



## **African Platform on Access to Information**

### **19 September 2011**

#### **Preamble**

We, participants at the Pan African Conference on Access to Information, organised by the Windhoek+20 Campaign on Access to Information in Africa in partnership with the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the African Union Commission (AUC) and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights in Cape Town, South Africa, September 17 – 19, 2011:

**Remembering** the 1991 Windhoek Declaration on Promoting an Independent and Pluralistic African Press and viewing the significant progress that has been made in the past 20 years on freedom of expression, access to information and the free flow of information;

**Stating** that access to information (ATI) is the right of all natural and legal persons, which consists of the right to seek, access and receive information from public bodies and private bodies performing a public function and the duty of the state to prove such information;

**Emphasising** that access to information is an integral part of the fundamental human right of freedom of expression, essential for the recognition and achievement of every person's civil, political and socio-economic rights, and as a mechanism to promote democratic accountability, good governance;

**Acknowledging** that access to information is instrumental to fostering access to education and health care, gender equality, children's rights, a clean environment, sustainable development and the fight against corruption;

**Recalling** Article 19 of the Universal Declaration of Human Rights of 10 December 1948, which guarantees that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers", Article 19 of the International Covenant on Civil and Political Rights and the UN Human Rights Committee General Comment No. 34 adopted in 2011 which states that Article 19(2) of the ICCPR includes the right of access to information held by public bodies; and Article 1.2 of the UNESCO Constitution;

**Underlining** Article 9 of the African Charter on Human and Peoples' Rights adopted by the Organisation of African Unity (OAU) on 27 June 1981, which provides that, "Every individual shall have the right to receive information";

**Reaffirming** Article IV(1) of the Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples' Rights at its 32<sup>nd</sup> Ordinary Session held in October 2002, which provides that "Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law";

**Cognisant** of the African Union Convention on Preventing and Combating Corruption, the African Charter on Values and Principles of Public Service and Administration, the African Charter on Democracy, Elections and Governance, the African Youth Charter and the African Statistics Charter, all of which promote transparency in public life.

**Welcoming** the efforts of the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information in developing a Model Law for AU Member States on Access to Information, aimed at assisting Member States in formulating, adopting or reviewing access to information legislation and its implementation;

**Mindful** of the efforts of international organisations and others to develop principles and declarations on the right of access to information and freedom of expression including the 2010 Brisbane Declaration "Freedom of Information: The Right to Know", the Atlanta Declaration and African Regional Findings, the Accra Agenda for Action, the Lagos Declaration on the Right of Access to Information, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, and the Declaration of Table Mountain;

**Aware** that the World Summit on the Information Society (WSIS) brought to the forefront the importance of access to information in the modern world through the Geneva Declaration of Principles and Tunis Commitment and that the Internet Governance Forum (IGF) plays a crucial role in bringing together all of the stakeholders to facilitate an international internet governance debate that includes issues of access and openness;

**Recognising** the work of the African Union Commission to give practical expression to the various instruments of the African Union on freedom of expression and access to information, through such initiatives as the Pan African Media Network and portal, the new AU website, social networks, the media center, training programmes, ensuring media access to the AUC leadership, and publication of other information materials among others; as well as its efforts in promoting Information and Communications Technology (ICTs) in Africa;

**Encouraged** that over 90 countries around the world have adopted comprehensive national access to information laws or regulations including ten in Africa; that many countries in Africa have joined the Extractive Industries Transparency Initiative, the International Aid Transparency Initiative and the Open Government Partnership; and that the Economic Community of West African States is moving towards adoption of a binding Supplementary Act for a Uniform Legal Framework on Freedom of Expression and Right to Information;

**Concerned** that most African nations have not yet adopted comprehensive ATI laws or regulations and that significant problems remain with both the substantive provisions of many of those that have adopted laws and the full implementation of the laws;

**Acknowledging** that civil society organisations and government bodies around the world have adopted 28 September as International Right to Know Day;

**Convinced** that it is of critical importance that clear and comprehensive principles are established to guide the promotion and protection of the right of access to information in Africa through the adoption and effective implementation of appropriate national laws and regulations;

Resolve to adopt the following Principles on The Right of Access to Information:

### **Key Principles**

1. **Fundamental Right Accessible to Everyone.** Access to information is a fundamental human right, in accordance with Article 9 of the African Charter on Human and Peoples' Rights. It is open to everyone, and no one should be privileged or prejudiced in the exercise of this right on account of belonging to a class or group howsoever defined, and whether in terms of gender, class, race, political association, occupation, sexual orientation, age, nationality, HIV status, and other bases as cited in many African constitutions. It is not required that anyone must demonstrate a specific legal or personal interest in the information requested or sought or otherwise required to provide justification for seeking access to the information.

2. **Maximum Disclosure.** The presumption is that all information held by public bodies is public and as such should be subject to disclosure. Only in limited circumstances set out in these principles below may disclosure be denied.
3. **Established in Law.** The right of access to information shall be established by law in each African country. Such law shall be binding and enforceable and based on the principle of maximum disclosure. The law shall take precedence over other conflicting laws that limit access to information.
4. **Applies to Public Bodies and Private Bodies.** The obligations of ATI shall apply to all public bodies, as well as to private bodies that are owned or controlled by the government, utilise public funds, perform functions or provide services on behalf of public institutions, or have exclusive contracts to exploit natural resources (with regards to said funds, functions, services or resources), or which are in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety, or to the exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right.
5. **Clear and Unambiguous Process.** The law shall include procedures for the exercise of the right. The process to obtain information should be simple and fast and take advantage of new information and communication technologies where possible. Bodies falling under the scope of the ATI law should provide assistance to requesters in order to ensure that they receive the information they need. The information provided should be provided in a form understandable to the requestor. Information should be disclosed within a clear and reasonable deadline provided for by law. It should be available at low or no cost.
6. **Obligation to Publish Information.** Public and relevant private bodies shall be obliged to proactively release information in a timely manner about their functions, powers, structures, officials, decisions, expenditures, budgets, and other information relating to their activities that is of public interest. The dissemination should use all reasonable means of communications, including ICTs, to maximise access to all communities and sectors of society.
7. **Language and Accessibility.** To the greatest extent possible, information should be available in the language of the person seeking it, in an accessible location, in a format that is as accessible as possible, and, in particular, ensures that it is accessible to those who may be particularly affected by the subject matter of the information.
8. **Limited Exemptions.** The right of access to information shall only be limited by provisions expressly provided for in the law. Those exemptions should be strictly defined and the withholding of information should only be allowed if the body can demonstrate that there would be a significant harm if the information is released and that the public interest in withholding the information is clearly shown to be greater than the public interest in disclosure. Information can only be withheld for the period that the harm would occur. No information relating to human rights abuses or imminent dangers to public health, environment, or safety may be withheld.

9. **Oversight Bodies.** Independent bodies such as an ombudsperson or information commissioner should be established to monitor and hold government bodies and relevant private entities to account on their access to information disclosure practices, to receive and decide upon complaints, and generally oversee the implementation of the access to information legislation. The oversight body should be adequately funded.
10. **Right to Personal Data.** All persons have a right to access and correct their personal data held by third parties.
11. **Whistleblower Protection.** To ensure the free flow of information in the public interest, adequate protections against legal, administrative and employment-related sanctions should be provided for those who disclose information on wrong-doing and other information in the public interest.
12. **Right of Appeal.** Everyone has a right to appeal administratively any action that hinders or denies access to information or any failure to proactively disclose information. They have a right to further appeal to an independent body and to finally seek judicial review of all limits of their right of access to information.
13. **Duty to Collect and Manage Information.** Public and relevant private bodies have a duty to collect information on their operations and activities on behalf of their citizens. They also have a duty to respect minimum standards in relation to the management of this information to ensure that it may easily be made accessible to citizens.
14. **Duty to Fully Implement.** Public and relevant private bodies have an obligation to ensure the law is fully implemented. This includes internal procedures and processes and the designation of responsible officials.

### **Application of Principles**

These principles are essential to development, democracy, equality, and the provision of public service, and are applicable to, amongst others, the following:

1. **Enabling Environment.** Governments should ensure that the legal frameworks create an enabling environment allowing individuals, civil society organisations including trade unions, media organisations, and private businesses to fully enjoy access to information, thus fostering active participation in socio-economic life by all, in particular people living in poverty and those discriminated against or marginalised.
2. **Elections and Electoral Processes:** Governments and election management bodies have a positive obligation to provide the public with information before, during and after elections, not to interfere with media coverage, to encourage public participation and proactively publish campaign spending and contributions.
3. **Disadvantaged Communities:** Governments have a particular obligation to facilitate access to information by disadvantaged minority groups and minority language speakers, as well as

marginalised groups including women, children, rural people, the poor and persons with disabilities. Information should be available at no costs to these groups. This especially applies to information that contributes to the long-term empowerment of the groups. Governments also have an obligation to ensure equitable and affordable access to ICTs for those with special needs and for other disadvantaged persons and groups.

4. **Women:** Governments, civil society and the media have an obligation to facilitate women's equal access to information, so that they can defend their rights and participate in public life. Civil society organisations should be encouraged to make the best use of access to information mechanisms to monitor governments' fulfilment of commitments to further gender equality, to demand the enhanced delivery of services targeted at women and to ensure that the public funds they are entitled to actually reach them. The collection, management and release of information should be gender disaggregated.
5. **Children and Youth:** Governments have an obligation to encourage the mass media to disseminate information and material of social and cultural benefit to children and the youth. Governments are further encouraged to facilitate the exchange and dissemination of such information and material from a diversity of cultural, national and international sources as well as the production and dissemination of information specifically for children and youth and wherever reasonably possible facilitate and encourage access to such information by children and youth.
6. **Environmental Information:** Governments and inter-governmental organisations should increase their efforts in implementing Principle 10 of the 1992 Rio Declaration on the Environment and Development on the right of access to information, public participation and access to justice on environmental issues. Governments should adopt appropriate legislation and regulations to promote access and proactive release of environmental information, guarantee openness, fight secrecy in institutional practices, and repeal that which hinders public availability of environmental information. Governments' capacity to supply environmental information and civil society organisations' demand for such information, as well as engagement in decision-making processes and the ability to hold governments and other actors accountable for actions affecting the environment should be strengthened.
7. **Education:** Taking into account the close connection between the right of access to information and the right to education, governments have the duty to make publicly available information about educational policies and assessments of their impacts, school performance data, and budgets for education at all government levels. Governments also have a positive obligation to provide information for each school, in particular, schools' admission policies and admission lists, information on management practices, school governance, and other relevant aspects.
8. **Health:** Governments have a duty to provide access to information with a view to ensuring and improving access to health care services and enhancing accountability regarding their provision. Civil society actors should be encouraged to implement actions to expand the reach of this type of information to all sectors in society, promote the exercise of the right to information to advance the right to health and counter its violations, undertake advocacy and monitoring actions and directly involve individuals in them. Enhanced access to health-related information shall not preclude the protection of individuals' right to privacy.

9. **The Fight Against Corruption:** By contributing to openness and accountability, access to information can be a useful tool in anti-corruption efforts. Besides ensuring that access to information legislation is effectively implemented, governments have a duty to guarantee a broader legal and institutional framework conducive to preventing and combatting corruption. Civil society organisations and plural media independent of powerful political and commercial interests are critical actors in unveiling and fighting corrupt practices, and their use of access to information laws and other mechanisms enhancing transparency should be encouraged.
10. **Aid Transparency.** Governments, donors and recipients have a duty to make all information relating to development assistance including grants, loans and transfers to public and private bodies, and assessments on the use and effects of such assistance fully public in a proactive manner based on the principles of the International Aid Transparency Initiative.
11. **Natural Resources Transparency.** Governments should proactively publish all information including policies, impact assessments, agreements, subsidies, licenses, permits and revenues relating to the exploitation of natural resources including the extractive industries, water, fisheries, and forests. Private bodies which are exploiting natural resources should be required to publicly disclose the terms of such agreements and payments made to governments based on the principles developed by the Extractive Industries Transparency Initiative (EITI).
12. **Media and Information Literacy.** Governments, civil society, education institutions, and the media have an obligation to promote media and information literacy, to assist individuals and communities to ensure that all members of society can understand and take advantage of new technologies, and to be able to participate intelligently and actively in public matters, and enforce their right of access to information. Citizens should be empowered to be able to consume information critically and express their views on such information, as well as be enabled to seek corrections where applicable.
13. **Access to Information and Communications Technologies.** Governments have an obligation to (i) use ICTs and other media to ensure maximum disclosure and dissemination of information; (ii) promote and facilitate unhindered public access to such technologies for all citizens and especially for disadvantaged minority groups and minority language speakers, as well as marginalised people such as women, children, rural people, the poor and persons with disabilities.
14. **Apply in Other Spheres.** The principles stated above on the right of access to information also apply to various spheres that have not been listed.

### **Call to Action**

In light of the above, the Conference calls on:

**UNESCO to:**

- Endorse, through its General Conference, the “African Platform on Access to Information” and the proclamation of 28 September as International Right to Information Day, also recommending

the endorsement of this International Day by the United Nations General Assembly, as a date to raise awareness about the importance of the right of access to information throughout the world;

- Develop and implement internal policies facilitating access to information held by UNESCO in line with this Declaration, and to encourage the adoption of similar policies by other UN agencies.

#### **UN Economic Commission for Africa:**

- Develop as part of the RIO +20 Earth Summit a regional convention on access to environmental information, public participation and access to justice based on Principle 10 of the 1992 Rio Declaration and the UNEP Bali Guidelines.

#### **The African Union, its Organs and Institutions:**

- The African Commission on Human and Peoples' Rights to promote 28 September as African Right to Information Day;
- The African Commission on Human and People's Rights to adopt ~~use this Declaration for~~ a resolution authorising the Special Rapporteur on Freedom of Expression and Access to Information to expand Article IV of the Declaration of Principles on Freedom of Expression in Africa to incorporate the principles of this Declaration.
- The African Commission on Human and Peoples' Rights to complete and approve the proposed Africa Model Law for AU Member States on Access to Information;
- The African Union Commission to take forward this Declaration by (1) proposing to the next AU summit in January 2012 to adopt 28 September as African "Right to Information Day"; and (2) initiate an Experts Group to develop further instruments on access to information;
- The Pan-African Parliament (PAP) to endorse this Declaration;
- All African Union bodies to promote the respect of the principles in this Declaration by national governments and provide assistance in implementing them;
- The New Partnership for African Development (NEPAD) to adopt the revised African Peer Review Mechanism (APRM), which includes transparency and access to information;
- The African Union should develop and implement internal policies on access to information held by AU bodies based on this Declaration.

#### **Other African Regional Organizations and Institutions:**

- All Regional Economic Communities (RECs) should develop internal policies on access to information held by those bodies based on this Declaration;
- ECOWAS to review and adopt the Supplementary Act for a Uniform Legal Framework on Freedom of Expression and Right to Information in West Africa;
- The Southern African Development Community (SADC) to revise the Protocol on Culture, Information and Sport to include principles on access to information;
- Inter-governmental Agency on Development (IGAD) to develop and adopt a Protocol on access to information based on this Declaration;

- The East African Community (EAC) to develop and adopt a Protocol on access to information based on this Declaration;
- The African Development Bank (ADB) to adopt a revised public access policy based on the Transparency Charter for International Financial Institutions.

**National Governments of AU member states to:**

- Adopt or revise existing comprehensive laws on access to information in line with the principles in this Declaration and the proposed AU Model Law, and fully implement them;
- Harmonise legal frameworks to ensure access to information including repealing or revising antiquated laws which restrict access and ensuring that new laws are compatible with the ATI principles;
- Engage with civil society and other stakeholders to ensure widespread information demand and effective implementation of laws and policies to advance access to information by all persons, especially marginalised groups.
- Join and implement multi-stakeholder efforts including the Extractive Industries Transparency Initiative (EITI), the Construction Sector Transparency Initiative (CoST) and the Medicines Transparency Alliance (MeTA) to further transparency;
- Promote availability of public domain information through ICTs and public access to ICTs;
- Support AU efforts to adopt an instrument on access to information;
- Officially recognise 28 September as International and African “Right to Information Day”;
- Adopt and effectively implement legislation and policies ensuring whistleblower-protection.

**Civil Society to:**

- Engage with governments in developing, enhancing and implementing ATI laws;
- Monitor progress on the implementation of ATI laws including sectoral laws;
- Create awareness on ATI and provide assistance to facilitate information access by the general public as well as by specific audiences (including women, minority groups and minority language speakers, children, rural communities, individuals with disabilities or living in poverty);
- Ensure transparency in their own activities;
- Promote September 28 as African and International Right to Information Day and, in particular, carry out activities on that date every year to advance the recognition, awareness and enjoyment of the right of access to information by all sectors of society.

**Media to:**

- Respect editorial independence, professional ethics and journalism standards in their provision of information;
- Recognise the need for transparency and accountability with regard to their own output and institutions, while safeguarding the principal of protecting sources;
- Respect and promote equality, and provide equitable representation within their information output;
- Promote the widest possible access to their information output;
- Enhance mechanisms for audience participation and response;
- Recognise and be responsive to gender differences in regard to audience and market research;



- Popularise the importance of, and issues around, access to information.
- Make optimum use of ATI laws to access information for the public interest.

**Business Sector Companies and Corporations to:**

- Join multi-stakeholder initiatives promoting transparency including EITI, CoST and MeTA;
- Adopt corporate and social responsibility (CSR) policies that promote transparency and accountability, including access to information and protection of whistleblowers;
- Proactively disclose information of public interest including on pollution releases and other environmental issues;
- Support government and CSO efforts to improve access to information in society.

**Public and Private Donors to:**

- Ensure that all information relating to the use of development assistance and its effects are made public;
- Ensure that all information relating to development assistance is made available in conformity with the International Aid Transparency Initiative (IATI) standards;
- Encourage and support governments in the adoption and full implementation of access to information laws and policies;
- Support civil society and governments' efforts to promote access to information.

*Adopted in Cape Town, South Africa, on this 19th Day of September 2011 upon a motion for adoption moved by Advocate Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights, and seconded by Hon. Norris Tweah, Deputy Minister of Information of the Republic of Liberia.*