

# African Commission on Human and Peoples' Rights



## DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

ADOPTED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS  
AT ITS 65<sup>TH</sup> ORDINARY SESSION  
HELD FROM 21 OCTOBER TO 10 NOVEMBER 2019  
IN BANJUL, THE GAMBIA

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## **Introduction**

The Declaration of Principles of Freedom of Expression and Access to Information in Africa (the Declaration) was adopted by the African Commission on Human and Peoples' Rights (the African Commission) at its 65<sup>th</sup> Ordinary Session which was held from 21 October to 10 November 2019 in Banjul, The Gambia. The Declaration was prepared pursuant to Article 45 1 of the African Charter on Human and Peoples' Rights (the African Charter) which requires the African Commission to promote human and peoples' rights, among others, by formulating and laying down principles and rules to solve legal problems relating to human and peoples' rights and fundamental freedoms upon which African States may base their legislation.

The Declaration establishes or affirms the principles for anchoring the rights to freedom of expression and access to information in conformance with Article 9 of the African Charter which guarantees individuals the right to receive information as well as the right to express and disseminate information. The Declaration therefore forms part of the soft-law corpus of Article 9 norms developed by the African Commission, including the Model Law on Access to Information for Africa as well as the Guidelines on Access to Information and Elections in Africa, adopted by the Commission, respectively, in 2013 and 2017.

This Declaration replaces the Declaration of Principles on Freedom of Expression in Africa which the African Commission had adopted in 2002. The 2002 Declaration elaborated on the scope and content of Article 9 of the African Charter. Yet, over the last two decades, major pertinent issues emerged which were addressed insufficiently. This was notably the case in relation to access to information and the interface between Article 9 rights and the internet.

Consequently, initially in 2012 and then again in 2016, the African Commission decided to modify the 2002 Declaration to include access to information while also taking note of developments in the internet age. Hence, this Declaration consolidates developments on freedom of expression and access to information guided by hard-law and soft-law standards drawn from African and

international human rights instruments and standards, including the jurisprudence of African judicial bodies.

Preparation of this Declaration was led by the Special Rapporteur on Freedom of expression and Access to Information in Africa, who worked closely with stakeholders from State and non-State actors to generate the concept for and to prepare the Declaration. Drafting was spearheaded by a Technical Drafting Team constituted by a team of 15 individuals drawn to cover relevant Article 9 themes as well as various legal traditions on the continent. Technical meetings were held in Nouakchott, Mauritania, on 22 April 2018; Mombasa, Kenya, from 11 to 12 October 2018, and again from 28 to 29 March 2019; and Pretoria, South Africa, from 30 September to 01 October 2019.

Consultations to validate the Declaration were launched at a panel discussion on the Declaration held on 29 April 2019 at the 64th Ordinary Session of the African Commission, in Sharm-el-Sheikh, Egypt. During May and June 2019, State and non-State actors were invited through a public call to provide feedback; and a similar specific call was sent to each State Party to the African Charter. Validation workshops were also held covering State and non-State representatives in Maputo, Mozambique, from 11 to 12 July 2019; Windhoek, Namibia, from 19 to 20 September 2019; and Banjul, The Gambia, from 18 to 19 October 2019.

Part I of this Declaration establishes the general principles which apply to the whole Declaration. Part II sets out principles on freedom of expression, while Part III sets out principles on access to information. Part IV addresses freedom of expression and access to information on the internet. Part V establishes principles on the Declaration's implementation.

The Special Rapporteur wishes to thank all State and non-State stakeholders who participated in the preparation of this Declaration by making contributions to the approach and content of the Declaration. He also thanks all those who provided technical or financial support to the process, including the Technical Drafting Team.

The Special Rapporteur trusts that this Declaration will anchor

the promotion, protection and interpretation of Article 9 of the African Charter at the continental, regional and municipal levels and within the executive, legislative and judicial branches as well as amongst the non-State sector, including the media, civil society and indeed the public generally.

**Lawrence Murugu Mute**  
**Special Rapporteur on Freedom of Expression and**  
**Access to Information in Africa**  
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# DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

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## **Preamble**

*The African Commission on Human and Peoples' Rights (African Commission):*

**Affirming** its mandate to promote human and peoples' rights in accordance with Article 45 of the **African Charter on Human and Peoples' Rights** (the African Charter);

**Recalling** Resolution 222 (ACHPR/Res.222 (LI) 2012) calling on the African Commission to modify the **Declaration of Principles on Freedom of Expression in Africa** of 2002 (the Declaration) to include access to information, Resolution 350 (ACHPR/Res.350 (EXT.OS/XX) 2016) mandating the African Commission to revise the Declaration and Resolution 362 (ACHPR/Res.362 (LIX) 2016) requesting the Special Rapporteur on Freedom of Expression and Access to Information in Africa to take note of developments in the internet age during the revision of the Declaration;

**Recognizing** the need to revise the Declaration to consolidate developments on freedom of expression and access to information, including by taking account of African Union treaties and soft law standards, the emerging jurisprudence of judicial and quasi-judicial organs of the African Union, as well as the need for the elaboration of the digital dimensions of both rights;

**Reaffirming** the fundamental importance of freedom of expression and access to information as individual human rights, as cornerstones of democracy and as means of ensuring respect for other human rights;

**Recalling** that freedom of expression and access to information are fundamental human rights guaranteed by Article 9 of the African Charter, and that those rights are also affirmed in the **African Charter on the Rights and Welfare of the Child**, the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa**, the **African Union Convention on Preventing and Combating Corruption**, the **African Charter on Statistics**, the **African Youth Charter**, the **African Charter on Democracy, Elections and Governance**, the **African Charter on Values and Principles of Public Service and Administration**, and



the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**;

**Noting** the adoption by the African Commission of relevant soft law standards, such as the **Model Law on Access to Information for Africa** of 2013 and the **Guidelines on Access to Information and Elections in Africa** of 2017;

**Noting** further the adoption of the **African Union Convention on Cyber Security and Personal Data Protection**;

**Recognizing** that the **Universal Declaration of Human Rights** and the **International Covenant on Civil and Political Rights** as well as other international instruments and national constitutions also guarantee the rights to freedom of expression and access to information;

**Conscious** that freedom of expression and access to information are cross-cutting rights that are important for the realization of all other human rights, including socio-economic rights, and of the potential of both rights to contribute to the socio-economic transformation of the continent;

**Recognizing** the need to protect and promote the right to freedom of expression and access to information of marginalized groups and groups that face multiple discrimination, including women, children, persons with disabilities, older persons, sexual and gender minorities, refugees and internally displaced persons;

**Desiring** to promote the free flow of information and ideas and greater respect for the rights to freedom of expression and access to information;

**Noting** that local languages are critical in optimizing the realization of access to information by communities and for the effective realization of freedom of expression;

**Considering** the key role of the media and other means of communication in ensuring full respect for the right to freedom of expression, promoting the free flow of information and ideas, assisting individuals in making informed decisions and facilitating and strengthening democracy;

**Aware** of the particular importance of broadcast media in Africa, given its capacity to reach a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy;

**Recognizing** the role of new digital technologies in the realization of the rights to freedom of expression and access to information and the role of open government data in fostering transparency, efficiency and innovation;

**Affirming** that the same rights that people have offline should be protected online and in accordance with international human rights law and standards;

**Acknowledging** that the exercise of the rights to freedom of expression and access to information using the internet are central to the enjoyment of other rights and essential to bridging the digital divide;

**Conscious** that freedom of expression and privacy are mutually reinforcing rights that are essential for human dignity and the overall promotion and protection of human and peoples' rights;

The African Commission adopts the **Declaration of Principles on Freedom of Expression and Access to Information in Africa** to replace the Declaration on Principles of Freedom of Expression in Africa of 2002.

## **Part I: General Principles**

### **Principle 1. Importance of the rights to freedom of expression and access to information**

1. Freedom of expression and access to information are fundamental rights protected under the African Charter and other international human rights laws and standards. The respect, protection and fulfilment of these rights is crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights.
2. States Parties to the African Charter (States) shall create an enabling environment for the exercise of freedom of expression and access to information, including by ensuring protection against acts or omissions of non-State actors that curtail the enjoyment of freedom of expression and access to information.

### **Principle 2. Non-interference with freedom of opinion**

Freedom of opinion, including the right to form and change all forms of opinion at any time and for whatever reason, is a fundamental and inalienable human right indispensable for the exercise of freedom of expression. States shall not interfere with anyone's freedom of opinion.

### **Principle 3. Non-discrimination**

Everyone shall have the rights to exercise freedom of expression and access to information without distinction of any kind, on one or more grounds, including race, ethnic group, colour, sex, language, religion, political or any other opinion, political association, national and social origin, birth, age, class, level of education, occupation, disability, sexual orientation, gender identity or any other status.

### **Principle 4. Most favourable provision to prevail**

Where a conflict arises between any domestic and international human rights law, the most favourable provision for the full exercise of the rights to freedom of expression or access to information shall prevail.

**Principle 5. Protection of the rights to freedom of expression and access to information online**

The exercise of the rights to freedom of expression and access to information shall be protected from interference both online and offline, and States shall interpret and implement the protection of these rights in this Declaration and other relevant international standards accordingly.

**Principle 6. Protection of human rights defenders and others**

The protections accorded to journalists and other media practitioners in this Declaration shall apply, as necessary, to every human rights defender and any other individual or group exercising their rights to freedom of expression and access to information through any medium.

**Principle 7. Specific measures**

States shall take specific measures to address the needs of marginalised groups in a manner that guarantees the full enjoyment of their rights to freedom of expression and access to information on an equal basis with others. Marginalised groups include women, children, persons with disabilities, older persons, refugees, internally displaced persons, other migrants, ethnic, religious, sexual or gender minorities.

**Principle 8. Evolving capacities of children**

States shall recognise and respect the evolving capacities of children, and shall take measures that enable children, including adolescents, to exercise the rights to freedom of expression and access to information. In all such actions, the best interest of the child shall be a primary consideration.

**Principle 9. Justifiable limitations**

1. States may only limit the exercise of the rights to freedom of expression and access to information, if the limitation:
  - a. is prescribed by law;
  - b. serves a legitimate aim; and
  - c. is a necessary and proportionate means to achieve the stated aim in a democratic society.
2. States shall ensure that any law limiting the rights to freedom of

expression and access to information:

- a. is clear, precise, accessible and foreseeable;
  - b. is overseen by an independent body in a manner that is not arbitrary or discriminatory; and
  - c. effectively safeguards against abuse including through the provision of a right of appeal to independent and impartial courts.
3. A limitation shall serve a legitimate aim where the objective of the limitation is:
- a. to preserve respect for the rights or reputations of others; or
  - b. to protect national security, public order or public health.
4. To be necessary and proportionate, the limitation shall:
- a. originate from a pressing and substantial need that is relevant and sufficient;
  - b. have a direct and immediate connection to the expression and disclosure of information, and be the least restrictive means of achieving the stated aim; and
  - c. be such that the benefit of protecting the stated interest outweighs the harm to the expression and disclosure of information, including with respect to the sanctions authorised.

## **PART II: Right to Freedom of Expression**

### **Principle 10. Guarantee of freedom of expression**

Freedom of expression, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art or through any other form of communication or medium, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

### **Principle 11. Media diversity and pluralism**

1. State or private monopoly over print, broadcast and online media is not compatible with the right to freedom of expression.
2. State and government-controlled broadcasters shall be transformed into public service broadcasters, accountable to the public through the legislature or other mechanism for public accountability.
3. States shall take positive measures to promote a diverse and pluralistic media, which shall facilitate:

- a. the promotion of free flow of information and ideas;
- b. access to media and other means of communication, including by marginalised groups, linguistic and cultural minorities;
- c. access to non-discriminatory and non-stereotyped information;
- d. access to the media by poor and rural communities, including by subsidising household costs associated with digital migration;
- e. The promotion of transparency and diversity in media ownership;
- f. The promotion of local and African languages, content and voices; and
- g. The promotion of the use of local languages in public affairs, including by the executive, legislature and the judiciary.

**Principle 12. Media independence**

1. States shall guarantee the right to establish various forms of independent media, including print, broadcast and online media.
2. Any registration system for media shall be for administrative purposes only, and shall not impose excessive fees or other restrictions on the media.
3. States shall develop regulatory environments that encourage media owners and media practitioners to reach agreements to guarantee editorial independence and to prevent commercial and other considerations from influencing media content.

**Principle 13. Public service media**

1. States shall establish public service media governed by a transparently constituted and diverse board adequately protected against undue interference of a political, commercial or other nature.
2. The senior management of public service media shall be appointed by and accountable to the board.
3. The editorial independence of public service media shall be guaranteed.
4. Public service media shall be adequately funded in a manner that protects them from undue interference.
5. Public service broadcasters shall ensure that their transmission systems cover the whole territory of the State.

6. The public service ambit of public broadcasters shall be clearly defined and include an obligation to ensure that the public receive adequate and politically balanced information, particularly during election periods.

#### **Principle 14. Private media**

1. States shall promote a diverse private media as vehicles for the development and dissemination of a variety of content in the public interest.
2. States shall encourage broadcast, print and online media to publicly disclose all forms of media ownership and any subsequent acquisitions or change in ownership.
3. States shall establish an independent regulatory body to issue broadcasting licenses and to oversee the observance of license conditions.
4. States shall ensure that licensing processes for private media are fair and transparent, and promote diversity in broadcasting by:
  - a. mandating full public disclosure of all forms of media ownership and any subsequent acquisitions or change of ownership; and
  - b. taking preventive measures against the undue concentration of private broadcasting ownership, including through non-award of licenses and non-approval of subsequent acquisitions or change of ownership.
  - c. States shall ensure that the process of frequency allocation for private broadcasting use is fair and transparent.
5. States shall ensure that the process for the acquisition of broadcasting rights imposes such conditions as are necessary for ensuring diversity in the private broadcasting sector.
6. States shall encourage private broadcasting services to promote interoperability of platforms and facilities.

#### **Principle 15. Community media**

1. States shall facilitate the establishment of community media as independent non-profit entities, with the objective of developing and disseminating content that is relevant to the interests of geographic communities or communities sharing common interests such as language and culture.
2. The regulation of community broadcasting shall be governed in

accordance with the following principles:

- a. The ownership, management and programming of community broadcasters shall be representative of the community.
- b. Licensing processes shall be simple, expeditious and cost effective, and guarantee community participation.
- c. Licensing requirements shall fulfil the objectives of community broadcasting and shall not be prohibitive.
- d. States shall allocate a fixed percentage of available radio frequency spectrum to community broadcasters to encourage diversity.

**Principle 16. Self-regulation and co-regulation**

1. States shall encourage media self-regulation which shall be impartial, expeditious, cost-effective, and promote high standards in the media.
2. Codes of ethics and conduct shall be developed by the media through transparent and participatory processes and shall be effectively implemented to ensure the observance of the highest standards of professionalism by the media.
3. Co-regulation may also be encouraged by States as a complement to self-regulation, founded on informed collaboration between stakeholders including the public regulatory authority, media and civil society.

**Principle 17. Regulatory bodies for broadcast, telecommunications and the internet**

1. A public regulatory authority that exercises powers in the areas of broadcast, telecommunications or internet infrastructure shall be independent and adequately protected against interference of a political, commercial or other nature.
2. The appointment process for members of a public regulatory body overseeing broadcast, telecommunications or internet infrastructure shall be independent and adequately protected against interference. The process shall be open, transparent and involve the participation of relevant stakeholders.
3. Any public regulatory authority that exercises powers in broadcast, telecommunications or internet infrastructure shall be accountable to the public.
4. A multi-stakeholder model of regulation shall be encouraged to



develop shared principles, rules, decision-making procedures and programmes to shape the use and evolution of the internet.

5. The powers of regulatory bodies shall be administrative in nature and shall not seek to usurp the role of the courts.

#### **Principle 18. Complaints**

1. Public complaints systems for print, broadcast, online media and internet intermediaries shall be widely accessible and determined in accordance with established rules and codes of conduct.
2. Any regulatory body established to adjudicate complaints about media content shall be protected against political, commercial or any other undue interference.

#### **Principle 19. Protection of journalists and other media practitioners**

1. The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.
2. Journalists and other media practitioners shall be free to organise themselves into unions and associations.

#### **Principle 20. Safety of journalists and other media practitioners**

1. States shall guarantee the safety of journalists and other media practitioners.
2. States shall take measures to prevent attacks on journalists and other media practitioners, including murder, extra-judicial killing, torture and other forms of ill-treatment, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, threats and unlawful surveillance undertaken by State and non-State actors.
3. States shall take measures to raise the awareness and build the capacities of journalists and other media practitioners, policy makers and other stakeholders on laws and standards for ensuring the safety of journalists and other media practitioners.
4. States shall take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners, and ensure that victims have access to effective remedies.

5. States shall be liable for the conduct of law enforcement, security, intelligence, military and other personnel which threatens, undermines or violates the safety of journalists and other media practitioners.
6. States shall take specific measures to ensure the safety of female journalists and media practitioners by addressing gender-specific safety concerns, including sexual and gender-based violence, intimidation and harassment.
7. In times of armed conflict, States shall respect the status of journalists and other media practitioners as non-combatants in accordance with international humanitarian law.

#### **Principle 21. Protecting reputations**

1. States shall ensure that laws relating to defamation conform with the following standards:
  - a. No one shall be found liable for true statements, expressions of opinions or statements which are reasonable to make in the circumstances.
  - b. Public figures shall be required to tolerate a greater degree of criticism.
  - c. Sanctions shall never be so severe as to inhibit the right to freedom of expression.
2. Privacy and secrecy laws shall not inhibit the dissemination of information of public interest.

#### **Principle 22. Criminal measures**

1. States shall review all criminal restrictions of content to ensure that they are justifiable and compatible with international human rights law and standards.
2. States shall repeal laws that criminalise sedition, insult and publication of false news.
3. States shall amend criminal laws on defamation and libel in favour of civil sanctions which must themselves be necessary and proportionate.
4. The imposition of custodial sentences for the offences of defamation and libel are a violation of the right to freedom of expression.
5. Freedom of expression shall not be restricted on public order or

national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

**Principle 23. Prohibited speech**

1. States shall prohibit any speech that advocates for national, racial, religious or other forms of discriminatory hatred which constitutes incitement to discrimination, hostility or violence.
2. States shall criminalise prohibited speech as a last resort and only for the most severe cases. In determining the threshold of severity that may warrant criminal sanctions, States shall take into account the:
  - a. prevailing social and political context;
  - b. status of the speaker in relation to the audience;
  - c. existence of a clear intent to incite;
  - d. content and form of the speech;
  - e. extent of the speech, including its public nature, size of audience and means of dissemination;
  - f. real likelihood and imminence of harm.
3. States shall not prohibit speech that merely lacks civility or which offends or disturbs.

**Principle 24. Economic measures**

1. States shall promote a conducive economic environment in which all media can flourish, including through the adoption of policies for the provision of financial or other public support for the sustainability of all media through a fair, neutral, independent and transparent process, and based on objective criteria.
2. States shall ensure that the allocation of funds for public advertising is transparent and subject to public accountability, and they shall not abuse their power over the placement of public advertising.
3. States shall adopt effective measures to avoid undue concentration of media ownership, whether horizontal or vertical. Such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

### **Principle 25. Protection of sources and other journalistic material**

1. Journalists and other media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except where disclosure has been ordered by a court after a full and fair public hearing.
2. The disclosure of sources of information or journalistic material as ordered by a court shall only take place where:
  - a. the identity of the source is necessary for the investigation or prosecution of a serious crime or the defence of a person accused of a criminal offence;
  - b. the information or similar information leading to the same result cannot be obtained elsewhere; and
  - c. the public interest in disclosure outweighs the harm to freedom of expression.
3. States shall not circumvent the protection of confidential sources of information or journalistic material through the conduct of communication surveillance except where such surveillance is ordered by an impartial and independent court and is subject to appropriate safeguards.

## **Part III: Right of Access to Information**

### **Principle 26. The right of access to information**

1. The right of access to information shall be guaranteed by law in accordance with the following principles:
  - a. Every person has the right to access information held by public bodies and relevant private bodies expeditiously and inexpensively.
  - b. Every person has the right to access information of private bodies that may assist in the exercise or protection of any right expeditiously and inexpensively.
2. For the purpose of this part, a relevant private body is a body that would otherwise be a private body but is owned partially or totally, or is controlled or financed directly or indirectly by public funds, or a body that carries out a statutory or public function or a statutory or public service.

### **Principle 27. Primacy**

Access to information laws shall take precedence over any other laws

that prohibit or restrict the disclosure of information.

**Principle 28. Maximum disclosure**

The right of access to information shall be guided by the principle of maximum disclosure. Access to information may only be limited by narrowly defined exemptions, which shall be provided by law and shall comply strictly with international human rights law and standards.

**Principle 29. Proactive disclosure**

1. Public bodies and relevant private bodies shall be required, even in the absence of a specific request, to proactively publish information of public interest, including information about their functions, powers, structure, officials, decisions, budgets, expenditure and other information relating to their activities.
2. Proactive disclosure by relevant private bodies shall apply to activities for which public funds are utilised or public functions or services are performed.
3. Information required to be proactively disclosed shall be disseminated through all available mediums, including digital technologies. In particular, States shall proactively publish information in accordance with internationally accepted open data principles.

**Principle 30. Duty to create, keep, organise and maintain information**

Public bodies, relevant private bodies and private bodies shall create, keep, organise and maintain information in a manner that facilitates the exercise of the right of access to information.

**Principle 31. Procedure for accessing information**

1. Access to information shall be granted as expeditiously and inexpensively as possible, and in accessible formats and technologies.
2. No one shall be required to demonstrate a specific legal or personal interest in the information requested or to provide justification for a request.
3. Every person shall be assisted in making requests for

information orally or in writing and in conformity with processing requirements. Appropriate support shall be provided to non-literate persons and persons with disabilities to make requests for information on an equal basis with others.

4. No fees shall be payable other than the reasonable reproduction cost of requested information. The cost of reproduction shall be waived where the requester is indigent.
5. Any refusal to disclose information shall be provided timeously and in writing, and it shall be well-reasoned and premised on international law and standards.

### **Principle 32. Appeals**

Any refusal to disclose information shall be subject to an expeditious internal appeal process at no cost to the applicant. The right of further appeal against the outcome of an internal appeal process shall lie to the oversight mechanism and, ultimately, the courts.

### **Principle 33. Exemptions**

1. Information may only be legitimately withheld where the harm to the interest protected under the relevant exemption demonstrably outweighs the public interest in disclosure of the information. Such information may only be withheld for the period that the harm could occur.
2. Where a portion of a document containing requested information is exempted from disclosure, the exempted portion shall be severed or redacted and access granted to the remainder of the document that is not exempted from disclosure.
3. Laws governing classification of information shall stipulate the maximum period of the classification and restrict classification only to the extent necessary, never indefinitely.
4. Information may only be legitimately withheld as an exemption if its release would:
  - a. result in the unreasonable disclosure of the personal information of a third party;
  - b. cause substantial prejudice to a legitimate commercial or financial interest of relevant stakeholders or other third party;
  - c. endanger the life, health or safety of an individual;
  - d. cause substantial prejudice to the national security and defence of

- the State;
- e. cause substantial prejudice to international relations where the information relates to information required to be held in confidence under international law, the position of the State with respect to international negotiations, and diplomatic or official correspondence with States or international organisations and diplomatic or consular missions;
  - f. cause prejudice to law enforcement, in particular, the prevention and detection of crime, apprehension or prosecution of offenders and the administration of justice;
  - g. result in the disclosure of confidential communication between medical practitioner and patient, lawyer and client, journalist and sources, or is otherwise privileged from disclosure in legal proceedings; or
  - h. jeopardise the integrity of a professional examination or recruitment process.

**Principle 34. Oversight mechanism**

1. An independent and impartial oversight mechanism shall be established by law to monitor, promote and protect the right of access to information and resolve disputes on access to information.
2. The independence of the oversight mechanism shall be guaranteed in law which shall stipulate a transparent and participatory appointment process, a clear and specific term of office, adequate remuneration and resourcing, and ultimate accountability to the legislature.
3. Public bodies and relevant private bodies shall recognise decisions of the oversight mechanism as formally and legally binding in all matters relating to access to information, including resolving access to information disputes.

**Principle 35. Protected disclosures in the public interest**

1. No person shall be subject to civil, criminal, administrative or employment-related or other sanctions or harm, for releasing information on wrongdoing or which discloses a serious threat to health, safety or the environment, or whose disclosure is in the public interest, in the honest belief that such information is substantially true.
2. States shall adopt laws to establish protected disclosure regimes

and independent institutions to oversee the protected disclosure of information in the public interest.

**Principle 36. Sanctions**

1. The failure of an information holder to proactively disclose information or to grant a request for information shall be established as offences punishable by law.
2. The wilful destruction, damage, alteration, concealment or falsification of information and the obstruction or interference with the performance of the duties of an information holder or of an oversight mechanism, shall be established as offences punishable by law.

**Part IV: Freedom of Expression and Access to Information on the Internet**

**Principle 37. Access to the internet**

1. States shall facilitate the rights to freedom of expression and access to information online and the means necessary to exercise these rights.
2. States shall recognise that universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights.
3. States shall, in cooperation with all relevant stakeholders, adopt laws, policies and other measures to provide universal, equitable, affordable and meaningful access to the internet without discrimination, including by:
  - a. developing independent and transparent regulatory mechanisms for effective oversight;
  - b. improving information and communication technology and internet infrastructure for universal coverage;
  - c. establishing mechanisms for regulating market competition to support lower pricing and encourage diversity;
  - d. promoting local access initiatives such as community networks for enabling the increased connection of marginalised, unserved or underserved communities; and
  - e. facilitating digital literacy skills for inclusive and autonomous use.



4. In providing access to the internet, States shall take specific measures to ensure that marginalised groups have effective exercise of their rights online.
5. States shall adopt laws, policies and other measures to promote affordable access to the internet for children that equips them with digital literacy skills for online education and safety, protects them from online harm and safeguards their privacy and identity.

**Principle 38. Non-interference**

1. States shall not interfere with the right of individuals to seek, receive and impart information through any means of communication and digital technologies, through measures such as the removal, blocking or filtering of content, unless such interference is justifiable and compatible with international human rights law and standards.
2. States shall not engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population.
3. States shall only adopt economic measures, including taxes, levies and duties, on internet and information and communication technology service end-users that do not undermine universal, equitable, affordable and meaningful access to the internet and that are justifiable and compatible with international human rights law and standards.

**Principle 39. Internet intermediaries**

1. States shall require that internet intermediaries enable access to all internet traffic equally without discrimination on the basis of the type or origin of content or the means used to transmit content, and that internet intermediaries shall not interfere with the free flow of information by blocking or giving preference to particular internet traffic.
2. States shall not require internet intermediaries to proactively monitor content which they have not authored or otherwise modified.
3. States shall require internet intermediaries to ensure that in moderating or filtering online content, they mainstream human

rights safeguards into their processes, adopt mitigation strategies to address all restrictions on freedom of expression and access to information online, ensure transparency on all requests for removal of content, incorporate appeal mechanisms, and offer effective remedies where rights violations occur.

4. States shall not require the removal of online content by internet intermediaries unless such requests are:
  - a. clear and unambiguous;
  - b. imposed by an independent and impartial judicial authority, subject to sub-principle 5;
  - c. subject to due process safeguards;
  - d. justifiable and compatible with international human rights law and standards; and
  - e. implemented through a transparent process that allows a right of appeal.
5. Law-enforcement agencies may request intermediaries for the expedited or immediate removal of online content that poses imminent danger or constitutes real risk of death or serious harm to a person or child, provided such removal is subject to review by judicial authority.
6. States shall ensure that the development, use and application of artificial intelligence, algorithms and other similar technologies by internet intermediaries are compatible with international human rights law and standards, and do not infringe on the rights to freedom of expression, access to information and other human rights.

**Principle 40. Privacy and the protection of personal information**

1. Everyone has the right to privacy, including the confidentiality of their communications and the protection of their personal information.
2. Everyone has the right to communicate anonymously or use pseudonyms on the internet and to secure the confidentiality of their communications and personal information from access by third parties through the aid of digital technologies.
3. States shall not adopt laws or other measures prohibiting or weakening encryption, including backdoors, key escrows and

data localisation requirements, unless such measures are justifiable and compatible with international human rights law and standards.

**Principle 41. Privacy and communication surveillance**

1. States shall not engage in or condone acts of indiscriminate and untargeted collection, storage, analysis or sharing of a person's communications.
2. States shall only engage in targeted communication surveillance that is authorised by law, that conforms with international human rights law and standards, and that is premised on specific and reasonable suspicion that a serious crime has been or is being carried out or for any other legitimate aim.
3. States shall ensure that any law authorising targeted communication surveillance provides adequate safeguards for the right to privacy, including:
  - a. the prior authorisation of an independent and impartial judicial authority;
  - b. due process safeguards;
  - c. specific limitation on the time, manner, place and scope of the surveillance;
  - d. notification of the decision authorising surveillance within a reasonable time of the conclusion of such surveillance;
  - e. proactive transparency on the nature and scope of its use; and
  - f. effective monitoring and regular review by an independent oversight mechanism.

**Principle 42. Legal framework for the protection of personal information**

1. States shall adopt laws for the protection of personal information of individuals in accordance with international human rights law and standards.
2. The processing of personal information shall by law be:
  - a. with the consent of the individual concerned;
  - b. conducted in a lawful and fair manner;
  - c. in accordance with the purpose for which it was collected, and adequate, relevant and not excessive;
  - d. accurate and updated, and where incomplete, erased or rectified;
  - e. transparent and disclose the personal information held; and
  - f. confidential and kept secure at all times.

3. States shall ensure, in relation to the processing of a person's personal information, that the person has the rights to:
  - a. be informed in detail about the processing;
  - b. access personal information that has been or is being processed;
  - c. object to the processing; and
  - d. rectify, complete or erase personal information that is inaccurate, incomplete or prohibited from collection, use, disclosure or storage.
4. Every person shall have the right to exercise autonomy in relation to their personal information by law and to obtain and reuse their personal information, across multiple services, by moving, copying or transferring it.
5. Any person whose personal information has been accessed by an unauthorised person has the right to be notified of this fact within a reasonable period and of the identity of the unauthorised person, unless such identity cannot be established.
6. The harmful sharing of personal information, such as child sexual abuse or the non-consensual sharing of intimate images, shall be established as offences punishable by law.
7. Every individual shall have legal recourse to effective remedies in relation to the violation of their privacy and the unlawful processing of their personal information.
8. Oversight mechanisms for the protection of communication and personal information shall be established by law as independent entities and include human rights and privacy experts.

## **Part V: Implementation**

### **Principle 43. Implementation**

1. States shall adopt legislative, administrative, judicial and other measures to give effect to this Declaration and facilitate its dissemination.
2. When States review or adopt legislation on access to information, they shall be further guided by the African Commission's Model Law on Access to Information for Africa.
3. When States adopt measures related to elections, they shall be further guided by the African Commission's Guidelines on

Access to Information and Elections in Africa.

4. In accordance with Article 62 of the African Charter, States shall, in each Periodic Report submitted to the African Commission, provide detailed information on the measures taken to facilitate compliance with the provisions of this Declaration.

