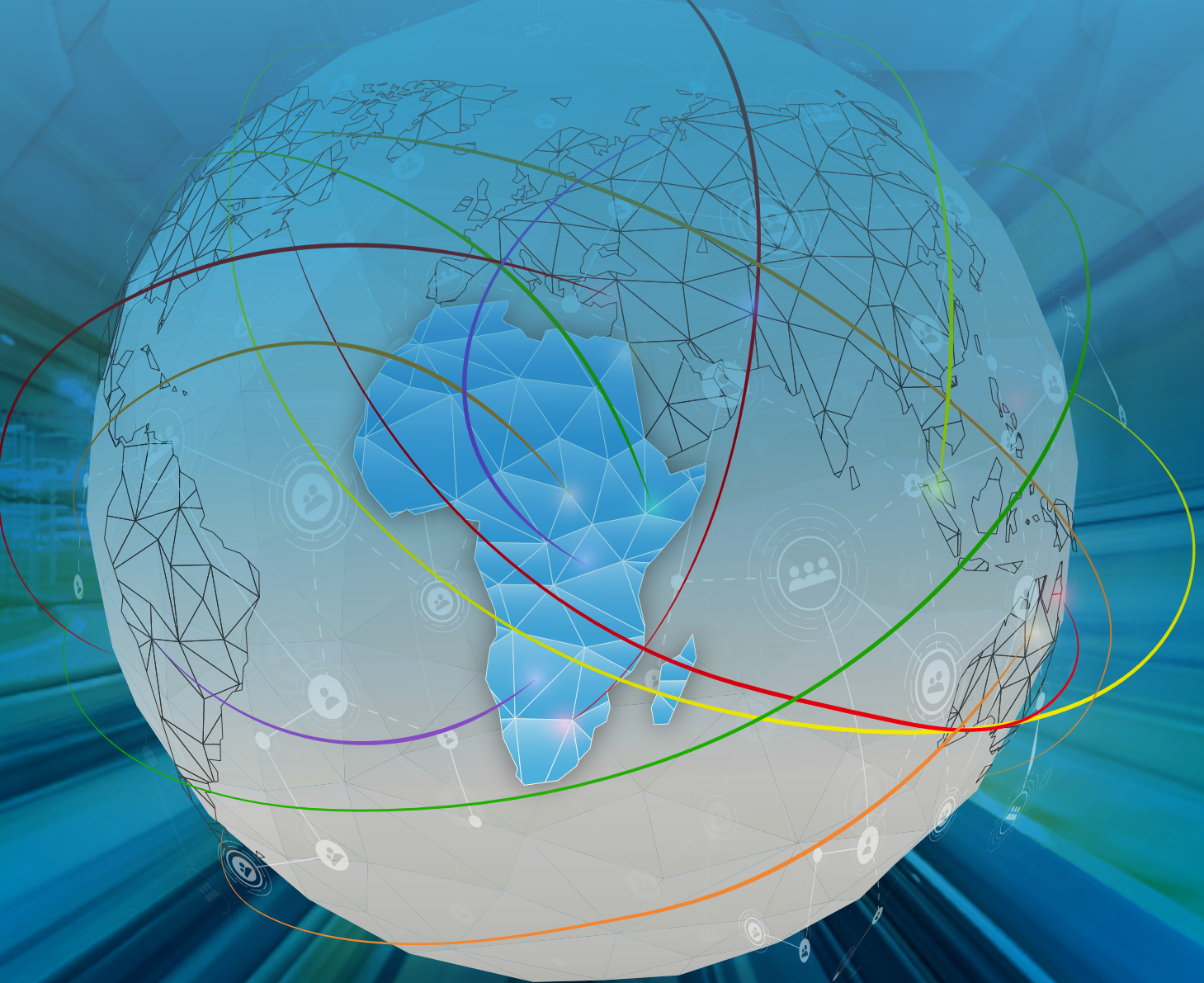
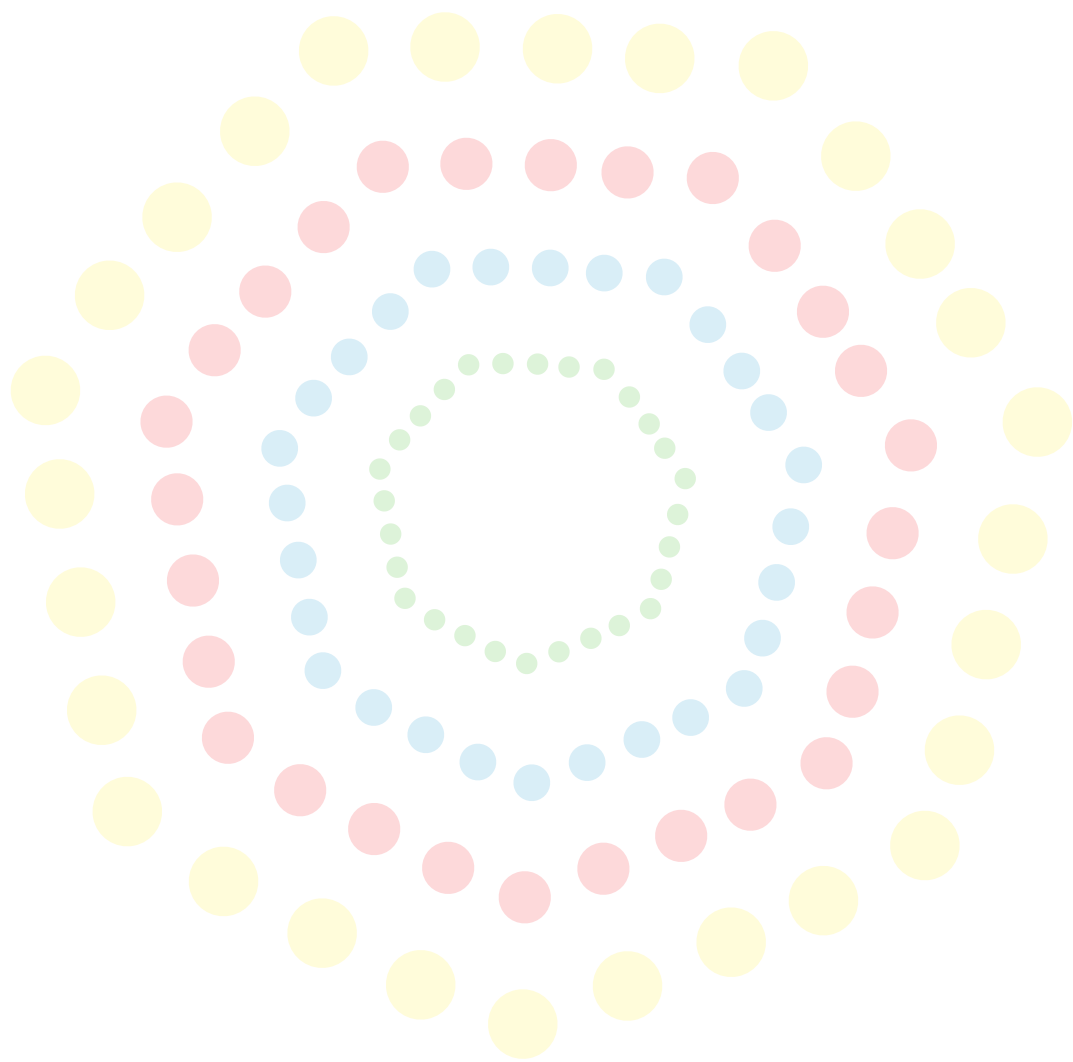


FRAMING, MAPPING & ADDRESSING CROSS-BORDER DIGITAL POLICIES IN AFRICA

AN INTERNET & JURISDICTION POLICY NETWORK
REGIONAL STATUS REPORT

EXECUTIVE SUMMARY





The Report was commissioned by the Secretariat of the Internet & Jurisdiction Policy Network (I&JPN) and authored by a research team at [Research ICT Africa](#) (RIA) under the supervision of Dr. Alison Gillwald and researchers Dr. Andrew Rens, Dr. Dunia Prince Zongwe, Hanani Hlomani and with project management by Naila Govan-Vassen.

The Report represents the author's best endeavor to map the current ecosystem and trends in Africa on the basis of desk research and stakeholder surveys and interviews. The completeness of the information cannot be guaranteed, however, as this Report constitutes a first regional baseline with regard to the state of cross-border digital (and data) policies in Africa.

I&JPN is grateful for the financial and institutional support of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ) which enabled the production of this Report.

The views expressed in this document, which has been reproduced without formal editing, are those of the authors and do not necessarily reflect the views of the Secretariat of the Internet & Jurisdiction Policy Network, stakeholders engaged in the Internet & Jurisdiction Policy Network, or the financial supporters of the Report.

The report has been designed by Hubble Studios, South Africa.

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FOREWORD

Developing interoperable cross-border digital policies is an increasingly complex policy challenge, yet it lies at the forefront of leveraging digital technologies and the data economy to improve societies and reach the Sustainable Development Goals (SDGs).

For the past ten years, the Internet & Jurisdiction Policy Network has been working to support multistakeholder cooperation across sectors and regions. It has become increasingly clear that scalable and coherent policy solutions cannot be developed without a comprehensive understanding of the highly complex and dynamic digital ecosystem of multiple actors, initiatives, and trends across many cross-cutting and often competing policy objectives and silos.

New and innovative policy approaches are needed now more than ever to facilitate data sharing and leverage digital technologies to reach the SDGs. This is nowhere more evident than in Africa, where, as in other regions of the world, following the COVID-19 pandemic, the digital transformation of economies, governments, and societies is sharply accelerating.

Against the backdrop of the ambitious strategic frameworks of the Agenda 2063, the African Continental Free Trade Area (AfCFTA) and the recently endorsed AU Data Policy Framework we have embarked to enable peer-to-peer knowledge exchange of stakeholders in the region as they frame, map, and address cross-border digital policy challenges, through the collaborative methodology of the Internet & Jurisdiction Policy Network Regional Status Report: Framing, Mapping and Addressing Cross-border Digital Policies in Africa.

Authored by Research ICT Africa, the Report builds on the unique methodology of the Internet & Jurisdiction Policy Network to mutualize knowledge of key regional stakeholders from states, companies, technical operators,

international organizations, academia, and civil society through interviews, surveys, and workshops. It is a regional follow-up to both the Internet & Jurisdiction Global Status Report 2019, and the Internet & Jurisdiction and ECLAC Regional Status Report in 2020.

The Report explores why policy coordination is important to building an inclusive and vibrant digital economy in Africa. It identifies key trends taking shape across the region and presents opportunities and challenges for government, private sector, and civil society actors to consider.

The analysis showcases regional stakeholder perspectives and identifies ways to cooperatively govern cross-border digital issues. A key message of the Regional Status Report is that incremental implementation of cross-border digital policies should progress toward harmonization and consider development capacities and national contexts without requiring simultaneous conformity.

By laying out key trends concerning the handling of digital policy issues on the continent, the Report is intended to provide a baseline for policymakers within Africa and globally to enhance their understanding of the current opportunities and challenges as Africa seeks to design policy and technical innovations to leverage the digital economy for sustainable and inclusive development. We hope that the findings will contribute to the broader continental project of data policy harmonization envisioned in the [Digital Transformation Strategy](#) of the African Union Commission.

As Africa seeks to build its path and strengthen its regional voice in global policy debates, we hope that this report, and the community that helped to develop it, will support further dialogue and evidence-based research to foster coordination on cross-border digital policies across the region.



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Internet & Jurisdiction Policy Network

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EXECUTIVE SUMMARY

AT A GLANCE

- African countries should increase their coordination on data policies.
- Data sovereignty can be realized without data localization through reciprocal protection of personal data and continental policies to share benefits.
- Data policies require human rights safeguards in order to create a trusted and functioning online environment.
- Incremental implementation of data policy should progress toward harmonization and take into account development capacities and national contexts without requiring simultaneous conformity.
- There is generally a data deficit in the continent, particularly of accurate data and data sharing structures that can foster the attainment of the Sustainable Development Goals.
- Shared data infrastructures, including a distributed network of data centers, needs to be progressively developed to enjoy the benefits of scale and scope.
- A common African voice in international fora should advocate for data policies that support inclusive development and uphold both individual and collective rights.

ABOUT THE REPORT

The *Internet & Jurisdiction Policy Network Regional Status Report: Framing, Mapping and Addressing Cross-border Digital Policies in Africa* is an exploration of how cross-border data flows can be unleashed to contribute to continental objectives of economic and social development while respecting national sovereignty imperatives, including the safeguarding of citizens from potential harm. Research began by identifying digital cross-border issues. Cross-border data flow rapidly emerged as the most crucial and immediate, albeit under-rated cross-border issue. As a result, the Report provides an overview of the current state of data policy with a mapping of laws and conventions in the context of the new [African Union Data Policy Framework](#) with a focus on cross-border digital issues. A central objective of that ground-breaking initiative is an interoperable and integrated data system for the single market and ultimately, the harmonization of policies to foster development across the continent. As stakeholders point out however, the test of the success of this Framework will be in its implementation at the continental level through its domestication by member states. Previous timely and necessary digital conventions have been adopted but not ratified by a sufficient number of states for them to become binding and are thus not implemented by most member states.

In acknowledgment of this challenge, the African Union has developed an implementation and action plan for member states and will facilitate a capacity-building program to respond to the identified needs of member states. By expanding the multifaceted research method first adopted for the production of the pioneering [Internet & Jurisdiction Global Status Report 2019](#), and later deployed by the [Internet & Jurisdiction and ECLAC Regional Status Report 2020](#), the findings in this Report are based on a large-scale collaborative contribution and review process, combining the expertise of the key stakeholders engaged in the Internet & Jurisdiction Policy Network and beyond.

The initiative is intended to complement existing continental mechanisms for stakeholder engagement across Africa to share knowledge, consult each other, interact with stakeholders around the world and develop a shared understanding of capacity around digital policy issues.

The Report explores why cross-border policy coordination is important to building an inclusive and vibrant digital economy in Africa. It identifies key trends taking shape across the region and presents opportunities and challenges for government, private sector, and civil society actors to consider. The Report showcases regional stakeholder perspectives and identifies ways to cooperatively govern cross-border digital issues. The findings will contribute to the broader continental project of data policy harmonization, market integration, and socio-economic development envisioned in the [Digital Transformation Strategy](#) (DTSA) of the African Union Commission. The Report's findings should resonate with policymakers in Africa and globally.

The Introduction sets out the challenges of digitization and datafication, the methodology used for the research, and briefly describes the research process and early findings. The policy context is detailed in Chapter 1, that discusses continental policy responses to digitization, datafication and the tectonic policy development that is the inception of the African Continental Free Trade Area (AfCFTA). Chapter 1 also sets out data protection and privacy, cybercrime laws, intellectual property, and competition law drive cross-border digital issues. In Chapter 2, the Report discusses topical trends of cross-border digital issues in Africa. A wide range of trends is reviewed under the descriptors of a trusted environment, inclusive economy, infrastructure, and the need for digital policy coordination. Possible solutions to some of the issues raised by the research are presented in Chapter 3, including developing shared infrastructure, harmonizing legal standards, agreeing on cross-border data flow, and developing a common African narrative. Chapter 4 contains conclusions framing the challenges.

OVERARCHING TRENDS

Desk research and the series of consultations in the preparation of this Report have surfaced high-level trends and messages from more than 100 consulted stakeholders.

AFRICA IS CONFRONTED WITH SIMILAR CHALLENGES AS OTHER REGIONS IN DEVELOPING ITS DIGITAL POLICIES

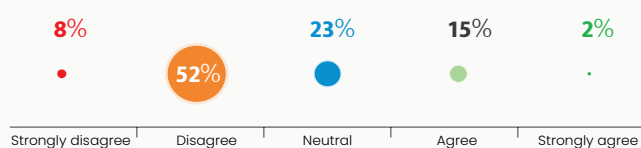
Desk research and the series of consultations in the preparation of this Report have surfaced high-level trends and messages from more than 100 consulted stakeholders.

The present Report is a follow-up to two previous initiatives by the Internet & Jurisdiction Policy Network: its 2019 Global Status Report and 2020 Regional Status Report regarding Latin America and the Caribbean. Several challenges around digital policies for Africa appear similar to the ones encountered in other regions, in particular:

- The difficult handling of interdependencies between policies conducted in **separate knowledge and policy silos** (e.g., trade, security, privacy protection, etc.);
- The risk of possible **incompatibilities between unilateral measures** adopted among a large number of countries, the cumulative effect of which can make some issues even harder to solve;
- The growing tension between aspirations to both **protect the free flow of data and ensure digital sovereignty** through measures such as data localization;
- The difficulty to fully participate in the global debate about data policies, which is largely driven by actors outside of the region and makes African countries “standard takers” rather than “standards makers”;
- The growing concern about the **extractive nature of the data economy** and the wealth inequalities it creates and amplifies.

An overarching theme is the **need for stronger coordination** among countries in the continent and the recognition that it is currently not sufficient.

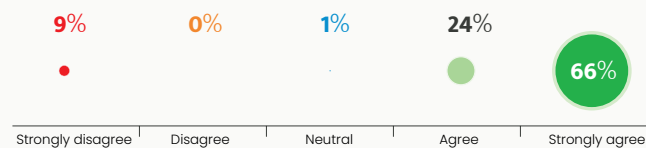
Figure 8



Answers to the statement:

There is strong coordination among African countries regarding digital policy issues.

Figure 9



Answers to the statement:

African countries need to work more together on digital issues

AFRICA ALSO FACES SPECIFIC CHALLENGES

Beyond the above problems, with which all countries are confronted, Africa has specific characteristics stemming from its general social and economic situation that must be taken into account when developing the ambitious set of digital policies that are needed. They include:

- The **sheer size of the continent**, in terms of the number of countries involved and the overall territorial footprint, with vastly diverse environmental and topographic situations;
- The **very disparate levels of overall development**, both among and within countries, with considerable issues regarding primary needs and potential climate change related risks;
- The **very uneven geographic distribution of populations**, with dense urban centers and very dispersed rural populations;
- The persistence of **societal and political tensions** and even violent conflicts in some parts of the continent, with too many correlated measures of internet shutdowns;
- The **coexistence of a continental integration effort with multiple sub-regional groupings** (with strong historic roots), which adds a layer of coordination challenges;
- The level of overall development and **uneven availability of reliable energy infrastructure**, which is critical for powering the digital economy.

A CLEAR AMBITION TOWARD DIGITAL INTEGRATION IS EMERGING

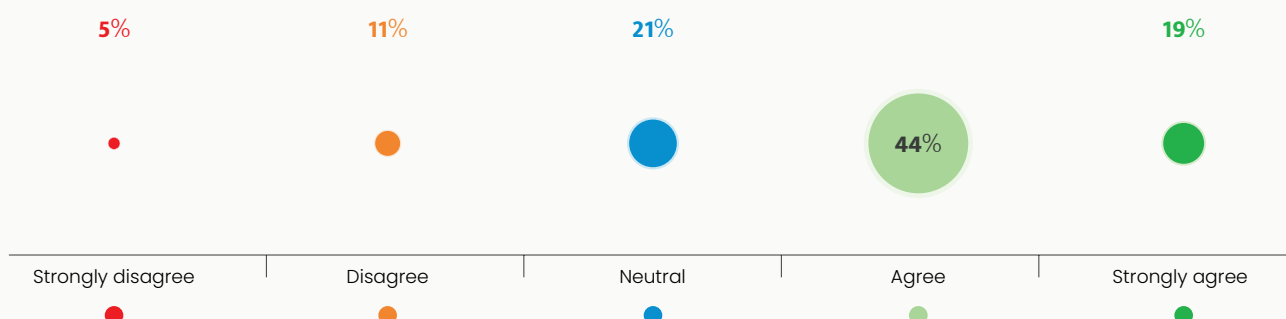
Several initiatives highlight the growing consciousness of the importance of digital and in particular data policies for the development of the continent. They manifest the ambition of Africa to build a dynamic, inclusive, and integrated digital economy offering the scale and scope necessary for data value creation. Such initiatives include:

- [Agenda 2063](#), the 2013 overarching development strategy for Africa, emphasizes “inclusive growth and sustainable development” through increased capacity for innovation, science and technology;
- The African Union’s (AU) [Digital Transformation Strategy](#) (DTSA) addresses legacy deficits in continental cooperation and cohesion, and seeks to establish a digital single market in Africa by 2030;
- The AU [Data Policy Framework](#) presents detailed recommendations to guide the formulation of domestic policies, strengthen cooperation among countries, and promote intra-Africa flows of data.

In parallel, an ambitious agreement establishing an [African Continental Free Trade Area](#) (AfCFTA) was adopted in March 2018. Although it entered into force in 2019 and 44 countries have already ratified it as of 2022, the specific protocols related to digital and data-related policies are still under negotiation. There is however a significant hope that this framework will enable the creation of an African digital single market.

Figure 19

African Continental Free Trade Area enables the achievement of a common digital single market in Africa.



However, a note of caution regarding the challenges of harmonization comes from the low formal adoption of the 2014 AU [Convention on Cyber Security and Personal Data Protection](#) (Malabo Convention). As of 2022, it has only been ratified by 13 countries and as a result, hence, it has not yet come into force.

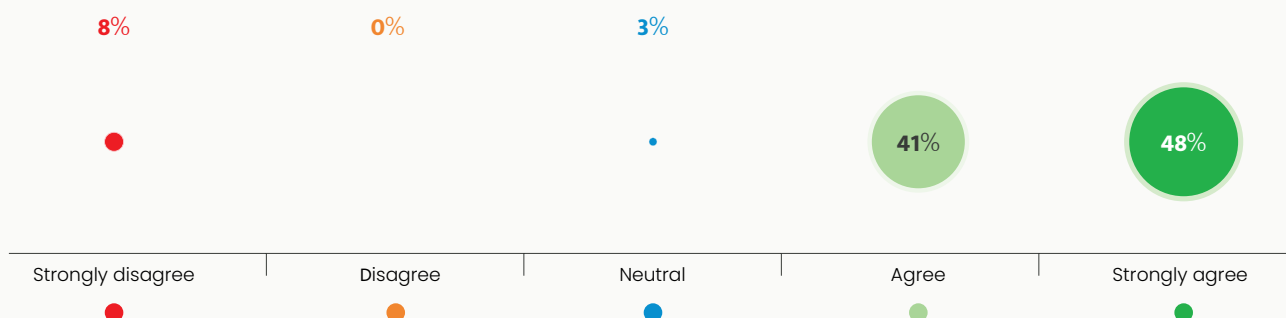
DATA GOVERNANCE WILL BE A KEY, STILL UNDERAPPRECIATED, PART OF DIGITAL POLICIES

Of all the policies dealing with the development of a more equitable digital society, the governance of data constitutes a foundational element to generate social and economic value. There is in that regard, a broad recognition that:

- Ensuring **cross-border data flows**, not only among African countries but also with the rest of the world, is critical for the development of a prosperous digital economy in the continent;

Figure 23

Data flows are beneficial



- This requires nonetheless significant convergence of diverse regulatory frameworks **guaranteeing high levels of protection** in terms of, inter alia, privacy, law enforcement access to data, or content moderation;
- A particular attention needs to be devoted to the **equitable distribution of the value created** by the sharing of data among actors in situations of power imbalances.

STRUCTURING QUESTIONS

The following four structuring questions are put forward as a contribution to the ongoing debate on digital policies in Africa. They are naturally not exhaustive, but examples of a framing approach to formulate, at various levels, common challenges to foster the necessary cooperation. The methodology can be applied to other issues.

What path toward harmonization?

The stark disparity of legal and economic development situations among African countries makes achieving full harmonization a particularly difficult objective. This is still true even in the European Union, which builds upon decades of convergence among less numerous and more similar economies, and benefits from strong regulatory instruments that the African Union does not possess to the same degree.

Not hampering further progress in the most advanced countries can conflict with the desire to establish sufficiently common rules across the continent. **A flexible approach toward progressive convergence** might be necessary to accommodate the different situations without introducing excessive distortions of the competition landscape.

A dedicated discussion needs to take place to determine the right combination of legal interoperability and full harmonization to create the necessary cooperation between different country groupings. More generally, further development of rule of law and political legitimacy are essential to creating trusted environments leading to effective cooperation.

What digital infrastructure strategy?

The success of any digital ambition for Africa depends on access to reliable digital infrastructure. Enormous progress has been achieved in the last ten years in terms of connectivity, through the multiplication of undersea cables connecting the continent to the global network and terrestrial backbones internally, even if the connectivity of very low density rural communities remains a challenge.

However, the situation remains very different in terms of location of **data centers**, due to often unreliable electric power, unfavorable climate conditions and legal and political instability. Thus efficient African actors still need access to cloud services located outside of the continent that can provide the necessary degree of reliability and security protections.

A dedicated strategy to **progressively develop this layer of the data infrastructure** on its territory should form an integral part of any general digital ambition for Africa, taking into account the optimal locations for such data centers, which may not immediately exist for every country. A corollary is that generalized data localization measures would prevent the construction of a coherent and progressively scalable continental infrastructure and ultimately hurt the development potential of many actors.

How to leverage data sharing for development?

Data is essential to achieve the Sustainable Development Goals (SDGs), which are of critical importance for Africa, for instance in terms of access to water, food, health, or energy, and with regards to urban planning or climate change mitigation.

A major part of a **data for development strategy for Africa** should encompass the strengthening of reliable national statistics, the standardization of data formats in various sectors to foster interoperability and reuse for analysis, encouragement of the creation of data-sharing communities (e.g. data commons, collectives, trusts, or stewardships), and, when appropriate, two-way cooperation between private entities and public authorities (including local ones).

In that regard, the [Datasphere Governance Atlas](#), a publication of the Datasphere Initiative documents a range of such initiatives around the world that can provide useful inspiration.

How to strengthen the voice of Africa in the global data governance fora?

Data governance is becoming a topic high on the international agenda. Yet, these discussions mostly take place in fora where African actors are not present at all (e.g. G7, OECD) or marginally represented (G20), in spite of it representing 17% of the world population (and 25% by 2050).

As a result, African actors are on the receiving end of regulations adopted elsewhere (in particular by the EU). Moreover, the continent as a whole is a battleground for competing regulatory visions of the US, the EU and China, which complexifies its efforts at regional integration.

The development of a **specific narrative by Africa** regarding the future of the digital society is a prerequisite to strengthening its voice in the global debate. This can cover in particular: the necessary assessment by other regions of the extraterritorial impact of their regulations, and the more equitable distribution of social and economic value than the current data extractive economy provides.

Africa cannot develop its digital strategies without taking into account the global environment in which it necessarily operates and new interfaces to global processes must be developed to carry the voice of the continent.

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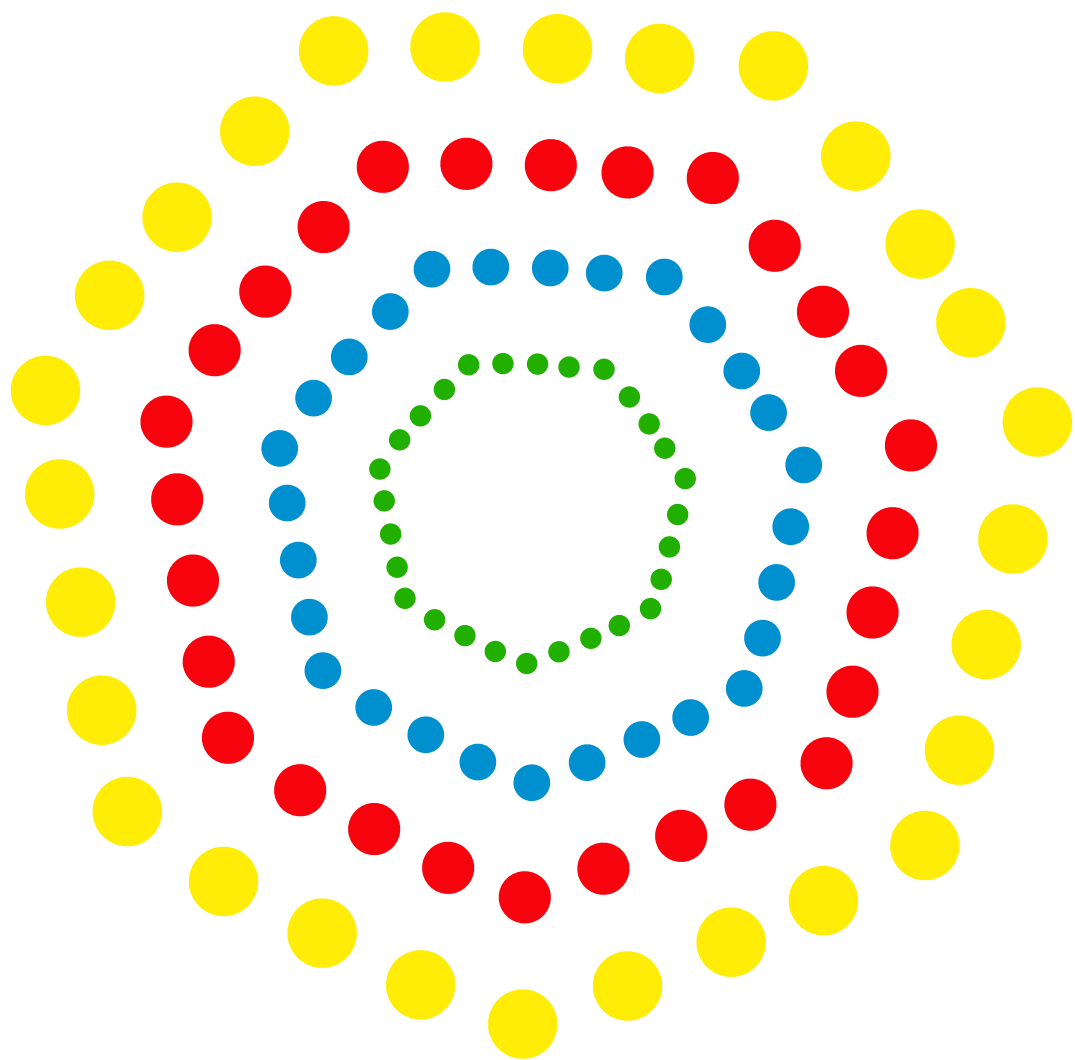
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The Internet & Jurisdiction Policy Network is the multistakeholder organization addressing the tension between the cross-border nature of the internet and national jurisdictions.

Its Secretariat facilitates a global policy process between key stakeholders to enable transnational cooperation and policy coherence. Participants in the Policy Network work together to preserve the cross-border nature of the Internet, protect human rights, fight abuses, and enable the global digital economy. Since 2012, the Internet & Jurisdiction Policy Network has engaged more than 400 key entities from different stakeholder groups around the world, including governments, the world's largest Internet companies, the technical community, civil society groups, leading universities, and international organizations.