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Toward a Constitution for the Metaverse: Key Principles for the Creation Process - A thinkpiece

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Toward a Constitution for the Metaverse: Key Principles for the Creation Process - A thinkpiece

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Introduction

Digital worlds today are often largely lawless spaces. Where rules are enforced, they tend to be either feudal, imposed by the lord of a particular part of the digital world (such as a specific platform) and subject to few of the ordinary legislative or interpretative processes of a more democratic legal system; or cultural, relying on a shared sense of etiquette that evolves rapidly and encouraged (but not enforced) by social mechanisms. Neither of these approaches leaves room for the safeguarding of fundamental rights or the equitable inclusion of those with less power.

As humans increasingly live significant portions of our lives online – in the metaverse rather than the physical universe, or in a physical universe enhanced by virtual additions to our reality – the dangers of digital lawlessness or, conversely, undemocratic rulemaking and enforcement, pose deeper and wider risks to our mental, physical, emotional and spiritual wellbeing.

To counter this, we argue there is a deep need to create a “Constitution for the Metaverse” with broad, well-designed worldwide public and multistakeholder participation. While the creation of such a Constitution can and should take account of state-led multilateral processes such as the [Global Digital Compact](#), such efforts are inherently exclusive and thus risk being seen as illegitimate or, in more practical terms, meeting widespread resistance. Civil society efforts such as the [African Declaration](#) on Internet Rights and Freedoms provide intriguing alternatives but so far remain regional rather than global; they also may lack necessary buy-in from more powerful actors such as governments and the private sector. We believe a broader approach is needed: one that centers current and future denizens of the metaverse to create a constitution that reflects the values by which they wish to be governed.

Responding to the most immediate gap in current governance of digital spaces, we propose the central component of this Constitution should be a Bill of Rights or other definition of the fundamental rights the Constitution is designed to safeguard. To ensure this Constitution and Bill of Rights has



broad legitimacy, we believe this process should be informed by principles of democratic and inclusive norm-making and rulemaking. This memo attempts to summarize the history of efforts to date, identify key gaps in processes and outputs so far, and propose the foundational principles of a more inclusive and legitimate process to create a true Constitution for the Metaverse.

Dangers of Lawless Digital Space

A Wide Array of Dangers

The dangers in digital space are, in broad terms, not significantly different from those in physical space. Individuals can become the targets of malicious speech intended to directly impair their mental wellbeing, or to convince them to engage in activity that directly harms their physical wellbeing; or negligent speech that has similar effects, albeit not directly intended. Individuals may have their digital property stolen, including money – not just cryptocurrency, but also digital proxies for physical cash such as bank balances. They may experience identity theft. They may be coerced into consenting to harmful or dangerous practices through the use of contracts of adhesion, where such contracts serve as a gateway to accessing resources or community.

Beyond harms that occur more or less entirely in a digital space, there are those where digital and physical worlds interact in ways that enable or magnify harm. Speech online can be tracked to physical locations, such that governments or private actors can engage in violence against those engaged in certain types of speech, or who possess characteristics such as a particular ethnicity or gender. Digital spaces can be used not only for malicious speech intended to harm listeners, but also for speech intended and even deliberately designed to incite listeners to harm others. Virtual worlds provide venues for conspiracy to commit all manner of harms, from human trafficking and enslavement to un- or under-compensated extraction of resources from places or people with limited power to resist.



Digital Harms Often Have Dire and Widespread Impact

While these harms may seem abstract, their impact can be severe. The Myanmar military government has [detained or killed activists](#) after tracking their online speech. A white supremacist radicalized online [murdered Black shoppers](#) in Buffalo, New York. Teens have been encouraged to [plan and commit suicide](#) in online forums – and some have done so. Game developers Zoë Quinn and Brianna Wu, among others, received online [threats of rape and murder](#); Wu has publicly shared that she was diagnosed with post-traumatic stress disorder as a result.

These harms also can directly impact large numbers of people. At any given moment, over 40 million people are experiencing [labor or sex trafficking](#) or forced marriage, with women and girls accounting for 71 percent of this figure. Traffickers are increasingly [using digital spaces](#) to lure people into trafficking situations. Perhaps less imminently drastic but with the potential to grow ever more problematic, [digital colonialism](#) through the extraction and [ownership of data](#) with minimal benefit to the people who are sources of that data, and a deepening [divide](#) between the privileged and those who are not, also affect millions or billions around the world.

Many Digital Harms Remain Largely Overlooked

Much of the scholarship on digital harms has, until now, focused on government limitation or suppression of free speech online. Such harms can be real: The governments of China and Myanmar, among various others, have used physical violence and incarceration to silence and at times kill critics.

Many of those writing about the dangers of government suppression of free speech, however, have failed to take into account other dangers, for example hate speech and incitement that can also foment violent or otherwise harmful action, or digital colonization, perhaps in part because the writers occupy privileged positions in the Global North in which they are unlikely to be direct targets of harms such as misogynistic or racist violence or the corrosive impacts of colonization.



Moreover, while digital worlds are, today, still largely mediated by tools that humans can set aside, the harms that occur often transcend those tools, encroaching into the physical world. Where the harms occur purely in digital spaces, humans may still have very real experiences of mental or emotional harm; and where humans already interact with concepts that have an imperfect physical analog, such as money, digital attacks can result in analogous physical-world impacts. As digital and physical worlds grow ever more integrated, as some believe likely, the types of harms that occur at least partly in digital worlds is likely to grow.

A Metaverse Constitution Can and Should Address The Varied Forms of Digital Harm

To be clear, it is not necessary to compare or rank different forms of digital harm in order to devise a Constitution or Bill of Rights for digital worlds. Humans hold a range of rights that are fundamental to a full and thriving human existence, online no less than in the physical world. Rather, the creation of a Constitution requires consideration of the full scope of rights that are and will be fundamental to human wellbeing, and ultimately the codification of these rights into a governing instrument that can serve as a social compact between all individuals and entities acting in the digital worlds to which we collectively refer as the Metaverse.

As we consider an appropriate Constitution for the Metaverse, it will be critical to consider the wide range of harms that may affect people in disparate circumstances and physical locations and with disparate characteristics. It also will be important to attempt to envision harms that may emerge or become more prevalent over time. Finally, it will be important to develop a fair and effective process for continued adjustment of the Constitution based on changes we, as yet, cannot imagine.



Prior Efforts to Uphold Rights

A History of Permissiveness

In digital spaces, relatively little has been done to comprehensively define or safeguard rights. Although efforts in the 2010s and 2020s have begun to catalyze discussion about human rights protections in the metaverse, the early history of digital spaces was one of non-regulation and self-organization.

This permissiveness in part resulted from a widespread belief, during the emergence of the internet as a popular medium in the US in the 1990s and early 2000s, that governments posed the greatest systemic risk to individual rights, particularly the civil and political rights that were understood as most relevant to digital worlds at the time. As a consequence, prominent US public voices advocated for limited to no government regulation of digital spaces.

The most libertarian of these voices were activists such as Grateful Dead lyricist John Perry Barlow and technology entrepreneurs Mitch Kapor and John Gilmore, who argued fiercely against virtually any form of regulation or structured norm-setting. These activists – who went on to found leading internet policy advocacy organization Electronic Frontier Foundation (EFF) – saw governments as threats to, rather than protectors of, human wellbeing in the digital world. Their views were formed, in part, by experiences with US government officials attempting to apply existing laws or create new ones for digital spaces based on insufficient technical knowledge; these attempts threatened or resulted in outcomes that were at odds with the activists' cultural norms about justice.¹

A more tempered view was advanced by advocates such as Lawrence Lessig, a prominent lawyer and scholar (also at one time a board member of EFF), who acknowledged a need for codification and safeguarding of rights while

¹ Interestingly, although these activists and EFF as an entity advocated against governmental regulation of digital spaces, their objections were still couched in the language of law. In a ringing [declaration](#) delivered at Davos in 1996, Barlow proclaimed, “we do not need a constitution or government in cyberspace, all are free and independent” – yet in his own [history of EFF](#), he writes that EFF was created because he and other founders objected to violations of the US Bill of Rights and felt the need to defend the US Constitution.



also expressing concern about the contemporary implementation of government regulation of digital spaces. Lessig [foresaw](#) a future in which governments would require the architecture of digital spaces (e.g., software code) to enable instant, continual identification of all participating individuals, such that anyone existing in digital spaces could be tracked or blocked. Lessig's vision, however, failed to foresee that instant, continual identification would become the norm in digital spaces not because a government required it, but because the creation of digital spaces was left to private for-profit corporations who benefited from such architecture.

Views such as these contributed to a permissive tendency toward digital spaces by governments in the 1990s and early 2000s. Digital worlds grew in scope, but remained largely unregulated. Even where governments took an authoritarian approach to regulating digital spaces, this approach was often narrow in focus: In the Global South / East, governments tended to impose rules related to critique of their regimes, while in the Global North / West, governments tended to impose rules designed to suppress certain narrow types of speech seen as fundamentally undermining the morality of the country (for example, in the US, obscene or pornographic speech accessible to minors; in Germany, hate speech that extolled Nazi ideology).

Corporate Assumption of Rulemaking

While governments shied away from broad regulation of digital spaces, other entities took control of digital spaces by virtue of their ownership of the property and infrastructure necessary for creation of these spaces. Most of these entities are for-profit corporations, often very large and, by virtue of their size, with significant influence in the global economy. As their power has grown, these companies have also come to hold significant influence on society, culture, and politics. Some of the most influential include Google, Facebook, and Apple among others.

While rulemaking in the early days of the digital world resulted primarily, as Lessig notes, from the architecture of the code (and hardware) that enabled these spaces, the corporations that came to largely own digital space not only adapted its architecture to serve their own interests, but also gradually



imposed other usage rules. Today, usage rules range from anti-piracy agreements to prohibitions on hate speech; architecture rules often include tracking of movement and activity, and submitting to propaganda (such as advertising) as a condition of entry.

Architectural rules are enforced automatically, typically with no opportunity to negotiate or appeal to a decisionmaker capable of considering questions of justice. Enforcement of usage rules happens both directly, through corporate acts such as removing or limiting a violator's access to a digital space, and mediated by traditional state-run enforcement mechanisms such as police and courts; in both cases, appeal of an initial enforcement action is possible, albeit sometimes inaccessible to those without certain privileges. Both architectural and usage rules vary by corporation, such that different sets of rules may be enforced in different "territories" of the digital world. Unlike physical territory, however, a person may be active in multiple territories at once, for example when reading a New York Times news article within Google's Chrome browser, or scrolling through Facebook on an Apple device.

Because much enforcement of corporate rulemaking in digital spaces is conducted either by the infrastructure itself or by the corporation, such enforcement is designed to serve the interests of corporate owners. Indeed, many would argue that corporations, at least those that are publicly traded (as the largest digital space owners are) have a legal obligation to ensure their rulemaking and enforcement systems serve the corporation first and foremost, as part of every corporation's [purported duty](#) to maximize profits for its shareholders. In the physical world, corporate ownership of large amounts of territory is widely seen as problematic precisely because of a virtually universal philosophy that territory should be governed for the good of those who inhabit it² rather than exclusively for the benefit of those who own it. In the digital world, however, corporate ownership is currently expected and seen as normal.

² The British East India Company's legacy in India is an illustration of some reasons such ownership is problematic. By contrast, both democratic models such as that of Canada or Kenya and communist models such as China or Morocco are founded on the ostensible premise that the purpose of governance is the good of citizens (even where the practice of governance patently gives the lie to this idea).



Although corporate rulemaking for digital worlds is generally designed to benefit the corporation, calls for corporate adherence to human rights norms (from both inside and outside corporations that control digital spaces) have borne some fruit. Google, for example, has attracted talent since its inception by publicly proclaiming its “[Don't be evil](#)” motto. More recently, Facebook has created an [advisory board](#) to adjudicate user appeals of Facebook content moderation decisions. The advisory board’s charter and bylaws, among other documents, indicate that Facebook expects the board’s decisions to be guided by international human rights norms and principles, at least those “protecting freedom of expression”. Some commentators argue that corporate business interests, in particular an attempt to stave off government regulation, ultimately drive such initiatives. Nonetheless, initiatives such as these may offer ideas for developing the design process and the content of a Constitution for the Metaverse.

Civil Society Promotion of Human Rights Standards

Alongside corporate efforts to grapple with human rights norms in the digital world, independent civil society initiatives also have made strides toward creating human rights rules and norms for digital spaces. Civil society efforts have grown as the dangers of government permissiveness and corporate control have become increasingly apparent with the expansion of the metaverse. As David Souter, lead consultant on the ten-year review of the United Nations’ World Summit on the Information Society, has [noted](#), “It’s generally recognized that the ‘wild west’ days of early internet are over and that regulation’s going to be fundamental to IG [internet governance] in the future.” Civil society organizations concerned about human rights in the digital world are increasingly engaged in research, analysis and advocacy to define and promote adoption of human rights standards for the metaverse.

In 2014, Human Rights Watch called for the development of [governance structures](#) to protect human rights in digital spaces: a United Nations Special Rapporteur, a stronger multistakeholder internet governance model, and a conceptual reframing of human rights as essential, rather than antithetical, to national security in digital spaces. These recommendations, however, did not



seek to define human rights in the metaverse, or to apply existing substantive human rights standards to digital spaces. More recently, two significant civil society initiatives to propose and promote human rights standards in the metaverse have emerged: The [African Declaration](#) on Internet Rights and Freedoms (AfDec) and Ranking Digital Rights' [Big Tech Scorecard](#).

Created by a coalition of mostly [Africa-based civil society](#) organizations, the [African Declaration](#) articulates thirteen principles for upholding human and people's rights in the digital world and describes how these principles should be applied, with a particular focus on "Africa's social and economic development needs and goals". The Declaration builds on a human rights legal instrument initially developed to govern physical spaces, the [African Charter of Human and People's Rights](#), as well as civil society standard-setting initiatives such as the [Windhoek Declaration](#) and the [African Platform on Access to Information](#).

AfDec's principles are:

1. [Openness](#)
2. [Internet Access and Affordability](#)
3. [Freedom of Expression](#)
4. [Right to Information](#)
5. [Freedom of Assembly and Association and the Internet](#)
6. [Cultural and Linguistic Diversity](#)
7. [Right to Development and Access to Knowledge](#)
8. [Privacy and Personal Data Protection](#)
9. [Security, Stability and Resilience of the Internet](#)
10. [Marginalized Groups and Groups at Risk](#)
11. [Right to Due Process](#)
12. [Democratic Multistakeholder Internet Governance](#)
13. [Gender Equality](#)

While AfDec's principles are more comprehensive than other attempts to define human rights in digital spaces, it is not always clear whether these principles apply only to government regulation, or to the behavior of other actors such as private corporations. For example, Principle 5, [Freedom of Assembly and Association](#), says in part:



Everyone has the right to use the Internet and digital technologies in relation to freedom of assembly and association, including through social networks and platforms. *No restrictions on usage of and access to the Internet and digital technologies in relation to the right to freedom of assembly and association may be imposed unless the restriction is prescribed by law, pursues a legitimate aim as expressly listed under international human rights law (as specified in Principle 3 of this Declaration) and is necessary and proportionate in pursuance of a legitimate aim....Everyone should enjoy unrestricted access to the Internet. Any shutting down or blocking of access to social networking platforms, and in fact the Internet in general, constitutes a direct interference with this right (emphasis added).*

While nothing in the description of this principle and its application explicitly states that it applies only to states, the description also does not appear to consider limitations imposed by non-state actors such as the corporations that control social networks. The language used in the AfDec would not allow Facebook to block users spreading [misinformation about COVID-19](#) (because such removal is not prescribed by law) or Twitter to [ban former US President Donald Trump](#) under its prohibition on “[glorification of violence](#)” (because Twitter’s policy bans speech that is well outside the legal definition of [incitement](#)).

To be sure, AfDec’s discussion of Principle 3, [Freedom of Expression](#), does address the case of non-governmental actors. AfDec calls on “intermediaries” that “operate self-regulatory systems and/or make judgment calls on content and privacy issues” to do so in ways that align with human rights standards, although it still makes no recommendation regarding external accountability. While AfDec’s signatories might argue that government suppression of free expression is a more immediate threat given the prevalence of [internet shutdowns](#) and [government ownership or licensing](#) of internet providers, AfDec’s failure to set forth clear human rights obligations for private entities limits its direct use in regulating non-governmental conduct in the metaverse. Nonetheless, the human rights principles it articulates could be a



starting point for discussions of a broader Metaverse Constitution that governs the conduct of all actors in the digital world.

US nonprofit think tank New America's independent research project, Ranking Digital Rights, "evaluates and ranks the world's most powerful tech and telecom companies on their commitments to respect users' fundamental rights, and on the mechanisms they have in place to ensure those promises are kept," reporting its findings on the [Big Tech Scorecard](#). RDR's methodology uses the Universal Declaration of Human Rights as its foundation, specifically focusing on rights related to governance, freedom of expression, and privacy. Much of RDR's emphasis is on corporate transparency about their internal rules and processes; responsibility for preventing or redressing harms is largely missing from RDR's [scoring methodology](#).

While RDR's scorecard is a step toward incentivizing conformity with a narrow band of human rights procedural standards, it does little to address corporate responsibility for substantive human rights implementation or enforcement in the digital spaces under corporate control. In addition, nothing in RDR's approach addresses corporate responsibility for safeguarding rights outside of those directly related to free expression and privacy within corporate-controlled digital territory.

For example, while a corporation may receive a lower score if it is not transparent about when and how it will share user data with a government, a corporation that follows its transparent rules about data-sharing in a way that leads or contributes to an activist's death will not be penalized in the ranking. Moreover, a corporation that controls a digital space where one person stalks or harasses another will not be penalized in the ranking, even if the corporation did not abide by its own enforcement policies in permitting the stalking or harassment to continue, provided it was transparent about prohibited activity and included and advertised features to allow the user to keep their account secure. By analogy, if RDR were ranking governments, a government that published its laws, and provided residents with free door locks and installation instructions, would have no further responsibility per the RDR ranking for preventing or redressing crimes.



Governments and Multilaterals Reclaim Internet Rulemaking

As corporations increasingly come under fire for human rights abuses perpetrated partly in digital spaces, and civil society calls for digital human rights protections grow more specific, governments and multilateral institutions have sought to reclaim and expand their rulemaking power vis-a-vis digital spaces.

1. United Nations

The United Nations is slowly progressing toward the creation of a [Global Digital Compact](#) – which could ultimately serve as a Constitution of the Metaverse. The Compact, which aims to define “shared principles for an open, free, and secure digital future for all,” is a component of the UN Secretary General’s [Roadmap for Digital Cooperation](#), overseen by his [Envoy on Technology](#), a position created in 2019. Initial development of the Global Digital Compact is happening via a process of [public, multistakeholder contribution](#) and review, with a final version to be negotiated at the proposed 2023 [Summit of the Future](#).

While the Global Digital Compact process currently appears to align with best practices in inclusive rulemaking and norm development for digital spaces, there are reasons to be skeptical as well. The [rise of non-binding compacts](#) over the past decade as a [substitute](#) for binding international legal instruments addressing human rights arguably is problematic, as it weakens the accountability of states and other actors by replacing rules with suggestions. Where compacts do contribute to norms, they may encourage eventual legal recognition of new rights – but they may also undermine existing legal rights by encouraging a narrower or [more limited interpretation](#) of binding human rights instruments.

Additionally, while the Global Digital Compact process currently invites open contributions from all people, the process does not appear widely advertised at time of writing. The Compact appears to have no coverage on Reddit, a major internet discussion forum, nor in the largest international wire services: Reuters and Associated Press. The Compact also apparently has not received



any coverage in the New York Times, the Guardian, or the Washington Post. Single brief mentions of the Compact have appeared in other newspapers including the Guardian Nigeria (not affiliated with the Guardian), El Mostrador in Chile, Straits Times, and Foreign Policy in the US, but by any measure the Compact is not being widely publicly discussed, two months after its [concept note](#) and [contribution portal](#) were publicly shared by the UN. Coupled with the reality that states still control virtually all United Nations processes, this suggests the final drafting and decisions about the Compact's content may ultimately reflect a more [Westphalian](#) than multistakeholder approach.

In addition to the Global Digital Compact and the Summit of the Future, the United Nations also has other avenues for influencing rulemaking for digital spaces. One is the [Internet Governance Forum](#) (IGF), created in 2006 with a mandate to facilitate discussion of digital world policies and best practices. IGF could play a leadership role in convening relevant stakeholders to create a Constitution of the Metaverse, although as an institution created by UN mandate, it – like the Global Digital Compact – might tend toward a state-centric, Westphalian approach rather than a truly multistakeholder agreement.

Another United Nations entity addressing digital human rights is the [Special Rapporteur](#) on the Right to Privacy, established in 2015.³ The Special Rapporteur on Privacy is charged with advocating and supporting government changes to bring surveillance in line with rule of law and human rights, and laying out the obligations of the private sector with regard to human rights protections. A Special Rapporteur, however, typically reports on and advises specific countries or regions, rather than prescribing global norms that could serve as a foundation for a Metaverse Constitution. Where a Special Rapporteur does make broader global recommendations, these usually focus on a narrow [thematic issue](#) (for example, [privacy protections during a pandemic](#)).

³ Civil society has largely sought and welcomed increased multilateral regulation of digital spaces. For example, Human Rights Watch's call for a United Nations [Special Rapporteur](#) on the Right to Privacy became a 90-organization [advocacy effort](#) that resulted in the [appointment](#) of the special rapporteur in 2015.



2. States

In addition to United Nations efforts, states are increasingly seeking to expand their rulemaking in digital spaces, including to prevent and address harms against people. While rule enforcement generally takes place at the national level, many of these efforts have included a multilateral component, albeit usually outside of formal multilateral structures such as the United Nations. These expansions arguably began in the 2010s with concerns about privacy (as Lessig's predictions about the tracking implications of digital infrastructure design were realized in corporate-controlled spaces), but recent efforts are far more comprehensive.

In Europe, for example, the [General Data Protection Regulation](#) went into effect in 2016 as an effort to protect individuals' data and privacy in digital spaces, changing the behavior of virtually all who control licit digital spaces open to the public.⁴ A few years earlier, in 2011, thirteen countries established the [Freedom Online Coalition](#), focused on core civil and political rights such as free expression, association, and assembly, as well as privacy.

Today, however, state ambitions are far broader: In April 2022, 60 governments signed a [Declaration for the Future of the Internet](#), a US government-led attempt to establish broad principles applicable to all digital worlds. This Declaration gets closer to articulating a comprehensive set of ideas that might serve as a foundation for a Constitution of the Metaverse. The core principles of the Declaration include:

- Protection of Human Rights and Fundamental Freedoms
- A Global Internet that operates on principles of net neutrality and free flow of data, without government-imposed shutdowns or degradation
- Inclusive and Affordable Access to the Internet
- Trust in the Digital Ecosystem, including protection of privacy, human rights, electoral processes and online security while combating unfair, malicious, or criminal online activity
- Multistakeholder Internet Governance

⁴ Another example is the 2018 [California Consumer Privacy Act](#). Although only binding at the sub-national level and only from 2020 onwards, it also has impacted the behavior of those who control digital spaces.



The Declaration also recognizes United Nations and other multilateral efforts and positions itself as complementary.

Two characteristics of the Declaration's creation process undermine its potential as a basis for a Constitution of the Metaverse, however. First, the process was entirely state-led, rather than multistakeholder, with [no direct public input](#). Those most likely to suffer internet harms were represented only by their governments, if at all – and many of those who are at risk of internet harms live under government regimes that did not participate in the Declaration. Moreover, the Declaration implicitly focuses on harms most likely to be inflicted by governments, without seriously addressing [corporate complicity](#) in misinformation campaigns and other harms impacting individuals.

Second, the Declaration [originated](#) as an attempt by the United States government to form an alliance of states against China and Russia. A [leaked early draft](#) showed a focus on technical cooperation in support of US political and economic interests, with human rights mentioned only once, prefatorily. China and Russia are [expected to ignore](#) it, which will undermine claims to global legitimacy. If Chinese and Russian citizens and civil society organizations had contributed to its development alongside other non-state stakeholders, a case for its legitimacy would be stronger – but under the circumstances, it is likely to be seen primarily as geopolitical maneuvering.

Beyond the Metaverse: Constitution Creation Processes in the Physical World

To identify the principles that give legitimacy to constitutional development processes, we need not restrict our gaze to prior efforts in digital spaces. Humans have been developing democratic governance systems for millenia. We can look to recent constitutional processes in the physical world – to broaden our understanding of how we might enhance the legitimacy of a process for creating a Constitution of the Metaverse.

One recent good practice example is the [Kenyan constitutional revision process](#) in 2008-2010. This process, which substantially overhauled Kenya's



much-amended post-colonial constitution, combined broad public consultation with expert analysis and development of specific constitutional provisions: Widespread advertisements invited the public to submit their views via memoranda, which an Expert Committee analyzed to understand the strength of popular opinions and the breadth of divergence among them. Subsequently, thematic and sectoral consultations allowed the Experts to refine their understanding of public views. Where needed, the Experts also engaged technical consultants.

The Experts then made a draft constitution available for public review and parliamentary consultation. Based on input from both processes, the experts issued a further draft, to which the National Assembly could propose amendments. Following that process, a final draft of the proposed constitution was subject to public referendum and, when passed, became Kenya's new governing instrument – which remains substantially in place today.

While other modern constitutional processes – for example, that of [Ecuador in 2008](#) or the drafting of the [Universal Declaration of Human Rights](#) in the 1940s – each have their own unique details, common elements tend to include public consultation coupled with expert leadership and drafting. The selection of expert representatives with appropriate credentials or experience usually occurs through a process that is essentially democratic or republican in nature; and the selected representatives undertake the responsibilities of conducting public consultation and analysis followed by debating, negotiating and proposing a shared set of rules that is then ratified either by the public or their elected representatives.

A Way Forward: Rights in the Metaverse

An Inclusive Process is a Moral Imperative and Practical Necessity

To effectively uphold human rights in the metaverse, we must create a governing instrument that has widespread legitimacy and buy-in. This is true for any constitution, but it has become particularly critical for digital worlds



because of their dualistic history: State permissiveness and early adopter resistance to regulation that has led to lawlessness in many corners of the metaverse, alongside feudalistic, authoritarian regimes of digital landlords who are unaccountable to their denizens. Already governance of the metaverse suffers from a legitimacy deficit; to reverse this, any global governance effort must align consistently with best practices in participatory co-creation.

At the same time, the momentum of current efforts should not be discounted. In particular, the [Global Digital Compact](#) has the imprimatur of the United Nations, which remains – despite critiques and flaws – the multilateral governing entity with the greatest global legitimacy. The Compact’s biggest drawback is the insufficiency of its public and stakeholder consultation process so far; if this could be remedied, we could harness rather than compete with the energy being invested into the Compact process.

Recommendations for an Inclusive Process

Drawing on strong examples like Kenya’s 2008-2010 [constitutional revision](#) and the [African Declaration](#) (AfDec) development process, the Global Digital Compact process – or another global effort to create a Constitution for the Metaverse – could uphold principles of inclusion and participatory governance by taking the following four steps:

1. Enlist and Empower Champions

A public consultation process is only effective if it engenders ample and diverse participation. To achieve this, the Global Digital Compact process (or other digital constitution processes) should ensure their public consultations are championed by **diverse civil society** that is **well-connected in digital worlds** or to current or prospective digital denizens; and **willing and resourced** (with adequate financial and technical support) to conduct widespread **outreach** and to **support underrepresented populations** to organize and participate.



2. Communicate Proactively and Accessibly

Communication must reach the eyes and ears of its intended audiences. While the Envoy on Technology has launched a relatively user-friendly [website](#) for participation, it should also invest in designing and executing a well-constructed **public communications plan** that invites participants – in **multiple languages, media, and disability-friendly formats** – to join the Global Digital Compact consultation process. The communications plan should be designed both to **motivate** participation and to provide **clear, simple instructions** on how to do so.

3. Reach Constituents Where They Are

To engender ample and diverse public participation, the Global Digital Compact process (or other digital constitution processes) should disseminate information via a plethora of communication channels in both virtual and physical spaces. These might include: Radio and billboard advertisements in places where the internet is not easily accessible and commonly used; printed and online news media including both traditional media and widely-followed “new” media such as blogs; and social media including Facebook, Instagram, Twitter, TikTok, WhatsApp, WeChat, YouTube, Reddit and the like.

4. Consider Distributed Volunteer Models to Analyze Input

Wide public participation on a global scale poses a challenge, as the scope of review and analysis needed to appropriately consider all input will be extensive. Using a distributed volunteer model, like that used to [edit Wikipedia](#), could make this challenge manageable while increasing the participatory nature of the process. Because multiple volunteer reviewers could contribute to the analysis of any input, the aggregate analysis is likely to be strong. One consideration is ensuring a representative diversity of distributed volunteer reviewers; this has proven challenging for Wikipedia, but could be addressed through a campaign to encourage volunteers from a diverse range of backgrounds, locations and languages.

A Constitution for the Metaverse: The Time Is Now

The convergence of state, multilateral and civil society efforts to articulate and promote human rights principles for the metaverse over the past decade



indicates rising public concern about the current gaps in governance of digital worlds. Much of the world are digital denizens – and we are experiencing in real time the harms that arise in undemocratic online spaces. As more and more of us suffer these harms or know someone who has, a growing body of people across the world is calling for a new human rights instrument: A Constitution for the Metaverse.

Although the metaverse differs from the physical world, its inhabitants are the same: us. The time is now to safeguard our human rights where we spend increasing amounts of our lives – in the metaverse.



APPENDIX 1

Prior Efforts toward a Metaverse Constitution

Author: Shagun Sethi

About this Research Summary

Humans increasingly live significant portions of their lives in digital spaces. Oftentimes, these spaces are social in nature - in preliminary phases, one primary example is the Metaverse. The Metaverse today poses an array of possibilities and dangers, and for this reason, its regulation (whether it be over-or under-regulated) is crucial to explore going forward. To safeguard the well-being of all participants in the Metaverse, we at OneShared.World see an urgent need for a Constitution or Bill of Rights to help guide the development of the Metaverse transparently and inclusively. We believe we have a chance to develop this new public space in an equal, just and interdependent manner keeping in mind the needs of different communities and by listening to voices of people from different backgrounds, communities and ethnicities. Historically constitutions have been developed by privileged populations, and with this moment in time represents a chance to right the wrongs and preemptively develop a living document that is amorphous, inclusive and truly global.

The creation of such a Constitution, requires an inclusive, democratic process to ensure that Human Rights for all participants are at the forefront of the development of the Metaverse and other digital platforms as they emerge. To help guide and inform the development of such a process, this memo addresses the following question: *What prior work has been done exploring the idea of a bill of rights or constitution for cyberspace and/or virtual worlds? What governing rules have been proposed for the Metaverse so far?* It should be noted that this memo does not purport to be complete or comprehensive; rather, it represents a working summary of research



undertaken by the author to date, some of which may require further investigation.

Prior Efforts toward a Metaverse Constitution

The rise in the use of technology and increasing digital access has led to the creation of a new public space - a digital, global common ground where people across genders, ethnicities, nationalities, religions, and privileges - have had been able to communicate, interact and exchange ideas and information. However, the development of this public space has sparked debate about human rights and the need for protection of people on this space.

Historically, philosophers have argued for the need for laws and government to regulate society. From James Madison's (in)famous argument, 'If men were angels, no government would be necessary'⁵, to John Rawls theory of the Social Contract⁶, arguments have been made to show and demonstrate how laws, morality, and checks, and balances are necessary to safeguard principles of liberty, equality, and freedom in any space. Now, what does this mean for the metaverse and/ or cyberspace? What are cyber laws? Who is responsible to frame them? What work has been done in this domain?

The debate and conversation about human rights in cyberspace is not new. It dates back to the 1990s when the internet boomed across the globe. Academics, critics, philosophers and people in governments debated this issue - privately and in professional settings. However, an important trend through history about this debate, is that the nature and/or line of argumentation has been about whether there is a need for human rights in the digital space and not about the *kind* of human rights needed. As a new, undiscovered realm, many philosophers, thinkers, and innovators were eager to participate in and explore this paradigm - and they each picked sides on libertarian tendencies - should there be limits to freedom on cyberspace? Would human rights dialogues curb free speech? Why should the cyberspace conform to paradigms of human rights in the real (offline) world? etc.

⁵ Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Bantam., 1982).

⁶ John Rawls, *A Theory of Justice* (Cambridge, Massachusetts, 1971).



One of the earliest conversations about the internet was about its ability to extend liberty beyond what conventional state systems offer. In 1996, in an article entitled ‘A Declaration of the Independence of Cyberspace’, Barlow highlighted the discrepancy between the fundamental rights enshrined in the US Constitution and the violation of citizens’ rights on the Internet. Barlow quotes ‘we do not need a constitution or government in cyberspace, all are free and independent’⁷. In 1998, Lessig agrees with Barlow and argues that cyberspace should be a free, autonomous space. As we discuss and understand leading work in this domain, it becomes important to read his work because he actively opposes the idea of a constitution for the metaverse and instead notes that

“Cyberspace is regulated - by laws, but not just by law. The code of cyberspace is one of these laws. We must come to see how this code is an emerging sovereign — omnipresent, omnipotent, gentle, efficient, growing — and that we must develop against this sovereign the limits that we have developed against real space sovereigns. Sovereigns will always say — real space as well as cyberspace — that limits, and inefficiencies — bugs — are not necessary. But things move too quickly for such confidence. My fear is not just that against this sovereign, we have not yet developed a language of liberty. Nor that we haven’t the time to develop such language. But my fear is that we sustain the will — the will of free societies for the past two centuries, to architect constitutions to protect freedom, efficiencies notwithstanding”⁸.

However, Barlow and Lessig’s arguments have since been rebutted and evolved by other scholars working in this field. In 2010, Jeff Jarvis suggests amendments to Barlow’s declaration and suggests a bill of rights (not a

⁷ John Perry Barlow, “A Declaration of the Independence of Cyberspace,” February 8, 1996, <https://www.eff.org/cyberspace-independence>.

⁸ Lawrence Lessig, “The Laws of Cyberspace” (Taiwan Net ’98 conference, Taipei, 1998), https://cyber.harvard.edu/works/lessig/laws_cyberspace.pdf.



constitution). These include: the right to connect, right to speak (in all languages), right to assemble, right to act, right to control our data, right to own our identity, declaration of the internet as a public good, and that the operation of the internet should function ‘openly’⁹.

These debates and arguments led to conversations defining what cyber rights are and therefore in some cases, pushing governments to enlist laws and measures (and in some cases restrictions), regarding individuals’ rights on the internet.

“Cyber-rights recognize the right of individuals to access, use, create and publish digital media, and the right of access to the computers, electronic devices and telecommunications networks necessary to exercise them”¹⁰. Since the first concerns of data privacy and the rising interest by civil society to take part in cyberspace, countries and multinational governments have rolled out a series of laws and measures to protect their citizens. The General Data Protection Regulation (GDPR), in the European Union, which came into force in 2018, obliges member countries both to preserve citizens' personal data and to allow the free movement of data¹¹. In the United States, there is no federal data protection law and each state applies different regulations. There are a number of federal data protection laws that are sector-specific or focus on particular types of data. In 1996 after a case in the Pennsylvania district court about whether the first amendment of the US Constitution applies in cyberspace, this research argued a case for rights on the internet¹². According to the UNCTAD, 137 out of 194 countries had put in place legislation to secure the protection of data and privacy¹³. In 1993, the United Nations Commission on Human Rights established the mandate of the Special Rapporteur on the

⁹ Jeff Jarvis, “My Cyberspace Bill of Rights,” *The Guardian*, March 29, 2010, <https://www.theguardian.com/commentisfree/2010/mar/29/internet-censorship-cyberspace-bill-of-rights>.

¹⁰ Iberdrola, “Digital Rights, Essential in the Internet Age,” n.d., <https://www.iberdrola.com/innovation/what-are-digital-rights>.

¹¹ Citizens Information, “Controlling and Processing Personal Data,” n.d., https://www.citizensinformation.ie/en/government_in_ireland/data_protection/obligations_under_general_protection_regulation.html.

¹² Marjorie W Hodges and Steven L Worona, “The First Amendment in Cyberspace,” *The First Amendment in Cyberspace 20* (1997): 4–8, <https://www.educause.edu/ir/library/html/cem/cem97/cem9732.html>.

¹³ UNCTAD, “Data Protection and Privacy Legislation Worldwide,” n.d., <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>.



promotion and protection of the right to freedom of opinion and expression - both offline and online¹⁴. Finally, UN General Assembly (UNGA) passed a resolution on The Right to Privacy in the Digital Age by consensus on December 18, 2014 in New York, under the leadership of Brazil and Germany¹⁵. In April 2022, 60 countries including the United States signed a non-binding declaration¹⁶ that aims for open, free, interoperable internet in the face of authoritarian threats. It centers around five principles: Protecting and advancing human rights, promoting an open global internet, making connectivity affordable, protecting user privacy and strengthening multi-stakeholder approaches to internet governance. Another recent and significant effort by the United Nations in this ambit has been the release of 'Our Common Agenda' by the Secretary-General in September 2021 - this Agenda proposes a Global Digital Compact (to be agreed at the Summit of the Future in September 2023), which would involve all stakeholders: governments, civil society, academics, individuals, and the private sector. 'The Global Digital Compact is expected to "outline shared principles for an open, free and secure digital future for all". The Common Agenda report suggests issues that it might cover, including digital connectivity, avoiding Internet fragmentation, providing people with options as to how their data is used, application of human rights online, and promoting a trustworthy Internet by introducing accountability criteria for discrimination and misleading content'¹⁷.

In the early 2000s, this debate and conversation became global and work on understanding the need for human rights in a cyberspace/ metaverse became inevitable. Conversations about the rights of people sparked in part due to the increasing threat they faced to cybercrime but also due to the increasing academic investigation in the domain. In 2007, independent researchers from

¹⁴ "OHCHR | Special Rapporteur on Freedom of Opinion and Expression," OHCHR, accessed September 2, 2022,

<https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression>.

¹⁵ General Assembly, United Nations, "The Right to Privacy in the Digital Age, Resolution Adopted by the General Assembly," December 18, 2014,

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/707/03/PDF/N1470703.pdf?OpenElement>.

¹⁶ Brandon Vigliarolo, "60 Countries Sign Declaration to Keep Future Internet Open," accessed September 2, 2022, https://www.theregister.com/2022/04/28/us_60_other_countries_sign/.

¹⁷ "Global Digital Compact | Office of the Secretary-General's Envoy on Technology," accessed September 2, 2022, <https://www.un.org/techenvoy/global-digital-compact>.



Brazil presented a paper on ‘Privacy and the need for an Internet Bill of Rights’ at the Global Internet Governance Academic Network’ (GigaNet). This outlines and traces the trajectory of the debate on the bill of rights for the internet and makes an argument for how the lack of a single, uniform bill of rights results in the existence of many rights and claims in the online world, resulting in a ‘Clash of rights in CyberSpace’. Prof. David Casacuberta (Universidad Autónoma de Barcelona), Ph.D. Candidate Max Senges (Universitat Oberta de Catalunya), and Prof. Josep-Maria Duart (Universitat Oberta de Catalunya) argued that “In order to create a Human Rights-based regime (Jørgensen, 2006) in Cyberspace, in which netizens are protected against arbitrary action of system operators of public sites, as well as public institutions as such [1] an Internet Bill of Rights is needed in order to clarify and in some cases extend the established Human Rights, taking the particularities of Cyberspace into consideration”¹⁸. In line with this, and due to the same political and social climate of continued risk to individuals, in 2014, Sir Tim Berners-Lee, inventor of the World Wide Web told the Guardian that ‘the web had come under increasing attack from governments and corporate influence and that new rules were needed to protect the "open, neutral" system. Speaking exactly 25 years after he wrote the first draft of the first proposal for what would become the world wide web, the computer scientist said: "We need a global constitution – a bill of rights”¹⁹. Sir Tim Berners Lee went on to found the Web We Want Foundation which further conducted outreach on this idea and core tenant of the need for rights in the cyberspace.

Gradually, this was not a conversation limited to academic circles and technical clout, it became one of concern to organizations and groups working in the human rights domain. In an article²⁰ posted in December 2014, Human Rights Watch proposed three practical steps to ensure Human Rights are upheld in cyberspace. The article noted,

¹⁸ David Casacuberta, Max Senges, and Josep-Maria Duart, “Privacy and the Need for an Internet Bill of Rights: Are There New Rights in Cyberspace?,” November 11, 2007, <https://ssrn.com/abstract=2798298>.

¹⁹ Jemima Kiss, “An Online Magna Carta: Berners-Lee Calls for Bill of Rights for Web,” March 12, 2014, <https://www.theguardian.com/technology/2014/mar/12/online-magna-carta-berners-lee-web>.

²⁰ Human Rights Watch, “Human Rights in the Digital Age,” 2014, <https://www.hrw.org/news/2014/12/23/human-rights-digital-age>.



“Every day, there are new examples of how digital technologies play a role in undermining human rights — whether through a prime minister banning Twitter in Turkey; a death sentence for a posting on Facebook in Iran; bulk electronic surveillance of American citizens by the NSA; a court ruling on the right to be forgotten in Google searches in Europe; or a requirement that Internet users supply real names to service providers in China. This dual edge aspect of technology was conveyed well by a Tibetan human rights activist to the Toronto-based research group Citizen Lab: “Technology is this funny thing where it’s a lifeline, and then . . . maybe it’s your ticket to jail”²¹.

To tackle these problems and mitigate risk, some of the key recommendations it proposed included:

- Create a Special Rapporteur Mandate on the Right to Privacy at the UN Human Rights Council
- Contribute to Development of Multi-Stakeholder Internet Governance
- Reinforce the Conceptualization of Human Rights Protection as a National Security Priority

Gradually, all sectors picked up the conversation. From the private sector, Iberdrola published an article detailing the need for digital rights in an increasingly digital age. The article traces the origin of Digital Rights with recommendations on the proposed rights in a digital space, including, universal and equal access, freedom of expression, information and communication, privacy and data protection, right to anonymity, right to be forgotten, protection of minors, intellectual property rights²². Ranking Digital Rights²³, an independent policy think tank also advances and focuses on corporate accountability for human rights in the digital age. From the academic space, Dr. Sharath Srinivasan (Director of the University’s Centre for

²¹ Human Rights Watch.

²² Iberdrola, “Digital Rights, Essential in the Internet Age,” n.d., <https://www.iberdrola.com/innovation/what-are-digital-rights>.

²³ “Ranking Digital Rights,” Ranking Digital Rights, accessed September 2, 2022, <https://rankingdigitalrights.org/>.



Governance and Human Rights), Shoshana Zuboff (Harvard Business School), Rebekah Larsen (Ph.D. at Cambridge), and others write for the University of Cambridge about the need for human rights to protect people against privacy invasion and data leaks²⁴. In 2021, Forbes published an article²⁵ by Schuyler Moore, who is a Partner at Greenberg Glusker, where they discuss the 'clash of laws in the metaverse', and the need for a uniform mechanism to uphold rights and liberties.

Having traced the trajectory of the conversation about rights and how they relate to cyberspace, it is fair to say that this debate and discussion is not new. From the early 1990s to 2021, scholars, professionals, academics, and scientists have tried to unpack the potential of cyberspace and in doing so have discovered the various ways in which people need to be protected. Civil society efforts can be categorized into two major streams of work - advocacy orientated organizations and academic projects and think tanks.

These include efforts like the work done by Tony Blair's Institute for Global Change²⁶, Article19²⁷, Access Now²⁸, and The Association for Progressive Communications²⁹, universities including Stanford, Cambridge and others. Concrete action to uphold human rights and create a uniform system, is however absent today. Organizations including Electronic Frontier Foundation³⁰, one of the flagships in the defense of cyber-rights, a non-profit organization founded by Internet activists John Perry Barlow, Mitch Kapor, and John Gilmore, The Global Internet Governance Academic Network (GIGANet), Web We Want³¹ - A global social initiative by WWW, have been spearheading debate in the domain. However, there is still no proposal to document and

²⁴ William Ham Bevan, "Human Rights in a Digital Age," n.d., <https://www.cam.ac.uk/cammagazine/humanrightsinadigitalage>.

²⁵ Moore Schuyler, "Law In The Metaverse," December 22, 2021, <https://www.forbes.com/sites/schuylermoore/2021/12/22/law-in-the-metaverse/?sh=fcfca1c45d13>.

²⁶ Kieren McCarthy, "Revitalising Global Internet Governance" (Tony Blair Institute for Global Change, May 2022), <https://institute.global/policy/revitalising-global-internet-governance>.

²⁷ "ARTICLE 19 - Defending Freedom of Expression and Information.," ARTICLE 19, accessed September 2, 2022, <https://www.article19.org/>.

²⁸ "Access Now," Access Now, accessed September 2, 2022, <https://www.accessnow.org/>.

²⁹ "Association for Progressive Communications | Internet for Social Justice and Sustainable Development," accessed September 2, 2022, <https://www.apc.org/>.

³⁰ "Electronic Frontier Foundation," Electronic Frontier Foundation, n.d., [eff.org](https://www.eff.org/).

³¹ "Web We Want," Web We Want, n.d., <https://webwewant.org/>.



develop a bill of rights, no proposed plan of action to implement and uphold this, and no stakeholder initiative driving this conversation.

To ensure that this new public space, the cyberspace/ the metaverse, does not fall prey to existing systems of patriarchy, discrimination, disenfranchisement, racism, classism and oppression, urgent and collective action is needed to draft rights such that they are bottom-up, inclusive diverse and equitable. We have a unique moment and opportunity to shape our collective future and only through interdependent action can this mutual challenge be tackled.



APPENDIX 2

A Brief Look at Governance Systems in Cyberspace - Contemporary Efforts

Author: James Clarke-Lister

About this Research Summary

We humans increasingly live significant portions of our lives in digital spaces. Whether it's online meetings, video games, or education (E-learning), often, these spaces bear some form of a social component, that is, features that allow us to share our voices, engage with others, and express ourselves in various ways. Although in preliminary phases, one example that seems to be the most anticipated is the Metaverse. Although the Metaverse exists in various forms, it is still in its infancy; thus, it's worth considering how such spaces will form and what laws, if any, may apply.

Most, if not all, digital spaces have some formation of a fundamental set of laws, often mutually agreed upon by all participating members, even a video game like World of Warcraft has a team (that being Blizzard) that shapes the logic and rules within the game. With technological innovation exponentially maturing, it has become increasingly apparent that policy implementation and execution of efforts to apply governance systems, whether binding or non-binding or internally or on the international stage, legal legislature, and multi-lateral affairs bring forth lengthy and rather complicated processes that address cyber efforts through a human rights lens. As a result, applying governance systems to digital spaces is challenging to execute and enforce,



especially when considering the diversity of laws between nations and anonymous capacities of cyber footprints. Digital platforms, much like that of the Metaverse, lay in a pool of opportunity, yet there remains the argument that it all is happening too fast.

Like most innovative worlds, the Metaverse poses an array of possible dangers alongside benefits. There is a significant opportunity to aid in guiding the development of the Metaverse in a manner where considering current human rights guidelines, such as the UNDHR, foster human rights in digital spaces to the equivalent capacity of human rights offline and in a manner that is both transparent and inclusive. However, the latter only becomes realistic if Human Rights for all participants are at the forefront of the developmental process.

This memo does not purport to be complete or comprehensive; instead, it serves to act as a short dialogue in reviewing contemporary governance systems in cyberspace and to advocate for the implementation of governance systems, if any, to be conducted in a manner where universal human rights guide the development process.

I. Where We Are

Undoubtedly, digital transformation continues to play a significant role in our lives, both direct and indirect, for example, designing dynamic digital ecosystems that include thriving digital economies and enhancing preparedness and response for health and climate catastrophes. However, there continues to be a growing gap in accessibility to such innovation - the digital divide. Notably, Many countries recognized the impact that COVID-19



has had on the acceleration and exposure of digital transformation technology vulnerabilities, such as cyber security threats, and how such has significantly accentuated the widening of the *digital divide*, especially for marginalized individuals. The notion of the digital divide adjoins the important topic of equitable access to technologies. Access to primary resources such as the internet is a fundamental component in addressing this divide, and it is for this reason that we can see, amongst other issues, the importance of guiding digital transformation and, in particular, access to the internet, viewing the latter as a fundamental human right, and, embedded within it, specific and universally agreed upon human rights principles.

Indeed corporate entities and Nations have implemented specific ‘Cyberspace Codes of Conduct’, although many appear to have been, or are, ineffective. For example, although long ago in the realms of cyberspace, in February of 2017, the government of the Netherlands, with the support of Microsoft, the Internet Society, the EastWest Institute, and the Hague Centre for Strategic Studies, launched the Global Commission on the Stability of Cyberspace. GCSC suspended all activities after the publication of the CyberStability Paper Series in December 2021. However, there are many notable examples of more contemporary legal and advocacy work, such as the Center for Humane Technology, which advocates driving technological innovation transparently and inclusively while at the same time exposing considerable flaws in the creation process that failed to be directly addressed in a legal and governmental context. However, given the nature and thus complexity of applying governance systems to the transnational space of cyberspace, both nations and corporations, and sometimes both, come to work together to acknowledge particular technological human rights concerns, such as data privacy, freedom of speech etc. Even in light of recent



events, digital human rights appear to be a topic of discussion at all levels. For example, the holding of the UN Statement at RightsCon 2022, which took place in Los Angeles, California, and was attended to at the ministerial and presidential level in the Americas. The primary themes highlighted but are not limited to: *bridging the digital divide, protection of personal data, open and inclusive governance, cyber security, digital literacy, telemedicine, and education.*

II. Recent Examples

Another example which involves the Americas (being North and South America) was The Summit of the Americas, which is held approximately every three years and is the only event of its kind that brings together the Heads of State and Government of the Americas. The Summit traditionally provides an opportunity for active exchange among member states and civil society organizations, the private sector, Indigenous organizations, and youth from across the Hemisphere. The Summit includes discussions of shared goals and priorities and guides action by Inter-American institutions. It is a highly valued platform for countries to engage with others in the Hemisphere, and to advance foreign policy, trade and development priorities, and human rights. Although limited to the Americas, the Summit reflects similar themes presently growing within other multilateral institutions, particularly the United Nations, which embodies most legal elements and the United Nations Declaration of Human Rights. Although not exhaustive, below are recent mentions of digital transformation with a human rights focus in two recent outcome documents (*Regional Agenda for Digital Transformation and Democratic Governance*) that are becoming more at the forefront of policymaking:



Regional Agenda for Digital Transformation

Reference: CA-IX/doc.5/22

The *Regional Agenda For Digital Transformation* outcome document, as adopted by states at the Ninth Summit of the Americas on June 9, 2022, aims to build digital economies through secure, reliable communication architecture and regulatory practices. It also aims to prevent the blocking of the Internet, telecommunications infrastructure, and social media platforms while increasing cyber security and combatting cybercrime. Moreover, the essential role and collective commitment to the advancement and protection of human rights and fundamental freedoms in a digital context, quality education and digital literacy, and in the promotion of equality and digital inclusion for all peoples in cyberspace, particularly for remote and rural communities of the Americas, women and girls, persons with disabilities, and other individuals in situations of vulnerability and marginalization, regardless of their countries of origin, is necessary in light of fundamental human rights and freedoms.

Inter-American Action Plan on Democratic Governance

Reference: CA-IX/doc.5/22

The Inter-American Action Plan on Democratic Governance outcome document proposes mechanisms to strengthen democracy and human rights in the hemisphere. Areas of focus set forth in agreeance by committing parties exemplified the commitment of States to addressing the digital divide through means such as facilitating equitable access to the internet for all



individuals (streamlining internet access) and, thus, enhancing effective citizen participation and promoting the use of all relevant digital systems to ensure further and enhance governmental transparency, dissemination, public accountability, and the fight against corruption.

Other examples:

Human Rights Convention, regular session #47

Reference: HRC47

The 47th regular session of the Human Rights Council (HRC47) held from June 21 to July 13, 2021, discusses the obligations and primary responsibility of states, *as guided by the purposes and principles of the Charter of the United Nations, and enshrined in the Universal Declaration of Human Rights and relevant international human rights treaties, in the promotion, protection and enjoyment of human rights and fundamental freedoms, including the right to freedom of opinion and expression, peaceful assembly and association, digital privacy and personal data in response to health or other emergencies, while ensuring the responsibility for states to promote free, open interoperable, reliable and secure access to the internet, and that such measures, both offline and online in all digital contexts and with other information and communications technology, are in full compliance with international law and that the principles of lawfulness, legitimacy, necessity and proportionality are respected.*

Declaration of Jamaica from the Sixth Meetings of Ministers and High Authorities of Science and Technology

Reference: CISI/REMCYT-VI/DEC.1/21



The commitment of states to cooperate effectively in addressing the misuse of technology, to protect our societies from information manipulation and interference, and the regional call to action to close the digital divide and promote secure, reliable and affordable connectivity for all peoples, emphasizing access for women and girls, youth, persons with disabilities, rural and indigenous communities, and individuals within traditionally underrepresented groups or populations in vulnerable situations and/or historical marginalization.

Freedom Online Coalition

In December 2011, the Dutch Government convened a meeting in The Hague, the Netherlands, to launch the Freedom Online Coalition. The Freedom Online Coalition is a coalition of 34 states that collaborate to enhance Internet freedom, primarily through the development of global norms through Joint Statements, multistakeholder participation through their Advisory Network, and coordination of diplomatic activities and interventions at important international forums. Concerning the Internet and connected technologies, participating nations pledge to "promote the freedoms of expression, association, and peaceful assembly." They support the idea that individuals should have the same protections for their online human rights as they do for their offline ones, including the freedom to assemble, the right to form an association, and the right to privacy protection from "arbitrary" invasions. Annual gatherings of the group have taken place in The Netherlands (2011), Kenya (2012), Tunisia (2013), Estonia (2014), Mongolia (2015), Costa Rica (2016), Germany (2018), Ghana (2020), and Finland (2021). As of 2021, the group includes 34 member nations.



III. Reflecting on the State Duty to Protect

The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. States may, however, violate their commitments under international human rights law when the abuse is attributable to them or when they fail to take the necessary precautions to stop, look into, punish, and remedy abuse by private actors.

In meeting their duty to protect, States should:

- a. Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps;
- b. Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- c. Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- d. Encourage and, where appropriate, require business enterprises to communicate how they address their human rights impacts.

Three pillars of rights protection for businesses:

1. Protect against human rights violations by third parties, including business
2. Corporate responsibility to respect HR



3. Greater access by victims to effective remedy both judicial and non-judicial

In 2004, the Sub-commission of the then UN Commission on Human Rights produced a set of “Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.” The Norms essentially sought to impose as binding obligations on companies directly under international human rights law the same range of duties that states have accepted for themselves: namely, “to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights,” with the only distinctions being that states would have “primary” duties and companies would have “secondary” duties and that these responsibilities of companies would take effect within their (undefined) “spheres of influence.” This is broken down into *positive* and *negative* State obligations:

Negative obligations (negative rights) - to refrain from interference. Less controversial than positive rights

- Forbids someone from committing an action that goes against your human rights
- Some examples of negative rights are:
 - *Freedom of religion*
 - *Freedom of speech*
 - *Property rights*

And then we have *Absolute rights*: The right set out in the European Convention on Human Rights that cannot lawfully be interfered with, no matter how important the public interest in doing so might be. ‘*A right is absolute when it cannot be overridden in any circumstances, so that it can*



never be justifiably infringed and it must be fulfilled without any exceptions.' Absolute rights include freedom of thought, conscience, and religion and the prohibitions on torture, inhuman treatment or punishment, and degrading treatment or punishment. Usually, reasonable limits are placed on most rights, but it is worth noting that international human rights law recognizes few of them as 'absolute.' For example, The right to freedom from torture and other cruel, inhuman or degrading treatment or punishment [Article 7, ICCPR] is an absolute right.

Absolute rights;

- a. Cannot be limited for any reason whatsoever.
- b. No circumstance justifies a qualification or limitation of these rights.
- c. They can't be suspended or restricted even during declarations of emergencies.

There are, of course, other forms of law and rights - the above is worth mentioning to understand better the intricacies of human rights and their complexity in the real world. Of course, applying such knowledge and transferring such legal characteristics to a digital world like the Metaverse, which is transnational and the fact that it is only in its infancy, makes matters even more complex.

Furthermore, a brief investigation into governance systems and cyberspace indicates that students have predominantly been the primary contributors to these policies via papers and theses, demonstrating that perhaps it is becoming an increasingly crucial area of concern. While, for the most part, there are societal "norms and expectations," many human rights laws



continue not to be lawfully recognized in every country, which makes matters ever more-so complex. This is not to say that governmental regulation is the only hope or, on the other hand, an inevitable inaccuracy, as it is still argued whether or not governance on a political level needs to be - how such systems will look is beyond the point. Instead, it is crucial to maintain a vision that ensures respect and implementation of fundamental human rights for all online and that creations such as the Metaverse be built in a manner which is transparent and inclusive for all.

Conclusion

In order to prevent existing systems of patriarchy, discrimination, disenfranchisement, racism, classism, and oppression from taking hold in new digital, social spaces, and to protect the rights of everyone, urgent and collective action is required at all levels to advocate, create, abide by or implement universal human rights that are bottom-up, inclusive, diverse, and equitable. Indeed, due to the transnational nature of cyberspace and the Metaverse, and given the decentralization of much technological innovation, the matter is complex, to say the least. Although much work understanding the grounds on which governance systems can be applied to the transnational space of cyberspace has been largely debated for decades, what remains clear is a need for collective action which embodies shared interests of protecting human rights online as well as offline, and the world is in an early and rather unique position to influence this shared destiny.



APPENDIX 3

Some Common Elements of Constitutions

Author: Sandi Gendi

About this Research Summary

Humans increasingly live significant portions of our lives in digital spaces. Often, these spaces are social in nature. Although in preliminary phases, one primary example is the Metaverse.

The Metaverse today poses an array of dangers, and for this reason, its regulation (whether it be over-or under-regulated) is crucial to explore going forward. To safeguard the well-being of all participants in the Metaverse, we at OneShared.World see an urgent need for a Constitution or Bill of Rights to help guide the development of the Metaverse transparently and inclusively to protect all global stakeholders.

The creation of such a Constitution, therefore, requires an inclusive, democratic process to ensure that Human Rights for all participants are at the forefront of the development of the Metaverse. To help guide and inform the development of such a process, this memo addresses the following question: *What are common procedural principles or other “ground rules” of constitutions or equivalent instruments?*

This memo does not purport to be complete or comprehensive; rather, it represents a working summary of research undertaken by the author to date, some of which may require further investigation.

Some Common Elements of Constitutions

The definition of a Constitution, and the elements that make up a Constitution vary depending on each individual Nation. With that being said,



most National Constitutions, as well as International Covenants and Treaties that oblige signatory member states, contain a universal set of common guiding principles. From a comparative analysis, this Research Memorandum considers certain processes unifying national Constitutions, as well as the principles agreed to by various Member States in an international context. We propose that these common constitutional principles for generating constitutions or equivalent instruments should not only be utilized when thinking of the governance of the Metaverse, but should be increasingly relied on as we continue to see an exacerbation of power imbalances, injustices and adverse effects within the Metaverse.

Individual Nations looked at to date: Canada; United Kingdom; United States of America; South Africa; Australia; Fiji; Mongolia; Nepal

International instruments looked at to date: International Covenant on Civil and Political Rights; UN Declaration of Human Rights; International Covenant on Economic Social and Cultural Rights (International Bill of Human Rights)

International organizations looked at to date: European Union; NATO; WTO; UN; G20; ICC

It's important to note that most Constitutions or similar instruments have many elements to their structure. A typical Constitution is structured to include a preamble, identifying the aim of the Constitution and recognizes past efforts oftentimes. Followed by the preamble, the operative rights and freedoms are set out. The operative provisions are more often than not divided into procedural rights and substantive fundamental rights. At times, there may be other miscellaneous provisions which can be set out in special provisions for particular groups such as minority groups. After the operative provisions are set out, a Constitution provides for amendment or modification procedures and an implementation timetable.³²

Since the substantive fundamental rights typically enshrined in a Constitution often reflect that State's values and ideals, it tends to differ among States.

³² IDEA Constitutional Principles and Concepts
<https://www.idea.int/sites/default/files/publications/what-is-a-constitution-primer.pdf#page6>



With that being that, the procedural rights reflected in National Constitutions and those contained in equivalent international instruments are similar. A procedural rights constitution defines the legal and political system of that nation and “sets out the legal limits of government power in order to protect democratic processes and fundamental human rights.”³³ These procedural rules and guidelines allow the state’s citizens to know the parameters of their rights and navigate their rights in their legal and political institutions as set out in the written document and guiding principles. We propose that the common procedural rights sampled should lay the foundation for establishing a Constitution-like document for the Metaverse. While there are a number of common procedural rules and guidelines, this memo highlights the importance of transferring over the aforementioned procedural guidelines and laying the base for a Constitution of the Metaverse. The common procedural rules specified include the Division of Powers, and the Rule of Law.

Division of Powers

Common among the various Constitutions and equivalent international legal instruments looked at is the Divisions of Power. In addition to the typical structure of a Constitution which contains the preamble, procedural and substantive rights, these Constitutions are clear for setting the parameters for certain governmental institutions to govern. For example, the Constitution of the United States of America distinguishes between states’ jurisdiction and federal jurisdiction.³⁴ Similarly, Canada clearly sets out the powers conferred onto the federal government and the powers conferred onto the provincial governments.³⁵ Likewise, Australia distinguishes between the jurisdiction between the federal government and the various states.

This concept of the division of powers is also seen in the European Union. Member states are governed by the European Union and the ultimate rulings

³³ *Ibid*

³⁴ *The Constitution of the United States of America 1789*

(https://www.senate.gov/civics/constitution_item/constitution.htm#:~:text=Written%20in%201787%2C%20ratified%20in,exists%20to%20serve%20its%20citizens.)

³⁵ *Canadian Constitution 1867 and Canadian Constitution 1982*

(<https://laws-lois.justice.gc.ca/eng/const/>)



of the Court of Justice of the European Union (CJEU).³⁶ This, however, does not abolish the Member States' own governance system. In fact, many Member States carry legislative powers at the sub-national level, similar to that of the Canadian and American political and legal structures.³⁷ States within the European Union that exercise legislative powers best suited to be dealt with on a local level, often referred to as the subsidiarity principle, include Austria, Belgium, Finland, Germany, Italy, Portugal, Spain, etc.³⁸

This separation of powers typically consists in the form of granting jurisdiction to the different levels of government. In most commonwealth countries, including Canada, America, South Africa, and the United Kingdom, the Constitutions or guiding principles allows a State to grant powers to the Executive, Legislature and Judiciary and sets out what each level of government is responsible for.

This division of powers will be a useful guiding principle for the implementation of a constitution for the Metaverse as it will allow those who govern the Metaverse digital space to adequately represent the users with consideration of the particular interests they represent.

This concept of the division of powers has been employed, explicitly and implicitly, in the considerable Constitutions and international legal instruments that govern most of our daily lives. The concept seeks to not only protect concurrent powers of jurisdiction among federal and sub-federal levels of government in certain States, but also emphasises the importance of the 'proximity principle' which states that decisions ought to be exercised as close to the citizen as possible.³⁹ Implementing the division of powers concept in the creation of a constitution for the Metaverse will allow regulators to control decision-making powers so that decisions affecting the entirety of stakeholders are unified and equally applicable to all participants,

³⁶ *Court of Justice of the European Union*

(https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/court-justice-european-union-cjeu_en)

³⁷ *Ibid*

³⁸ <https://portal.cor.europa.eu/divisionpowers/Pages/All-countries.aspx>

³⁹ *The Principle of Subsidiarity*

(<https://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity>); P. W. Hogg, "Subsidiarity and the Division of Powers in Canada" (1993) 3 *National Journal of Constitutional Law* 341



while also accounting for local decisions that only affect a certain portion of all stakeholders.

Rule of Law

The Canadian Constitution⁴⁰ and the Dutch Constitution⁴¹ closely illustrate a procedural archetype whereby the provisions do not explicitly focus on particular policy issues. Rather, the Constitutions are based on democratic constitutionalism. Democratic constitutionalism is based on two principles: a “representative government, enabling citizens to participate in public affairs and hold their government to account” and “the protection of rights (especially the due process of law, freedom of speech and religious tolerance), through which citizens are insulated from abuses of power.”⁴²

The concept of democratic constitutionalism is inherent in various Constitutions and similar legal instruments. It represents a political structure allowing governments to represent the citizens, but at the same time, it affords those citizens an avenue to hold their governments accountable for the work they do in representing the citizens. This principle can easily be translated into a Metaverse constitution as it will allow some sort of oversight board to handle matters that are relevant to the users. However, the oversight board would only be a mechanism for ensuring that the users’ interests are protected. This is further advanced by allowing the users to hold such oversight committee accountable. Moreover, by including a Constitution that respects the nearly universal procedural rights of due process and the rule of law, the users would be able to further hold such oversight committee accountable.

The rule of law principle appears in varying degrees in almost all Constitutions and equivalent legal instruments considered. The preamble of The Constitution of the United States of America states

“We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the

⁴⁰ *Canadian Constitution Supra Note 4*

⁴¹ *Dutch Constitution 1848 and Dutch Constitution 1983*

(<https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008>)

⁴² *IDEA Constitutional Principles and Concepts Supra Note 1*



common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America”.⁴³

The preamble of The Constitution of the United States inherently reveals the procedural principle of the rule of law. The notion that every citizen, institution and organization is not above the law advances the concept of supremacy of a unifying constitution.⁴⁴

Another factor closely related to the rule of law are the principles of fundamental justice, as referred to in the Canadian context. S.7 of the Canadian Charter of Rights and Freedoms states

“Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of justice”.⁴⁵

Any governmental action, or piece of legislation or law that contradicts S.7 will be declared of no force and effect, if it is not in accordance with the principles of fundamental justice.⁴⁶ A governmental action or piece of legislation is not in accordance with the principles of fundamental justice if it is either vague, arbitrary, overbroad or grossly disproportionate.

It should be noted that this provision contained in the Canadian Constitution is both procedural and substantive in nature. In essence, if one’s procedural rights, including the right to not be tried fairly and impartially, has been invalidated, and it is not in accordance with the principles of fundamental justice, that action will be void or read down. Similarly, if one’s substantive rights, including the right to freedom of speech, has been invalidated, and it is not in accordance with the principles of fundamental justice, that action will also be void, struck out, or read down.

⁴³ *The Constitution of the United States* Supra Note 3

⁴⁴ Overview: Rule of Law

<https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law>

⁴⁵ The Principles of Fundamental Justice: The Constitution and the Common Law

<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1753&context=ohlj>

⁴⁶ *Ibid*



Another factor closely related to the rule of law is the presumption of innocence until proven guilty by law. This procedural guideline is contained in the various Constitution or similar legal instruments. This presumption of innocence contains two elements: an accused is presumed to be innocent until proven guilty beyond a reasonable doubt; and that the crown bears the onus of establishing guilt beyond a reasonable doubt.⁴⁷

The concepts of ‘independence and impartiality’ are also contained in the rule of law. These include things such as a hearing by an independent and impartial tribunal, right to representation by legal counsel, right to be present and give testimony, and more.⁴⁸

The International Covenant on Civil and Political rights, while appearing to be substantive in nature, also grants similar procedural rights closely related to the presumption of innocence. While the Covenant protects and preserves certain human rights, it also “compels governments to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”⁴⁹

The rule of law will be a necessary procedural element to include in the creation and implementation of a constitution for the Metaverse as it will enable all stakeholders and active participants to take a direct approach to addressing some of the injustices that may arise with operating in a digital environment. All stakeholders and active participants may engage with the platform knowing that no one is above the law. This may relate to other users who are participating in otherwise cyber harmful conduct, or in relation to the actors working within the digital platform who controls all information and sensitive privacy matters that may appear on the platform. Moreover, stakeholders and active users of the digital platforms will be free to engage in the digital world without fear of receiving a decision made by the oversight committee or any regulatory body that was arbitrary, vague, overbroad or even grossly disproportionate, or at least have reasonable means and grounds of accessing a legal avenue to address any decision that was arbitrary or otherwise.

⁴⁷ *R v Oakes* [1986] 1 SCR 103; *Coffin v. United States*, 156 U.S. 432 (1895)

⁴⁸ Overview: Rule of Law *Supra* Note 10

⁴⁹ <https://www.aclu.org/other/fag-covenant-civil-political-rights-iccpr>



Process for creating and generating Constitutions

While the aforementioned principles including the overarching doctrines of the division of powers and the rule of law are common procedural principles that are among the many constitutions and international legal instruments that exist, the aforementioned principles are two-fold in the sense that they are guidelines for both the creation and the implementation of Constitutions.

The following guidelines are procedural guidelines that will serve as useful and beneficial benchmarks for the sole creation of a Constitution or guiding principles for the use of the Metaverse. Certain principles that ought to be considered when creating a Constitution for the Metaverse include the notion of legal continuity, public discourse and judicial review.

Legal Continuity

While the process of creating a new Constitution is to formally and officially acknowledge the institutions and structures of self-government that a Nation has agreed upon, it risks the letting the law operate in a vacuum. The notion of legal continuity is to ensure that the citizens understand the rule of law that governs themselves. Having some legal continuity is especially important for stakeholders of the Metaverse that log in from all parts of the globe. It will be necessary to know and understand exactly what rules and procedures govern the activities of the numerous participants and stakeholders that access the digital environment.

The State of Fiji is an example where the citizens had a direct impact in ensuring legal continuity following the abrogation of its earlier 2009 constitution.⁵⁰

It is important to note that while a certain degree of legal continuity is required for the creation and implementation of a Constitution for the Metaverse, it is also recognized that the general reference of legal continuity is more nuanced when considering it within the context of the Metaverse. While it is true that legal continuity is often thought of as still maintaining an adherence to old constitutional rules and guidelines, within the context of the

⁵⁰ *Constitutional Beginnings: Making and Amending Constitutions*
<https://www.idea.int/sites/default/files/publications/constitutional-beginnings-making-amending-constitutions.pdf>



Metaverse, the notion stands as a principle that we need to have equal application and enforcement of rules and guidelines that affect all stakeholders equally no matter their nationality. Looking at legal continuity in this respect, the creation of a new constitution is likely to afford regulators greater flexibility to ensure all stakeholders support the procedures it set out.⁵¹

Public Disclosure and Engagement

“When a new constitution is made, public participation offers a mechanism for building legitimacy.”⁵² Public engagement will allow the regulators to consider all the views, perspectives and boices of all active participants or stakeholders, especially those belonging to marginalized and disenfranchised communities, of the digital platform.

Not only does public participation allow for a mechanism where voices are heard, but it will also support the notion of the Rule of Law as discussed above. The more public engagement and discourse occurs when creating the Constitution, the more likely the stakeholders will be able to hold the regulators accountable. Public discourse will enable the regulators to justify their policies to the public.

“Mechanisms for public participation may include elected or appointed citizens assemblies to discuss and advise on proposed changes, direct consultation processes such as meetings and written submissions, and wider public consultations” such as that that occurred in Mongolia, where citizens were able to discuss their issues at a public forum which was used by the Mongolian Parlioament.⁵³

Judicial Review

The role of the courts is also a complex, but necessary, tenet that is employed among many of the Constitutions or similar international legal instruments looked at. The role of the courts or similar tribunals ensures all regulators maintain the principles as discussed above including the division of powers, rule of law, and public engagement. The role of judicial review ensures that

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ *Ibid*



the decision-makers are held accountable, that no decision is arbitrary, vague, overbroad or grossly disproportionate.

A detailed look at what occurred in Nepal is a useful example to consider here. The Supreme Court of Nepal rejected the first Constituent Assembly's request to extend its tenure to make a Constitution as their delay was arbitrary. The Supreme Court stepped in to hold the first Constituent Assembly accountable, and elected a second Constituent Assembly.⁵⁴

⁵⁴ *Ibid*



APPENDIX 4

Constitution Creation Processes in Non-Metaverse Spaces

Author: Emily E. Arnold-Fernández

About this Research Summary

Humans increasingly live significant portions of our lives in digital spaces. Oftentimes, these spaces are social in nature. Although in preliminary phases, one primary example is the Metaverse. The Metaverse today poses an array of dangers, and for this reason, its regulation (whether it be over- or under-regulated) is crucial to explore going forward. To safeguard the well-being of all participants in the Metaverse, we at One Shared World see an urgent need for a Constitution or Bill of Rights to help guide the development of the Metaverse transparently and inclusively.

The creation of such a Constitution, therefore, requires an inclusive, democratic process to ensure that Human Rights for all participants are at the forefront of the development of the Metaverse. To help guide and inform the development of such a process, this memo addresses the following questions: How are constitutions in physical spaces created? What common characteristics tend to confer legitimacy in the development of constitutional instruments that create binding rules of engagement for individual and corporate denizens of a particular territory or space? It should be noted that this memo does not purport to be complete or comprehensive; rather, it represents a working summary of research undertaken by the author to date, some of which may require further investigation.

Constitution Creation Processes in Non-Metaverse Spaces

Constitutions in physical spaces have generally been compacts between a group of people who agree to be bound by a shared set of rules. With some exceptions, a constitution therefore typically is the product of a democratic or



other popular inclusive process by which a group of people determine what rules will bind them. Recent examples of national constitutional processes include:

- The Constitutional Convention in the fledgling United States after its independence from what is now the United Kingdom. Delegates to the Constitutional Convention were selected by the legislatures of each US state, whose members had been elected by popular vote among white male landholders. These delegates were responsible for drafting the original version of the US constitution.
- The Committee of Experts constitutional revision process in Kenya in 2008 to 2010, which substantially overhauled Kenya's much-amended post-colonial constitution. Experts charged with developing Kenya's revised constitution invited the public to submit their views via memoranda, which were analyzed to understand the strength of popular opinions and the breadth of divergence among them. The experts, however, were ultimately responsible for drafting Kenya's 2010 constitution, which remains substantially in place today.⁵⁵
- The election of a Constituent Assembly by plebiscite in Ecuador in 2008 to draft the country's twentieth constitution in less than 200 years.⁵⁶

Beyond national examples, other recent constitutional processes include the development of the United Nations Charter and the Universal Declaration of Human Rights:

- The United Nations Charter was developed by representatives selected by their nation-states via various means, with broader power given (including rotating chairship) to the so-called "Big Four" Allied states that had together defeated the Axis states in World War II.⁵⁷

⁵⁵ https://constitutionnet.org/sites/default/files/CoE_ProgressReport.pdf

⁵⁶ https://es.wikipedia.org/wiki/Constituci%C3%B3n_del_Ecuador_de_2008

⁵⁷ https://en.wikipedia.org/wiki/Charter_of_the_United_Nations



- The Universal Declaration of Human Rights was developed by a committee of experts from several key United Nations member states, which was selected by the UN Commission of Human Rights, a “functional commission” created under the auspices of the UN’s Economic and Social Council (one of the six principal organs of the United Nations).

While these and other physical-world processes for constitutional rulemaking vary in their precise details, we can identify a common premise: The selection of representatives with appropriate credentials or experience, usually by a process that is democratic or republican in nature, wherein the selected representatives undertake the responsibilities of proposing, debating, and negotiating a shared set of rules.

We also can identify some common principles in such processes: 1) Content is generated in an **emergent** way, building on existing beliefs; 2) Participants are **representative** of those understood as stakeholders; 3) Processes are **inclusive**. Each of these principles is discussed below.

1. Content is emergent, building on existing beliefs. Most processes of governance development or norm-setting build on existing non-codified or less-codified norms and beliefs that already exist among the participants. A basis in shared belief has generally proven critical for the effectiveness and legitimacy of norms.⁵⁸ Advocates of new or expanded rights or governance rules often begin by introducing new norms in discourse. Once such ideas have become shared beliefs or unwritten norms, they may be initially codified

⁵⁸ See, eg, Risse & Sikkink; Ali Pourghassab Amiri, “Agreements or arrangements are not enough for the protection and promotion of human rights unless there is a genuine belief in international human rights.” Amiri, Ali Pourghassab. *Development of International Human Rights Regime: An Overview*. AALCO Journal of International Law, Vol. 2, issue 1. Asian-African Legal Consultative Organization (2013). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2385447.



in non-binding or less-binding instruments before being included in instruments that create binding legal obligations.⁵⁹

2. Participants are representative of those perceived as stakeholders.

Representation of stakeholders ensures that all those to whom such governance will be applied have a voice in the development of that governance – and thus will accept it as binding.

This principle is inherent not only in formal constitutional rulemaking processes such as those described above, but also in many other norm-development settings. Stakeholder participation in the development and operation of governance systems is widely used in at least two major types of societies throughout history:

First, in small communal societies, at least some decisions are undertaken only with representation of all community members. African traditional dispute resolution mechanisms commonly referred to as “palaver” are an example of this; in its most robust form, palaver requires not only that all members of the community take part in discussion and development of laws or legal interpretation, but also that a decision is only taken once all community members reach a consensus.⁶⁰ Other examples include local governance in kibbutzim in Israel and modern-day criminal jury systems in the United States.

Second, in hierarchical societies where a group of economically- and/or politically-privileged people beyond the monarch and their family demanded a say in governance. The ancient Roman senate, in which wealthy Roman

⁵⁹ For example, the non-binding Universal Declaration of Human Rights in 1948 led to construction of the binding twin human rights covenants in 1967, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. By contrast, the Cartagena Declaration on Refugees in 1984 was never formalized into a binding agreement per se, but a series of follow-on processes have encouraged Latin American and Caribbean governments to make concrete progress toward the full realization of the principles of the Cartagena Declaration through regular Plans of Action such as the Brazil Plan in 2014.

⁶⁰ *Socio-Political Aspects of the Palaver in Some African Countries*. Paris: UNESCO and New York: UNIPUB (1979).



male landholders collectively governed, is one example; another is the emergence of the Magna Carta and similar efforts in England during the Middle Ages, granting limited rights to male nobles. In more modern times, conceptions of representation have broadened: Today, representative democracies such as those in Uruguay, Sweden, Japan, and South Africa among many others determine the laws that will govern their residents through the free election of legislators by adult citizens of all genders.⁶¹

3. Inclusiveness. Although similar to stakeholder representation, inclusiveness is the idea that barriers impeding the participation of all those affected should be actively removed. Such barriers might include anything from holding a part of the process on a workday without safeguarding employment and providing compensation for time away from work; limitations on the ease of physical or linguistic access to any part of the process; requirements to hold or present state-issued documentation such as an identity card; and myriad other barriers.

Inclusiveness is a still-emerging norm. Historically, small communal societies were more likely to be inclusive of all members. Stakeholder representation in larger governed units such as states, at least in the Global West/North, historically began with a very narrow and exclusionary definition of stakeholders and has broadened over the past millennium to include all genders and races, and to lessen the importance of property ownership. Nonetheless it remains exclusionary *de jure* on the basis of citizenship, and in many cases *de facto* on the basis of physical mobility, economic resources, and other categories.

⁶¹ See, eg, Freedom House's "Global Freedom Scores" and specifically the "Political Rights" rating of the world's countries, <https://freedomhouse.org/countries/freedom-world/scores?sort=desc&order=Political%20Rights>.