

African Platform on Access to Information

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Preamble

We, participants at the Pan African Conference on Access to Information in Africa, 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:

Stating that access to information (ATI) is the right of all natural and legal persons, which implies the right to seek, access and obtain information from public bodies and private bodies acting in a public domain;

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, and 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";

Observing the UN Human Rights Committee General Comment No. 34 adopted in 2011 which states that Article 19 (2) of the International Covenant on Civil and Political Rights includes the right of access to information held by public bodies and that the right includes the right of the media to have access to information on public affairs, and the right of the general public to receive media output. It also states that all states parties should proactively put in the public domain Government information of public interest and create mechanisms through law to facilitate the obtaining of information from authorities.

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 32nd 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";

Underscoring Article 9 of the African Union Convention on Preventing and Combating Corruption, adopted on 11 July 2003, which states that "Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required

to assist in the fight against corruption and related offences” and Article 12, which requires nations to engage with civil society and the media to promote transparency and provide information to the media relating to corruption;

Bearing in mind the African Charter on Democracy, Elections and Governance, adopted on 30 January 2007, whose objective, according to Article 2(10), includes to: “Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs”;

Cognisant of the African Charter on Values and Principles of Public Service and Administration, adopted on 31 January 2011, which in Article 6 provides *inter alia* that public service and administration shall establish effective communication systems and processes to inform the public about service delivery, to enhance access to information by users, as well as to receive their feedback and inputs;

Encouraged by 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” adopted in the context of UNESCO’s celebration of World Press Freedom Day in 2010, the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information, the Accra Agenda for Action, the African Regional Findings and Plan of Action for the Advancement of the Right of Access to Information, 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 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

Acknowledging the efforts of the African Union Commission in promoting Information and Communications Technology (ICTs) in Africa.

Recalling 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;

Aware that over 90 countries around the world have adopted comprehensive access to information laws or regulations; that many countries in Africa have joined the Extractive Industries Transparency Initiative; and that the Economic Community of West African States (ECOWAS) is

moving towards adoption of a binding Supplementary Act for a Uniform Legal Framework on Freedom of Expression and Right to Information;

Concerned that only nine African nations have adopted comprehensive ATI laws or regulations and that significant problems remain with both the substantive provisions on many of those laws and implementation in those nations;

Cognisant that questions around “whose information” and “who has access to information” highlight problems in society that need to be addressed in terms of equality of access.

Recognising that civil society organisations 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 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 has to 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 (i.e. the private business sector as well as civil society organisations) that utilise public funds, perform public functions, provide public services or exploit public resources (with regards to said funds, functions, services or resources), or which are in possession of information which is of significant public interest or where the release of such information is needed for exercising or protecting other rights.

5. **Clear and Unambiguous Process.** The law shall include procedures for the exercise of the right. The process to obtain information should be simple, fast and at low or no cost 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.
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, and in a format that is as accessible as possible.
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. Exemptions shall be overridden when the public interest in disclosure outweighs any harm. Information can only be withheld for the period that the harm would occur. No information relating to public interest, such as about human rights abuses, corruption, or imminent dangers to public health or safety, may be withheld. Privacy can be a legitimate limitation on access to information except when over-ridden by public interest.
9. **Right to Personal Data**
All persons have a right to access and correct their personal data held by third parties.
10. **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, in accordance with Principle IV (2) of the Declaration of Principles on Freedom of Expression in Africa.
11. **Right of Appeal.** Everyone has a right to appeal administratively any refusals of access to information requests (and failure to proactively disclose information?), to further appeal to an independent body and to seek judicial review of all denials of their right of access to information.

12. **Duty to Collect and Manage Information.** Public and relevant private bodies have a duty to collect and manage information on their operations and activities on behalf of their citizens. This includes procedures for ensuring that the information is easily accessible.

13. **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. An independent body such as an ombudsman or commissioner should be established to monitor and ensure implementation.

Application of Principles

These principles are essential to development, democracy 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 civil society organisations, media organisations, private businesses and individual women and men 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. Independent bodies should put in place mechanisms to monitor and hold governments to account on their access to information disclosure practices.
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 further obligation to provide information to disadvantaged minority groups and minority language speakers, as well as marginalised people such as women, children, rural people, the poor and persons with disabilities. This especially applies to information that contributes to the long-term empowerment of people. Governments also have an obligation to ensure equitable and affordable access to ICTs for those with special needs and for other disadvantaged persons.
4. **Women:** Governments, civil society and media should facilitate women's access to information, thereby contributing to promote and defend their rights and participation in public life. Civil society organisations should 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 are received. The collection, management and release of information should reflect gender distinctions where relevant.
5. **Children:** Pursuant to Article 17 of the United Nations Convention on the Rights of the Child, Governments have an obligation to encourage the mass media to disseminate information and material of social and cultural benefit to the child. 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.

6. **Environmental Information:** Governments and international 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. They should adopt appropriate legislation and regulations and repeal that which hinders public availability of environmental information, guarantee openness and fight secrecy in institutional practices. Actions should be encouraged to strengthen governments' capacity to supply environmental information and civil society organisations' demand for such information, engagement in decision-making processes and the ability to hold governments and other actors accountable for actions affecting the environment.
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 their impact on individuals' lives, school performance data, 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:** It is the duty of governments to facilitate information allowing for improved access to health care services and enhanced accountability regarding their provision. Civil society actors should 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, it is a duty of governments 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.** All information relating to development assistance including grants, loans and transfers to public and private bodies and the use and effects of such assistance should be made fully public in a proactive manner.
11. **Natural Resources Transparency.** Governments should publish all information including agreements and revenues relating to extractive industries, fisheries, forests and other natural resources. Private bodies which are exploiting natural resources should be required to 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 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.

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 Access 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 in line with this Declaration, and to encourage the adoption of similar ones by other UN agencies.

The African Union, its Organs and Institutions:

- The African Commission on Human and Peoples’ Rights to promote 28 September as African Access to Information Day;
- The African Commission on Human and Peoples’ Rights to use this Declaration for a resolution authorising the Special Rapporteur on Freedom of Expression and Access to Information to extend the information provisions of the Declaration of Principles on Freedom of Expression in Africa.
- 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 “Access to Information Day”; and (2) initiate an Experts Group to develop an instrument 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 revise the African Peer Review Mechanism (APRM) criteria to include transparency and access to information in line with this Declaration;
- The African Union should develop and implement internal policies on access to information based on this Declaration.

Other African Regional Organizations and Institutions:

- All Regional Economic Communities (RECs) should develop internal policies on access to information 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;
- 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 principles and the standards set out by the Global Transparency Initiative.

National Governments of AU member states to:

- Adopt 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;
- Engage with civil society and other stakeholders to ensure widespread information demand and effective implementation of laws and policies to advance access to information;
- 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 “Access 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;
- Create awareness on ATI and provide assistance to facilitate information access by the general public as well as by specific audiences (including minority groups and

minority language speakers, women, children, rural communities, individuals with disabilities or living in poverty);

- Ensure transparency in their own activities;
- Promote September 28 as African and International Access 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 professional ethics and journalism standards in their provision of information;
- Respect 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 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 efforts to promote access to information.