Towards an African Union Treaty on Artificial Intelligence: Reconciling African Values with Global Standards

LA Abdulrauf*

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Author

Lukman Adebisi Abdulrauf

Affiliation

University of Ilorin, Nigeria

Email

abdulrauf.la@unilorin.edu.ng

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Prof Chijioke Okorie
Prof Vukosi Marivate

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Prof Wian Erlank

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Abstract

In the wake of the European Union (EU)'s landmark *Artificial Intelligence Act* and similar normative developments in other regions, the regulation of artificial intelligence (AI) has become a global race for governance legitimacy and leadership. While many jurisdictions are swiftly advancing binding legislative instruments to manage the opportunities and risks of AI, AI governance across African states and regional institutions has, to date, tended to favour a more deliberative and consultative approach, reflecting diverse national priorities and capacities. The African Union (AU), through various soft law initiatives and continental strategies, has established foundational principles that prioritise inclusiveness, context sensitivity, and sovereignty in technological governance. Chief among these initiatives is the *AU Continental Artificial Intelligence Strategy*, which articulates a vision for AI governance that reflects African values – a collection of indigenous values, a communal ethos, and socio-cultural realities – while cautiously engaging with the technical universality promoted by global standards.

The purpose of this article is to outline an agenda for discussions on the imperative and feasibility of transitioning from soft law frameworks to an AU treaty on AI. It argues that the central challenge is not merely the codification of rules, but the normative reconciliation of African values with existing global standards. Global AI standards – often shaped by Eurocentric epistemologies and market logic – may inadequately reflect African ethical frameworks, historical contexts and development priorities. Yet the pursuit of regulatory autonomy must not lead to technological isolationism. Instead, the article argues for a hybrid normative approach that retains the technical interoperability necessary for international collaboration, while embedding the African philosophies of *Ubuntu*, solidarity and fairness within the legal architecture of AI governance.

Keywords

AI governance; AU AI treaty; African values and *Ubuntu;* soft law and binding law; global AI standards; normative reconciliation.

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1 Introduction

The rapid evolution of artificial intelligence (AI) has ushered in a new era of legal and ethical governance, compelling states and regional blocs to design frameworks that regulate AI technologies in line with societal values, human rights and economic priorities. Regionally, the European Union's (EU's) landmark *Artificial Intelligence Act* (*EU AI Act*)[1] has positioned the EU as a global leader in shaping the contours of lawful and responsible AI, setting a precedent for binding regional regulation. The recently adopted Council of Europe (CoE) *Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law* (*CoE Framework Convention*) has further cemented Europe's position as a global leader and norm-setter in AI governance.[2] Similarly, at the domestic level, the United States, China and several other jurisdictions have initiated executive actions, policy blueprints and standard-setting activities to assert regulatory influence over AI's developmental trajectory.[3] These initiatives aim to promote the safe and responsible use of AI while also securing strategic influence in the emerging global AI order, thereby contributing to what has been described as the "race to govern AI".[4] Clearly this race is not merely about regulating AI but

* Lukman Adebisi Abdulrauf. LLB (Zaria) BL LLM (Ilorin) LLD (Pretoria). Associate Professor/Reader, Department of Public Law, University of Ilorin, Nigeria. Honorary Research Fellow, School of Law, University of KwaZulu-Natal, South Africa. E-mail: abdulrauf.la@unilorin.edu.ng. ORCiD: https://orcid.org/0000-0003-4877-9415. A version of this article was presented at Legal-Technical Governance of AI in Africa: A Virtual Symposium organised by the Data Science Law Lab, University of Pretoria, South Africa, held on 15 August 2025. I thank all the reviewers and participants in the symposium for their valuable feedback on this topic. I acknowledge the use of OpenAI's Chat GPT 5.2 mainly to improve the language and readability of this article. This work forms part of the Legal–Technical AI Governance in Africa project hosted by the Data Science Law Lab at the University of Pretoria. The work was supported in part by funding provided to the University of Pretoria through a gift from Meta. The views and opinions expressed in this publication are those of the author(s) and do not necessarily reflect those of the University of Pretoria, Meta, or affiliated institutions.

1 CoE *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and Amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)* [2024] OJL 1689 (the *EU AI Act*).

2 CoE *Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law* (2024) (*CoE Framework Convention*).

3 The White House 2025 https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf. Also see World Economic Forum 2025 https://reports.weforum.org/docs/WEF_Blueprint_to_Action_Chinas_Path_to_AI-Powered_Industry_Transformation_2025.pdf.

4 Koniakou 2022 *Information Systems Frontiers* 71-102.

also about securing influence and leadership in the global discourse on AI governance.

In contrast, the African region's participation in the global race to govern AI remains uneven and fragmented, with limited collective influence over the dominant normative frameworks shaping global AI regulation.[5] This does not suggest that there is no activity on the continent regarding AI governance; rather, Africa countries at both the regional and the domestic levels have adopted a more reflective and context-sensitive approach. Although Africa lacks a continental-wide treaty on AI, it has witnessed the emergence of critical normative instruments that lay the foundation for ethical and inclusive AI governance. The most significant of these instrument regionally is the *AU Continental Strategy on Artificial Intelligence*,[6] which articulates a vision for AI grounded in African values, development priorities, and aspirations for technological sovereignty.[7] The Strategy is firmly anchored in African values – a term loosely referring to principles such as communalism, *Ubuntu*, solidarity, respect for dignity, and epistemic plurality – while cautiously engaging with global norms that privilege technical efficiency, innovation and market-based regulation.[8] Other initiatives, such as the Smart Africa Blueprint Artificial Intelligence for Africa[9] and the *AU Data Policy Framework*,[10] further affirm Africa's aspiration to govern emerging technologies on its normative terms, which are laudable. However, the practical influence of these initiatives remains uncertain, given that they are predominantly non-binding soft-law instruments without enforceable obligations.

As global AI governance increasingly shifts from soft law frameworks toward binding regional instruments such as the *EU AI Act* and the *CoE AI Convention*, an important question arises as to whether Africa should similarly consider moving toward a treaty-based approach. In addition, the divergence in regulatory pace and normative orientation gives rise to a central tension that this article interrogates: the normative dilemma between global interoperability and Afrocentric legitimacy. On the one hand, Africa must ensure that its AI systems remain interoperable with international

5 Mosero 2024 https://qbit.africa/blog/2024/09/10/securing-africas-seat-at-the-global-ai-table/.

6 AU 2024 https://au.int/en/documents/20240809/continental-artificial-intelligence-strategy (*AU Continental Strategy on AI*). Adopted by the African Union Executive Council in July 2024.

7 Abiero, Karanja and Kaaniru 2024 https://cipit.strathmore.edu/an-in-depth-analysis-of-the-au-ai-continental-strategy-and-implications-on-ai-governance-in-the-continent/.

8 *AU Continental Strategy on AI* 1, 3, 4.

9 Smart Africa 2021 https://smartafrica.org/wp-content/uploads/2023/11/70029-eng_ai-for-africa-blueprint-min.pdf.

10 AU 2022 https://au.int/sites/default/files/documents/42078-doc-DATA-POLICY-FRAMEWORKS-2024-ENG-V2.pdf (*AU Data Policy Framework*).

technical standards to avoid being isolated in the global legal order. On the other hand, a "copy and paste" replication of external standards – many of which are shaped by Eurocentric epistemologies, market logic, and technocratic paradigms – risks entrenching a new form of colonialism.[11] With their distinct socio-cultural realities and historical experiences of technological adoption, African societies require governance frameworks that are not merely transplanted but carefully considered and normatively negotiated.

This article argues that Africa does not face a binary choice between integration into the global AI order and the affirmation of its indigenous values. Instead, what is needed is a hybrid legal approach that reconciles these imperatives by embedding Afrocentric values within globally interoperable standards. Such a model must recognise that while technical standardisation is vital for international collaboration and innovation, it must not come at the expense of cultural legitimacy and community-informed ethics. Therefore, the continent must assert a globally relevant and locally legitimate normative identity in AI governance. The article therefore seeks to offer a blueprint for an AU treaty on AI that embodies this hybrid vision. It argues that moving from soft law instruments to a continental treaty is not merely a matter of legal formalism but a strategic imperative for Africa's digital sovereignty, ethical governance and sustainable development. Through this proposed treaty framework the AU can institutionalise its normative commitments while contributing to the global governance of AI on terms that reflect its philosophical traditions and developmental aspirations.

It is nevertheless important to acknowledge that the proposal for an AU Treaty on AI is advanced with full awareness of the AU's architecture regarding adopting and enforcing binding legal instruments, particularly when contrasted with the EU. Unlike the EU's supranational legal order within which certain legislative acts have direct effect and domestic applicability, the AU operates predominantly as an intergovernmental organisation although with "supranational aspirations".[12] As a result, AU treaties do not enjoy automatic domestic effect but become legally binding on member states only upon ratification and, where required, domestication at the national level.[13] This article therefore proceeds based on, and is attentive to, these institutional and legal constraints. To that end, the article is structured in six parts. Following this introduction, Section Two explores Africa's place in the emerging global legal order on AI, highlighting its strategic vulnerabilities and normative contributions. Section Three outlines

11 Birhane "'Algorithmic Colonization of Africa" 254.
12 Fagbayibo 2013 *South African Journal of International Affairs* 411.
13 Fagbayibo and Owie 2021 *JAL* 185-186.

the core considerations for transitioning from soft law frameworks to a hard law or treaty, drawing on lessons from other regional regulatory regimes. Section Four proposes key normative and institutional elements underpinning an African AI treaty, emphasising value alignment, oversight mechanisms and legal enforceability. Section Five reflects on some practical and political challenges to adopting such a treaty, including state divergence, institutional capacity and external pressures. The final section concludes with reflections on the broader implications of treaty-based governance for Africa's digital future. It offers projections for the continent's role in shaping the normative global landscape for AI.

This article aligns with the dimension of "the design of technological/AI systems and tools and the design of legislation/legal frameworks must involve multiple stakeholders to build trust and acceptance" highlighted in the call for papers.[14] The article highlights the integration of African values of *Ubuntu*, solidarity and justice in substantive and procedural AI regulation through the proposal of a hybrid AU AI treaty. This corresponds with the emphasis of the call for co-design between technical and legal areas and on stakeholder engagement. Furthermore, the article contributes to the theme of "proposals for legislation-based governance of AI which mandatorily includes proposals on the content of such legislation",[15] as it sets out specific normative and institutional aspects that a continental AI treaty should cover, such as African-contextualised definitions, general ethical standards, human rights safeguards, and instruments of accountability and enforcement. By linking African values to internationally interoperable standards, the article fills a legal-technical gap that the call seeks to address.

The article focusses primarily on the AI legislative processes at the continental level, led by the AU, rather than domestic-level developments. While Africa is not a monolith – comprising diverse nations with distinct historical backgrounds and legal systems – countries in the Global South share critical concerns regarding AI governance.[16] Furthermore, the AU serves as a unifying platform rooted in a shared regional history and a collective mandate for continental integration. Therefore, analysing the AU's framework provides a representative lens through which to understand the emerging African normative stance on AI.

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14 Data Science Law Lab 2025 https://datasciencelawlab.africa/projectses/legal-technical-ai-gov-africa/.

15 Data Science Law Lab 2025 https://datasciencelawlab.africa/projectses/legal-technical-ai-gov-africa/.

16 Segun *et al* 2025 https://ui.adsabs.harvard.edu/link_gateway/2025arXiv250813179S/doi:10.48550/arXiv.2508.13179.

2 Africa in the global AI legal order: norm makers or norm takers?

To proceed with a discussion on the possibility or otherwise of a treaty on AI by the AU, it is important to briefly understand the place of Africa in the global AI legal order. Indeed, this is one of the preliminary means of determining Africa's readiness to start engaging in such conversations and projecting how the future may look like. The place of Africa in the global legal order has always been centred on the norm taker/norm maker debate. One may argue that if Africa is considered a norm maker as against a norm taker, then this is an indication of some readiness to concretise AI norms in a treaty. In a growing body of policy analysis and literature, Africa is generally described as a norm taker – primarily adapting AI governance rules implemented elsewhere, especially from the global north, rather than making its own.[17] This is not surprising considering that in the broader landscape of global AI development, the overwhelming contributions of certain countries cannot be overlooked. At present the United States, China, the EU, the United Kingdom and India continue to dominate in terms of research output, private and public investment, patent filings and technological innovation.[18] By contrast, contributions from African countries

17 Plantinga *et al* 2024 *Data & Policy.* There are at least four key justifications for the general view that Africa is more of a norm taker than a norm maker. First, the African Union's own Continental AI Strategy acknowledges structural under-representation and capacity constraints that keep African experts out of key norm-setting venues, noting that "AI is being discussed in different forums hosted mainly by [global] organisations … inaccessible to experts in Africa due to a lack of capacity", and therefore calls for greater African participation in global AI governance. Second, policy research on the *EU AI Act*'s extraterritorial reach and the "Brussels Effect" indicates that rules forged in the EU will shape (or be mirrored by) third-world countries' regimes, including in Africa, regardless of local legislative initiatives. See, for example, Siegmann and Anderljung 2022 https://cdn.governance.ai/Brussels_Effect_GovAI.pdf. Third, comparative governance briefings emphasise that the Global North leads on AI norm entrepreneurship, with African developments "often overlooked or seen as of lesser importance", and predict that the *EU AI Act* will shape African laws via diffusion and market power. Musoni 2024 https://ecdpm.org/work/envisioning-africas-ai-governance-landscape-2024. Fourth, membership and agenda-setting patterns in global initiatives have historically excluded or marginalised Africa at key moments. The *OECD AI Principles* – a foundational soft-law instrument – were adopted by OECD members and six non-members; no African country was among the initial endorsers, underscoring Africa's limited presence at that early table. OECD 2019 https://digitalpolicyalert.org/change/6188-oecd-principles-on-artificial-intelligence (*OECD AI Principles*). Related capacity indices, such as the Oxford Insights' Government AI Readiness Index, show that most African governments score significantly below global leaders. This is another practical reason why they adapt external norms more than they author them. Oxford Insights 2023 https://oxfordinsights.com/wp-content/uploads/2023/12/2023-Government-AI-Readiness-Index-1.pdf.

18 Maslej *et al* 2025 https://hai.stanford.edu/assets/files/hai_ai_index_report_2025.pdf.

remain marginal, constrained by some of its inherent challenges such as limited infrastructure, funding and human capital.[19] This imbalance means that Africa's role in shaping the emerging global AI legal order will also be comparatively minimal. Countries that play much more prominent roles in the development of AI are bound to have a greater stake in the global legal order. This is a reason why these countries are globally considered to be "norm-makers" as against African countries, that are generally described as "norm-takers".

Notwithstanding the foregoing, recent initiatives at the continental and national levels show an ambition on the part of Africa (of the AU and African countries individually) to change this narrative, especially in selected domains. At the multilateral level all African states are covered by UNESCO's *Recommendation on the Ethics of AI*, a global standard adopted in 2021 based on the principles of human rights, inclusion and sustainability, and comes with concrete implementation tools such as readiness and ethical-impact assessments.[20] In fact, there is evidence of significant African participation in both the drafting and in the intergovernmental discussions that produced the recommendations.[21] Similarly, in 2024 the UN General Assembly, with broad African support, adopted a consensus resolution urging safe, secure and trustworthy AI for sustainable development, which positions capacity building and bridging the digital divide as core global objectives rather than afterthoughts.[22]

Regionally the *AU Continental AI Strategy* endorsed by the AU Executive Council in July 2024 has adopted a distinctly "Africa-centric, development-first" approach that ties AI directly in with Agenda 2063 and insists on dignity, inclusion, and skills as governance fundamentals.[23] Similarly, the African Commission on Human and Peoples' Rights has also placed AI on the continental rights agenda through Resolution 473 (2021), which mandates a study of AI's human-rights implications and continues to steer normative debate.[24] Furthermore, African leaders recently adopted the

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19 Munga and Quansah 2025 https://carnegieendowment.org/posts/2025/09/understanding-africas-ai-governance-landscape-insights-from-policy-practice-and-dialogue?lang=en; Righi *et al AI Watch Index 2021*.

20 UNESCO 2021 https://www.unesco.org/en/articles/recommendation-ethics-artificial-intelligence (*UNESCO Recommendation on Ethics*). It is stated that the recommendation is applicable to all 194 member states.

21 The 24-member Ad Hoc Expert Group (AHEG) that prepared the first draft was led by a South African, Prof Emma Ruttkamp-Bloem. Likewise, UNESCO ran broad multi-stakeholder consultations with significant African participation in this process.

22 UNGA *Seizing the Opportunities of Safe, Secure and Trustworthy Artificial Intelligence Systems for Sustainable Development* UN Doc A/78/L.49 (2024).

23 *AU Continental AI Strategy* 1.

24 ACHPR *Resolution on the Need to Undertake a Study on Human and Peoples' Rights and Artificial Intelligence (AI), Robotics and Other New and Emerging*

Africa Declaration on Artificial Intelligence 2025, which articulates key normative values intended to guide the design and deployment of AI on the continent, including the principle that AI should "benefit all African communities and reflect Africa's strategic priorities, shared values, and diverse cultural contexts".[25] It is arguable that all these initiatives show a paradigm shift and enable African actors to speak with a principled voice in global fora while rooting AI governance in the continent's own unique tradition or approach.

The AU is also making significant strides in terms of consolidating binding digital rules with implications for AI governance. The AU *Convention on Cybersecurity and Personal Data Protection* (Malabo Convention) – the continent's only regional data-protection treaty – just recently entered into force on 8 June 2023, creating a set of privacy and security obligations that AI developers and deployers must observe.[26] The *AU Data Policy Framework*, which was endorsed in 2022, promotes the establishment of trustworthy, interoperable African data spaces and safeguards for cross-border flows, which are preconditions for responsible AI and for African participation in data-driven trade.[27] Parallel innovations may also be witnessed in trade law, as the African Continental Free Trade Agreement (AfCFTA) *Protocol on Digital Trade* contains data-governance disciplines (including cross-border data-flow and source-code provisions with public-policy exceptions) that will shape AI-enabled commerce within the single African market.[28] At the national level, appreciable legal reforms with implications for AI governance may also be witnessed, and are bourgeoning. Forty-six of the fifty-four African countries now have data protection laws in place, with more recent reforms addressing emerging developments in new technologies such as AI in some of these countries.[29] Likewise, about twelve countries have adopted national AI strategies or policy documents while about ten more countries are actively working on developing one.[30] In short, Africa's legal order for AI is forming through

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Technologies in Africa ACHPR/Res 473 (EXT.OS/XXXI) (2021) (*ACHPR Resolution 473*).

25 AI Expo Africa 2025 https://aiexpoafrica.com/africa-declaration-on-artificial-intelligence/. Adopted at the Global AI Summit on Africa in Kigali, Rwanda, on 3-4 April 2025.

26 Ayalew 2024 https://www.ejiltalk.org/the-african-unions-malabo-convention-on-cyber-security-and-personal-data-protection-enters-into-force-nearly-after-a-decade-what-does-it-mean-for-data-privacy-in-africa-or-beyond.

27 *AU Data Policy Framework* 2022.

28 Kugler 2024 https://www.iisd.org/articles/policy-analysis/afcfta-digital-protocol.

29 Akintolu 2025 https://iapp.org/news/a/evaluating-data-privacy-across-africa-toward-a-unified-gdpr-inspired-framework.

30 As of mid-2025. A report from Africa Tech Policy Tracker shows that Algeria, Libya, Egypt, Mauritania, Senegal, Cote D'Ivoire, Ghana, Benin, Nigeria, Ethiopia, Kenya, and Zambia had adopted AI policies or strategies, while Morocco, Tunisia, Togo, Cameroon, Chad, Namibia, Botswana, South Africa, Zimbabwe and Tanzania were

layered continental, trade and national instruments that can interoperate with global norms while reflecting local priorities and constraints.

On the global legislative stage Africa has practical avenues to shape emerging treaties and standards while preserving regulatory flexibility. The CoE's *Framework Convention on AI* – the first treaty of its kind – is explicitly open to non-European states. The CoE itself has explicitly invited engagement with African countries and the AU and has said that states that did not participate in the negotiations may accede to the *Framework Convention* after its entry into force.[31] Indeed, adherence or observer participation would help universalise human-rights safeguards in AI while giving the continent a say when it comes to discussions on interpretive guidance. Similarly, the *OECD AI Principles* allows non-member states to formally adhere to this Recommendation. Egypt adhered in 2021 and the OECD now reviews how Egypt is implementing the principles.[32] This has established a pathway for African participation even without OECD membership. More broadly, the OECD lists both members and selected partners as adherents, and promotes OECD–AU dialogue to bring African officials into standard-setting and implementation discussions.[33] This implies that Africa's current "treaty-like" role at the OECD is via adherence to the Recommendation (soft law) and participation in OECD–AU processes, rather than through a treaty.

The emerging picture is of a continent that, while still largely subscribing to global AI norms, is increasingly defining its own priorities in governance and is being recognised as an important stakeholder in global debates on the normative frameworks for AI.

The AU is playing a pivotal role as a norm-setter in the emerging regional AI legal order in all these initiatives. As the custodian of shared African values and aspirations,[34] the AU is uniquely positioned to shape a coordinated response to the governance challenges posed by AI.[35] These challenges are inherently transnational, making international organisations

in the process of developing policy frameworks or strategies. See Carnegie Endowment for International Peace 2024 https://carnegieendowment.org/features/africa-digital-regulations?lang=en.

31 *CoE Framework Convention*.

32 OECD *AI Review of Egypt*.

33 CoE 2024 https://www.coe.int/en/web/artificial-intelligence/-/presentation-of-the-council-of-europe-s-activities-on-artificial-intelligence-ai-during-the-oecd-african-union-ai-dialogue.

34 See generally Chipato 2023 *Global Studies Quarterly* 1-11, noting that "Pan-Africanism played a crucial role in the decolonization of the African continent and remains the ideological basis for the AU, which leads on issues of continental governance."

35 Smart Africa 2021 https://smartafrica.org/wp-content/uploads/2023/11/70029-eng_ai-for-africa-blueprint-min.pdf 10.

like the AU indispensable. Tallberg *et al* observe that international organisations have increasingly taken the lead over national authorities in AI governance, because AI generates cross-border externalities that require international cooperation and because its development is largely driven by transnational actors.[36]

The foregoing analysis suggests that, while countries in the African region may not yet rival advanced economies in building AI infrastructure, it is steadily carving out a role as a norm-setter in the global AI legal order. Through instruments such as the *Continental AI Strategy* and its leadership in digital policy coordination the AU is strategically placed to bring coherence to the otherwise fragmented national approaches across the continent. This positioning raises a timely question: should Africa now begin to consider the prospect of transitioning to a treaty based-AI regime at the regional level?

3 Making a case for transitioning from soft law to a treaty or hard law

Contemporary debates on AI governance centre on two related questions: whether AI should be regulated at all, and, if so, whether binding ("hard law") or non-binding ("soft law") instruments provide the most appropriate regulatory framework. One influential strand of scholarship, often associated with policy and academic debates in the United States, cautions that overly prescriptive or premature hard law regulation risks stifling innovation and technological development. A contrasting view, more prominently articulated within European legal and policy discourse, maintains that binding regulation does not inherently impede innovation but can instead provide legal certainty, enhance public trust, and mitigate the systemic risks associated with AI deployment.[37] Importantly, recent scholarship, most notably by Anu Bradford, challenges the framing of this debate as a false choice between regulation and innovation, arguing persuasively that well-designed regulatory frameworks can in fact enable and accelerate innovation.[38] Similarly, Hine and Floridi, discussing the state of AI regulation in the US, contend that promoting regulation (or legislation) does not in any way diminish innovation as "Responsible and thoughtful legislation can advance the interests of both the regulator and the regulated, encouraging responsible and sustainable innovation."[39] Nonetheless, disagreement persists globally over the most appropriate governance

36 Tallberg *et al* 2023 *International Studies Review*.
37 Bradford 2024 *NWULR* 337.
38 Bradford 2024 *NWULR* 337.
39 Hine and Floridi 2025 *Journal of AI Law and Regulation* 210.

mechanisms for AI, with regulatory preferences continuing to exhibit significant jurisdictional variation.[40]

AI governance in Africa has seen a marked increase in legal and policy activity in recent years with a prevalence of soft law mechanism. At the national level several countries have introduced AI strategies, with a few recently taking the bold step of enacting binding legislation to regulate AI technology.[41] At the regional and continental levels the most notable development is the recent adoption of the AU's *Continental AI Strategy*. While this represents important progress, the governance space is largely dominated by soft law initiatives. The region should now start discussions on the possibility of transitioning to a treaty. This is in line with the several action areas proposed in the *AU Continental AI Strategy*, the first being the "establishment of an appropriate AI governance system and regulations at regional and national levels".[42]

3.1 Justifying a treaty or "hard law"

As AI technologies become more deeply embedded in societies globally, regions are increasingly transitioning from soft-law frameworks to treaty-based mechanisms for more structured and enforceable governance. Obviously, this is a controversial issue, especially in a subject where the development of technology is moving at an alarmingly rapid pace and the complexities of hard law keeping up with such rapid development. Indeed, it is very easy, and of course convenient, to justify the adoption of soft law mechanisms as a governance strategy for AI, given their flexible and adaptive nature and the general fear that they would encourage rather than stifle innovation. In fact, within the African context several compelling factors favour a soft-law approach to AI governance. These include limited regulatory and technical capacity, diverse national realities, the need to build normative consensus, and sensitivities around national and digital sovereignty. Moreover, since the *AU Continental Strategy on AI* was only recently introduced, it could be argued that more time is needed for its implementation and evaluation before initiating discussions on transitioning from soft law to a treaty in the African context. The justifications are numerous and continue to build upon one another. Nevertheless, it is important to start reflecting on the rationale for transitioning from soft law to a treaty in the governance of AI in Africa. This is not a time-sensitive debate that demands immediate action, but rather an agenda-setting conversation

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40 Batool, Zowghi and Bano 2025 *AI and Ethics* 3265-3279.

41 Carnegie Endowment for International Peace 2024 https://carnegieendowment.org/features/africa-digital-regulations?lang=en. Angola also recently published its first draft of AI Law. Similar progress in coming up with a draft law has also been made in Nigeria.

42 *AU Continental AI Strategy* 4. The 10th and 11th action areas also speak to the need to adopt principles and standards on AI to ensure its responsible use.

that ought to be initiated now with a long-term perspective. The goal is not to rush the process, but to lay the groundwork for a future legal framework that reflects Africa's unique needs and values.

There are at least three compelling reasons why it is timely to begin the conversation on moving from soft law to treaty.

Among the sources of international law, treaties occupy a special place because of their legal force and ability to harmonise norms across nations. This potential is even more significant when dealing with complex and cross-cutting subjects such as AI. For the AU, however, a treaty could serve an even deeper purpose of establishing context-specific norms that blend global standards with local realities, rather than simply adopting a universal model. Concerns about the unsuitability of Western-derived norms for African contexts remain pressing. As Abeba Birhane cautions, "Insisting on a single AI integration framework for ethical, social, and economic issues that arise in various contexts and cultures is not only unattainable but also imposes a one-size-fits-all, single worldview."[43] She further notes that, "for African developers, start-ups, and policy makers working to solve local problems with home-grown solutions, what is considered ethical and responsible needs to be seen as inherently tied to local contexts and experts".[44]

A treaty may also be a strategic way of preserving African values in the application of AI technologies. Recent studies are now revealing how the development, deployment, and use of AI currently threaten core African values, making the need for an enforceable standard that will preserve these values crucial. As Samuel Segun argues, current AI deployment risks eroding Afro-communitarianism and dignity-based conceptions of personhood, given its tendency to prioritise profit and Western individualist logics.[45] In this regard Afro-communitarianism is a socio-ethical philosophy which asserts that people's identities and moral worth are fundamentally tied to their relationships within a community. This idea is famously summarised by the concept of *Ubuntu* – "I am because we are". This is not to dismiss the significance of AI technologies in general or those developed in the West. Rather, as Abeba Birhane explains, it is about rejecting specific harmful values and interests while suppressing approaches that fail to align with those values.[46]

Yet another reason why it is important to consider a treaty on AI is to protect Africa's digital sovereignty in an era of exploitation of Africans through digital

43 Birhane "Algorithmic Colonization of Africa" 254.
44 Birhane "Algorithmic Colonization of Africa" 254.
45 Segun 2024 *Data & Policy*.
46 Birhane "Algorithmic Colonization of Africa" 248.

technologies and, more recently, AI. A lot has been said about the use of technological power to further recolonise Africa. This has been expressed in different forms using concepts like "digital colonialism".[47] New dimensions to this unique kind of colonialism are "data colonialism" and "algorithmic colonialism".[48] Algorithmic colonialism, an idea popularised by Abeba Birhane,[49] is exploitation by corporate tech monopolies in the global north. According to her, colonialism in the AI era takes the form of "state-of-the-art algorithms" and "AI solutions" to social problems.[50] In response to this phenomenon, there have been proposals for a more harmonised approach for African countries under the auspices of the AU through a treaty.[51]

3.2 Other considerations

Beyond establishing the compelling case for initiating discussions on a treaty at this stage of Africa's development, it is equally important to consider how AI governance may emerge and evolve at the international (or regional) level in order to guide the discussions on what form it may take in Africa. AI governance has taken various forms so far.[52] According to Tallberg *et al,* the first form involves the reinterpretation of existing rules to cover AI without changing the source – for example, the application of the Malabo Convention's provisions regarding automated decision-making and algorithmic profiling.[53] The second form in which international law on AI could emerge is as an "add-on" or amendment to existing rules in the form of a protocol, a resolution, or another instrument.[54] For example, the UN General Assembly *Resolution on AI* was taken pursuant to the *Charter of the United Nations*.[55] The third form is having a specific, stand-alone, and new framework through customary international law or through a new legal act or treaty on AI.[56] The common example, of course, is the *EU AI Act*.

It is important to stress that this article prefers the third form, that of having a *sui generis* AI treaty, just like the *EU AI Act* and the *CoE Framework Convention*. This is because, as much as all the previous approaches have their advantages, there are also disadvantages that cannot be ignored when setting an agenda for future AI governance in Africa. For example, the

47 Coleman 2019 *Michigan Journal of Race and Law* 417. See Nothias 2025 *Journal of Communication*.
48 Salami 2024 *Data & Policy*.
49 Birhane 2020 *SCRIPTed* 389.
50 Birhane 2020 *SCRIPTed* 247.
51 Abdulrauf "Complex Path to Digital Constitutionalism in Africa".
52 Tallberg *et al* 2023 *International Studies Review* 7.
53 See Salami "Ascent of Artificial Intelligence in Africa" 111.
54 Tallberg *et al* 2023 *International Studies Review* 7.
55 UNGA *Resolution: Seizing the Opportunities of Safe, Secure and Trustworthy Artificial Intelligence Systems for Sustainable Development* UN Doc A/RES/78/265 (2024).
56 Tallberg *et al* 2023 *International Studies Review* 7.

obvious course to take may be to have an AI instrument as a supplementary instrument to a data protection or cybersecurity treaty like the Malabo Convention. A possible advantage of this approach could be that it would leverage existing capacity to monitor and enforce the rule which is already in place.[57] However, it is widely acknowledged that the Malabo Convention lacks a functional enforcement mechanism – a shortcoming that has attracted some serious criticism of the instrument.[58] There is, therefore, no existing institution to argue for AI governance under the Cybersecurity and Data Protection framework. The most significant disadvantage of the approach is that it would be difficult to adapt the existing instruments sufficiently. According to Leslie *et al*, "The challenges of cybercrime and data protection are related, but not identical, to those raised by AI, such as accountability and explainability for automated systems."[59]

Meanwhile, there are several justifications for the choice of adopting a new instrument, the most significant of which is that the desired goal of achieving a hybrid regime that nicely incorporates global standards and African values can be clearly expressed and normatively developed only by using a specific AI treaty. This treaty would not prevent the development of other forms of AI normative frameworks, but it would rather direct the process and provide overarching norms that could guide development on the continent.

In addition to the points already discussed, several critical issues must be carefully considered in the process of developing a treaty framework for AI. One such issue is the choice between adopting a framework convention and a more detailed convention. Such a framework convention would typically outline general principles and foundational values to guide the development and deployment of AI systems, but it would allow individual states substantial flexibility in how those principles are applied within their own jurisdictions. These types of treaties tend to focus on establishing broad state obligations rather than on articulating specific rights for individuals, thereby granting states considerable autonomy in their implementation.[60] In contrast, a full convention would be more prescriptive, setting out clear rights and duties aimed at protecting fundamental values such as human rights, democratic governance and the rule of law. This approach would offer stronger legal safeguards for individuals and promote greater consistency across jurisdictions. Adopting a convention could also incentivise states to expedite national legislation on AI and contribute to harmonising standards for the development and use of trustworthy AI

57 A similar suggestion was made regarding an AI treaty made pursuant to the Budapest Convention on Cybercrime or the Convention 108+. See Leslie *et al Artificial Intelligence* 28.

58 Abdulrauf 2021 *I&CTL* 87-107. Also see Abdulrauf & Fombad 2016 *JML* 67-97.

59 Leslie *et al Artificial Intelligence* 28.

60 Leslie *et al Artificial Intelligence* 28.

systems across borders.[61] Given the architecture of the AU, unlike the EU, it is unlikely that an emerging treaty would be a full convention since it would be more of an intergovernmental agency rather than a supranational organisation. Most of the treaties of the AU have been in the form of framework conventions, and it is difficult to conceive of something different for AI.

Yet another crucial consideration for the proposed treaty to achieve its desired goal is whether it should be horizontally or vertically applicable. Horizontal, unlike vertical applicability means that the proposed treaty would be applicable to a broad range of sectors rather than a specific sector.[62] Other supplementary instruments could be made pursuant to the primary treaty with sectoral application. A key decision would be whether the proposed treaty should adopt a human rights focus, like the *CoE Framework Convention*, or take a broader approach, as seen in the *EU AI Act*. Although initiatives such as the African Commission on Human and Peoples' Rights Study on AI and emerging technologies[63] suggest that the treaty should be human rights-oriented, it is unlikely that this will be the sole focus, given the prescriptions in the *AU Continental AI Strategy*. Nevertheless, human rights will undoubtedly play a prominent role. In this regard, a decision will have to be made whether the proposed treaty should focus on human rights like the *CoE Framework Convention* or be broadly framed like the *EU AI Act*. Another important consideration is the necessity or otherwise of a centralised rather than a decentralised institutional framework at the continental level. The former would result in a situation where there is a single, authoritative institution at the heart of the AI regime responsible for enforcement and harmonisation. I will return to this issue and the merit or otherwise of this approach in the next section of the article.

The foregoing considerations should inform the development of a treaty on AI in Africa. While many of these factors reflect global concerns, the key challenge lies in how to effectively integrate African principles and values into such a framework. This task – hybridising global norms with context-specific African ideals – is where the real substance of the work begins. The following section turns to this crucial discussion.

4 Normative and institutional components of an African AI treaty: a proposal

Africa and the AU cannot afford isolationism in the realm of AI governance, yet the development of an African AI treaty should not amount to a mere

61 Leslie *et al Artificial Intelligence* 28.
62 Plantinga *et al* 2024 *Data & Policy* 4.
63 ACHPR 2025 https://achpr.au.int/en/documents/2025-04-08/draft-study-human-peoples-rights-artificial-intelligence-robotics.

transplantation of existing global frameworks. As will be demonstrated, each of these frameworks reflects distinct approaches informed by internal dynamics. For example, the *EU AI Act* advances a risk-based approach; but Africa's development needs and digital divides require broader framing than just an ordinary risk-based regulation. Therefore a proposed treaty must blend globally recognised AI principles with African values and priorities.

4.1 Normative component

It is difficult to draw clear parallels in the normative content of the major AI governance frameworks, as each has a distinct focus. The *CoE Framework Convention* emphasises human rights, democracy and the rule of law, equality and non-discrimination, privacy and data protection, transparency and oversight, accountability, and safe innovation. This aligns with the overall mission of the CoE: "To promote democracy, human rights and the rule of law across Europe and beyond".[64] The *EU AI Act*, in contrast, is built around risk-based classification, product safety and market conformity, transparency obligations, human oversight, accountability, and the protection of fundamental rights. The *OECD AI Principles* focus on fostering innovative and trustworthy AI, respect for human rights and democratic values, transparency and explainability, robustness and security, accountability, and international cooperation. Meanwhile, the *UNESCO Recommendation on the Ethics of AI* highlights human rights and dignity as its foundation, cultural and environmental sustainability, inclusiveness and gender equality, ethical impact assessment, and data governance. Despite these differences, the common threads across all the frameworks include an emphasis on human rights and fundamental freedoms; transparency, accountability and oversight; proportional or risk-based obligations; and the promotion of trustworthy and safe AI.[65] A proposed treaty on AI should find a way to build on these core values, which can be distilled from the global AI standards, especially those that cut across all these standards.

The next issue is to identify the core African values captured as Africanness that should be embedded in a proposed AI treaty and to consider how these values can be effectively incorporated without undermining the treaty's integrity or its global acceptance. The meaning of the term Africanness remains contested and complex. As Charles Ngwena insightfully notes, Africanness should not be seen as a fixed or monolithic concept; rather, it is a fluid and evolving identity, shaped by history and marked by inclusivity

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64 CoE date unknown https://www.coe.int/en/web/portal/the-council-of-europe-at-a-glance.

65 Some scholars are also now arguing that while core ethical values guiding responsible AI "form a common core shared between and across applications and locations, their realization must be articulable through lenses that are relevant and appropriate to particular context and multicultural in formulation". See Townsend "Multiculturalism and AI Value Alignment".

and diversity, reflecting Africa's dynamic cultural and social realities.[66] It is important to stress that although African cultures and philosophies are diverse, many concepts and ideas are commonly shared across sub-Saharan societies, which do not reflect a single, uniform worldview.[67]

Africanness, which is evident in African-centric ideals such as *Ubuntu*, solidarity, and fairness, can provide a strong normative foundation for shaping the development and governance of AI and other emerging technologies. This vision is already reflected in the *AU Continental AI Strategy*, which aspires to create "a prosperous and integrated Africa where responsible, ethical and African-centric AI serves as the axis of inclusive growth, resilience, socio-economic development, people empowerment and the continent's positioning as a key player in the global AI landscape".[68] The Strategy further articulates six high-level principles that reconcile African values with global AI standards and socio-economic development. These principles – local first, people-centred, human rights and human dignity, peace and prosperity, inclusion and diversity, ethics and transparency, and cooperation and integration – must also guide the process of designing any proposed AU AI Treaty.[69]

Although useful, these principles would benefit from being broadened and integrated with widely accepted global AI standards. Below is a set of important principles that it is believed should shape the provisions of an AI treaty. It is important to emphasise that these recommendations are not exhaustive and are not based on empirical evidence. Rather, they are pragmatic suggestions intended to stimulate and guide initial discussions on the proposed treaty.

4.1.1 Human dignity and rights, read through Ubuntu

The principle of human dignity and rights, articulated in ways that resonate with and are often interpreted through African communitarian philosophies such as *Ubuntu*, is fundamental to a proposed treaty on AI in Africa because it provides a communitarian ethical framework that is distinct from the individualistic Western models currently dominating AI development. *Ubuntu*, often paraphrased as "I am because we are", emphasises that a person's humanity is intrinsically linked to that person's relationships with others and the well-being of the community. In the African context, where AI systems are largely imported and not locally developed, this philosophy would serve as a crucial counterweight to potential harms. Western-centric AI ethics often focus on individual rights like privacy and consent, but an

66 Ngwena *What is Africanness?* 18.
67 Mengesha, Belay and Adams 2024 *Data & Policy* 3.
68 *AU Continental AI Strategy* 27.
69 *AU Continental AI Strategy* 27-28.

Ubuntu-based approach would prioritise collective well-being, shared benefits and social cohesion.[70] A treaty grounded in this philosophy would, for example, mandate that AI applications – from healthcare diagnostics to credit scoring – be designed to uplift entire communities, not just individuals. This would mean, for instance, that AI-driven agricultural solutions should benefit the entire farming village, not just a few landowners. By foregrounding *Ubuntu*, a treaty would also address the issue of algorithmic bias by framing it not as a technical problem of misrepresentation but as a moral failing that degrades the collective human dignity of an entire people.[71] Such a framework could also inform governance models, promoting community-led data trusts and participatory design processes, thereby ensuring that AI serves African priorities and values rather than perpetuating neocolonial patterns of technological dependency and exploitation.

In almost all the important legal documents of the AU and even those of some member states, human dignity is considered a very significant value. The *Continental AI Strategy* has also made human dignity a core value that should guide the development, deployment and governance of AI.[72] What this means is that a proposed treaty must find a way to incorporate this through its provisions and ensure it is considered a core value inspiring the other provisions.

Human dignity should be an integral aspect of the Preamble of a proposed AI treaty and should further be expatiated on in a brief chapter on Principles and Objectives, with a cross-reference making the *African Charter on Human and Peoples' Rights* and the *AU Constitutive Act* the baseline for all AI uses. It should further require that design, deployment and public procurement of AI demonstrably respect life, dignity, equality, privacy, expression, participation and due process, interpreted through *Ubuntu's* ethics of humaneness, solidarity and restorative justice.[73] A more concrete vehicle to achieve this would be a mandatory fundamental-rights impact assessment for high-risk and public-sector uses, and a 'rights safeguard' clause that voids contravening private contract terms. Incorporating these basic principles would reflect continental obligations and the communitarian approach recognised by African jurisprudence[74] and would be consistent with the CoE's formulation that AI lifecycles must align with human rights, democracy and the rule of law.

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70 Gwagwa, Kazim and Hilliard 2022 *Patterns* 5.
71 Gwagwa, Kazim and Hilliard 2022 *Patterns* 5.
72 *AU Continental AI Strategy* 4.
73 Gwagwa, Kazim and Hilliard 2022 *Patterns* 5.
74 For example, the Constitutional Court of South Africa in *S v Makwanyane* 1995 3 SA 391 (CC).

4.1.2 People-centred, inclusive and promoting sustainable development

The principle that such a treaty should be people-centered, inclusive, and primitive of sustainable development is crucial because it shifts the focus of AI governance from simply regulating risks to actively leveraging AI for the continent's socio-economic transformation. Given Africa's unique developmental challenges such as the prevalence of gaps in healthcare, agriculture, and education, a treaty that prioritises these objectives could turn AI from a potential source of neocolonial exploitation into a powerful tool for progress. Rather than stifling innovation with prohibitive rules, a development-oriented treaty would create a clear, enabling framework that incentivises the creation of AI solutions for local problems. This approach would promote the development of homegrown AI ecosystems, build local capacity in data and tech skills, and ensure that the benefits of AI are shared equitably across society, preventing the technology from exacerbating existing inequalities. For instance, a proposed treaty could encourage AI development in key sectors in strategic ways. By entrenching these developmental goals, the treaty would dispel the fear of stifling innovation by demonstrating that responsible governance is a prerequisite for long-term, beneficial, and locally relevant technological growth. The *AU Continental AI Strategy* already emphasises this approach, recognising that for Africa, AI governance is not just about protection, but about purposeful and transformative development.[75]

It should not be a surprise that the people-centred, inclusive and sustainable development principle is very important to the AU. The centrality of the sense of community must therefore clearly reflect in the body of a proposed treaty as well as in the statement of objectives and key principles. In addition, a chapter on public interest and inclusion should require that significant AI deployments advance measurable social goods, including health, education, livelihoods and cultural life, while avoiding environmental harm. This aligns with the *AU Continental AI Strategy*'s ethics, inclusion and dignity-driven approach for Agenda 2063[76] and UNESCO's Recommendation, which places human rights, diversity and sustainability at the core of AI governance.[77] Clauses should mandate inclusive access (language and disability), public-interest research and development.

4.1.3 Safety, security and risk-proportionate regulation

The principle of safety, security, and risk-proportionate regulation is significant because it addresses the continent's specific vulnerabilities without hindering its developmental ambitions. Most of the AI systems

75 *AU Continental AI Strategy* 1.
76 *AU Continental AI Strategy* 1.
77 *UNESCO Recommendation on Ethics* 17-23.

deployed in Africa will have been developed in the Global North, often without consideration for local contexts. This could lead to significant and disproportionate harms, from biased loan approval algorithms that perpetuate economic exclusion to unsafe medical diagnostic tools that misdiagnose diseases based on data from non-African populations.[78] A treaty that adopts a risk-proportionate approach, similar to the *EU's AI Act* but tailored to the African context, would establish a clear framework. It would not impose a blanket ban or overly burdensome rules on all AI but would rather categorise AI systems based on their potential for harm. This means that high-risk applications such as those used in critical infrastructure, law enforcement or healthcare would be subject to stringent safety and security requirements. Conversely, low-risk AI, like spam filters, would face minimal regulation. The adoption of this approach would be vital as it would provide clarity and predictability for both foreign investors and local startups, thereby allowing them to innovate within a defined ethical and safety perimeter. It would also signal that Africa is committed to responsible innovation, thereby building trust with citizens and investors alike, and ensure that the technology developed and deployed on the continent is robust, secure, and truly beneficial to its diverse populations. This strategic balance would protect African people and their data while fostering a vibrant AI ecosystem that is a net positive for development.

The treaty should define a risk taxonomy with duties that scale with risk and a short list of prohibited practices such as social scoring and certain forms of biometric mass surveillance. A workable model is the *EU AI Act*'s risk-tiered regime, which prohibits "unacceptable-risk" systems[79] while imposing strict obligations on "high-risk" systems and lighter transparency duties for "limited-risk" applications, combined with the *CoE Framework Convention on AI*'s requirement that states adopt "graduated and differentiated" measures in view of the severity and probability of adverse impacts on human rights, democracy and the rule of law.[80] High-risk uses should face pre-market conformity assessment, post-market monitoring and the reporting of serious incidents; and limited-risk systems should meet basic transparency obligations. Narrow, time-bound exceptions such as judicially authorised real-time biometric identification must satisfy strict necessity and proportionality tests.

4.1.4 Fairness and non-discrimination

The principle of fairness and non-discrimination is important in the African context because the continent is particularly vulnerable to the biases embedded in AI systems developed elsewhere. As Pasipamire and

78 Gwagwa, Kazim and Hilliard 2022 *Patterns* 5.
79 Article 5 fo the *EU AI Act*.
80 Articles 1(2) and 16 of the *CoE Framework Convention.*

Muroyiwa show, algorithmic bias represents a substantial challenge in Africa, where uneven digital access, under-representation in training data and weak regulatory frameworks make societies especially vulnerable to unfair and discriminatory AI outcomes.[81] African data is often underrepresented or misrepresented in the global datasets used to train these models, leading to skewed outcomes.[82] This lack of representation creates an AI-driven digital divide, where systems are less accurate for African populations. For example, facial recognition technology may be less effective for individuals with darker skin tones, and diagnostic AI for skin diseases might misdiagnose conditions in Black patients. These biases can perpetuate and even amplify existing social inequalities, leading to tangible harms in areas such as criminal justice, hiring, and financial services, which can exacerbate historical injustices and generate profound mistrust. A treaty focussed on fairness would legally oblige developers and deployers of AI in Africa to use representative data, conduct bias audits and ensure equitable access, thereby mitigating these tensions and fostering an AI ecosystem that serves, rather than marginalises, its diverse populations. This approach is rooted in the recognition that without a deliberate focus on fairness, AI risks becoming a new tool for neocolonial exploitation, extracting data and imposing foreign values while denying the continent its own agency and benefits from the technology.

The principle of fairness and non-discrimination should therefore occupy a central place in any proposed AU Treaty on AI. In practical terms, this requires embedding bias-management obligations across the entire AI lifecycle, including requirements for representative training data that reflect African languages and demographic diversity, pre-deployment testing to identify disparate impacts, and continuous post-deployment monitoring. Such measures translate the *African Charter on Human and Peoples' Rights* guarantees of equality and non-discrimination,[83] as interpreted to prohibit indirect and structural discrimination, into concrete regulatory duties in the context of algorithmic decision-making.[84] Additional safeguards for children and other vulnerable groups further give effect to *African Charter on Human and Peoples' Rights*,[85] which imposes positive protection obligations. At the same time, these requirements are consistent with the OECD's human-centred AI principles[86] and reinforce the *CoE Framework Convention*'s emerging safeguards on equality, participation, and non-

81 Pasipamire and Muroyiwa 2024 *Frontiers in Research Metrics and Analytics* 1.
82 GIZ 2025 https://www.giz.de/sites/default/files/media/els-document/2025-10/giz-africa-relevant-open-datasets-102025-1.pdf.
83 Articles 2 and 3 of the *African Charter on Human and Peoples' Rights* (1981) (the *African Charter*).
84 *ACHPR Resolution 473.*
85 Article 18(3) of the *African Charter.*
86 *OECD AI Principles*.

discrimination.[87] Where AI systems affect access to essential services, obligations to publish mitigation plans and submit systems to independent auditing function as procedural guarantees of equal protection, helping to sustain public legitimacy and trust.

4.1.5 Data governance, privacy and data sovereignty

Data governance, privacy, and data sovereignty would be crucial to a proposed AI treaty in Africa because they directly confront the historical pattern of digital colonialism.[88] AI models are voraciously data-dependent, and much of the data used to train global models comes from Africa without adequate compensation or protection, leading to the risk of "digital extractivism".[89] A treaty would establish a clear legal framework that protects African data resources, preventing them from being exploited by foreign entities without the consent and benefit of the continent. This is not about building a "data fortress" but rather about establishing rules that ensure data are a strategic asset for Africa's development, not a free-for-all for foreign tech companies.

The *AU Data Policy Framework* reinforces the principle of data sovereignty, noting that data generated within the continent must remain subject to African legal jurisdictions to serve local developmental priorities.[90] A formal treaty would operationalise this ambition by codifying "data localisation with a purpose".[91] This framework mandates the local storage of sensitive personal and strategic data – mitigating risks of "digital colonialism" – while facilitating cross-border data flows essential for regional trade under the *AfCFTA Protocol on Digital Trade*.[92] Such flows would be governed by reciprocal agreements that respect privacy, thereby ensuring that regional innovation does not come at the expense of African data security or normative values.

This balanced approach would protect our data and national interests without stifling the continent's integration into the global digital economy. The key is to leverage data governance as a tool for economic empowerment and digital self-determination, turning data from a liability into a catalyst for an African-led AI revolution.

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87 As set out in its general obligations, equality and non-discrimination, and participation provisions.

88 BI Contributor 2025 https://africa.businessinsider.com/local/lifestyle/the-african-union-ai-policy-framework-sets-standards-for-data-sovereignty/n5dpnff.

89 PAP 2025 https://pap.au.int/en/news/press-releases/2025-07-25/pan-african-parliament-champions-africas-quest-data-sovereignty-and.

90 Paragraph 5.4.1 of the *AU Data Policy Framework* 47.

91 *AU Data Policy Framework* 21-46, enablers section.

92 Section 5.3 of the *AU Data Policy Framework* vi, xi ,4, 21.

A dedicated chapter of the treaty should align AI obligations with Africa's data protection instruments, embedding privacy by design, purpose limitation, data minimisation, securing cross-border data flows with adequate safeguards and clear responsibilities for controllers, processors and AI deployers, with the Malabo Convention as its foundation. It should recognise collective interests in community data and require impact assessments and fair-benefit arrangements where such data underpin high-impact models. The *AU Data Policy Framework*'s vision for trusted, interoperable data spaces could be implemented via the certification of "trusted African data spaces" and mutual-assistance rules among regulators. Trustworthy data governance is essential to social licence and to unlocking cross-border digital trade and research collaboration.[93]

4.1.6 Accountability and effective remedies

The principle of accountability and effective remedies should also feature prominently in a proposed AI treaty in Africa because it provides a necessary mechanism for redress in a context where power imbalances are significant and potential harms are high. Without clear lines of responsibility, individuals and communities harmed by AI systems, especially those developed outside the continent, would have no recourse. This is particularly vital in Africa, where AI can be used to make life-altering decisions in critical sectors like finance, healthcare and public services. The lack of accountability would not only leave victims without a means to seek justice but would also erode public trust and legitimise the exploitation of African data and people.

The proposed treaty should establish an AU-level AI Coordination Body to issue guidance, maintain a high-risk registry, coordinate the peer review of national authorities, and require each state to designate a competent supervisory authority with audit, sanction and emergency-suspension powers. Duties should be allocated across the value chain – developer, provider and deployer – with joint and several liability for foreseeable harms and mandatory insurance for specified high-risk uses. Individuals and communities must have accessible administrative and judicial remedies, including collective actions. This would blend the OECD AI principle on accountability[94] and UNESCO's governance-and-remedy pillars[95] with the

93 Section 4.2 (Data Governance Principles) of the *AU Data Policy Framewor*k.

94 *OECD AI Principles*.

95 *UNESCO Recommendation on Ethics* structures Policy Areas 3 (Governance) and 4 (Remedy) as pillars, with Governance (paras 47-55) mandating adaptive, inclusive mechanisms like ethical impact assessments and multi-stakeholder oversight, and Remedy (paras 56-62) requiring accessible redress systems, monitoring and reparations for AI harms.

EU AI Act's institutional model[96] and the *CoE Framework AI Convention*'s obligation to adopt adequate legislative and administrative measures turning principles into enforceable oversight.[97]

It must be emphasised that the foregoing discussion only sketches the principles and values that may inform a future African AI treaty. These proposals draw on a synthesis of the *AU Continental AI Strategy* and leading global standards. Crucially, advancing African values through such a treaty would not imply rejecting global AI norms. Rather, it means blending them in ways that carefully preserve Africa's interests. In this article the reference to "African values or Africanness" does not suggest inventing wholly new principles but promoting those priorities that genuinely reflect the continent's needs – such as striking a balance between economic development and the protection of human rights. Where tension arises between African priorities and global AI norms, this article treats international and regional human-rights guarantees (including the *African Charter*) as a non-derogable baseline. African values may enrich or specify these norms, but they do not justify falling below core protections such as dignity, equality and non-discrimination. Thus, the term "African values" is used here as an interpretive lens for specifying and implementing shared global AI principles in African contexts, for example by foregrounding inclusion, community well-being and equitable benefit-sharing, rather than as a rival standard that displaces universal human-rights commitments.

Ultimately, however, principles alone are not sufficient. For the treaty to be effective it must be underpinned by a deliberately designed and well-structured institutional framework. It is to this institutional dimension that the article now turns.

4.2 Institutional framework

To implement this ambitious but necessary framework, the treaty must also establish a robust and realistic institutional architecture. A central pillar of this would be the creation of an independent institution, like an African AI and Digital Ethics Commission (the Commission), under the auspices of the AU. This body would serve multiple functions including standard-setting (in collaboration with national regulators), monitoring and reporting (through annual compliance reviews), and capacity-building (through technical guidance and knowledge-sharing). Recognising the enforcement limitations of the AU, the treaty should initially avoid rigid supra-nationalism and

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96 The *EU AI Act* establishes its institutional model in Chapter VII (Arts 64-76), including the European AI Office (Art 64).

97 Article 7 of the *CoE Framework Convention*. "Each Party shall adopt legislative, regulatory and other appropriate measures to give effect to the provisions" of the Convention, with oversight via national mechanisms (Art 16), reporting (Art 17), and the Conference of the Parties (Art 21).

instead build on the peer review ethos of the African Peer Review Mechanism – fostering compliance through transparency, benchmarking and reputational accountability. The Commission should work closely with Regional Economic Communities (RECs) to support sub-regional harmonisation and allow for differentiated implementation timelines. In addition, the treaty should mandate the designation of national AI focal points and provide for the institutionalised involvement of African academia, civil society and the private sector. This multi-stakeholder approach would not only enhance legitimacy but also ensure that the implementation of the treaty reflects Africa's (legal) pluralism and developmental diversity. Most crucially, the proposed treaty must serve not merely as a regulatory tool, but as a platform for African normative leadership by positioning the continent as an active shaper, rather than a passive recipient, of the global AI order.

5 Overcoming the potential challenges of a treaty-based AI regime

Despite the growing recognition of the need for a treaty on AI, the path toward a treaty-based AI regime in Africa is riddled with formidable institutional and political challenges. The most significant of these challenges is the historically weak capacity of the AU to enforce compliance with its normative frameworks.[98] This situation has led the AU to be described as a "toothless bulldog" when it comes to ensuring compliance with its norms.[99] As seen in other domains, such as data protection, the AU has demonstrated a willingness to develop robust standards, but these often lack meaningful traction at the domestic level due to poor ratification rates, lack of implementation, and limited follow-up mechanisms.[100] The AU *Convention on Cyber Security and Personal Data Protection*, adopted as far back as 2014, only recently entered into force more than ten years after it was adopted – a fact that underscores the institutional inertia that could similarly affect any prospective AI treaty.[101] Indeed, this situation may even be more complicated with an AI treaty, because it would be relatively novel and technically complicated.

These compliance challenges are further compounded by the nature of the AU itself as an intergovernmental organisation rather than a supranational body.[102] Unlike the EU, which can rely on binding mechanisms and judicial oversight to ensure that member states adhere to common standards, the

98 Abdulrauf 2021 *I&CTL* 87-107.
99 Abdulrauf 2021 *I&CTL* 87-107.
100 Maluwa 2012 *MJIL* 1.
101 Ayalew 2024 https://www.ejiltalk.org/the-african-unions-malabo-convention-on-cyber-security-and-personal-data-protection-enters-into-force-nearly-after-a-decade-what-does-it-mean-for-data-privacy-in-africa-or-beyond/.
102 Magliveras "Implications of AU Law" 30.

AU operates largely through consensus and persuasion. Consequently, even where treaty norms are clear and well-drafted, they risk becoming little more than aspirational declarations without corresponding institutional teeth. This structural limitation is particularly concerning in the context of AI, where technological developments move rapidly and regulatory delays can have long-term consequences for rights protection, economic competitiveness and digital sovereignty.

Moreover, the wide disparity in digital readiness across African states presents a serious obstacle to the harmonisation of AI governance. While some countries have begun to explore AI strategies and digital policies, many others remain in the early stages of digital transformation, lacking the infrastructure, expertise and institutional frameworks needed to implement a complex treaty regime.[103] Without flexible implementation models and capacity-building support, there is a real risk that such a treaty would widen existing digital divides rather than addressing them.

Several steps must be taken to address these challenges. First, any proposed AI treaty must adopt a graduated and flexible structure that allows states to commit to core principles while progressively building toward full implementation. Such an approach would accommodate different levels of readiness and encourage broader ratification. Second, the AU must invest in mechanisms for oversight and accountability that go beyond mere reporting. Peer review processes, periodic evaluations and regionally coordinated implementation hubs – possibly through the RECs – could support monitoring and encourage normative alignment. Third, it is essential that African epistemologies and values are integrated into the treaty's substantive content. Concepts such as communal responsibility, solidarity and equity should shape the ethical orientation of the treaty, ensuring that it reflects the lived realities and developmental priorities of African societies.

While a treaty-based AI governance regime for Africa is both desirable and timely, its success would depend on confronting the continent's deeper structural and normative challenges.[104] It would not be enough to draft a treaty; the AU and its member states would also have to create the institutional, political and social conditions necessary for its meaningful

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103 As of July 2025, 16 African countries have successfully launched AI strategies or policies, while 34 are in the process of development. Just four African countries have so far not recorded any evidence of an initiative in this regard. For details of these countries see Intelpoint 2025 https://intelpoint.co/wp-content/uploads/2025/07/africas-ai-strategies-2025-scaled.webp.

104 Imoedemhe *Emergent African Union Law* 403; Rizk and Schonwetter 2024 https://openair.africa/wp-content/uploads/2024/12/WP-29-Rizk-Schonwetter-Governance-of-Data-and-Data-driven-Technology.pdf 5.

implementation.[105] Otherwise the project risks becoming yet another normative instrument with limited practical effect.

6 Conclusion

As AI continues to reshape the ambit of human interaction, economic productivity and statecraft, the question is no longer whether it should be regulated, but how and when it should be regulated. Likewise, the debate should move away from whether regulation of AI is bound to stifle innovation and stall penetration on the continent. Indeed, to adopt a better perspective on these issues, there is a need for some cautious optimism about the overall benefits of AI – it should not be viewed as a magic bullet out of all Africa's problems and therefore be left totally unregulated. As one scholar rightly pointed out, "[t]he sheer enthusiasm with which data and AI are subscribed to as gateways out of poverty or disease would make one think that all social, economic, educational, and cultural problems are immutable unless Africa imports state-of-the-art technology".[106] She therefore calls for cautious optimism when embracing these technologies and even greater caution in deciding how to regulate them. Accordingly, "[t]he continent would do well to adopt a dose of critical appraisal when regulating, deploying, and reporting AI. This requires challenging the mindset that portrays AI with god-like power and as something that exists and learns independent of those that create it".[107]

For Africa the regulatory challenge goes beyond technical alignment or the aggressive drive to adopt AI as a pathway out of its developmental challenges. It is fundamentally a normative project that must reconcile the continent's unique socio-cultural context with the exigencies of global interoperability. Indeed, AI can be regulated in such a way as not to stifle innovation, and one way to go about this effectively would be through a binding AI treaty. The article therefore concludes that the development of a binding AU treaty on AI offers a necessary and strategic means for dealing with all these concerns. By transitioning from soft law declarations to a continental legal instrument, Africa could both assert its digital sovereignty and contribute constructively to the emerging global AI governance architecture.

The future of AI governance in Africa must be rooted in African values, not as a rejection of global norms, but as a deliberate and principled effort to centre African values such as *Ubuntu*, community welfare, relational personhood, and intergenerational justice within the legal design and

105 AUC 2017 https://au.int/sites/default/files/pages/34915-file-report-20institutional20reform20of20the20au-2.pdf 2.
106 Birhane "Algorithmic Colonization of Africa" 254.
107 Birhane "Algorithmic Colonization of Africa" 254.

institutional logic of AI governance. Although the case has been made that AI has the potential to erode core African ethical values such as Afro-communitarianism and human dignity, one way to effectively preserve these values would be through an African-centred AI treaty.[108] Indeed, the notion of Africanisation, as envisaged here, calls for the cultivation of a jurisprudential space in which indigenous philosophies and moral frameworks inform both the substance and procedure of technology regulation. This includes not only embedding African ethical principles and values into algorithmic accountability regimes but also ensuring the inclusive participation of African communities, scholars and institutions in shaping AI standards and oversight mechanisms.

Looking ahead, a treaty-based regime offers multiple possibilities. First, it would enable the harmonisation of domestic AI laws across member states, thereby reducing fragmentation and promoting regulatory coherence – that is, if the AU is able to navigate the challenge of state support and buy-in. Second, it could establish a continent-wide institutional architecture, including an African AI and Digital Ethics Commission, to oversee compliance, facilitate ethical review and coordinate regional research and development agendas. Third, by grounding the treaty in contextual realities such as infrastructural asymmetries, digital divides and socio-economic inequality it could serve as a tool for developmental regulation that prioritises inclusion and justice over innovation for its own sake. Furthermore, such a treaty could position the AU as a normative leader in the global AI order, capable of offering alternative paradigms that challenge the hegemony of technocratic and market-driven models.

In conclusion, while this article has largely pursued an agenda-setting objective, it ultimately comes full circle to affirm that it is not too early for Africa to begin serious discussions on the possibility of a continental treaty on AI.

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List of Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
AfCFTA	African Continental Free Trade Agreement
AI	artificial intelligence
AU	African Union
AUC	African Union Commission
CoE	Council of Europe
EU	European Union
I&CTL	Information & Communications Technology Law
JAL	Journal of African Law
JML	Journal of Media Law
MJIL	Melbourne Journal of International Law
NWULR	Northwestern University Law Review
OECD	Organisation for Economic Cooperation and Development
PAP	Pan-African Parliament
RECs	Regional Economic Communities
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly