Symposium Introduction: The Digitalizing Continent: Challenges and Opportunities of Digital Transformation for Africa

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The fourth industrial revolution (4IR) is marked by an intensive digitalisation process. Within this process, digital data (physical information converted into digital) and digital technologies restructure how things are done and values created. Various initiatives and strategies from the very recent AU Data Policy Framework to the Africa Digital Transformation Strategy (ADTS), the Smart Africa Manifesto and the E-Commerce Protocol of the African Continental Free Trade Area (AfCFTA), which is still under discussion, are intended to galvanise such processes. Digital economy and e-commerce survive and thrive through a web of complex contractual and noncontractual relationships between actors, including consumers, businesses and governments. These relationships are

regulated to varying degrees – some remaining even entirely unregulated. The regulatory disparity coupled with path dependent asymmetric relationship between actors shape the degree of leverage they might have over the operation and outcome of such connectivity. Weak and fragmented regulation in areas such as consumer, data and privacy protection on the one hand risks enabling those in control of capital and political power, the corporations and governments, to configure the digitalization process to their interest (i.e., profit and power maximization). On the other hand, weak regulation in such areas means leaving users with weak or no protection and hence, erode consumers' trust to make use of and benefit from the digital transformation. In addition, leverage over the operation and outcome of such connectivity is impacted by existing and emergent constraints such as: digital divide, infrastructural challenges, misfit between Intellectual Property (IP) system and emerging data driven technologies, and taxes, tariffs and non-tariff barriers. Most importantly, transformation and connectivity outcomes are shaped also by historical and existing institutional, regulatory and societal cultures and embedded power relationships.

Moreover, digital transformation is not just about technology and technological advancements, but more deeply about people and their social, economic, political and cultural institutions and how these institutions are structured and configured. It is about who controls and shapes these institutions as well as the digital infrastructure – i.e., the physical such as fiber-optic cables and data centers and the non-physical such as networking protocols and digital identifiers. It is also about who benefits from and is victimised by or included and left out of such transformations. Thus, digital transformation shapes people's way of being, seeing, and knowing while also being configured by existing socio-political and economic institutions. It carries dual capacities - transformative capacities and the risk of replicating existing inequalities (i.e., replication of power differentials). The Continent has and continues to embark on various promising initiatives in order to tap into the transformative capacity of technology to facilitate economic and human development. However, the realisation of such promise depends significantly on how these initiatives address the accompanying risk of deepening existing inequalities and how it sets out to see, understand and respond to past, present and future complex socio-economic, geopolitical and security questions of Africa as a continent, its

member states, each sub-region and the local contexts of each country. Hence, the central question must be rooted in how the digital economy as an everyday aspect of life shape, and impact people's livelihood both at the macro-level and grassroots. These and other related issues require in-depth conversation and critical reflection. It is with this backdrop that the Competence Center for African Research at University of St.Gallen together with AfronomicsLaw convened a workshop on "The digitalizing continent: challenges and opportunities of digital transformation for Africa" This symposium captures contributions to the workshop split into three panels: Digitalization & human rights; Promises & challenges of digital trade and Normative accounts of digitalized governance.

The panel on digitalization and human rights was focused on the human rights issues that emerge from digital economy and more broadly digital transformation. Focusing on the state duty to protect, respect and remedy, two contributions to the first panel unpacked the emerging but underappreciated role of Africa and its national and regional institutions in norm development as pertains to digital rights and freedoms. Using the ECOWAS Court of Justice and the East African Court of Justice jurisprudence, **Christopher Yaw Nyinevi** and **Yohannes Eneyew Ayalew** explains the key role being played by sub-regional courts in fostering human rights on the internet. At the national level, **Nelson Otieno Okeyo**'s contribution presents Kenya's High Court ruling on digital ID. He argues that the court's ruling to stop the government's decision to roll out a digital ID without a data protection impact assessment (DPIA) is a progressive precedent with a lesson for jurisdictions across and beyond Africa.

The second panel dealt with digital trade with a spotlight on promises and challenges of e-commerce for Africa. Three contributions covered different aspects of the topic. **Michael Asiedu** illuminates on the role of courts in safeguarding Africa's e-commerce with focus on the economic dimension of digital freedom and consumer protection. His contribution looks at four judicial cases from Sudan, Kenya, and Uganda and discusses the significance of these cases as "precedent setting cases". Contribution by **Bereket Alemayehu Hagos** explores promises and challenges of digital trade in the African Continental Free Trade Agreement. His contribution highlights Africa's untapped potential regarding the digitalization process revealing key challenges, such as inadequate legal, policy and institutional frameworks as

well as infrastructural gaps and cultural resistance. **Uchenna Anyamele**'s contribution points out the significant role of paperless trade and further identifies the jurisdictional difficulty associated with the legal validity of electronic records. By drawing on Model Law on Electronic Transferable Records (MLETR), her contribution offers a suggestion for the upcoming AfCFTA E-Commerce Protocol.

The last panel engaged three contributors who reflected on normative accounts of digitalized governance. **Megan Kathure** probes the features and assumptions of Africa's digital transformation discourse across key strategy documents (initiatives) in juxtaposition to broader realities of digital transformation strategies. She questions the overly simplistic resort to technological discussions on Africa with minimal regard to systemic social challenges such as colonial legacies. **Aubin Nzaou-Kongo** in his contribution explains the importance of digitized governance when it comes to energy transition with emphasis on AU bodies, namely, the African Energy Commission (AFREC) and the African Energy Commission (AFREC). His contribution dwells on the emerging yet important consensus surrounding the dematerialization of energy information and the role of various actors, including non-state actors in its governance. He particularly calls for increased transparency and democratization of information as far as energy and climate transition management systems are concerned. This he explains will lead to better solutions in dealing with the challenges surrounding energy data navigation, interpretation and dataset operationalization which are normally shrouded in national sovereignty arguments. The symposium concludes with **Kimberley Nyajeka'**s contribution on how digital and data sovereignty as a concept can be applied to the African context. She cautions on the risk of sovereignty erosion if we are less critical of digital transformation initiatives. She concludes by encouraging individual African states to take control of their digital sovereignty to prevent instances of digital encroachment.

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