ACTIVITY REPORT

OF

THE SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

By Adv. Pansy Tlakula

Presented to the 47th Ordinary Session of the African Commission on Human and Peoples’ Rights

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Introduction

1. This Report outlines the activities undertaken by the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur) during the intersession period November 2009 to May 2010.

2. This Special Mechanism was established at the 36th Ordinary Session of the African Commission on Human and Peoples Rights (ACHPR or African Commission) held in Dakar, Senegal from 23 November to 5 December 2004.

3. Commissioner Pansy Tlakula was appointed as Special Rapporteur at the 38th Ordinary Session of the African Commission held in Banjul, The Gambia from 21 November to 5 December 2005. She was reappointed at its 42nd Ordinary Session held in Brazzaville, Republic of Congo, and 46th Ordinary Session which took place in Banjul The Gambia respectively.

4. Any further background information and information related to the Terms of Reference of the Special Rapporteur can be found in the Resolution establishing the mandate and her previous Reports available at www.achpr.org.

5. The Report is divided into six parts: Part I covers the activities undertaken by the Special Rapporteur in the period under review; Part II gives an overview of the status of the adoption of Access to Information legislation in Africa; Part III deals with the situation of freedom of expression and access to information in the continent during the period under review; Part IV addresses the challenges faced by the Special Rapporteur in realising her mandate; Part V presents the planned activities of the Special Rapporteur for the next intersession period and finally Part VI presents the conclusions and recommendations of the Special Rapporteur.

PART I

Activities undertaken in the period under review

6. The Activities of the Special Rapporteur during the reporting period is divided into two sections: Section 1 deals with briefings, conferences and meetings attended by the Special Rapporteur. In Section 2, she reports on the letters of Appeal she forwarded to States Parties to the African Charter on the situation of freedom of expression and access to information that was brought to her attention.
Section 1

Briefings, Conferences and Meetings

Briefing

7. On 2 December 2009, the Special Rapporteur was part of a consultative briefing organised by the City of Tshwane, Republic of South Africa. The briefing was aimed at planning the process of establishing a Freedom of Expression Monument at the Palace of Justice in honour of those who were tried by the apartheid government while fighting for the right to freedom of expression.

Briefing Session with the University of Pretoria

8. On 18 January 2010, the Special Rapporteur attended a briefing session with the Centre for Human Rights, University of Pretoria to discuss the areas of collaboration with her mandate. A number of research areas, which the Centre, through the LLM students of 2010 would assist the Special Rapporteur with were identified.¹

Briefing Session of the Representative of the Organisation for Security and Cooperation in Europe (OSCE) on Freedom of Expression

9. On 15 February 2010, the Special Rapporteur held a briefing session in Pretoria with Mr. Ilia Dohel, who represented Mr. Miklos Haraszti, the OSCE’s Representative on Freedom of Expression. The purpose of the briefing was to brief Mr. Dohel on the mandate of the Special Rapporteur and to discuss possible areas of cooperation between the two mandate holders.

African Regional Conference on the Rights of Access to Information

10. The Special Rapporteur attended the African Regional Conference on the Right of Access to Information. The Conference took place from 7 to 9 February 2010 in Accra, Ghana and was organised by Carter Center in collaboration with the Special Rapporteur, the Media Forum of West Africa and the Open Democracy Advocacy Centre (ODAC). She made a presentation on the importance of access to information in promoting transparency in Africa and also gave an overview of the status of adoption of access to information on the continent. At the end of the Conference, the “African Regional Findings and Plan of Action

¹ Students who are members of the Clinical Group on Freedom of Expression and Access to Information were assigned to assist in the Research. They are: Augustine Marrah, Wanjiku Nyoike-Mugo and Flora Ogbuitepu, and coordinated by Mrs. Ololade Shyllon-Adeyeoluwa
for the Advancement of the Right of Access to Information” was adopted. The Findings and Plan of the aforesaid Conference is attached to this Report as Annex I.

Regional Advocacy Conference on the Right to Information:

11. From 11 to 13 March 2010, the Special Rapporteur attended the Regional Advocacy Conference on the Right to Information. The Conference was hosted by ODAC in Cape Town, South Africa. The purpose of the Conference was to discuss the outcomes of the African Regional Conference on the Right of Access to Information that was hosted by Carter Centre in Ghana in February 2010, to share experiences and information on plans for advocacy on the right to information and to explore potential regional and continental advocacy initiatives.

12. During the Conference, she made a presentation on the “Right to Information Advocacy Interventions and plans of the Special Rapporteur on Freedom of Expression and Access to Information.”

2nd Continental Conference of the Federation of African Journalists (FAJ):

13. From 26 to 28 March 2010, the Special Rapporteur attended the 2nd Conference of the FAJ in Harare, Zimbabwe. She presented a paper on “Freedom and Media Development in Africa: Implementing the Declaration of Principles on Freedom of Expression.” In her presentation, she articulated the important role played by the media in the political, economic, social and cultural transformation of the society.

Arab Institute for Human Rights (IHRS) all Africa Conference:

14. On 15 April 2010, the Special Rapporteur attended the above Conference organised by the Arab Institute for Human Rights in Nairobi, Kenya on Human Rights Spaces, Accountability of Civil Society Organization. She made a presentation on “The role of the civil society in the promotion and protection of Freedom of Expression in Africa”.

15. In her presentation she highlighted the limitations of the African Charter and the Declaration of Principles on Freedom of Expression in Africa (Declaration) in promoting and protecting freedom of expression in Africa, and the role of Civil Society Organisations in filling these gaps.

Preparatory Meeting for the 47th Ordinary Session of the African Commission:

16. On 4 May 2010, the Special Rapporteur was invited by the Human Rights Institute of South Africa (HURISA) to the preparatory meeting for the 47th Ordinary Session of the Commission. During the Meeting, she spoke on “The effectiveness of the Right to Freedom of Expression on the continent.”
Other Activities

17. The Special Rapporteur was appointed by the Academy on Human Rights and Humanitarian Law of the American University Washington, College of Law to serve as an Honour Juror for the adjudication of the 2010 Human Rights Essays Awards. The topic for the essay was “The Right of Freedom of Expression and International Human Rights Law.” The essay of a Kenyan student on “The Role of the Media in Combating Corruption” won the award.

Section two

Appeals

17. In line with her mandate to “make public interventions where violations of the right to freedom of expression and access to information have been brought to her attention, including by issuing public statements, press releases, and sending appeals to Member States asking for clarifications,” the Special Rapporteur forwarded letters of Appeals to the Federal Republic of Nigeria and Sudan.

Nigeria


19. Reports alleged that the Bill requires members of the Nigerian Press and Practice of Journalism Council (the Council), to swear an oath of secrecy. Furthermore, that it provides for the licensing of journalists and seeks to establish a National Examination and Accreditation Board to “Conduct examination for would-be journalists or graduates of mass communication in Nigeria, in the Nigerian Institute of Journalism.”

20. Reports also alleged that the Chairperson of the Council is appointed and dismissed by the President of the Republic. In addition, that the Bill provides for the establishment of a Media Practitioner Complaint Commission (the Complaint Commission) in all States in Nigeria intended to render the Ombudsman mechanism, recently established by the Newspaper Proprietors Association of Nigerian (NPAN) ineffective.

21. The Special Rapporteur appealed to the Government of Nigeria to withdraw or amendment of the Bill, to ensure that it fully complies with the African Charter, the Declaration, as well as, applicable international and regional standards on Freedom of Expression and Access to Information.
**Sudan**

22. The Special Rapporteur received alleged reports regarding the disruption of a symposium entitled “elections and democratic transition,” by the National Intelligence and Security Services (NISS) officers in Sudan. The Symposium was organised by the Sudanese Monitor for Human Rights (SMHR), in coordination with the Sudanese Youth Union in Kosti. Reports alleged that several human rights defenders were due to participate in the symposium, and that one of the organisers of the symposium, Mr. Hatem Salah was arrested 15 minutes before the symposium because of his human rights activities, and subsequently released following interrogation.

23. On 19 January 2010, the Special Rapporteur on Freedom of Expression in Africa and the Special Rapporteur on Human Rights Defenders in Africa forwarded a joint letter of appeal to the Government of the Republic of Sudan requesting the latter to investigate the allegations and urgently inform the ACHPR of the steps it has taken to address the allegations, if they are true.

24. The Special Rapporteur notes that she has still not received a response from the Republic of Sudan.

**PART II**

**Status of adoption of Access to Information legislation in Africa**

25. Both the right to freedom of expression and access to information are fundamental in realizing the culture of transparency and participation of the public in the political affairs of the State. It is therefore imperative that these rights are ensured in the Constitutions and other national laws of States.

26. In line with the mandate of the Special Rapporteur to “Submit reports at each Ordinary Session of the African Commission on the status of the enjoyment of the right to freedom of expression and access to Information in Africa,” she undertook another audit of the adoption of Access to Information legislation on the continent during the reporting period. It

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3 This is an update of her presentation on the status of freedom of expression and access to information in Africa during the 44th Ordinary Session of the African Commission which took place in Abuja, Republic of Nigeria from 10-24 November 2008
should be noted that her last audit was carried out two years ago and was reported during the 44th Ordinary Session of the African Commission.\(^4\)

27. These findings, once again portrayed that while the right to access to information has been entrenched in the Constitutions of many countries in Africa, only a handful of these countries have enacted laws that give effect to this right.

28. They also illustrate the fact that the right of access to information in these Constitutions is often times lumped together with the right to freedom of expression. Consequently, this has had the potential of watering down the importance of access to information and its cause. This notwithstanding, some Constitutions in Africa have entrenched these rights separately in their Constitutions. This has proved to be a better approach because it reinforces the fact that these are separate freedoms in their own rights.

**Southern Africa**

29. In Southern Africa, South Africa,\(^5\) Mozambique,\(^6\) Malawi,\(^7\) and Madagascar,\(^8\) are four countries which expressly protect the right to freedom of information in their Constitutions. Among the countries listed, the Constitutions of Malawi, and South Africa provide the most comprehensive protection of the right to access information. This is because in addition to the general protection as an aspect of freedom of expression, separate articles define the specific right to access official information.

30. Other countries such as Zambia,\(^9\) Lesotho,\(^10\) Zimbabwe,\(^11\) Namibia,\(^12\) Botswana,\(^13\) Mauritius,\(^14\) Angola,\(^15\) and Swaziland,\(^16\) all protect the right only within the context of freedom of expression- the right to “seek, receive and impart information.” Of all these countries, only Zambia, Mozambique, and Malawi have Bills on freedom of information which are at various stages in the legislative process, whilst Angola, South Africa, and Zimbabwe have actually adopted such legislation.

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4 The research was conducted by the LL M Clinical group of the Center for Human Rights, University of Pretoria.

5 Section 32 & 16(1)

6 Article 74

7 Section 34 & 37 respectively

8 Article 10 deals with freedom of expression and Article 11 deals with access to information

9 Article 20(1) (2) of Part III of the Constitution

10 Article 14(1)

11 Articles 20(1) & (2). It should be noted that the government of Zimbabwe has also issued a cabinet directive that pronounced its commitment to provide information. Ministers also publish public information leaflets when the need arises and if the budget allows

12 Article 12(1)

13 Article 12(1)

14 Article 32

15 Section 24
31. In Zimbabwe the right to access information is governed by the provisions of the *Access to Information and Protection of Privacy Act of 2002* (AIPPA) which provides for the right to information that is held by public bodies only. The wide scope of protected information under AIPPA gives room for concern and expectedly has led to its constitutionality being criticized by Zimbabwean human rights activists.

**Eastern and Central Africa**

32. In Eastern and Central Africa, the Constitutions of Uganda, Tanzania, DRC and Eritrea explicitly guarantee freedom of information, while those of Kenya, Central African Republic, Chad and Ethiopia guarantee the right within the broader context of freedom of the press and expression. In Equatorial Guinea, Burundi, Cameroon, Gabon, Rwanda and Djibouti, though enshrining the right to freedom of expression, no reference is made to the right to information in their Constitutions. At present, DRC, Ethiopia, Kenya, and Tanzania have legislations on freedom of information, which have not yet been passed into law, while Uganda is the only country in East Africa with an Access to Information Law that has been adopted.

**West Africa**

33. With regards to West Africa, the Constitutions of Ghana, Guinea-Bissau, Cape Verde and Burkina Faso guarantee the right to freedom of information. In Nigeria, Togo and Liberia, freedom of information is provided for in the context of freedom of

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17 Article 41
18 Article 18(1)
19 Article 23 deals with freedom of Expression & Article 24 deals with access to information
20 Article 19
21 Section 79(1) of the Kenyan Constitution. It should be noted that, Kenya has a new harmonised draft Constitution which was approved by the Kenyan Legislators in April 2010
22 Article 13
23 Article 27
24 Article 29
25 Article 13(2)
26 Article 28
27 The preamble of the Cameroon Constitution states that the freedom of expression, press, assembly, association, and freedom of trade-unions are guaranteed under the conditions fixed by the law
28 Article 1(2)
29 Article 18
30 Article 15
31 Article 22
32 Article 34
33 Article 27(2)
34 Article 8
35 Section 24
36 Article 25
37 Article 15 (a) and (b)
expression. Benin, Senegal, Côte d’Ivoire, Guinea and Niger make no reference to this right in their Constitutions, only providing for freedom of expression. The Gambia however, has no protection of freedom of expression or access to information in its Constitution.

34. Amongst these countries, only Ghana, Liberia, Nigeria and Sierra Leone have Bills on freedom of information which are still under consideration.

**Northern Africa**

35. In Northern Africa, the Constitutions of Algeria, Egypt, Libya, Morocco and Tunisia are silent on freedom of information, protecting only the freedom of expression. Algeria and Morocco are the only countries in North Africa with draft Bills on access to information.

**Progress**

36. Since the last audit of the Special Rapporteur in November 2008, the status quo of the enactment of freedom of expression and access to information in Africa remains the same.

37. According to the 2008 Report, in Southern Africa, Malawi, Mozambique and Zambia were reported to have Bills on freedom of information pending adoption. These Bills are still to be adopted.

38. In East Africa, DRC, Ethiopia, Kenya, and Tanzania were also reported to have legislations on freedom of information during the 2008 Report pending adoption. Two years after, the status quo is still the same.

39. It was also reported in 2008 that in West Africa, Burkina Faso, Ghana, Liberia, Nigeria and Sierra Leone have Bills on freedom of information pending adoption, this situation has not changed. The only progress that has been made on the Ghanaian Bill which was drafted in 2003 is that it was finally tabled in Parliament in February 2010.

40. In North Africa, Algeria was reported to be the only country with a draft Bill on access to information pending adoption. This Bill is still to be adopted.
41. The above analysis confirms the Special Rapporteur’s concern that most countries have enshrined the right of access to information in their Constitutions, but have not adopted legislations to give effect to these provisions, making implementation difficult. Furthermore, it has also portrayed that mere existence of a provision in the Constitution on freedom of expression does not always translate to mean that access to information is guaranteed.

42. A more proactive approach to curb this problem is for more States on the continent to enact Access to Information Laws to give effect to the Constitutional provisions. This would not only foster implementation, but would also raise awareness as to the existence and importance of this right in promoting democracy and transparency.

PART III

Summary of the situation of freedom of expression and access to information in Africa

43. During the intersession, the Special Rapporteur continued to receive reports on the violation of the right to freedom of expression in the following countries: Cameroon, Eastern DRC, Egypt, Ethiopia, Kenya, Namibia, Nigeria, Somalia, Sudan, Tanzania, Tunisia, Uganda and Zimbabwe. These reports include: attacks on media practitioners and journalists including prosecution, kidnapping, imprisonment, harassment and intimidation; extra-judicial killing/murder of journalists; unfair press restrictions; banning and destruction of media houses, etc. All these allegations, if true, contravene the Principles of the Declaration, with particular reference to its Principles XI and XII.

44. Principle XI of the Declaration provides that:

1. **Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.**
2. **States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.**
3. **In times of conflict, States shall respect the status of media practitioners as non-combatants.**

45. Principle XII on the other hand provides that:

1. **States should ensure that their laws relating to defamation conform to the following standards:**
   - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
   - public figures shall be required to tolerate a greater degree of criticism; and
• sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.

2. Privacy laws shall not inhibit the dissemination of information of public interest.

Part IV

Challenges

46. It appears from the work of the Special Rapporteur that we are losing some of the gains that we had made in the enjoyment of the right to freedom of expression and access to information in Africa. This can be attributed to the following:

- Failure by some Member States to implement the recommendations of the Special Rapporteur in particular;
- Adoption of restrictive Media legislations by some Members States with a potential to limit the role of Media Practitioners and journalists to effectively carry out their functions;
- The use of restrictive laws to punish/harass journalists and Media Practitioners who publish articles that are critical to the government;
- The slow pace of the adoption of Access to information laws by States Parties;
- Failure by some Media Practitioners to adhere to professional and ethical standards of journalism; and
- Lack of responses from some States Parties to the African Charter on the Appeals of the Special Rapporteur;
PART V

Planned Activities

47. The Special Rapporteur has a couple of activities planned for 2010, some of which are still to be confirmed pending financial and other bottlenecks.

48. Amongst these activities, the Special Rapporteur intends to organise two very important Meetings in the later part of the year. They include:

i. A “Meeting on Elections, Freedom of Expression and Access to Information in Eastern Africa,” slated for 13 – 15 September 2010. This Meeting whose primary objective is to cover all the regions in Africa, is a continuation of the one that took place in Southern Africa in August 2007; and


49. Detailed information about these activities would be communicated on the website of the African Commission in due course.

PART VI

Conclusion and recommendations

50. Freedom of expression and access to information are channels through which development can effectively be achieved. The underlying reason being that, if these rights are promoted and protected, democracy is guaranteed. The unreasonable restriction of freedom to enjoy these rights amounts to putting a stumbling block in achieving a peaceful and democratic society.

51. The Special Rapporteur welcomes progress that has been made by some States Parties in terms of securing respect for the right to freedom of expression and access to information in their respective countries. She is aware that some States are still lagging behind because the issues about these rights are not given priority in their agenda.

52. The Special Rapporteur is therefore calling on all States Parties to the African Charter to intensify their efforts to make the enjoyment of the right to freedom of expression and access to information a reality for their citizens. In this regard, she appeals to States Parties that have not yet done so, to expedite the adoption of access to information laws.
53. The Special Rapporteur notes that journalists still face prosecutions and other forms of intimidation for articles published that criticise the government because criminal defamation laws still exist in some States Parties. She makes another appeal which has become a standing one in her Activity Reports, calling on States Parties to revoke or amend Criminal defamation laws and make sure that they conform with international and regional standards, and particularly to Principles XI and XII of the Declaration.

54. Many countries in Africa have elections scheduled for this year.48 In this regard, the Special Rapporteur applauds countries that have gone through the election process without any incidences especially vis a vis journalists and Media Practitioners. She also calls on countries that are going to hold elections this year, to ensure that journalists and media practitioners are allowed to freely disseminate information on the elections without any form of harassment or intimidation.

55. On the same note, she calls on Governments who have not yet signed or ratified the African Charter on Democracy, Elections, and Governance, to do so without delay and ensure the implementation of the same.

56. The Special Rapporteur urges all States Parties to the African Charter who have received her Appeals, to act on them and report on the measures they have taken to implement her recommendations.

57. The Special Rapporteur is looking forward to undertaking a Promotional Mission to Tanzania before the October elections. In this regard, she hopes to receive a formal response to the Note Verbale that she forwarded to the State Party, a few months ago requesting for the said Mission.

ANNEXURES


African Regional Findings and Plan of Action for the Advancement of the Right of Access to Information

Accra, Ghana

We, the 130 participants from 20 countries throughout Africa, representing governments, civil society organizations, international and regional bodies and financial institutions, donor agencies and foundations, the private sector, media outlets and scholars, gathered in Accra, Ghana from February 7-9, 2010, under the auspices of The Carter Center, in collaboration with the Special Rapporteur for Freedom of Expression and Access to Information in Africa, the Media Foundation for West Africa, and Open Democracy Advice Centre, to advance the right of access to information.

PREAMBLE

Endorsing the principles, global findings, and plan of action set out in the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information, including the international conventions referred to therein;

Acknowledging the leadership of the African Commission on Human and Peoples’ Rights, which adopted the Declaration of Principles of Freedom of Expression in Africa based on Article 9 of the African Charter on Human and Peoples’ Rights; the important work of the Special Rapporteur for Freedom of Expression and Access to Information in Africa; the African Union Convention Against Corruption; the Charter on Democracy, Elections and Governance; as well as the efforts in many nations to establish and promote the right of access to information;
Recognizing the great diversity of the African continent, its peoples and cultures, wealth of resources and natural environments, political and legal systems, indigenous and ancestral traditions, and colonial legacies;

Understanding the need for access to information to serve the essential goals of deepening democracy, strengthening political stability and promoting socio-economic justice and sustainable development;

Encouraged by the creative use of new technologies and traditional communication approaches to disseminate information that help people to access and realize their basic rights and needs;

Confident that African nations will build on past achievements, progress in their respect for the voices of the people, and continue to seek transparency;

FINDINGS

The assembled conference hereby affirms the findings of the Atlanta Declaration and further asserts that in Africa:

1. Access to information is a fundamental human right, and as such the State has a duty to respect, protect and fulfil this right.

2. Everyone has a need for information even though it is not always articulated. Access to information and voice ought to be a guarantee to all, including vulnerable populations, marginalized persons and the powerless. This will require reducing barriers and empowering people to seek information, including through oral and informal channels.

3. Transparency is essential to good governance, yet paradoxically in many countries it is seen as a costly luxury rather than a development priority that can bring economic gains.

4. Political and institutional constraints in Africa have limited the opportunities to exercise the right of access to information.

5. Increased understanding about how to realize the right to information would positively serve both public servants and the general population.

6. Quality information should be easily accessible and understandable to the general public, and should be available through timely proactive release of information as well as in response to specific requests.

7. Though separate, access to information, media freedom, and freedom of expression are mutually supportive and equally necessary for effective information flows to the public.

8. Where regional instruments, constitutional provisions and national laws exist often they have inadequately advanced the right of access to information due to factors such as insufficient political will, weak legal and administrative guidelines, and ineffective implementation and enforcement. At their worst, some national legal frameworks have even repressed rather than enabled the right of access to information.
9. Fear that information will be used by political opponents, increase risks to their personal interests, expose government failings, and demystify their power causes some politicians to impede the right of access to information. Champions understand that the incentives for greater transparency, including the potential increase in confidence and economic and political gains, outweigh these fears.

10. The values of transparency extend beyond the State to numerous other influential actors, whose activities are vital to peace, democracy, development and human dignity. Where these ideals have not flourished, such as in political parties, extractive industries, public utilities, and government procurement, it has contributed to corruption and undermined democratic government and fair competition.

11. In addition to the executive, institutions such as Parliament, national human rights commissions, national anti-corruption agencies, consumer protection agencies, and the judiciary have not been sufficiently engaged in the promotion and realization of the right of access to information.

12. A worrying absence of transparency characterizes some traditional authorities who control funds and resources, especially land held in the public interest.

13. Regulatory schemes and disclosure practices for multinational corporations are insufficient to protect rights and ensure transparency in the African countries in which they function.

14. A number of multilateral organizations, including the World Bank and the African Development Bank, have recently improved or are soon to review their access to information policies and practices, presenting an important window for advocacy.

15. Advocates for access to information may increase their effectiveness by framing the right in a variety of ways to gather support from different constituencies and by taking greater account of the political realities when developing their strategies, such as looking for various points of entry, envisioning alternative approaches, encouraging sectoral and voluntary approaches, and building buy-in.

REGIONAL PLAN OF ACTION

To give effect to the Atlanta Declaration and the African Regional Findings, we call upon the relevant stakeholders to undertake the following actions:

For Regional and International Bodies:

1. The African Union and sub-regional bodies should lead by example and increase openness through a comprehensive disclosure policy related to their operations and functioning.

2. The African Union and its partners should incorporate a review of the right of access to information into the African Peer Review Mechanism.
3. The Special Rapporteur for Freedom of Expression and Access to Information should be provided an enhanced mandate and the necessary resources and support to:
   a. carry out an analysis of existing relevant regional Charters, Declarations, Protocols, Conventions and other instruments to determine their scope, application and limitations and provide recommendations for making them more effective and, where necessary, for future instruments;
   b. convene a multi-stakeholder panel of experts to advise on establishing norms and standards on access to information, developing benchmarks and monitoring compliance;
   c. facilitate the drafting of a region-specific model law, through a participatory process with inputs from all relevant stakeholder groups, to support the passage of national laws and encourage observance of the highest standards of transparency.

4. The upcoming revisions of the African Development Bank’s disclosure policy, which may be under review in 2010, should bring the institution up to the standards of the Atlanta Declaration and should seek maximum engagement of civil society actors throughout the review process.

5. The work of the International Financial Corporation (IFC) serves as a model and sets standards for other actors, particularly private banks and corporations. The on-going review of its disclosure policy also should bring this institution up to the standards of the Atlanta Declaration and include a requirement that all IFC-financed or co-financed project agreements and related contracts be disclosed.

6. The international community should maintain the practice of including transparency in “country dialogues” as part of funding agreements, and multilateral institutions should encourage the establishment of national access to information laws.

7. In celebration of the 20th anniversary of the Declaration of Windhoek on Promoting an Independent and Pluralistic African Press, UNESCO’s International Conference on Press Freedom should be held in Namibia in 2011 and focus on the advancement of the right of access to information.

8. The international community should prioritize funding support for:
   a. activities by States and non-state actors which promote demand for, monitoring, and use of the right of access to information;
   b. supporting the provision of universal access to information and communication technologies;
   c. fostering an African peer-reviewed network to develop policy and advocacy-pertinent research;
   d. building capacity on the right of access to information for parliamentarians through mechanisms such as the International Parliamentary Union; and
   e. an initiative to convene African Information Ministers to facilitate regional impetus towards enhanced transparency in both regional and national laws, policies and practices.
For States:

9. Political will should be cultivated and customary in those who govern.

10. States should accept responsibility and take leadership by ensuring the right of access to information and fulfilling existing constitutional provisions for the right by:
   a. enacting and implementing comprehensive right to information legislation and supportive policies;
   b. repealing, amending or reforming all laws and administrative measures inconsistent with the right of access to information; and
   c. assuring adequate budgets for full and effective implementation of access to information laws and instruments.

11. Where unjust access to information laws exist, States should amend or repeal such legislation.

12. Consistent with the Atlanta Declaration principles, access to information laws should be entrenched in regional instruments as well as national and sub-national laws and should extend to all levels and branches of government, particularly local levels, to public information held by the private sector, and cover other non-state actors. Moreover, exemptions to access to information should be narrowly drawn, specified in law, and limited only to those permitted by international law, and subject to a public interest override.

13. Governments should proactively disseminate public information, including all national and sub-national laws and regulations, criteria for resource allocation, budgets, and standard procedural guidelines on availability of and means for accessing public services.

14. User-friendly information should be disseminated through all possible channels, including: radio, newspapers, signage, meetings, depositories, archives, internet, mobile telephone, TV and images, and more advanced technologies.

15. States should establish the policy framework and enabling regulatory mechanisms, including opportunities for competition and liberalization, for citizens to easily access accurate, reliable and affordable information.

16. In addition, States should build capacity for those responsible for fulfilling the right and develop public awareness campaigns to encourage people to claim their right of access to information.

17. Institutions such as Parliament, national human rights commissions, national anti-corruption agencies, consumer protection agencies, and the judiciary should be capacitated and engaged to advance and protect the right of access to information.
18. States and their international partners should further the tenets of multi-stakeholder initiatives in areas such as extractive industries, pharmaceuticals, armaments, international aid and construction sectors, as a complement to comprehensive right to information efforts.

**For Non-State Actors: Civil Society, Media, Private Sector, and Multinational Organisations**

19. All persons should fully exercise their right of access to information, including making requests and pursuing all legal and administrative remedies available when denied.

20. As the media and civil society organisations advocate for access to information, they should lead by example and ensure their own transparency in matters of interest to the public.

21. Civil society organisations should monitor the implementation and enforcement of access to information provisions by States, public institutions, private sector actors, and multilateral bodies, including the new World Bank information policy reforms.

22. Civil society organisations should fully participate in the African Development Bank review process of its information disclosure policy, including in the Civil Society Working Group, and encourage provisions that restrict the right of national governments to veto the Bank’s disclosure of information related to the public interest. In addition, civil society should take an active role in the review of the International Financial Corporation’s disclosure policy.

23. Civil society organisations should identify, analyse, and disseminate information about access to information mechanisms, laws, and obstacles (such as tax policy and regulatory frameworks) which affect the full realization and enjoyment of the right.

24. Additionally, civil society should conduct a mapping exercise on the scope of work being done on the advancement of access to information on the continent, and strive to create effective coalitions and networks of access to information advocates.

25. The private sector should increase its leadership in promoting access to information, including forming or joining coalitions with civil society organisations and States to increase access to information.

26. Private corporations and non-state actors should include access to information provisions into their codes of conduct and comply with national and international laws and norms of best practices for proactive disclosure and access to information.

27. Traditional leaders should be subject to access to information instruments for management and use of public resources and encouraged to provide additional information through voluntary disclosure.

28. Multinational organisations, such as donors, international NGOs and multinational companies, should implement and support high standards of access to information in their operations and activities. These organisations should provide access to information which
complies with both the access to information legislation in the country of their headquarters as well as with the laws of the countries in which they operate.

29. Multi-stakeholder initiatives, such as in the extractive industries, pharmaceuticals, armaments industry, international aid and the construction sectors should be promoted as an important complement to ongoing efforts to establish or strengthen right of access to information instruments.

30. The access to information community should strive to build solidarity and links with a full range of stakeholders who share a common transparency agenda.

We call upon all regional and international bodies, States, and the regional access to information community to establish, develop and nurture the right of access to information on the African continent, in accordance with the principles, findings and global plan of action enunciated in the Atlanta Declaration and in the African Regional Findings, and to commit to the African Regional Plan of Action in furtherance of our common objective.

Accra, Ghana
February 9, 2010
AFRICAN REGIONAL CONFERENCE ON
THE RIGHT OF ACCESS TO INFORMATION
February 7-9, 2010
Accra, Ghana

COUNTRY WORKING GROUP PLAN

ANGOLA

The Angolan delegate joined the Mozambicans, given that the countries share a similar history and political problems. In Angola there is political will as there is a public decree for access to administrative documents, but there is no provision for implementation and the constitution does not endorse the right.

- There was a new constitution passed in Angola last week, and it needs to be reviewed to understand whether there right to information has been included in the document.
- Start public debate on the right to information.
- Evaluate the existing law on access to administrative documents.
- Build greater capacity among public servants responsible for implementing and providing information.

DEMOCRATIC REPUBLIC OF CONGO

The DRC’s constitution has a broad right to information but no specific law. There is a certain political will on the part of the government toward transparency, and it has subscribed to the EITI. Even without a law, efforts from civil society are being supported by government. There was a recent national seminar in the Katanga province hosted by AMICUS with representatives of civil society, government and the private sector, and a draft bill was prepared. The group would like to do the following:

- Convene a multi-stakeholder group to push for the bill’s adoption and convince parliamentarians of the importance of the law.
- Undertake extensive sensitization activity with lawyers, judges, and others beforehand in order for people to take ownership of the bill.
- Continue exchanging experiences with other conference participants, especially representatives of Mali and South Africa.
- Send the draft law by e-mail to other organizations present at the conference.

ETHIOPIA

The group looked through the text of the conference document and was in accordance with it. They recognized the need for strengthening the existing access to information legislation in Ethiopia and decided upon these action items:
Summon stakeholders through a forum to create a concerted effort to evaluate the legislative framework related to access to information;

Work as a group to consider the government-initiated law, specifically the impediments to implementation such as lack of capacity, and records keeping and technology challenges.

Raise awareness on the value of access to information

**GHANA**

The delegation agreed that the draft conference document resonates well in the Ghanaian context. They agreed upon the following:

**Government should:**
- Adopt a cross-sectoral, pro-active disclosure approach and integrate areas like public health into this process.
- Support the legislation toward its passage.
- Make available opposition papers on the bill.
- Once the law is passed, establish independent sources of funding for implementation.

**Civil society will:**
- Disseminate the Accra Declaration widely;
- Strengthen public awareness;
- Expand the support base to include churches and community groups, and
- Engage the media.

**KENYA**

The situation in Kenya is troubling because there has been push-back against access to information. The fact that no Kenyan government representatives attended is disconcerting. The group agreed on the below points:

**Civil society will:**
- Request the Carter Center to sponsor a meeting in East Africa to work on sub regional norm building.
- Invite the Special Rapporteur for Freedom of Expression and Access to Information in Africa to push the issue in Kenya.
- Examine regional mechanisms and look at World Bank disclosure policies.
- Sensitize government, especially with regard to post election reconstruction.
- Engage directly to achieve a constitutional right to information so that a law may follow. There is a review process occurring in June.
- ICJ-Kenya, which sits on the African Union Assembly, will initiate discussions that bring together parties and link FOI to financial reform.
LIBERIA

As Liberia emerges from 40 years of conflict, it has pursued the sectoral approach and passed the LEITI bill. There are additional steps toward transparency being taken in the logging sector, by the General Auditing Committee, and people are being prosecuted for corruption. President Sirleaf has demonstrated political will by signing an order to protect whistleblowers. Civil society also has presented an FOI bill. Hon. Hodges’ chamber in the House of Representatives was about the pass the bill, but decided to wait for suggestions from other organizations such as the Carter Center. The group determined that stakeholders in Liberia will:

- Ensure passage of the draft FOI bill. There is sufficient political will in the House, and Liberia will be the first country in West Africa to pass a bill.
- Disseminate information about the FOI project not as a media bill but as a bill that promotes economic development and that is important for all persons.

MALI

Unlike the comments that other French speaking delegates have made regarding Francophone Africa lagging behind, Mali has taken a number of initiatives and has made good progress in advancing access to information. There has been a law that related to access to information since 1998 and the voluntary disclosure strategy (SAISA) has been operational since 2006. The delegation decided upon the following:

- Government will generalize the strategy and support its expansion beyond the pilot agencies.
- An external evaluation to see how users experience the FOI system must be undertaken.
- The group will lead efforts to raise awareness around the Atlanta Declaration and the African Regional Findings and Plan of Action.
- Journalists will publish the documents on different websites and make them public through the press.
- All actors will increase and improve engagement with civil society.

MOZAMBIQUE

The group looked at the issues in the short and long term as well as at three levels: political will, institutional framework, and specific groups. The constitution provides for the right to information, and although a project was presented to Parliament in 2005 and publicly debated for four years, it never passed. The delegation agreed to the following:

- Bring the law into debate upon returning to Mozambique. The new parliament was just sworn in, and the process can be examined again to consider what has changed since 2005.
- Convene a range of stakeholders to review the law.
- There is a need to produce greater research on the legal standards and barriers to access to information.
Civic education should be provided for public servants so that they learn to seek and proactively disclose information to the public.

Booklets should be produced to supply basic skills about how to deal with information and topics such as what constitutes state secrets.

Campaigns will be organized to educate communities about issues important to them.

**NGERIA**

The group generally agreed with the content of the conference document. They agreed on five main action points:

- Complete an audit to assess federal and state legislation mandating information disclosure in different sectors to improve understanding of the existing state of affairs.
- Test the responsiveness of government bodies under existing law, although early cases show the response capacity of public institutions to be very weak.
- Tracking procedures and information sharing within institutions must be improved, as public officials’ ability to keep records of meaningful information is very low.
- Increase awareness to stimulate demand for information covered by those laws.
- Define clearly national security in relation to restrictions and encourage the use of international standards to delimit what can be withheld.
- Recommend addressing and engaging the critical issue of access to information in the on-going development of a holistic National Strategy to combat corruption.

**SENEGAL**

The group agreed that an access to information law is essential because it is relevant to Senegal’s economic and political problems. There are numerous initiatives promoting freedom of information from government, civil society and academia. At the government level there is a reform policy on communications and the press law, and civil society is drafting a bill on access to information. In Senegal, this issue is taken very seriously, especially as the Francophone world is lagging behind. The group’s action points included:

- Clarify the distinction between freedom of the press and access to information within draft bills.
- Contextualize drafts to be consistent with existing laws related to information disclosure and the constitution.
- Continue working with the Ministries of Justice and Communication to speed up the law’s adoption.
- Draw together all the issues and actors relevant to access to information for further discussions, especially within universities.
- Organize a team to work in French-speaking countries to contribute to regional efforts to document the work being done across the continent (such as is being done by the African Framework of Constitutional Law).
SIERRA LEONE

The group agreed that the conference action plan is very relevant to Sierra Leone’s local context and provides a path for an FOI law and general access to information. The multi-stakeholder delegation decided on these items:

- The Ministry will work with civil society to review the existing draft FOI bill.
- The government has the political will and pledges to enact the freedom of information bill by the end of 2010.
- Parliament will conduct outreach to constituents and insure citizen participation in the process.
- The Government will continue and strengthen existing projects, including:
  - Proactive steps to disclose information to the public, including on finances.
  - Source funding to support the existing National Communication Strategy that creates dialogue between the Government and its citizens through town hall meetings and radio phone-in programmes.
  - Complete the process of transforming the State owned Sierra Leone Broadcasting service to a National Public Broadcaster called the Sierra Leone Broadcasting Corporation (SLBC)

SOUTH AFRICA

This year marks the 10th anniversary of the South African act, which applies to both public and private actors. Thus far, the challenges have been around the law’s implementation and there is a need for review. Action items included:

- Parliament will undertake a review of the Promotion of Access to Information Act.
- Parliament will convene civil society and other actors on September 28th to coincide with Right to Know Day.
- The Special Rapporteur will host a meeting with different stakeholders to discuss implementation of the model law that her office is drafting.
- Group members will share the African Regional Findings and Plan of Action with all members of parliament in South Africa.

TANZANIA

In Tanzania, advocates are working on freedom of information and media access laws, although a previous draft FOI bill was not passed. The group suggested the following action points:

- Work toward a new, more progressive bill that is in line with article 18 of the constitution, Tanzania Policy, Commonwealth Principles and the Atlanta Declaration. This initiative to be led by the government and Media Council of Tanzania.
- Ask President Carter to contact the President of Tanzania to urge him to reflect these standards in the upcoming Bill.
Non-state actors will support the government to enhance the public website, particularly www.mwananchi.go.tz and increase citizen-government interaction as well as publicize government reports. They will encourage MAELEZO to arrange for the President to launch the website and will undertake independent testing and analysis of the website responsiveness.

Civil society and media organizations should lead by example and use an NGO code for accountability and transparency to make public financial and governance information.

Both government and NGOs consider using new technologies to inform citizens more broadly (rather than just doing workshops and seminars that only reach a few). The government and these organizations will make more information available to the public through technology such as cell phones.

UGANDA

Uganda finds itself in a unique position because it already has a law and on-going initiatives to assure its effectiveness. Both Izama and Ken Kakuru are in court with litigation to advance the access to information law. The group made a number of recommendations:

- Model legislation is probably useful in standardizing what is happening at the sub regional level.
- Regarding the UNESCO press freedom conference, they would like to keep the venue open in hopes that Kampala would be considered as a location.
- The Minister agreed to expedite the completion of revisions to the access to information law, and the group intends to hold her to account.
- Civil society will raise awareness and undertake further reviews of legislation to ensure compatibility with the constitutional right.

ZAMBIA

An FOI bill is in consultation, and the World Bank is providing assistance by gathering input from civil society and the media. Following the consultative process, the bill will go to cabinet and then be tabled in Parliament, at which point the public will be invited to make submissions before a parliamentary special committee. Action items for the group included:

- Government will raise awareness of the bill at different levels and make the document available to citizens.
- In the absence of an access to information law, the Government of Zambia will try to increase the categories of information to be made public for citizens, including budgets and expenditures.
- Government will encourage the bill to be considered by Cabinet and moved to Parliament in a timely manner.
- Civil society will:
  - Advocate for existing secrecy laws to be harmonized to limit exemptions in the draft bill.
- Urge the national constitutional conference and the human rights committee to include the right to information in the new constitution.
- Engage citizens directly through meetings and community gatherings so that the right is well understood as a developmental right and a leveraging right, recognizing that an absence of demand does not indicate an absence of need.

ZIMBABWE

The delegate from Zimbabwe joined the meeting with the Zambians. They agreed on the importance of the following items:

- CSOs and other players should sharpen and strengthen their strategies in advocating for the Repeal of AIPA, POSA and other laws that impede access to information
- CSOs engage in the ongoing Constitutional reforms to promote inclusion of access to information provisions and for it to be recognized as a fundamental right
- Need for actors in Zimbabwe to build a strong cross-sectoral National Coalition on Access to Information which caters for all sectors (health, environment and natural resources, media, religion, etc)
- Need to promote community awareness on international and regional best practices on access to information issues.