AFRICAN DATA & DIGITAL DIALOGUES REPORT

CROSS-BORDER DIGITAL POLICIES FOR AFRICA

Scoping, Framing and Mapping Trends

Synthesis Report on the First and Second Knowledge Dialogue Workshops

EXECUTIVE SUMMARY

This report synthesizes the discussions during two Knowledge Dialogues Workshops held on December 13, 2021 and February 22, 2022. The first workshop, primarily a dialogue between African stakeholders, identified the key challenges that the continent faces in realizing the potential benefits of digital technologies. This is particularly so in the context of the need to develop harmonized and coordinated responses considering the number and diversity of countries, with very different levels of technological readiness.

The second dialogue focused on a discussion between African stakeholders and policy experts from other regions, including North America, Europe and Asia. It identified that an important task for African countries, in giving voice to African positions in international fora that affect and set digital policy, is to present a common narrative on digital policies.

Both workshops highlighted that data policy is a central and urgent concern. Participants voiced the necessity for data policies to shift the currently uneven distribution of opportunities both between and within countries so as to (1) enable Africa as a whole to benefit from the data-driven technologies and (2) ensure that these benefits are shared equitably among all its inhabitants.

The participants emphasized that addressing the digital infrastructure deficit is a precondition to more equitable and inclusive outcomes. The continent can only host data when both infrastructure and trust are established. Data environments will earn the trust necessary to render them sustainable and value-enhancing only by upholding human rights and the rule of law, protecting personal data but also ensuring that people can access information and quality data, securing data, and creating public value from the transparent and accountable use of data by governments. Participants discussed sustainable and equitable ways of creating the required infrastructure, including the possibility of sharing infrastructure. The discussion also emphasized the important value-creation potential of non-personal data.

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INTRODUCTION

This report draws together knowledge gleaned from two Knowledge Dialogue Workshops that supported the *Cross-border Digital Policies for Africa* project, an initiative of the Internet and Jurisdiction Policy Network (I&JPN). The first workshop took place on December 13, 2021 and the second workshop on February 22, 2022.

The first workshop formed the subject of an earlier report ('the first report'). This synthesis report discusses how the second Knowledge Dialogue built on the first including reporting contributions from the stakeholders from Africa and the Global North who participated in the second Knowledge Dialogue workshop This report condenses and compares inputs from the stakeholders in both workshops.

The Knowledge Dialogues aimed to:
- bring together relevant experts and practitioners from Africa in a recurring and safe space;
- collect and frame the most relevant questions;
- share knowledge and expertise;
- support peer-to-peer learning; and
- consult on upcoming trends and challenges.

This report summarizes the key takeaways from stakeholder inputs and discussions, as well as the results of the informal live polling conducted during the second Knowledge Dialogue workshop. The poll results and the breakdown of the stakeholder groups who participated in the second workshop are included in an annex.

SYNOPSIS OF WORKSHOPS

December 2021 Workshop

The first workshop, which mainly involved practitioners from Africa, tackled several themes, challenges, and questions. It addressed at least 9 major themes, namely the nature of data, capacity building, policy reform, problem solving, sovereignty, justice, and (African) agency, security, and the need for trusted environments. Then, the workshop identified 16 challenges that could be conveniently grouped into four broad categories: value extraction versus value distribution (i.e., private data versus public value), harmonization, infrastructure (i.e., data centers and their prerequisites), and participation (i.e., producing effective feedback loops in the face of the extraterritorial impact of digital policies). Lastly, the participants answered and discussed online survey questions. Overall, the vast majority (i.e., 65% or upwards) of participants thought that cross-border digital policies will become prominent in the next three years and that African governments do not yet work together enough, nor participate enough in international mechanisms, to develop those policies.

February 2022 Workshop

The second Knowledge Dialogue workshop offered an opportunity to reach three objectives:

(1) to spot gaps - issues that participants left out - during the first Knowledge Dialogue workshop,

(2) to focus less on high-level principles and more on questions of implementation, and

(3) to share perspectives from the African region with an audience from the Global North and other regions.

Workshop participants, stemming from the African continent as well as other global regions discussed these recurring themes: the nature of data, data value extraction and data value creation, data governance, collaboration, stakeholder interests, harmonization, interoperability, regional economic integration, taxation, implementation, (economic or distributive) justice, language, capacity building, trust, public awareness, data protection, and (African) agency.

Under these themes, the participants weighed in on numerous issues pertaining to the following clusters:

- *data* (personal and non-personal, open data, localization, cross-border flows, socio-economic value, security, and protection authorities),
- *policies* (common narratives, transparency in policymaking, domestication of international norms, political will, outdated laws, the copy-paste culture, and the European Union General Data Protection Regulation (EU GDPR),

- *the data economy* (data costs, data markets, development disparities, inclusive development, production versus consumption, the African Continental Free Trade Area (AfCFTA), rules of origin, resource control, foreign capital, and scarcity of expertise),
- *infrastructure* (blockchain, data centers, digital payment systems, energy, and search engines), and
- *justice and society* (gender parity and cultural sensitivities).

CHALLENGES AND QUESTIONS IDENTIFIED IN THE DECEMBER 2021 WORKSHOP (FIRST WORKSHOP)

The first workshop identified sixteen issues, posed as questions or challenges for African policy makers. These were set out in the first report as follows:

1. Regulation of cross-border data flows is disharmonious, not only do laws differ widely from country to country but the movement of some types of data is heavily regulated. How can data flow easily across borders but be regulated to ensure personal data is secure, and all data is used lawfully and ethically?

2. Prerequisites for Data value:
   In order to realise the full value of data fully functional data centers are required, to establish these centres it is necessary for a country to have:
   - reliable electric power, appropriate climate – cooling, water for cooling
   - high speed bandwidth connection
   - data centers and skills to operate them
   - an enabling legal environment including rule of law
   - no internet disconnections for political purpose
   - data analytic and business skills
   - data regulation/institutional capacity
   - human capital/skills

   How many of the prerequisites are in place in African countries and the continent as a whole to realize the value of data?[1]

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[1] During the first and second workshops this issue was linked to the implications of extraterritorial data-centers catering to African users given the difficulty to foresee adequate centers on the continent itself, and the consequent regulatory issues.

3. With the increasing necessity for the adoption of digital policies and cross-border data flows, is the continent ready to meet the demand for the data revolution?

4. Most digital policies at the moment have adopted a human rights approach. Should additional digital rights, based on human rights, be developed?

5. Digital trade will, if appropriately structured, support economic development. What role do data flows play in digital trade? How may data policy and regulation support the development of developmental digital trade?

6. How may data sovereignty be realized?[2] Do restrictive understandings of 'data sovereignty' as mandatory data localization undermine economic development?

7. How can countries identify data needed for development and ensure it is collected, standardized and available for data-driven development?

8. What legal mechanisms are required to enable data mining?

9. Does a preoccupation with personal data protection and consequent lack of regulation/recognition of other types of data of a non-personal nature hinder development of digital economies?

10. What effect do consumer protection (laws) have on sharing and movement of data especially across borders? What role should consumer protection play?

11. What is the effect of national personal data protection laws on free movement of data, especially across borders? How do the different mandates and duties of national data protection authorities (DPA's) influence digital policies and the free movement of data, especially across borders?

12. What is the effect of cross-border movement of data on competition? How should competition regulation engage with cross-border movement of data?

13. Making unsensitive public data open by design or default can drive development. For public data to be effectively open requires:

    - public data standardization;
    - public data infrastructure;
    - open data mandates; and
    - open data licences.

    How many of the prerequisites are in place in African countries and the continent as a whole to realize the value of open public data?

14. How should private data be treated in relation to openness?

15. To what extent have specific regimes emerged for sensitive data such as health data and financial data? How will these affect harmonization efforts?

16. The legal status of data is determined by divergent legal regimes, including copyright, competition law and privacy. How can these regimes be harmonized?

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[2] The workshops debated whether data sovereignty is a desirable objective.

QUESTIONS DISCUSSED IN FEBRUARY 2022 WORKSHOP

Based on sixteen challenges and the questions formulated in the first Knowledge Dialogue workshop's synthesis report, four major questions were posed in the second workshop. The four categories of questions below derive from the 16 questions discussed under the "Challenges" section of the first workshop.

1. Should countries without the prerequisites for data centers such as capital, suitable climate, reliable electrical power, high speed data connections and the like partner with other African countries to efficiently create continental infrastructure?

2. Acknowledging that African countries are at different stages of data readiness, what core areas and issues should be the focus of harmonization objectives for the continent in order to create a developmentally driven common digital market?

3. How can a trusted environment for value creation from data be created? How can the objectives of data protection and public value creation from both personal and non-personal data be aligned?

4. How can African actors influence global governance agendas and outcomes in the interests of the continent and specifically to ensure the realization of global digital public goods? What opportunities are there for developmental data value creation?

PERSPECTIVES FROM AFRICA, THE GLOBAL NORTH AND SOUTH: SECOND WORKSHOP

Discussant points

During the plenary session, several discussants took the stage. The points raised by each discussant are described below.

Mr. Bertrand de La Chapelle,

Executive Director, Internet & Jurisdiction Policy Network

In his opening remarks, *Bertrand de La Chapelle,* reminded the audience that the *Cross-border Digital Policy for Africa* project is a broad mapping exercise of Africa's fast-evolving data policy landscape.

Mr. de La Chapelle acknowledged that cross-border digital policies pose difficult questions, but strongly encouraged the workshop participants to see them as problems that we have in common, rather than problems they have with each other. Importantly, since these policies are transnational, we must strive to achieve a common framing if we wish to find solutions to these problems and if we want African voices to have an impact on policies made elsewhere.

Later, Mr. de La Chapelle reflected on the value of data, underlining the importance of factoring in both social and economic value creation. He observed that people struggle to measure social value - for example, how does one evaluate the benefit (or positive externalities) of free services such as search engines? For that reason, they often overlook the social value of data. He remarked that, in many situations, social and economic value creation may conflict, for example, in the field of intellectual property; and the quandary then consists in reconciling such competing objectives, maximizing overall value creation, and ensuring its equitable distribution.

Ms. Amazouz Souhila,

Senior Policy Officer, African Union Commission

Amazouz Souhila, set out to explain and summarize two soon-to-be-published frameworks that the African Union (AU) adopted recently at its Summit, namely the data policy framework and the interoperability framework for digital ID. These frameworks resulted from a collaborative and participatory process that involved regional organizations and institutions as well as online consultations that were open to different types of stakeholders, including the private sector and civil society.

The overall objective of the Africa Data Policy Framework is to raise awareness about data and its growing importance as a strategic asset for African economies and lay the foundations for the development of harmonized and integrated data governance systems that facilitate data access and cross-border data flows. Also, the Framework emphasizes the urgent need for African countries to develop their national data policies, and the need for a common African approach and building a shared data ecosystem across the continent. Ms. Souhila encouraged African countries to foster the deployment of data infrastructure, develop their data capabilities and   strengthen cooperation within the continent to effectively harness the potential of data while taking into account the differing levels of development of countries (i.e., data maturity and readiness) in Africa.

Moreover, the Framework aims to support the development of data markets. In that regard, the AU proposed that data be considered in the second phase of negotiations of the [African Continental Free Trade Area](#) (AfCFTA) that will take place later this year and that will hammer away at African trade on digital goods and services.

For Ms. Souhila, the adoption of the Data Policy Framework by the AU organs provides a unique opportunity for African countries to cooperatively enable data to flow within the continent while safeguarding human rights and ensuring equitable access and sharing of benefits. She urged African policymakers to stop working in silos and move towards more comprehensive and forward-looking policies and regulations that take into account the multidimensional and transnational nature of data.

Ms. Souhila explained that countries need to enable data to flow across sectors and regions to boost value creation and emergence of data-driven business models that can foster intra-Africa digital trade and data-enabled entrepreneurship. She further drew attention to the necessity for the continent to invest in adequate digital infrastructure to host and self-manage data internally and then observed that only 1% of data generated by Africans is hosted on the continent (i.e., hosted in data centers located in Africa).

Lastly, Ms. Souhila welcomed the organization of the Second Knowledge Dialogue Workshop and invited participants to explore ways to establish a well-functioning data governance environment that ensures equal opportunities to all Africans.

Dr. Alison Gillwald,

Executive Director, Research ICT Africa (RIA)

Picking up where Ms. Amazouz Souhila left off, *Alison Gillwald* noted:

"The Africa Data Policy Framework really provides a wonderful context for us now to begin to work towards some of its objectives around... a continental free trade agreement and single market, the digital market and the transformation that digitization can provide, especially in the context of data."

Dr. Gillwald affirmed that the Africa Data Policy Framework has filled an important policy gap that went beyond personal data and represented a progressive policy contribution to data governance. It also provided an opportunity for African countries to mobilize around their common interests and engage more strategically in forums of global governance. It also presented a launching pad from which to assess how Africa can position itself to shift the uneven distribution of opportunities, and harms, associated with data-driven technologies in its favour.

Moreover, she stressed that despite the differences between Africa and other regions, the globalized nature of the data economy and cross jurisdictional challenges required global cooperation. Dr. Gillwald said it was ironic that efforts to develop data policy and the regulation of the data industry in Africa were being undertaken largely in the absence of national and regional digital and data indicators and statistics and called for a commitment to the official gathering and sharing of public data as part of open government and open data calls. She said the pandemic had highlighted the need for commercial data to be regulated in such a way that it could be made available in a transparent and accountable manner for the common good.

Dr. Andrew Rens,

Senior Researcher, Research ICT Africa (RIA)

Andrew Rens, at RIA, offered a rundown of the 16 foremost issues identified during the first Knowledge Dialogue workshop (see above 'Challenges and questions identified in the December 2021 workshop"). Of those issues, he spotlighted and further developed cross-border data flows, harmonization, value creation, Africa's readiness for the digital economy, and digital rights, amongst others.

Rens emphasized that the stakeholders in the first workshop had been very clear that the wide variation in contexts of the 54 states in Africa presented challenges for cooperation and harmonisation but also showed the necessity of cooperation if the benefits of the digital economy were to be equitably distributed both between and within countries.

Ms. Mary Uduma,

Coordinator, West Africa Internet Governance Forum

Mary Uduma, mainly spoke about two aspects of data policies in Africa: stakeholders and the challenges faced by Africa in the internet space.

Ms. Uduma began by asserting that different stakeholders pursue different contested interests: government seeks security and data localization, businesses seek to maximize profits and data flows, civil society defend human rights (especially privacy) and promote the protection of personal data, and academia need to access data to conduct and promote their research.

Ms. Uduma raised the key issue of 'trust'. She noted that the AU Commission has adopted the AU policy, the Malabo Convention,[3] and other policy initiatives, but that the lack of ratification worries her. She stated there is a 'trust issue' between actors including between citizens and their governments.

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[3] The 2014 AU Convention on Cyber Security and Personal Data Protection (the 'Malabo Convention').

Referring to education, she deplored that governments often lack skills to know enough about how data works. Africa also lacks infrastructure for hosting data. Ms. Uduma also mentioned harmonization, local culture, the digital divide and the gendered access to cellphones.

Dr. Martina Ferracane,

Max Weber Fellow, European Institute

Martina Ferracane, started by stressing that promoting harmonization and interoperability ought to be actioned as a matter of urgency. African nations will have to ensure interoperability, even without harmonisation.

For Dr. Ferracane, data policies matter, but so do many other policy areas, such as standards for information and communication technologies (ICT) goods, anti-competitive practices in the telecommunication sector, regulations on online payments, or taxation policies, among others.

She briefly reflected on the fact that different agencies involved in the data policy space, for example, data protection authorities and telecommunication authorities, could collaborate with each other and share best practices.

She suggested that, before providing specific policy recommendations at the regional level, it would be important that African governments conduct a mapping of existing policies. This will allow identifying areas for policy action. Dr. Ferracane mentioned that a mapping exercise is currently being conducted by the United Nations Economic Commission for Africa (UNECA) in collaboration with the European University Institute, with the mapping report due to be released in June. Furthermore, she recommended talking to start-ups and corporates to identify priority or action areas.

She also touched on issues related to ICT skills, connectivity, training, start-up support, and the exchange of best practices, that could all be areas to focus on to promote digital trade in the region.

Together with bottom-up approaches to identify areas of action by speaking with the private sector, Dr. Ferracane suggested to consider the necessity for Africa to frame a common narrative through dialogue between politicians and policy-makers across the region.

What is Africa's common narrative? This could be channelled through joint state initiatives. Does Africa want to delay commitments?

Dr. Patricia Boshe,

Data protection Consultant, Researcher and Trainer

Responding to questions about Africa's common narrative, *Patricia Boshe,* highlighted that the African agenda is being colonized by "best practices from other contexts". For that reason, it is hard to bring out an African narrative.

Dr. Boshe also tackled a host of other issues. First, she claimed that the multiplicity of regional groupings, such as the ECOWAS, SADC and the EAC in addition to the AU, leads to policy incoherence. She then suggested that the motto in Africa should be: "Leave no country behind." Differing levels of development should not be used to preclude some nations from the policy-making process. We need all stakeholders and countries involved.

Dr. Boshe commented on the report of the First Knowledge Dialogue Workshop, remarking that it appropriately raised the issue of how to value data and how to tap into the value of data. Ms. Boshe also insisted on the importance of promoting open data, which covers both personal data and non-personal data. It also relates to the question of data localization because data localization may not be useful in terms of data value creation: even if a country locates data within its geographical boundaries, this localization may still fail to bring out the value of this data. To promote value, that country will need to promote open data. Doing so will enable that country and Africa to make value out of this data and use it "in Africa for African development".

To create value, African countries will also need to share information across Africa. They will need to lay out guidelines on data usage and access, and the rights and duties of holders or producers of this data. They would have to draw up rules that govern the usage, the transfer, and (a sort of) ownership of that data.

Moreover, to create value, African countries should have the capacity to take part in the digital economy, to design interoperable policies and acquire interoperable technology. Dr. Boshe agreed with the

participants of that workshop that Africa needs policies that support open data. This could lead to a path to policy harmonization in Africa. Lastly, Ms. Boshe reiterated the need for an African digital agenda.

Mr. Mark Dempsey

Team Leader, Enhanced Data & Data Flows, B&S Europe

Mark Dempsey is currently Team Leader for B&S Europe on an EU funded project for the EU Commission's International Data Protection and Data flows unit within the Directorate-General for Justice and Consumers. The project promotes EU dialogue and cooperation with partner countries on data protection and currently provides assistance in countries in South America, Asia and Africa.

Before his current position, Mr. Dempsey researched the impact of the EU's General Data Protection Regulation (GDPR) in Africa and ascertained, via many cross-sectoral interviews (DPA officials, civil society, the legal community, academia) that the GDPR was widely welcomed to ensure that governments' proposed data protection laws were up-to-standard by using the GDPR as a benchmark and where the fundamental right to privacy is at the core. The extra-territorial effect of the GDPR is known as the 'Brussels Effect' because in the case of non-EU countries wishing to operate in the EU, they must abide by the standards of the GDPR when it comes to the safeguarding of the data of EU subjects. However, Mr. Dempsey's research also revealed that, despite broad support for the GDPR, an EU constitutionalist approach may not be appropriate and that often a policy-mix approach was preferred to meet Africa's uniquely complex social and cultural contexts across its many states.

Reflecting on harmonization and the Malabo Convention, he noted that there is not a pan-African consensus and that other actors, for example, philosophers, should be involved in the process. He also observed the lack of trust in government and its ability to act as custodian of data.

Finally, Mr. Dempsey underscored the significance of education. The value of data hinges on education, but Data Protection Authorities in Africa, more often than not lack resources. This is similar to Ireland, which does not have enough resources and therefore cannot enforce to the extent that it needs to. Thereafter, Mr. Dempsey asked: Who is driving the policy making? He said that people have to be confident that lawmakers know what they are talking about. Just like resources, transparency in policy- and law-making is lacking. Work needs to be done; politicians do not seem interested and, if they are, there are often vested interests at play.

Ms. Gayani Hurulle,

Senior Research Manager, LIRNEasia

Gayani Hurulle, saw parallels between South Asia and Africa. She emphasized that policies should fit in the local or regional policy environment. Citing data protection as an example, she recalled that some countries in South Asia simply wanted to copy-paste benchmark legislation. However, the implementation costs can be expensive because of, among others, various checks and approvals that need to be paid for. What is cheap in one country may be impractical in another.

She also raised the question as to whether non-personal data should be regulated alongside personal data. India is currently debating this self-same issue. What about overlap? Should there be a single regulator for both kinds of data? She invited the audience to track this debate for the purposes of the Knowledge Dialogue workshops.

Implementation challenges

One participant observed that the *effective implementation of the AfCFTA* depends, to a great extent, on digital technologies and, thus, digital policies. When the AU officially implemented the AfCFTA, it enacted five instruments, three of which were either online platforms or tools that heavily relied on digital technologies. These three operational instruments are the Pan-African Payment and Settlement System (PAPSS), the online monitoring mechanism (designed to identify non-tariff barriers to trade), and the African Trade Observatory (a portal aimed at bridging information and data gaps). That participant implied that the cross-border data policy challenges faced by the continent will determine how effectively AU member states implement the AfCFTA and whether the continental trade bloc will eventually succeed.

Identification of gaps by the first workshop

Through an online survey, workshop participants identified emerging trends that they thought the first workshop left out, although not all participants had participated in the workshop that took place in December 2021. For these participants, the gaps in the first Knowledge Dialogue workshop comprise jurisdiction and sovereignty, the strengthening of Africa-wide institutions (such as the AU, ECOWAS, and civil society), the trends set by countries that ratified the GDPR: data sovereignty, value creation in the global data ecosystem, intellectual property (including copyright exceptions for data mining), the impact

of automation and the 4th Industrial Revolution on employment, the convergence of data and broadcast services regulation, 'entrepreneurial insight', start-ups, skills, the preparation of university curricula for the 4th Industrial Revolution, and digital infrastructure.

However, it bears mentioning that, contrary to what some participants in the second claimed, the first Knowledge Dialogue workshop did discuss trends related to jurisdiction and sovereignty, data sovereignty, value creation, and digital infrastructure (for example, the Pan-African Payment and Settlement System). As the synthesis report for the first Knowledge Dialogue Workshop reveals, participants in that workshop canvassed those trends, though the participants may not have exhausted them.

On the other hand, the second Knowledge Dialogue workshop dealt with some trends that the first workshop did not cover. Thus, the second workshop debated intellectual property, start-ups and small and medium enterprises (SMEs), skills, capacity building, and the strengthening of Africa-wide institutions such as the AU. Still, neither the first nor the second Knowledge Dialogue workshop delved into the impact of automation and the 4th Industrial Revolution on employment, and into the preparation of university curricula for the 4th Industrial Revolution.
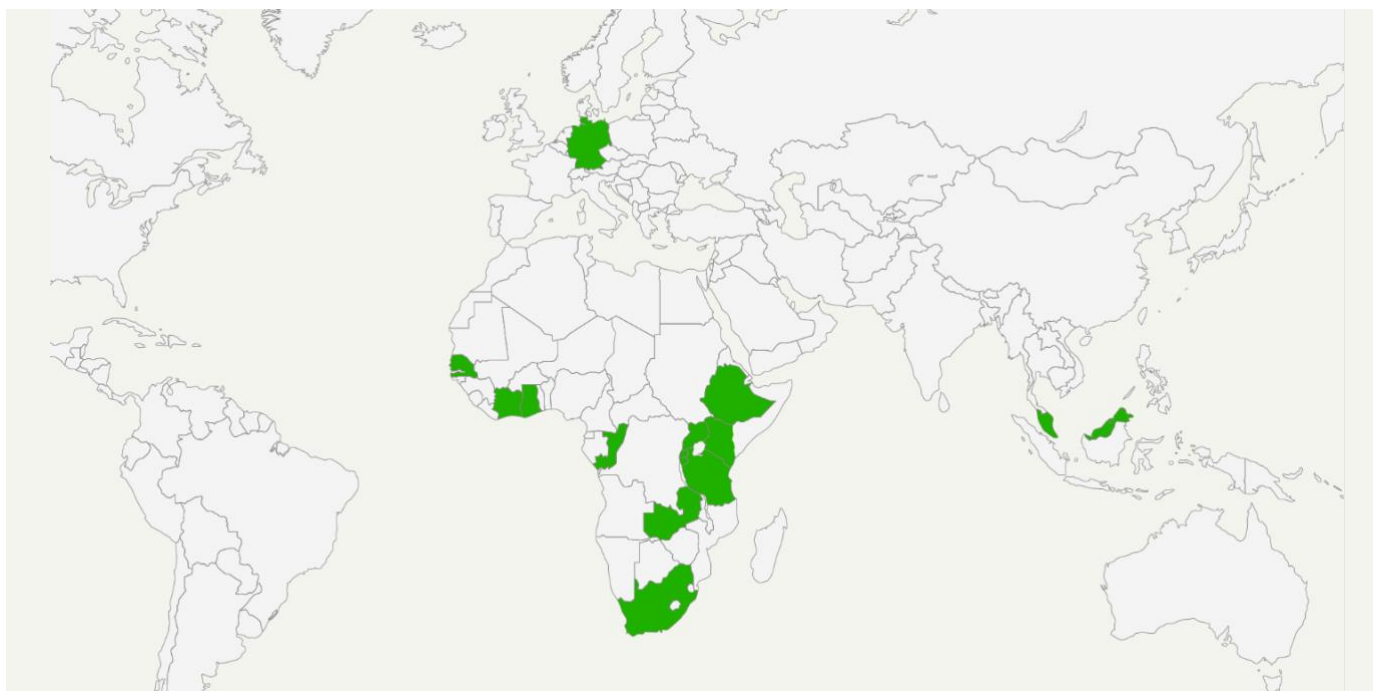
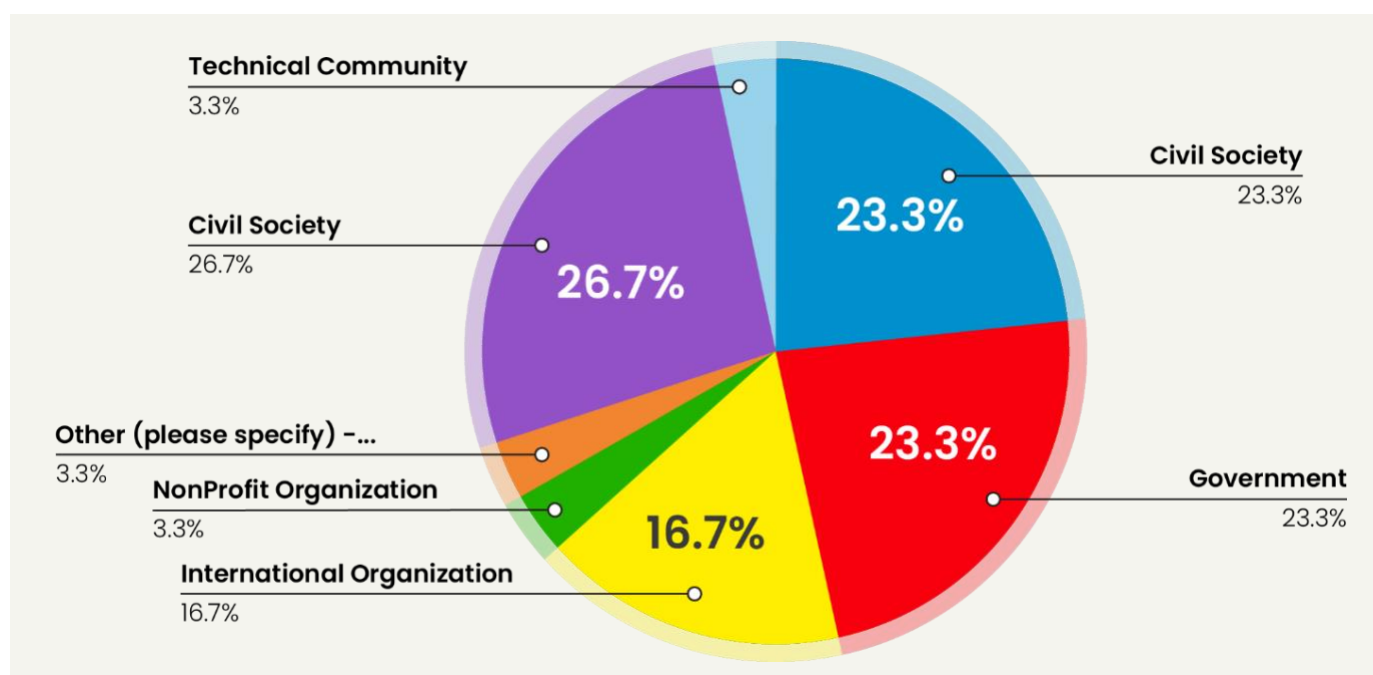# STAKEHOLDER PARTICIPATION IN THE WORKSHOPS

Stakeholder Participation in December 2021 Workshop

Over 35 registrations from 14 countries (December 2021)

The locations of registrations across the world is shown in the graphic below.

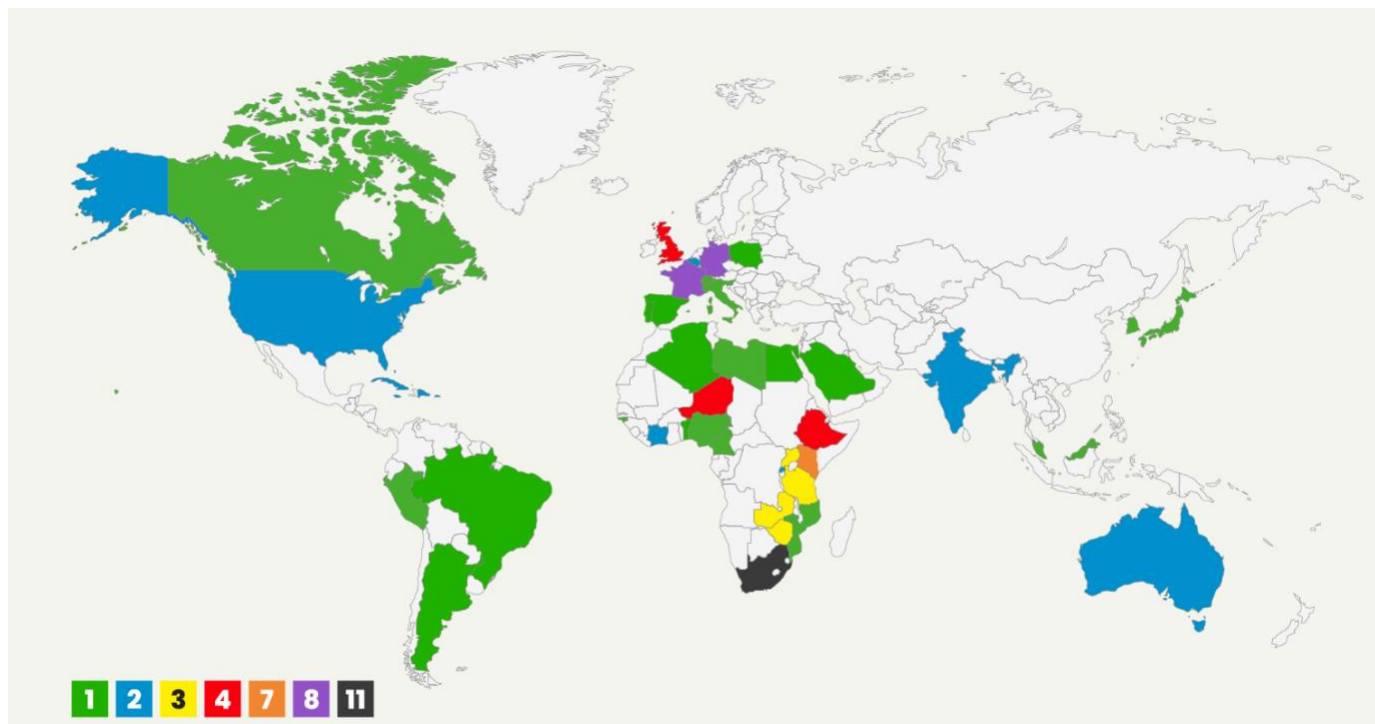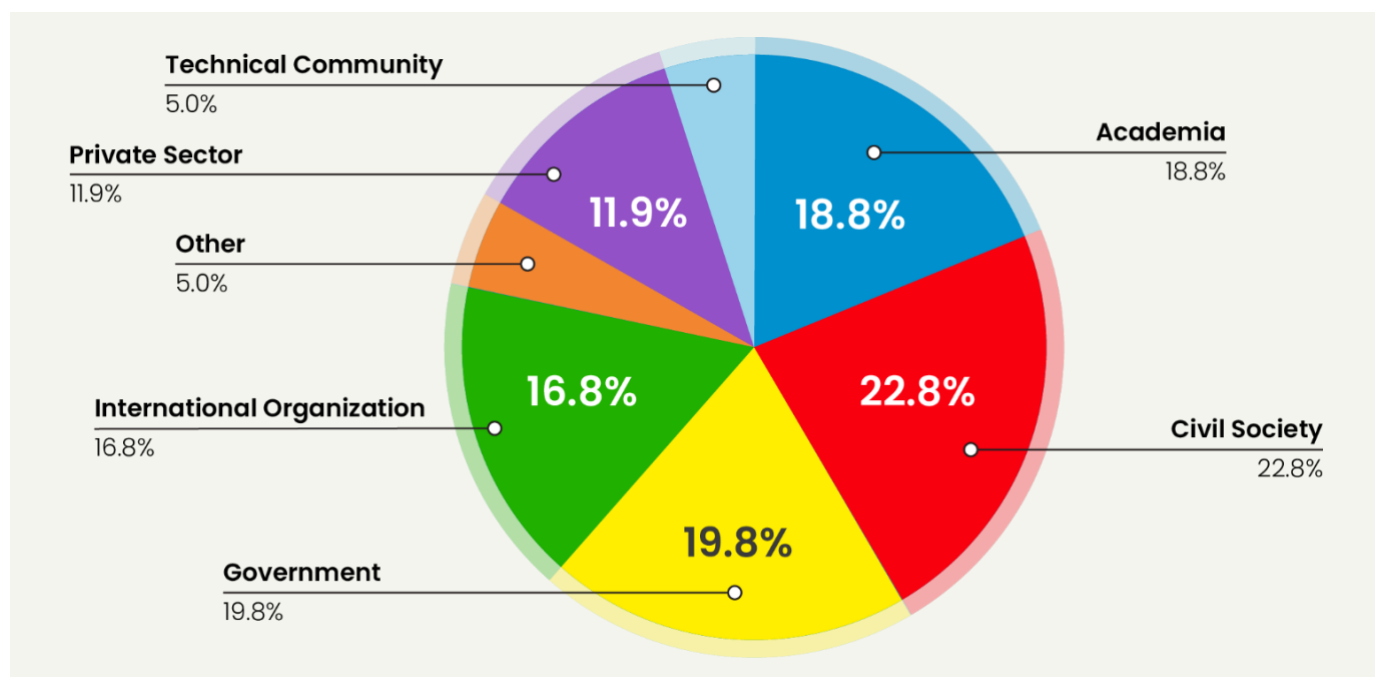Breakdown of registrations per stakeholder group (December 2021)

Stakeholder Participation from February 2022 Workshop

There were over 100 registrations from 40 countries.
The locations and location density of registrations across the world is shown in the
graphic below.

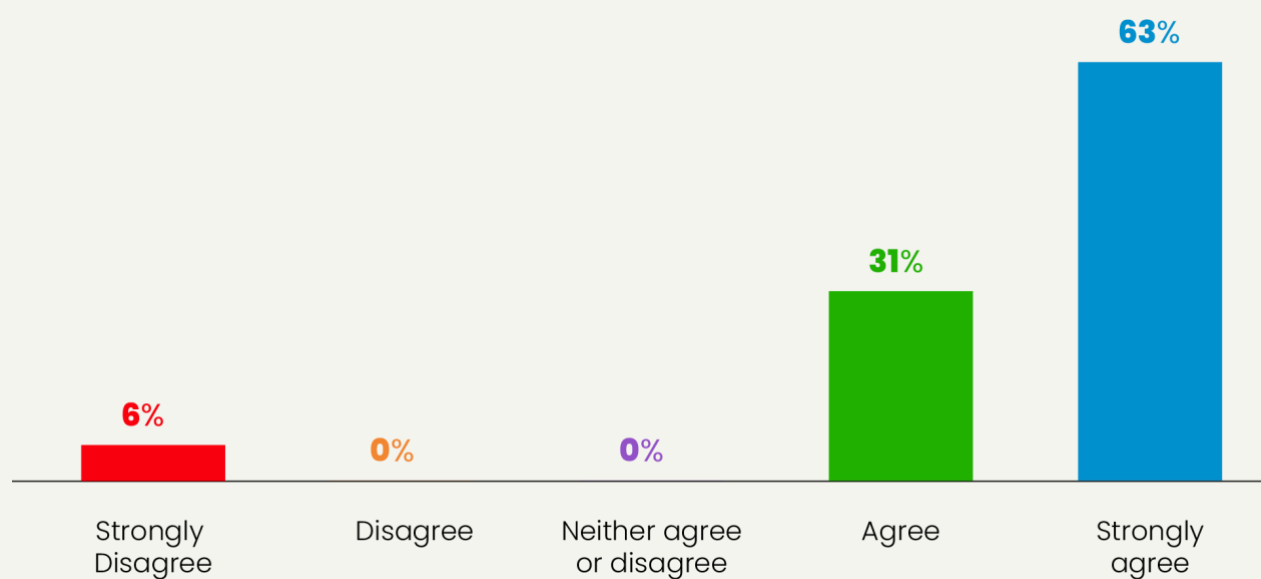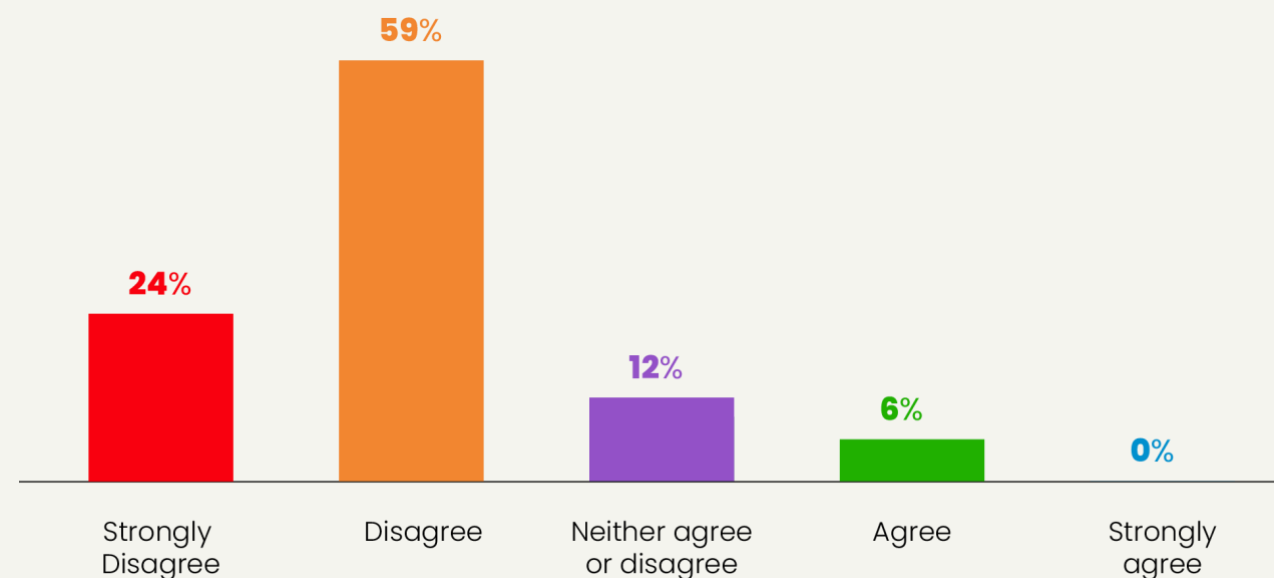Breakdown of registrations per stakeholder group (2022)

ANNEXES:

Annex 1: Surveys from the first workshop

Participants were asked to which degree they agreed with each of the statements given below. The diagrams below each statement depict the participants' responses.

### Cross-border digital policies will become increasingly important in the next three years

6%	0%	0%	31%	63%
Strongly Disagree	Disagree	Neither agree or disagree	Agree	Strongly agree

There is sufficient African coordination and coherence to develop adequate cross-border digital policies

|				
24%	59%	12%	6%	0%
Strongly Disagree	Disagree	Neither agree or disagree	Agree	Strongly agree

There is sufficient African participation in international coordination and coherence mechanisms to develop adequate cross-border digital policies
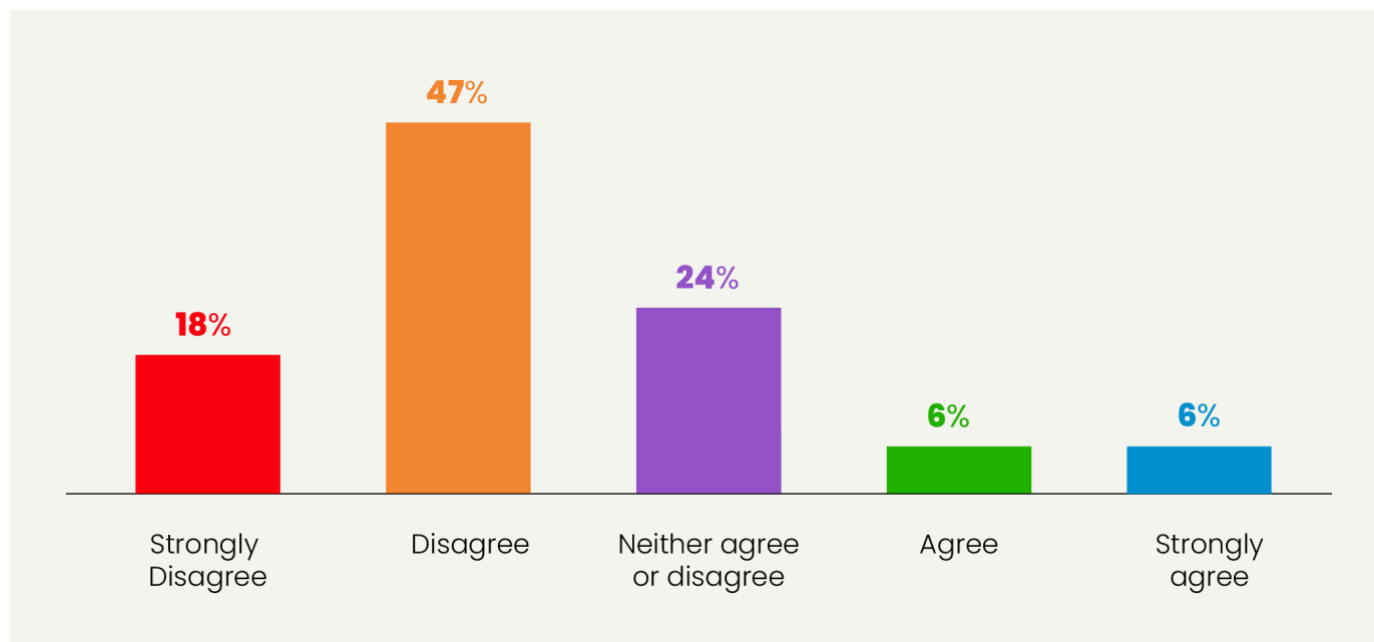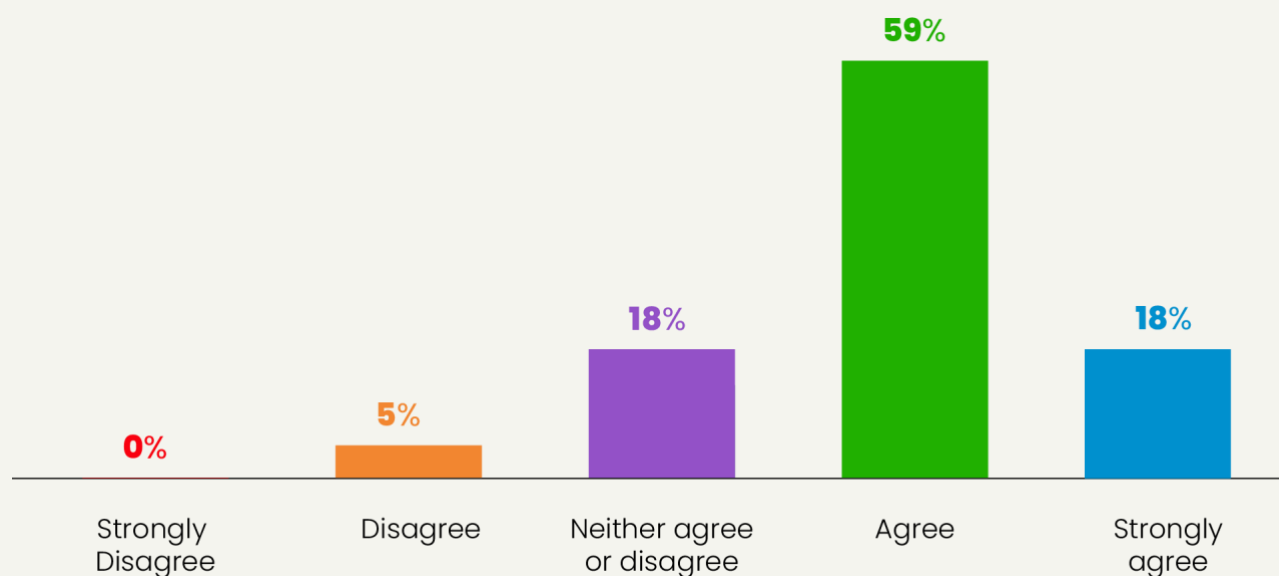

Annex 2: Surveys from second workshop

Participants were asked to which degree they agreed with each of the statements given below. The diagrams below each statement depict participant's responses.

Collaboration and harmonisation of laws
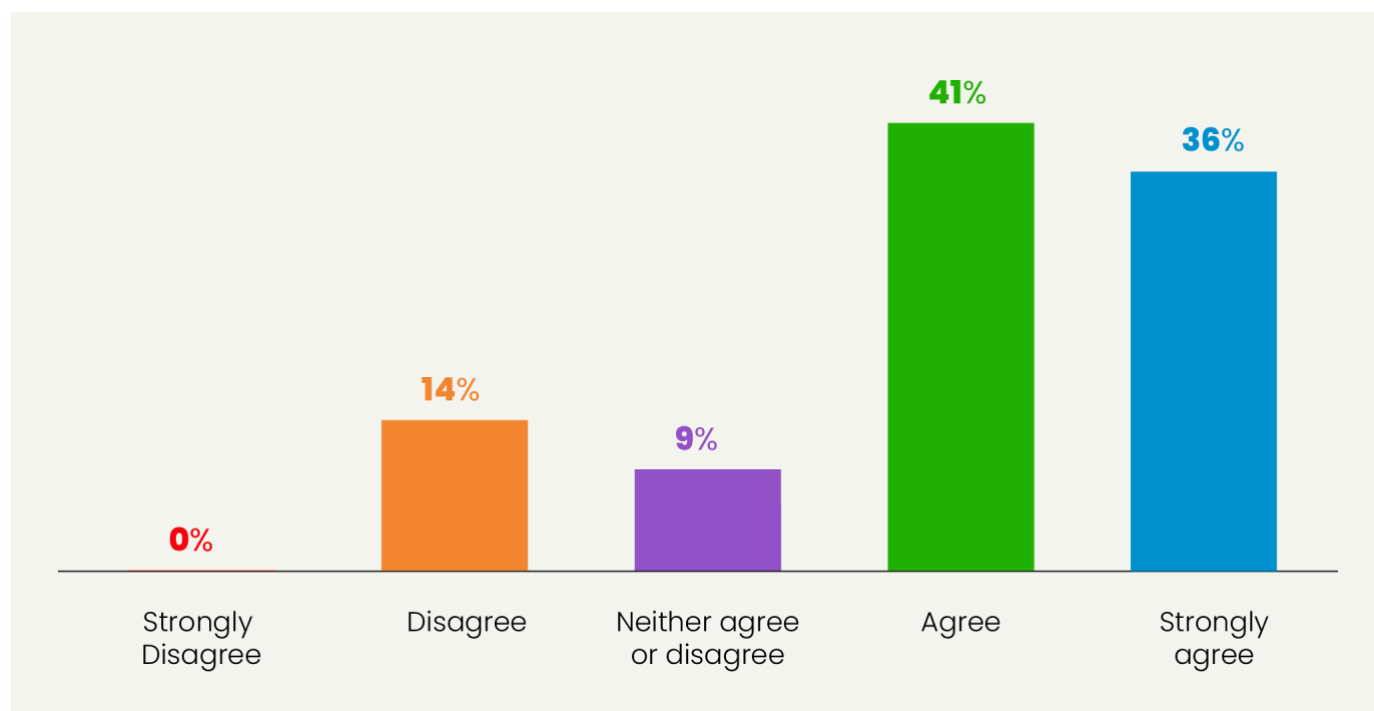
The (in)justice of the data economy: a different 'rights approach to cross-border data flows

Are there any other emerging trend related to cross-border digital policies for Africa from your perspective?

Strengthening African wide institutions as AU, ECOWAS, as well as civil society

From my point of view, everything has been listed.

Copyright exceptions for data mining

I existe des tendances émergentes liées aux politiques numériques transfrontalières. Ces dernières sont tirées par les pays ayant ratifié la Convention 108 sur la protection des données.

The entrepreneurial insight is needed given the lack of inclusion of this sector towards informing digital policies

Digital infrastructure and skills.

Yes. The trend on how Africans can improve the value of their data in the global data ecosystem.

Data sovereignty

Preparing university curricula for the 4th Industrial Revolution

The impact of automation and the 4th Industrial Revolution on employment