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From centralised artificial intelligence to democratic systems: African Union-aligned pathways for economic justice and the right to development

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Abstract: *Four decades after the adoption of the United Nations Declaration on the Right to Development (DRtD), artificial intelligence (AI) is being deployed across Africa's financial services, digital identity systems, public administration and cross-border trade. Prevailing models of AI governance, however, are highly centralised concentrating data ownership, algorithmic control and economic value in a small number of predominantly external actors. This chapter pursues three objectives. First, it examines how centralised AI governance undermines the right to development (RtD) by weakening democratic accountability, limiting public participation and reinforcing structural inequality. Second, it establishes the RtD, as recognised in the DRtD and article 22 of the African Charter on Human and Peoples' Rights, as the normative foundation for AI governance in Africa, and clarifies the chapter's conception of economic justice. Third, it develops an African Union (AU)-aligned framework for democratic AI governance. Drawing on doctrinal analysis of African and international instruments, including Agenda 2063, the AU Digital Transformation Strategy, the AU Continental AI Strategy and the African Continental Free Trade Area (AfCFTA) Protocol on Digital Trade, the chapter finds that existing approaches prioritises efficiency and innovation over participation, accountability and distributive justice. It proposes a framework built on participatory algorithmic impact assessments, independent oversight, digital sovereignty and regional harmonisation, and argues that democratic AI governance is a precondition for, rather than an obstacle to, the realisation of the RtD in Africa.*

Résumé : *Quatre décennies après l'adoption de la Déclaration des Nations Unies sur le droit au développement (DNUDAD), l'intelligence artificielle (IA) est déployée dans l'ensemble des services financiers, des systèmes d'identité numérique, de l'administration publique et du commerce transfrontalier en Afrique. Les modèles dominants de gouvernance de l'IA sont toutefois fortement centralisés, concentrant la propriété des données, le contrôle algorithmique et la valeur économique entre les mains d'un petit nombre d'acteurs, principalement externes. Cet article poursuit trois objectifs. Premièrement, il examine comment la gouvernance centralisée de l'IA porte atteinte au droit au développement (DaD) en affaiblissant la responsabilité démocratique, en limitant la participation publique et en renforçant les inégalités structurelles. Deuxièmement, il établit le DaD, tel que reconnu dans la DNUDAD et à l'article 22 de la Charte africaine des droits de l'homme et des peuples, comme fondement normatif de la gouvernance de l'IA en Afrique, et clarifie la conception de la justice économique défendue dans cet article. Troisièmement, il élabore un cadre de gouvernance démocratique de l'IA aligné sur l'Union africaine (UA). S'appuyant sur une analyse doctrinale des instruments africains et internationaux, notamment l'Agenda 2063, la stratégie de transformation numérique de l'UA, la stratégie continentale de l'UA en matière d'IA et le protocole sur le commerce numérique de la Zone de libre-échange continentale africaine (ZLECA), cet article constate que les approches existantes privilégient l'efficacité et l'innovation au détriment de la participation, de la responsabilité et de la justice distributive. Il propose un cadre fondé sur des évaluations participatives de l'impact des algorithmes, une surveillance indépendante, la souveraineté numérique et l'harmonisation régionale, et soutient que la gouvernance démocratique de l'IA est une condition préalable à la réalisation de la DaD en Afrique, et non un obstacle à celle-ci.*

Key words: *artificial intelligence; right to development; AfCFTA; democratic AI governance; economic justice; digital sovereignty; AU Agenda 2063*

1 Introduction

The African continent is undergoing a profound structural transition, in which digital technologies are increasingly positioned at the centre of

economic development, public governance and administrative reform. National development plans increasingly reflect this shift: Kenya's Digital Economy Blueprint and Nigeria's National Digital Economy Policy and Strategy, for example, treat digital infrastructure and data as foundations of economic growth and public service delivery.[1] Driven by continent-wide policy imperatives, most notably Agenda 2063: The Africa We Want[2] and the African Union (AU) Digital Transformation Strategy for Africa (2020-2030),[3] African states have embraced artificial intelligence (AI) and automated systems as critical catalysts for industrial expansion, financial inclusion, public service enhancement and regional market integration under the African Continental Free Trade Area (AfCFTA).[4]

Adoption, however, has been uneven across the continent. A small number of states, such as Mauritius, Egypt and Rwanda, have adopted national AI strategies, while many others have yet to develop dedicated AI policies or the infrastructure needed to support them.[5] Where AI has been adopted, machine-learning algorithms, predictive analytics and natural language processing tools are deployed across vital socio-economic sectors. In agriculture, automated decision support tools evaluate climate risk and optimise crop yields; in health care, AI systems assist in rural diagnostic screening;[6] in public administration, algorithmic identity verification and automated welfare scoring streamline social grant distribution; and in financial markets, machine-learning models govern mobile credit scoring and automated risk assessment.

1 See, eg, Republic of Kenya *Digital economy blueprint: Powering Kenya's transformation* (2019); Federal Ministry of Communications and Digital Economy (Nigeria) *National digital economy policy and strategy (2020-2030)* (2019).

2 African Union Commission *Agenda 2063: The Africa we want* (2015) 1-12.

3 African Union Commission *The digital transformation strategy for Africa (2020–2030)* (2020) 4-18.

4 Protocol to the Agreement Establishing the African Continental Free Trade Area on Digital Trade (2024) arts 1 & 2.

5 Oxford Insights *Government AI readiness index 2023* (2023); Republic of Mauritius *Mauritius artificial intelligence strategy* (2018); National Council for Artificial Intelligence (Egypt) *Egypt national artificial intelligence strategy* (2021); Ministry of ICT and Innovation (Rwanda) *The national artificial intelligence policy* (2023).

6 A Gwagwa and others 'Responsible artificial intelligence in sub-Saharan Africa: Landscape and general state of play' (2021) *Artificial Intelligence for Development – Africa* 9; World Health Organisation *WHO consolidated guidelines on tuberculosis: Module 2: Screening – systematic screening for tuberculosis disease* (2021).

Yet, this shift towards AI-driven development and governance does not occur in a structural vacuum. The rapid adoption of AI across African societies interacts with historical infrastructural deficits, regulatory fragmentation and asymmetrical socio-economic conditions. Where broadband coverage, reliable electricity and civil registration remain incomplete, AI systems designed and tested elsewhere are deployed into environments for which they were not built, and those without connectivity or documentation are the first to be excluded. Fragmented regulation, in turn, leaves such deployments without consistent oversight.[7] While political leaders and technology developers celebrate AI potential to enable latecomer economies to leapfrog traditional industrial bottlenecks, the technological foundation upon which these systems are built remains predominantly external, proprietary and extractive.[8] The infrastructural architecture of AI ranging from cloud compute capacity and algorithmic models to foundational training datasets is concentrated in a handful of multinational technology firms based in the Global North and East Asia.[9] Consequently, African digital ecosystems are increasingly dependent on imported automated systems that process domestic data, make decisions affecting African livelihoods, and extract economic value, while remaining largely insulated from local democratic oversight and constitutional accountability.

This structural asymmetry gives rise to a central governance dilemma: Prevailing frameworks governing AI deploy technocratic risk management strategies that treat technology primarily as a commercial product or technical artifact, rather than a system of public power with deep developmental and rights-based implications. Global standards, such as risk-tiering frameworks and voluntary ethical guidelines, often focus on technical risk mitigation, technical safety and compliance burdens.[10] While technical safety and privacy protections are necessary, these narrow paradigms consistently obscure broader questions of

7 Gwagwa and others (n 6).

8 N Couldry & UI Mejias *The costs of connection: How data is colonizing human life and appropriating it for capitalism* (2019) 45-82.

9 S Zuboff *The age of surveillance capitalism: The fight for a human future at the new frontier of power* (2019) 120-145.

10 See, eg, European Union Regulation 2024/1689 (EU Artificial Intelligence Act); OECD Recommendation of the Council on Artificial Intelligence OECD/LEGAL/0449 (2019).

structural power, resource extraction, democratic control and distributive justice,[11] undermining the right to development (RtD).

In practice, centralised AI systems concentrate operational control and computational ownership within remote corporate hubs or closed public agencies. This concentration creates what critical legal scholars term 'algorithmic public power' the authority of opaque, automated systems to make binding decisions concerning individual rights, resource access, employment eligibility and market participation without traditional procedural safeguards.[12] When automated credit algorithms deny micro-loans to informal vendors based on unexplainable risk scores, or when biometric identification systems disenfranchise rural populations from social security due to system failure or dataset bias, the consequences extend far beyond technical error to affect the RtD. They directly erode human dignity, exacerbate structural exclusion and undermine the socio-economic entitlements guaranteed under the United Nations (UN) Declaration on the Right to Development (DRtD) and regional human rights instruments.

This chapter addresses this governance gap by conducting a doctrinal analysis anchored in African regional human rights law and international development instruments. It argues that the conceptualisation of AI governance must move beyond private technocratic regulation towards a rights-based framework grounded in the RtD. The central argument is that centralised, opaque AI governance models undermine the substantive realisation of the RtD in Africa by privatising public governance, entrenching technological dependence, and excluding affected communities from shaping digital futures. To counter these dynamics, the chapter develops an African Union (AU)-aligned framework for democratic AI governance, a normative and institutional model that operationalises democratic oversight, procedural fairness, digital sovereignty and distributive justice across the African digital space.

Four concepts structure this inquiry, and the relationship between these concepts frames the argument that follows. Centralised AI

11 A Birhane 'Algorithmic colonization of Africa' (2020) 17 *SCRIPTed*: *A Journal of Law, Technology and Society* 389.

12 L Taylor 'Safety in numbers? Group privacy and big data analytics in the developing world' in L Taylor, L Floridi & B van der Sloot (eds) *Group privacy: New challenges of data technologies* (2016) 13-36.

governance, the problem the chapter addresses, refers to arrangements in which data, computational infrastructure and decision-making authority over AI systems are concentrated in a small number of actors, often located outside Africa and insulated from public oversight. The RtD provides the normative standard against which those arrangements are assessed. Democratic AI governance is the institutional response the chapter proposes: a set of mechanisms that embed participation, transparency, accountability and contestability into the life cycle of AI systems. Economic justice names the outcome that this response is designed to secure, namely, a fair share in, and meaningful control over, the value that AI generates.

Accordingly, the chapter pursues three objectives: first, to examine how centralised AI governance undermines the RtD in Africa; second, to establish the RtD as the normative foundation for AI governance on the continent; and, third, to develop an AU-aligned framework for democratic AI governance capable of advancing economic justice. Although the framework is continental in scope, reflecting the mandate of the AU, the illustrative examples are drawn mainly from sub-Saharan jurisdictions, where the documented evidence is most extensive.

The chapter is structured in six parts. Part 2 establishes the conceptual framework, examining the normative origins and legal binding nature of the RtD under the African regional system and elaborating the core pillars of democratic AI governance. Part 3 critically evaluates centralised AI systems, interrogating how data colonialism, algorithmic extractivism, procedural unfairness and digital exclusion disrupt developmental rights across Africa. Part 4 examines the existing AU normative architecture, assessing the alignment and tensions between the African Charter on Human and Peoples' Rights (African Charter), Agenda 2063, the AU Digital Transformation Strategy, the AfCFTA Protocol on Digital Trade and the AU Continental Artificial Intelligence Strategy. Part 5 translates these normative principles into actionable institutional policy pathways, proposing mechanisms for participatory oversight, digital sovereignty, public digital infrastructure and interoperable regional governance. Part 6 concludes with a synthesis of the core arguments.

2 Conceptual framework: The right to development and democratic AI governance

2.1 Theoretical foundations and key concepts

The accelerating deployment of AI across economic, social and public governance systems is transforming the conditions under which development is pursued and experienced. In Africa, these developments coincide with ambitious continental initiatives, including Agenda 2063,[13] the AU Digital Transformation Strategy[14] and the AfCFTA,[15] which seek to harness digital technologies as drivers of structural transformation, regional integration and inclusive economic growth. Yet, the governance of AI remains characterised by significant asymmetries in technological capacity, computational infrastructure, data ownership and regulatory influence, with much of the digital ecosystem underpinning AI systems controlled by a limited number of multinational technology corporations headquartered outside Africa.[16]

These developments raise questions that extend beyond technological regulation. They require a reconsideration of the legal and normative foundations upon which digital transformation should be governed. Existing AI governance frameworks have largely focused on ethical principles, technical risk management and regulatory compliance.[17] While these approaches have made important contributions to the governance of emerging technologies, they have paid comparatively less attention to the democratic conditions necessary to ensure that AI contributes to equitable development, distributive justice and the protection of fundamental rights, particularly in developing economies. This omission is especially significant in Africa, where persistent inequalities in digital infrastructure, institutional capacity and technological dependence risk reproducing historical patterns of exclusion through algorithmic systems.[18]

13 African Union Commission (n 2) 14.
14 African Union Commission (n 3) 8.
15 AfCFTA Protocol on Digital Trade (n 4) art 3.
16 Couldry & Mejias (n 8) 89.
17 A Batool & others 'AI governance: A systematic literature review' (2025) 5 *AI and Ethics* 3265.
18 Birhane (n 11) 392.

This chapter argues that the RtD provides the most appropriate normative framework through which AI governance should be evaluated in the African context. Unlike approaches that conceptualise AI primarily as a technological or commercial phenomenon, such as the product-safety model of the European Union (EU)'s AI Act, the Organisation for Economic Co-operation and Development (OECD) AI Principles, and the voluntary Artificial Intelligence Risk Management Framework of the United States National Institute of Standards and Technology,[19] the RtD conceives of development as a human-centred process requiring active participation, equality of opportunity, accountability and the equitable distribution of development benefits.[20] Properly understood, the RtD is not merely an aspirational development objective, but a legal principle imposing obligations upon states to establish institutional conditions that enable all persons and peoples to participate meaningfully in, contribute to and benefit from development. As AI increasingly determines access to economic opportunities, public services and digital markets (for example, through credit-scoring models that decide who may borrow, automated eligibility systems that decide who receives social grants, and platform algorithms that determine which traders reach online buyers), its governance becomes inseparable from the effective realisation of the RtD.

Building upon this premise, this part presents democratic AI governance as the lens through which the RtD is applied to AI in this chapter. It contends that democratic governance should not be confined to electoral legitimacy or procedural consultation, but should instead be understood as a broader institutional architecture embedding participation, transparency, accountability, contestability, distributive justice and digital sovereignty into the design, deployment and oversight of AI systems.[21] Democratic AI governance, therefore, is advanced as both a normative and institutional framework capable of reconciling technological innovation with economic justice and the substantive realisation of the RtD within the African digital transformation agenda.

19 European Union AI Act and OECD Recommendation (n 10); E Tabassi *Artificial intelligence risk management framework (AI RMF 1.0)* NIST AI 100-1 (2023).
20 United Nations Declaration on the Right to Development (DRtD) (1986) art 1.
21 Batool (n 17) 3271.

For the purposes of this study, the key concepts are used as follows: The RtD refers to the right recognised in article 1 of the DRtD and article 22 of the African Charter, by virtue of which every person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development.[22] Centralised AI governance refers to arrangements in which the data, computational resources and decision-making authority that shape AI systems are concentrated in a few public or private actors, with limited transparency or external accountability. Democratic governance, in this study, is not confined to periodic elections. It denotes a mode of public decision making in which those affected by a decision can take part in shaping it, obtain reasons for it, and hold the decision maker to account. Democratic AI governance applies this understanding to the design, procurement, deployment and oversight of AI systems. Economic justice, defined more fully in part 2.2, refers both to the fair distribution of AI-generated benefits and to meaningful control over the resources through which those benefits are produced.

These concepts are connected in a sequence that structures the chapter. Centralised AI governance is the condition under examination (part 3). Its effects are assessed against the procedural and substantive dimensions of the RtD, which serve as the evaluative standard (part 2). The gap between the two identifies what an adequate governance response must achieve: participation and accountability to satisfy the procedural dimension, and fair distribution and structural control to satisfy the substantive one. Democratic AI governance is the response that meets these requirements, and AU instruments supply the institutional vehicle through which it can be implemented (parts 4 and 5). Economic justice is the outcome against which the success of that response is ultimately measured. The conceptual framework, therefore, is relational rather than merely definitional: Each concept marks a stage in the argument, from problem, to standard, to response, to outcome.

22 DRtD (n 20) art 1(1).

2.2 Right to development as a normative framework for AI governance

The governance of AI has emerged as one of the defining legal and policy challenges of the twenty-first century.[23] As AI increasingly shapes access to employment, finance, health care, education, public administration and cross-border trade, questions concerning its regulation extend beyond technological innovation to encompass broader issues of justice, participation and human development. In the African context, where digital transformation is expected to serve as a catalyst for economic integration under the AfCFTA, the governance of AI must be evaluated not only against principles of efficiency and innovation, but also against the continent's normative commitments to inclusive development, human dignity and social justice.[24] It is against this backdrop that the RtD assumes particular significance as a legal and normative framework capable of reconciling technological advancement with equitable development.

The RtD emerged from the broader movement for a New International Economic Order during the 1970s, when developing states challenged structural inequalities embedded in the international economic system.[25] These debates culminated in the adoption of the DRtD in 1986, which recognised development as 'an inalienable human right' belonging both to individuals and to peoples.[26] The Declaration represented an important conceptual shift in international human rights law by rejecting the notion that economic growth alone constitutes development. Instead, it defines development as a comprehensive economic, social, cultural and political process directed towards the constant improvement of the well-being of the entire population through their active, free and meaningful participation and the fair distribution of the benefits derived therefrom.[27]

23 United Nations High-Level Advisory Body on Artificial Intelligence 'Governing AI for humanity: Final report' (2024); UN General Assembly Resolution 78/265 'Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development' (21 March 2024).

24 African Union Commission (n 2); African Union Commission (n 3) 8.

25 A Sengupta 'The human right to development' (2004) 32 *Oxford development studies* 179.

26 DRtD (n 20) art 1(1).

27 As above.

Participation and equitable benefit sharing, therefore, are not incidental aspirations but constitutive elements of the RtD itself.

Unlike many socio-economic rights, such as the rights to work, social security, health and education, which focus primarily on substantive outcomes, the RtD integrates both procedural and substantive dimensions of justice.[28] Procedurally, it requires meaningful participation in development decision making, transparency in governance and accountability of public institutions. Substantively, it seeks the equitable distribution of opportunities and benefits arising from development processes, with particular attention to vulnerable and marginalised communities. As Sengupta has argued, the RtD is best understood as a process-oriented right that imposes obligations upon states to establish institutional arrangements capable of enabling individuals and communities to participate effectively in development, while ensuring that development outcomes are distributed fairly.[29] This understanding resonates strongly with Sen's capability approach, which conceives development as the expansion of substantive freedoms rather than the mere accumulation of economic resources.[30]

The African human rights system has played a particularly important role in transforming the RtD from a largely aspirational international declaration into an enforceable legal principle. The African Charter[31] is unique among regional human rights instruments in expressly recognising the right of peoples to economic, social and cultural development, while simultaneously imposing duties upon states to ensure its exercise.[32] Article 22 of the African Charter provides that '[a]ll peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind'. More importantly, '[s]tates shall have the duty, individually or collectively, to ensure the exercise of the right to development'.

The African Charter's emphasis on collective rights, solidarity and peoples' self-determination reflects an African conception of

28 International Covenant on Economic, Social and Cultural Rights (1966) arts 6, 9, 12 & 13 (ICESCR).
29 Sengupta (n 25) 181.
30 A Sen *Development as freedom* (1999) 36-53.
31 African Charter on Human and Peoples' Rights (1981).
32 African Charter (n 31) art 22.

development that extends beyond aggregate economic growth to encompass social inclusion, human dignity and communal well-being. Consequently, development within the African Charter framework is understood not merely as an economic objective, but as a legally protected entitlement requiring active state intervention to remove structural barriers to equality and participation.

This interpretation has been reinforced through the jurisprudence of the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court). In *Centre for Minority Rights Development & Another v Kenya* (*Endorois*), the African Commission held that the RtD encompasses both procedural and substantive obligations, requiring meaningful participation of affected communities in development decisions as well as equitable access to the benefits arising from development projects.[33] The Commission explicitly affirmed that structural choices affecting a community's economic and cultural life cannot be lawfully executed without prior, informed consultation and equitable benefit sharing.[34]

Similarly, in *Ogiek* the African Court emphasised that development cannot be imposed upon communities without their effective participation and consent, particularly where development initiatives affect fundamental rights and traditional livelihoods.[35] Collectively, these decisions establish participation, accountability, consultation and equitable benefit sharing as legally enforceable components of the RtD within African regional law.

These principles assume renewed significance in the context of AI governance. Contemporary AI systems increasingly influence decisions concerning creditworthiness, employment opportunities, social protection, digital identity verification, agricultural extension services and access to digital markets.[36] Although these decisions are frequently characterised as technical or data-driven, they possess profound distributive consequences because they determine who participates in

33 *Centre for Minority Rights Development & Another v Kenya* (2009) AHRLR 75 (ACHPR 2009) paras 277-283 (*Endorois*).
34 *Endorois* (n 33) para 281.
35 *African Commission on Human and Peoples' Rights v Kenya* (2017) 2 AFCLR 9 (ACHPR) paras 208-211 (*Ogiek*).
36 Gwagwa and others (n 6); United Nations High-Level Advisory Body (n 23).

economic life and under what conditions.[37] Algorithmic bias, opaque decision making and unequal access to computational resources may therefore undermine the RtD by restricting meaningful participation in development and concentrating the economic value generated through AI within a small number of actors.[38] The challenge is not merely that AI may produce discriminatory outcomes; rather, AI increasingly shapes the institutional processes through which development itself is organised and experienced.

Existing international AI governance frameworks acknowledge many of these concerns but remain primarily oriented towards ethics, safety and technical risk management. While principles such as transparency, accountability and human oversight are undoubtedly important, they often fail to interrogate broader questions concerning distributive justice, democratic legitimacy and structural inequalities in global digital markets. This limitation is particularly evident within Africa, where technological dependence, limited digital infrastructure and asymmetrical control over data and computational resources risk reproducing historical patterns of economic dependency in digital form.[39] Consequently, a governance framework concerned solely with mitigating technical risks is insufficient to address the developmental implications of AI in African economies.

For the purposes of this chapter, economic justice is understood as broader than, though inclusive of, distributive justice. Distributive justice concerns the fair allocation of the benefits and burdens generated by development and corresponds to the substantive limb of the RtD reflected in articles 2(3) and 8 of the DRtD.[40] Economic justice additionally concerns the terms on which individuals and peoples participate in economic life: who owns and controls productive resources, who sets the rules of exchange, and whether structural relations of dependency are reproduced or dismantled. This broader conception is embedded in the origins of the RtD itself, which emerged from the New International Economic Order's challenge to structural inequality in the international

37 V Eubanks *Automating inequality: How high-tech tools profile, police, and punish the poor* (2018); Birhane (n 11).
38 Couldry & Mejias (n 8); Zuboff (n 9).
39 Birhane (n 11) 400.
40 DRtD (n 20) arts 2(3) & 8(1).

economy rather than from a concern with redistribution alone.[41] It is also reflected in article 21 of the African Charter, which guarantees the right of peoples to freely dispose of their wealth and natural resources.[42]

Applied to AI, economic justice therefore asks not only whether AI-generated value is shared fairly (a distributive question), but also whether African states and communities exercise meaningful control over the data, computational infrastructure and algorithmic systems through which that value is produced (a question of ownership, sovereignty and structural position).[43] This distinction informs the analysis of data extractivism in part 3.1 and the sovereignty and redistributive mechanisms proposed in parts 5.2 and 5.3.

This chapter therefore argues that the RtD provides the missing normative foundation for AI governance in Africa. On the interpretation advanced in this chapter, which builds on Sengupta's process-oriented account of the right, the RtD requires more than the prevention of algorithmic harm; it requires institutional arrangements that enable meaningful participation in AI governance, equitable distribution of AI-generated benefits, transparency in algorithmic decision making, and accountability for technologies that shape development outcomes.[44] These obligations extend beyond states to encompass regional institutions and, increasingly, powerful private actors whose technological infrastructures exercise quasi-public functions within the digital economy. Viewed through the RtD, AI governance becomes not merely a question of regulating technology, but of ensuring that technological transformation contributes to inclusive development, human dignity and economic justice. It is this understanding that informs the subsequent development of Democratic AI Governance as an AU-aligned framework for governing AI in accordance with Africa's human rights commitments and development aspirations.

41 Declaration on the Establishment of a New International Economic Order, UN General Assembly Resolution 3201 (S-VI) (1974). See generally Sengupta (n 25).
42 African Charter (n 31) art 21.
43 On the distinction between the redistributive and the structural dimensions of justice, see N Fraser *Scales of justice: Reimagining political space in a globalizing world* (2013); IM Young *Responsibility for justice* (2011).
44 Sengupta (n 25).

2.3 Democratic governance and the right to development: Towards a rights-based model of AI governance

The recognition of the RtD as a human right fundamentally transforms the way in which governance is understood in development discourse. It does so by treating participation as part of the content of the right itself, rather than as an optional input into development policy.[45] Unlike traditional conceptions that regard governance as a matter of administrative efficiency or political organisation, the RtD positions democratic governance as an indispensable legal and institutional condition for achieving equitable development. Development, therefore, is not merely assessed by economic outcomes but also by the processes through which individuals and communities participate in shaping decisions that affect their social, political and economic well-being. This participatory understanding is particularly significant in the digital era, where AI increasingly influences decisions concerning employment, access to finance, healthcare, education, public administration and cross-border commerce. As AI assumes a greater role in development planning and governance, the democratic principles embedded within the RtD provide an essential normative framework for evaluating whether technological innovation genuinely advances human development.

The participatory conception of development has deep theoretical roots, and these roots explain why arguments for centralised, efficiency-driven AI governance should be treated with caution. Early development paradigms frequently prioritised economic growth over political participation, suggesting that rapid industrialisation justified centralised decision making and limited democratic engagement. Such approaches were increasingly challenged during the latter half of the twentieth century by scholars who argued that development cannot be divorced from human agency, participation and institutional accountability.[46] Sen's capability approach represented a decisive shift in this debate by conceptualising development as the expansion of substantive freedoms rather than the accumulation of material wealth alone.[47] Under this framework, democratic participation is both intrinsically valuable,

45 DRtD (n 20) art 2(3); Sengupta (n 25).
46 Sengupta (n 25) 180.
47 Sen (n 30) 14-25.

because it respects human dignity and autonomy, and instrumentally valuable, because it enhances the quality, legitimacy and sustainability of public decision making.

The RtD embodies this integrated understanding of democracy and development. Article 2(3) of the DRtD provides that

> [s]tates have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.[48]

This provision recognises participation as a legal entitlement rather than a discretionary element of public policy. Article 8(1), in turn, provides that states 'shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income'.

Read together, these provisions demonstrate that the RtD imposes both procedural and substantive obligations: Procedurally, development decisions must be transparent, participatory and accountable; substantively, development outcomes must be equitable and inclusive. Development achieved through exclusionary or opaque decision making is therefore inconsistent with the normative content of the RtD. The existence of participatory procedures, however, does not guarantee their quality. Participation may be tokenistic, captured by local elites, or limited to endorsing decisions that have already been taken.[49] The requirement in the DRtD that participation be 'active, free and meaningful' is therefore a qualitative standard, and it is this standard, rather than the mere availability of consultation, that AI governance must meet.

Within the African human rights system, democratic governance assumes an even more prominent role. The African Charter adopts a holistic understanding of development that links individual rights, collective rights and state obligations. Article 13 guarantees every citizen the right to participate freely in the government of their country, while article 22 recognises the right of all peoples to their economic, social and cultural development. The provisions, when read together

48 DRtD (n 20) arts 2(3) & 8(1).
49 SR Arnstein 'A ladder of citizen participation' (1969) 35 *Journal of the American Institute of Planners* 216.

with articles 20 and 21 on the question of self-determination and the permanent sovereignty of peoples over their natural resources, establish that development is inseparable from democratic participation and accountable governance. The Charter therefore rejects technocratic or paternalistic approaches to development in favour of governance arrangements that recognise individuals and communities as active participants in determining their developmental futures.

The African Commission has reinforced this interpretation through its jurisprudence. In *Endorois*, the Commission held that the RtD possesses both procedural and substantive dimensions. It described the right as both constitutive and instrumental, meaning that it may be violated through a flawed development process as well as through outcomes that fail to benefit those affected.[50] Procedurally, communities affected by development initiatives must be effectively consulted and afforded meaningful opportunities to influence decision making. Substantively, they must share equitably in the benefits generated by development projects.[51] The African Commission emphasised that participation requires more than formal consultation or information sharing; it must be informed, effective and capable of influencing outcomes.[52] This interpretation elevates democratic participation from a matter of administrative practice to a legally enforceable component of the RtD.

Similarly, the African Court in *Ogiek* reaffirmed that development initiatives affecting communities cannot legitimately proceed without meaningful participation, consultation and protection of community interests.[53] Together, the *Endorois* and *Ogiek* decisions demonstrate that African regional jurisprudence conceives development as a democratic process in which affected communities possess enforceable rights to participate in decisions that shape their social and economic futures.

These jurisprudential developments have profound implications for AI governance. Increasingly, AI systems determine eligibility for public benefits, allocate credit, assess employment applications, support immigration decisions, facilitate customs administration, and inform

50 *Endorois* (n 33) para 277.
51 *Endorois* (n 33) para 283.
52 *Endorois* (n 33) para 289.
53 *Ogiek* (n 35) para 210.

judicial and administrative decision making. Such systems exercise what scholars have described as algorithmic public power, performing functions that have traditionally been undertaken by public authorities.[54] Yet, algorithmic decision making often operates through opaque computational processes that are inaccessible to those affected, limiting opportunities for public scrutiny, participation and contestation. Where individuals cannot understand, challenge or influence algorithmic decisions that affect their developmental opportunities, the participatory guarantees inherent in the RtD are fundamentally compromised.

The dominant approaches to AI governance have sought to address these concerns through principles of transparency, explainability, accountability and human oversight.[55] This chapter contends that, although these principles are important, they frequently remain embedded within a risk-management paradigm that seeks primarily to minimise technological harms rather than to democratise the governance of AI itself. Consequently, public participation is often confined to consultation during legislative or regulatory processes, while the design, deployment and operation of AI systems remain concentrated within government agencies or private technology corporations. This technocratic orientation limits opportunities for affected communities to influence the governance of technologies that increasingly shape economic participation and social inclusion.

From the perspective of the RtD, democratic governance requires a more expansive institutional framework, one that gives those affected by AI systems real influence over how those systems are designed, deployed and corrected. Participation must extend beyond consultation to encompass meaningful involvement in agenda setting, regulatory development, algorithmic impact assessment, independent oversight, and accessible mechanisms for contesting automated decisions. Transparency must include not only explainability of algorithmic outputs, but also openness concerning data governance, procurement practices and institutional accountability. Accountability, in turn, must extend to both public authorities and private entities whose AI systems exercise significant influence over public life and economic opportunity.

54 Taylor (n 12) 15.
55 See, eg, OECD Recommendation (n 10); United Nations High-Level Advisory Body (n 23).

Democratic governance, therefore, requires institutional arrangements capable of ensuring that AI serves the public interest rather than reinforcing existing asymmetries of technological and economic power.

These considerations are particularly significant within Africa's digital transformation agenda. The AfCFTA, the AU Digital Transformation Strategy and Agenda 2063 collectively envisage digital technologies as catalysts for regional integration, innovation and inclusive economic development. Yet, these goals of integration, innovation and inclusive development cannot be realised solely through technological adoption. They require governance frameworks which ensure that AI contributes to equitable participation, regional solidarity and distributive justice across member states. In the absence of such safeguards, existing inequalities in technological capacity, digital infrastructure and access to data may enable AI to reinforce rather than reduce developmental disparities both in and between African countries.

It may be objected that participatory governance of this kind is slower and more resource-intensive than centralised approaches, and that administrations with limited technical and fiscal capacity cannot realistically sustain it. The objection has force and should not be dismissed. Three considerations nevertheless weigh against treating it as decisive. First, participatory obligations need not be uniform. They can be calibrated to risk, so that intensive consultation and independent assessment are reserved for systems that determine access to social protection, credit, identity or liberty, while low-impact applications are subject to lighter procedures.

Second, the efficiency of centralised deployment is often apparent rather than real. Systems deployed without prior assessment or consultation tend to generate exclusion errors, litigation and remedial redesign, all of which impose costs later. Kenya's experience with the Huduma Namba digital identity system illustrates this point: After protracted litigation, the High Court in 2021 declared the roll-out of Huduma cards unlawful for want of a prior data protection impact assessment and ordered that such an assessment be conducted before further processing.[56] Third, capacity constraints can be mitigated institutionally, by building on existing data protection authorities,

56 *R v Joe Mucheru & 2 Others; Ex parte Katiba Institute & Another* [2021] eKLR (High Court of Kenya, Judicial Review Application E1138 of 2020, 14 October

national human rights institutions and ombuds offices, and by pooling assessment expertise and standards at regional and continental level. Most fundamentally, *Endorois* and *Ogiek* establish participation as a legal component of the RtD rather than a discretionary policy choice.[57] Resource constraints may shape how that obligation is progressively realised, but they do not remove it.

Accordingly, democratic governance should not be regarded as an external normative constraint imposed upon AI regulation but as a constitutive requirement for the effective realisation of the RtD in the digital age. Participation, accountability, transparency and equitable benefit sharing are not merely desirable governance principles; they are legal obligations derived from the normative content of the RtD and reinforced by African regional human rights law. Recognising this relationship provides the conceptual bridge to the next part, which critically examines the dominant models of AI governance and demonstrates why ethical, trustworthy and risk-based approaches, while valuable, remain insufficient to address the democratic and developmental imperatives identified in this chapter.

3 Centralised AI governance and the disruption of the RtD in Africa

3.1 Data colonialism, algorithmic extractivism and technological dependency

The prevailing topology of global AI governance is defined by intense structural centralisation. The centralisation manifests through what Couldry and Mejias term 'data colonialism', a system wherein human life, behavioural patterns and environmental data are systematically extracted, quantified and appropriated to generate commercial value for foreign technology conglomerates.[58] Across Africa, data colonialism operates through digital platforms, social media ecosystems, telecommunications

2021). See also *Nubian Rights Forum & 2 Others v Attorney General & 6 Others; Child Welfare Society & 9 Others (Interested Parties)* [2020] eKLR.

57 *Endorois* (n 33); *Ogiek* (n 35).

58 Couldry & Mejias (n 8) 60.

networks and cloud computing infrastructures owned almost exclusively by multinational technology entities based in Northern jurisdictions.[59]

These patterns mirror the extractive logic of the colonial economy, in which raw materials were exported from Africa at low value and returned as higher-value manufactured goods. In the digital economy, data takes the place of the raw commodity: It is extracted from African users, refined into proprietary models elsewhere, and sold back to African markets as finished products.[60] This structural dynamic creates a dual legal and economic vulnerability for African states. First, it generates an asymmetrical economic exchange wherein raw data is extracted from African users with negligible financial remuneration or local value retention, only to be re-imported as high-cost, proprietary AI applications.[61] Second, it deprives African societies of the primary input required for indigenous technological development: representative local data. Consequently, foundational machine learning models are trained predominantly on non-African datasets, reflecting foreign cultural norms, linguistic structures and political assumptions. When these models are deployed across African public services, education and commerce, they introduce latent biases, erase local languages and indigenous knowledge systems, and compel domestic institutions into long-term technological dependency.[62]

From the perspective of the RtD, data extractivism directly violates article 21 of the African Charter, which guarantees the right of all peoples to freely dispose of their wealth and natural resources.[63] Data, in the modern digital economy, constitutes a strategic economic resource essential for self-determined national development, that is, development whose direction and priorities are set by African states and peoples themselves in exercise of the right to self-determination under article 20 of the African Charter. When foreign corporate actors exercise unchecked ownership over African data troves, state sovereignty over domestic developmental trajectories is severely impaired. Centralised AI systems thus lock African economies into subordinate positions

59 Gwagwa and others (n 6) 19.
60 W Rodney *How Europe underdeveloped Africa* (1972); Couldry & Mejias (n 8).
61 Birhane (n 11) 396.
62 Batool (n 17) 3267.
63 African Charter (n 31) art 21.

within global digital value chains, directly conflicting with the self-determination mandates of the DRtD and the African Charter.

3.2 Automated decision making, procedural unfairness and institutional erosion

The integration of centralised AI into public administration and administrative justice across Africa presents severe risks to procedural fairness and institutional accountability. Three risks are central: The displacement of reasoned human decision making by automated outputs that cannot be explained; the loss of the affected person's ability to know and contest the basis of a decision; and the diffusion of responsibility between public agencies and private vendors, which weakens the lines of accountability on which administrative law depends. Across Africa, national constitutions and administrative laws, such as the Promotion of Administrative Justice Act (PAJA) in South Africa[64] and equivalent statutory instruments across Commonwealth and civil law African jurisdictions, guarantee individuals the right to administrative action that is lawful, reasonable and procedurally fair.[65] A vital component of procedural fairness is the right to be provided with written reasons for administrative decisions that adversely affect one's rights or legitimate expectations.

Automated decision-making (ADM) systems, particularly deep neural networks and complex machine learning classifiers, frequently operate as opaque 'black boxes'.[66] The internal algorithmic logic by which an input dataset yields a specific administrative output is often inscrutable, not only to affected individuals but to the public officials deploying the technology. When public authorities delegate discretionary power to ADM systems, for instance, in evaluating eligibility for social relief grants, determining civil service employment or scoring judicial risk in bail hearings, they compromise administrative transparency.

64 Act 3 of 2000 secs 3 & 5.

65 See, eg, Constitution of the Republic of South Africa, 1996 sec 33; Constitution of Kenya, 2010 art 47; Fair Administrative Action Act, 2015 (Kenya) sec 4; Constitution of the Republic of Ghana, 1992 art 23.

66 F Pasquale *The black box society: The secret algorithms that control money and information* (2015); J Burrell 'How the machine "thinks": Understanding opacity in machine learning algorithms' (2016) 3 *Big Data & Society* 1.

When an individual receives an automated rejection generated by a black box model, the statutory right to request written reasons becomes illusory. Public agencies frequently rely on trade secret protections or proprietary non-disclosure agreements executed with foreign AI vendors to deny access to source code or algorithmic parameters. This dynamic undermines judicial review, as courts cannot meaningfully evaluate whether an automated decision was influenced by irrelevant considerations, legal errors or systemic bias. Consequently, the delegation of administrative governance to centralised AI systems erodes democratic accountability and degrades the rule of law.

3.3 Algorithmic exclusion in financial inclusion, public service delivery and digital identity

The real-world consequences of centralised, un-democratised AI are acute in financial services, social welfare distribution and digital identity infrastructures. In digital credit markets, most notably in Kenya, where mobile lending has expanded rapidly since the launch of M-Shwari in 2012, and increasingly in Nigeria, the rise of mobile money lending platforms powered by proprietary machine learning algorithms has been celebrated as an instrument of financial inclusion.[67] Yet, empirical studies reveal that these algorithmic credit scoring platforms often practise predatory automated underwriting and systemic exclusion.[68]

A prominent example is found in automated credit-scoring algorithms and digital micro-lending platforms operating across Kenya, Nigeria, South Africa and Ghana. The algorithms rely on non-traditional data sources such as mobile phone usage, digital wallet transactions and social network connections to evaluate creditworthiness.[69] Because the underlying machine learning models are proprietary and protected by trade secret laws, their internal logic remains opaque to consumers.

67 CT Okolo, K Aruleba & G Obaido 'Responsible AI in Africa: Challenges and opportunities' in DO Eke, K Wakunuma & S Akintoye (eds) *Responsible AI in Africa, social and cultural studies of robots and AI* (2023) 35-64.

68 Okolo and others (n 67) 49; P Gubbins & E Totolo *Digital credit in Kenya: Evidence from demand-side surveys* (2018); M Kaffenberger & E Totolo 'A digital credit revolution: Insights from borrowers in Kenya and Tanzania' CGAP Working Paper (2018); KP Donovan & E Park 'Knowledge/seizure: Debt and data in Kenya's zero balance economy' (2022) 54 *Antipode* 1063-1085.

69 Kaffenberger & Totolo (n 68); KP Donovan & E Park 'Perpetual debt in the Silicon Savannah' *Boston Review* (2019).

Millions of low-income individuals, rural women and informal workers are routinely denied credit or subjected to exorbitant interest rates based on algorithmic scoring models that penalise unbanked status or temporary financial instability. Over-indebted borrowers are negatively listed with credit reference bureaus, often without adequate notice or meaningful access to administrative review.[70] This algorithmic gatekeeping directly restricts access to productive economic resources, violating the substantive command of article 8 of the DRtD.

A parallel dynamic unfolds in biometric digital identity programmes and automated social grant distribution systems. Across several African states, national identification systems have been digitised and linked to biometric data and automated verification portals. In Uganda, for example, older persons without the national identity card have been excluded from social grants and healthcare services.[71] When access to essential public services such as food aid, health insurance or pensions is made strictly contingent upon automated identity verification, technical failures directly violate socio-economic rights. Biometric scanners and automated verification algorithms exhibit higher error rates when processing older populations, manual labourers and rural residents whose fingerprints are worn or damaged. In the absence of accessible human intervention pathways, automated rejections effectively deny marginalised populations access to basic survival resources. Centralised AI systems, when deployed without democratic oversight and participatory design, transform administrative technology into an engine of socio-economic disenfranchisement, directly compromising the core guarantee of the RtD: active, free and meaningful participation in governance.

70 Gubbins & Totolo (n 68).

71 Centre for Human Rights and Global Justice, Initiative for Social and Economic Rights & Unwanted Witness *Chased away and left to die: How a national security approach to Uganda's national digital ID has led to wholesale exclusion of women and older persons* (2021); *R v Joe Mucheru* (n 56).

4 AU normative architecture: Evaluating existing digital and AI frameworks

4.1 The African Charter, Agenda 2063 and the AU digital transformation strategy

Africa possesses a comprehensive legal framework that can ground a rights-based model of democratic AI governance. The foundation of this legal architecture is the African Charter. As established in part 2, article 22 guarantees the RtD, while article 13 secures the rights of citizens to participate freely in governance, and article 21 guarantees control over national resources. Furthermore, article 9 provides that '[e]very individual shall have the right to receive information' and that '[e]very individual shall have the right to express and disseminate his opinions within the law', while article 19 provides that '[a]ll peoples shall be equal' and 'shall enjoy the same respect'.[72] Together, these Charter guarantees require that digital transformation agendas prioritise human dignity, public participation and structural equality over pure technological expediency.

At the policy level, Agenda 2063: 'The Africa We Want' establishes the continent long-term vision for sustainable development, unity and self-reliance. It explicitly identifies science, technology and innovation as core drivers of structural transformation, while emphasising pan-African solidarity, democratic governance and gender equality. Realising this vision, the AU Assembly adopted the Digital Transformation Strategy for Africa (2020-2030).[73] The Strategy sets out an ambitious roadmap for establishing a harmonised Digital Single Market across Africa, expanding broadband infrastructure, building digital skills and fostering local innovation ecosystems.

Nevertheless, a critical evaluation of the Digital Transformation Strategy reveals a tension between commercial innovation and human rights oversight. While the Strategy repeatedly highlights the economic necessity of adopting AI and emerging technologies, its institutional mechanisms for enforcing human rights compliance, algorithmic accountability and public participation remain underdeveloped. It

72 African Charter (n 31) arts 9 & 19.
73 African Union Commission (n 3) 12.

relies heavily on market-driven adoption models, leaving the governance of algorithmic power largely to national regulations that are often fragmented or non-existent.

4.2 The AfCFTA Protocol on Digital Trade: Opportunities and normative friction

A decisive milestone in Africa digital governance architecture occurred in February 2024 at the thirty-seventh ordinary session of the AU Assembly of Heads of State and Government, with the official adoption of the AfCFTA Protocol on Digital Trade.[74] As an integral component of the AfCFTA legal framework, the Protocol on Digital Trade establishes binding rules governing cross-border electronic commerce, digital data flows, consumer protection and emerging digital technologies across 54 African countries, forming the world largest free trade area by number of participating states. The Protocol offers significant opportunities for operationalising democratic AI governance and regional digital sovereignty. It provides mechanisms for cross-border data interoperability, prohibits arbitrary restriction of digital trade, encourages joint technological innovation, and includes specific provisions aimed at digital inclusion for small and medium-sized enterprises (SMEs), women and the youth. By creating a unified regulatory market, the Protocol enables African states to collectively negotiate digital terms with global technology monopolies, mitigating the regulatory isolation that individual nations face when confronting foreign tech platforms.

Legal analysis nonetheless reveals structural frictions within the Protocol on Digital Trade regarding the RtD. Chief among these is the tension between free cross-border data flows and domestic regulatory space for data sovereignty. International digital trade disciplines, often influenced by frameworks developed in advanced industrial economies, frequently limit the capacity of states to impose data localisation rules or to demand access to proprietary software source code and algorithmic

74 AfCFTA Protocol on Digital Trade (n 4) Preamble. See also A Rens, S Makumbirofa & A Gillwald 'Alignment problems: The AfCFTA Digital Trade Protocol and AI' Research ICT Africa Policy Paper (2025) 3.

weights as conditions for market entry.[75] If interpreted restrictively, provisions protecting source code from mandatory disclosure to domestic regulators could undermine national algorithmic impact assessments, independent auditing and judicial review of ADM systems.

Moreover, while the Protocol promotes digital trade expansion, it does not contain explicit, enforceable human rights impact assessment mechanisms. To prevent corporate capture of the African digital market, the Protocol's implementation annexes must be harmonised with the African Charter and the DRtD. Trade integration must not pre-empt the constitutional duty of African states to regulate corporate AI actors in the interest of public policy, human rights and equitable socio-economic development.

4.3 The AU continental AI strategy: Operationalising sovereignty and developmental priorities

In July 2024, at the forty-fifth Executive Council meeting in Accra, Ghana, the AU marked a major policy shift by adopting the Continental AI Strategy.[76] The Continental AI Strategy represents Africa's most unified policy response to the global AI revolution, explicitly positioning the continent not merely as a passive market for external technologies, but as an active driver of Africa-centric, ethically grounded and development-oriented AI systems. The Strategy is structured around core strategic pillars designed to address Africa specific structural realities which centres around: building foundational digital and compute infrastructure; fostering indigenous data ecosystems and local language datasets; developing human capital and research capabilities; establishing ethical, human-centric governance frameworks; and accelerating AI integration across public administration, agriculture, health and trade under the AfCFTA.

Crucially, the Continental AI Strategy articulates a commitment to technological sovereignty, urging member states to establish national

75 See, eg, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2018), incorporating Trans-Pacific Partnership Agreement (2016) arts 14.13 & 14.17; Rens and others (n 74).

76 African Union Executive Council Continental artificial intelligence strategy: Harnessing AI for Africa's development and prosperity EX.CL/Dec.1260(XLV) (Accra, July 2024) paras 1-6. See also African Union Development Agency (AUDA-NEPAD) White paper on artificial intelligence for Africa (2024) 15-22.

AI strategies aligned with constitutional rights, local developmental goals and regional priorities. It advocates the creation of national AI councils, regulatory sandboxes, independent ethics boards and public data repositories. Despite these normative strengths, the Strategy faces significant implementation barriers. The primary hurdle is the gap between policy commitments and computational execution capacity. The execution of the Continental AI Strategy requires substantial investments in high-performance computing centres, data infrastructure, and specialised technical capacity resources that are currently unevenly distributed across the continent. There is a risk that without targeted funding and binding legal instruments, the Strategy's human rights-focused principles could give way to commercial imperatives, leaving member states reliant on external public-private partnerships that perpetuate technological dependency.

5 An AU-aligned framework for democratic AI governance

5.1 Institutional mechanisms for participatory oversight and algorithmic accountability

To translate the RtD from an abstract principle into a functional governance framework for AI, African states must establish institutional mechanisms for algorithmic accountability and public oversight. The centre piece of this operational architecture is the mandatory execution of human rights and algorithmic impact assessments (AIAs) prior to the procurement, development or public deployment of automated systems. This mechanism gives practical effect to the AU Continental AI Strategy, which identifies the minimisation of AI-related risks as one of its five focus areas, advances a multi-tiered governance framework grounded in human rights, and recommends impact assessments among the tools for responsible AI development.[77] It also builds on the national AI councils and independent ethics boards that the Strategy calls upon member states to establish, discussed in part 4.3. The proposal is further consistent with Resolution 473 of the African Commission, which recognised that AI and other emerging technologies present both opportunities and perils

77 African Union Executive Council (n 76).

for human and peoples' rights in Africa,[78] and with the AU Data Policy Framework, which commits member states to data governance that safeguards human rights and ensures equitable access to, and sharing of, the benefits of data.[79] The AU instruments thus provide the institutional vehicle for AIAs, while the African Charter jurisprudence discussed below supplies their legal content, in particular the requirement that assessment be genuinely participatory.

Rather than functioning as a static technical security audit, an AU-aligned AIA framework must be participatory and process-oriented, directly operationalising the participation mandates established in *Endorois* and *Ogiek*. Public authorities and private technology developers must be legally required to consult affected communities, civil society organisations and trade unions during the design and risk-profiling stages of AI systems. The assessment process must evaluate: the socio-economic impacts on vulnerable populations; the potential historical biases embedded within training data; the explainability of algorithmic models; and the presence of effective human-in-the-loop safeguards.

Additionally, member states of the AU should establish independent national AI governance authorities, working alongside data protection authorities established under the AU Convention on Cyber Security and Personal Data Protection (Malabo Convention).[80] In doing so, they would give institutional form to the national AI councils and independent ethics boards envisaged by the Continental AI Strategy. These authorities must maintain centralised, publicly accessible algorithmic registers detailing all ADM systems deployed in public service delivery, law enforcement and critical commercial sectors. Public deployment of high-risk ADM systems should be prohibited until an AIA is approved by the independent oversight body.

Complementing these preventative measures, statutory frameworks must guarantee individuals the right to contest automated decisions. Domestic administrative laws should be amended to establish an explicit

78 African Commission on Human and Peoples' Rights Resolution on the need to undertake a Study on human and peoples' rights and artificial intelligence (AI), robotics and other new and emerging technologies in Africa ACHPR/Res. 473 (EXT.OS/XXXI) 2021.

79 African Union Commission AU Data Policy Framework (2022), endorsed by the Executive Council in Decision EX.CL/Dec.1144(XL) (February 2022).

80 African Union Convention on Cyber Security and Personal Data Protection (2014) art 11.

right to human review, accompanied by plain language explanations of how algorithmic parameters produced a specific output.

5.2 Digital sovereignty, local data governance and open technological infrastructure

A core component of democratic AI governance is securing national and regional digital sovereignty. True technological self-determination cannot exist while African states remain reliant on external computational infrastructure and foreign-controlled AI platforms. Operationalising article 21 of the African Charter requires treating domestic data and computational power as strategic public infrastructure essential for the realisation of the RtD.

The first component of digital sovereignty is sovereign public digital infrastructure (PDI), which allows states to retain control over the computational foundations of their public services. Rather than outsourcing core state digital functions to private foreign cloud providers, African governments supported by regional financial institutions, such as the African Development Bank (AfDB), should invest in shared, publicly managed data centres and high-performance compute clusters. Shared compute infrastructure lowers entry barriers for local researchers, entrepreneurs and public institutions, reducing reliance on proprietary external cloud platforms.

The second component concerns local data governance. Data trusts and community-managed data pools offer ways of keeping the value of data within the communities that generate it. Data trusts allow communities to retain collective ownership over their data, delegating fiduciary responsibility to trustees obligated to deploy that data for local developmental purposes. Data pooling initiatives should prioritise the collection, curation and open-source licensing of African language datasets, indigenous medical knowledge and localised agricultural statistics. By supporting the training of open-weight, locally fine-tuned large language models (LLMs) and predictive tools, African states can ensure that AI applications reflect domestic linguistic diversity and socio-economic realities.

5.3 Regional harmonisation, interoperability and distributive justice mechanisms

Given the transboundary nature of data flows and digital trade, individual national regulations are insufficient to govern global technology actors. The framework for democratic AI governance requires regional harmonisation and institutional coordination under the AU, the AfCFTA Secretariat and regional economic communities (RECs).

Member states should work through the AfCFTA Committee on Digital Trade to establish mutual recognition agreements for AI risk classifications, safety certifications and ethical standards. Harmonised regional standards prevent a regulatory 'race to the bottom', wherein multinational tech firms exploit regulatory gaps in vulnerable jurisdictions to deploy untested or high-risk AI models. Joint regulatory sandboxes should be created at the regional level, allowing African innovators to test AI solutions in controlled environments while verifying compliance with continental human rights standards.

Beyond harmonisation, the substantive, distributive dimension of the RtD requires regional frameworks to incorporate explicit economic justice mechanisms. Foreign corporate AI entities operating within the AfCFTA Digital Single Market should be subject to mandatory technology transfer requirements, local capacity-building investments and equitable tax regimes. A portion of revenues generated from cross-border digital services should fund a Pan-African Technology and Data Fund. Managed under the auspices of the AU, this fund would finance public compute infrastructure, open-source AI research and local digital literacy initiatives across latecomer member states, ensuring that the economic value created by the digital economy is equitably distributed across the continent.

6 Conclusion

This chapter set out to examine how centralised AI governance undermines the RtD in Africa, to establish the RtD as the normative foundation for AI governance on the continent, and to develop an AU-aligned framework for democratic AI governance capable of advancing economic justice. Each of these objectives, and the concepts on which they rest, can now be drawn together.

On the first objective, part 3 showed that centralised AI governance is not a neutral technical arrangement. By concentrating data, computational infrastructure and algorithmic control in a small number of predominantly external actors, it entrenches technological dependency and reproduces extractive patterns of value capture. Where public authorities rely on opaque automated systems, the right to reasons and the possibility of judicial review are weakened. The evidence from digital credit markets and biometric identity systems shows how such systems can exclude the very people whom development is meant to reach.

On the second objective, part 2 established that the RtD, as articulated in the DRtD and made binding by article 22 of the African Charter, is the appropriate standard against which these effects should be assessed. The right has a procedural dimension, which requires active, free and meaningful participation, and a substantive dimension, which requires the fair distribution of the benefits of development. The *Endorois* and *Ogiek* decisions confirm that both dimensions are legally enforceable within the African regional system. Measured against this standard, centralised AI governance falls short on both counts.

The third objective was addressed in part 5, which developed democratic AI governance as the institutional means of meeting these obligations. Participatory human rights and algorithmic impact assessments, independent National AI Governance Authorities, public algorithmic registers, and an enforceable right to human review together give effect to the procedural limb of the RtD. The chapter has acknowledged that these mechanisms impose costs on administrations with limited capacity but has argued that obligations can be calibrated to risk and that the costs of unassessed deployment are often higher.

The framework also serves economic justice, which this chapter has understood as extending beyond the fair allocation of benefits to ownership and control of the resources through which AI value is produced. Public digital infrastructure, community data trusts, open African language models and a Pan-African Technology and Data Fund are directed at this structural dimension. As part 4 showed, the AU's own instruments, in particular the Continental AI Strategy, the Data Policy Framework and the AfCFTA Protocol on Digital Trade, already contain commitments on which such a framework can build, even though their enforcement mechanisms remain underdeveloped.

Taken together, these findings support the chapter's central argument. The transition from centralised algorithmic control to democratic, rights-centred AI governance is not an obstacle to technological progress; it is a condition for ensuring that Africa's digital transformation advances economic justice, protects human dignity and secures the RtD for all African peoples.

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