default of their obligations:

- Non-participation in sessions;
- Denial of documents and information;
- Denial of the opportunity to propose items to be included in the Commission's agenda and of participating in its proceeding;
- Observer status may be suspended or withdrawn from any organisation that does not fulfil the present criteria, after deliberation by the Commission.

End notes

- 1 www.accessnow.org/keepiton
- 2 <https://qz.com/875729/how-african-governments-blocked-the-internet-to-silence-dissent-in-2016/>
- 3 <https://qz.com/875729/how-african-governments-blocked-the-internet-to-silence-dissent-in-2016/>
- 4 https://au.int/sites/default/files/decisions/9564-assembly_au_dec_1-5_i_e.pdf
- 5 https://au.int/sites/default/files/pages/32020-file-constitutiveact_en.pdf
- 6 <https://au.int/en/organs/assembly>
- 7 https://au.int/sites/default/files/pages/32020-file-constitutiveact_en.pdf
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- 10 http://www.achpr.org/files/instruments/au-constitutive-act/au_act_2000_eng.pdf
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- 20 <https://au.int/en/organs/stc>
- 21 See Decision Assembly/AU/Dec.227 (XII) adopted in February 2009 in Addis Ababa, Ethiopia
- 22 https://au.int/sites/default/files/pages/31829-file-african_union_handbook_2018_english-2.pdf
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- 25 http://www.achpr.org/files/instruments/au-constitutive-act/au_act_2000_eng.pdf
- 26 https://au.int/sites/default/files/pages/31829-file-african_union_handbook_2018_english-2.pdf
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- 29 www.au.int/en/treaties
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- 35 <http://www.achpr.org/instruments/>
- 36 <http://www.achpr.org/press/2018/07/d409/>
- 37 https://www.ifex.org/campaign_toolkit/guide_to_achpr/
- 38 <http://www.achpr.org/network/ngo/by-name/>
- 39 <http://www.pijip-impact.org/wp-content/uploads/2012/04/OBTAINING-AND-THE-BENEFITS-OF-OBSERVER-STATUS.pdf>
- 40 This was in line with the AHG/dec.126 (XXXIV) of the Assembly of Heads of State and Government which had requested the Commission to undertake a review of the criteria for observer status with a view to enhancing efficiency and cooperation between the Commission and NGOs.

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