

Declaration of Principles on Freedom of Expression and Access to Information in Africa

Draft issued by the Special Rapporteur on Freedom of Expression and Access to Information in Africa, for consultation with States and other Stakeholders, pursuant to Resolution 350 (ACHPR/Res.350 (EXT.OS/XX) 2016) of the African Commission on Human and Peoples' Rights.

30 April 2019

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 (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 to include access to information, Resolution 350 (ACHPR/Res.350 (EXT.OS/XX) 2016) mandating the African Commission to revise the Declaration of Principles on Freedom of Expression in Africa, 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 of Principles on Freedom of Expression in Africa;

Recognising the need to revise the *Declaration of Principles on Freedom of Expression in Africa* of 2002, 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 in Africa;

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 is a fundamental human right guaranteed by Article 9 of the *African Charter*, and that this right is also affirmed in Article 7 of the *African Charter on the Rights and Welfare of the Child* and Article 23 of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa*;

Recognising the adoption of African union treaties giving express recognition of the right of access to information including *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*;

Recognising 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 realisation 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;

Recognising the need to protect and promote the right to freedom of expression and access to information of marginalised groups and groups that face multiple levels of discrimination including women, children, persons with disabilities, older persons, refugees and internally displaced persons;

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

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

Aware of the particular importance of the 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;

Recognising the important contribution that can be made to the realisation of the right to freedom of expression and access to information by new digital technologies and the role of open government data in fostering transparency, efficiency and innovation;

Affirming that the same rights that people have offline shall be protected online and that States shall respect, protect and fulfil rights online in accordance with relevant regional and international human rights law;

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

Conscious that balancing the use of the internet and digital technologies with privacy and the protection of personal information, is essential for human dignity and the overall promotion and protection of human and peoples' rights as guaranteed by the *African Charter*;

The African Commission adopts this 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, adopted by the African Commission in 2002.

PART I: GENERAL PRINCIPLES

Importance of the Right to Freedom of Expression and the Right of Access to Information

1. The right to freedom of expression and the right of access to information are fundamental rights protected under international human rights law, including the African Charter. The respect, protection and fulfilment of these rights are crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies, and for the exercise of other rights.

Non-Interference with Freedom of Opinion

2. States to the African Charter (hereafter 'States') shall not interfere with anyone's freedom of opinion, including the right to form, express and change all forms of opinion, whether political, scientific, historic, moral or religious, at any time and for whatever reason.

Non-Discrimination

3. Everyone shall have the equal opportunity to exercise the right to freedom of expression and the right of access to information without distinction of any kind, 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.

Most Favourable Law Shall Prevail

4. Where a conflict arises between the Principles contained in this Declaration and any domestic, regional or international human rights standards, the most favourable provision for the full exercise of the right to freedom of expression and the right of access to information shall take precedence.

Protection of the Right to Freedom of Expression and the Right of Access to Information Online

5. The exercise of the right to freedom of expression and the right of access to information shall be protected from interference both online and offline.

6. States shall interpret and implement the protection of freedom of expression and access to information in this Declaration and other relevant international standards, to include the enjoyment of the right to freedom of expression and the right of access to information in their digital dimensions.

Protection of Human Rights Defenders and Others

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

Specific Measures for Marginalised Groups

8. States shall take specific measures to address the needs of marginalised groups in a manner that guarantees the full enjoyment of their right to freedom of expression and their right of 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, and ethnic, religious or sexual minorities.

Evolving Capacities of Children

9. States shall recognise and respect the evolving capacities of children, and shall take measures that enable children, including adolescents, to exercise the right to freedom of expression and the right of access to information.

Justifiable limitations

10. States may only limit the exercise of the right to freedom of expression and the right of access to information, if the limitation is:
 - a. prescribed by law;
 - b. serves a legitimate aim; and
 - c. a necessary and proportionate means to achieve the stated aim in a democratic society, that is compatible with the African Charter and international human rights law.
11. States shall ensure that any law limiting the right of freedom of expression and access to information is:
 - a. clear, precise, accessible and foreseeable;
 - b. applied 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 the Courts.
12. A limitation shall serve a legitimate aim where the objective of the limitation is to preserve respect for the rights or reputations of others; or to protect of national security, public order, public health or morals.
13. To be necessary and proportionate, the limitation must:

- a. originate from a pressing and substantial need that is relevant and sufficient;
- b. have a direct and immediate connection to the expression such that it is 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, including with respect to the sanctions authorised.

PART II: FREEDOM OF EXPRESSION

The Guarantee of Freedom of Expression

14. 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, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
15. Freedom of opinion, including the right to form, express and change all forms of opinion, whether political, scientific, historic, moral or religious, at any time and for whatever reason, is a fundamental and inalienable human right indispensable for the exercise of freedom of expression.

Media Diversity and Pluralism

16. State monopoly over broadcasting is not compatible with the right to freedom of expression. State and government-controlled broadcasters shall be transformed into public service broadcasters, accountable to the public through the legislature.
17. States shall take positive measures to promote a diverse and pluralistic media, which shall facilitate:
 - a. Promotion of free flow of information and ideas to the public;
 - b. access to media and other means of communication, including by marginalised groups, as well as linguistic and cultural groups;
 - c. access to gender sensitive, 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. promotion of transparency and diversity in media ownership;
 - f. promotion of local and African languages, content and voices; and
 - g. promotion of the use of local languages in public affairs, including by the executive, legislature and the judiciary.

Media Independence

18. The right to establish various forms of independent media shall be guaranteed and enshrined in legislation.
19. Any registration system for media shall be for administrative purposes only, and shall not impose restrictions on the right to freedom of expression.

20. Any media owned, controlled or operated by a public authority shall be adequately protected against undue interference.
21. States shall develop regulatory environments that encourages media owners and media practitioners to reach agreements to guarantee editorial independence and to prevent commercial and other considerations from unduly influencing media content.

Public Service Media

22. Public service media shall be governed by law, including in accordance with the following principles:
 - a. public service media shall be governed by a board which is protected against undue interference, of a political, commercial or other nature;
 - b. the editorial independence of public service media shall be guaranteed;
 - c. public service media shall be adequately funded in a manner that protects them from arbitrary interference with their budgets;
 - d. public service broadcasters shall strive to ensure that their transmission systems cover the whole territory of the States; and
 - e. the public service ambit of public broadcasters shall be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

Private Media

23. States shall promote private media as vehicles for the development and dissemination of a variety of content in the public interest.
24. The regulation of private broadcasting shall be governed by law, including in accordance with the following principles:
 - a. An independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions.
 - b. licensing processes shall be fair and transparent and shall seek to promote diversity in broadcasting by:
 - i. mandating full public disclosure of all forms of media ownership and any subsequent acquisitions or change of ownership; and
 - ii. 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.
25. Frequency allocation for private broadcasting use shall be transparent and encourage interconnection between broadcasters, including for the purposes of interoperability.

26. The process for the acquisition of broadcasting rights shall impose such conditions as are necessary for ensuring diversity in the private broadcasting sector.

Community Media

27. States shall facilitate the establishment of community media as independent non-profit entities, with the objective to developing and disseminating content that is relevant to the interest of geographic communities or communities sharing common interests such as language and culture.
28. The regulation of community broadcasting shall be governed, including 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 fulfill the objectives of community broadcasting and shall not be prohibitive.
 - d. States may allocate a fixed percentage of available radio frequency spectrum to community broadcasters to encourage diversity.

Self-Regulation

29. States shall encourage media self-regulation which shall be impartial, expeditious, cost-effective and promote high standards in the media, in accordance with Codes of Conduct developed through multi-stakeholder processes.
30. The powers of regulatory bodies shall be administrative in nature and shall not seek to usurp the role of the courts.
31. Multi-stakeholder regulation should also be encouraged by States as a complement to self-regulation and founded on informed collaboration between the State, private sector and civil society.

Regulatory Bodies for Broadcast, Telecommunications and the Internet

32. A public regulatory authority that exercises powers in the areas of broadcast, telecommunications or the internet shall be independent and adequately protected against interference of a political, commercial nature or other nature.
33. The appointment process for members of a public regulatory body overseeing broadcast, telecommunications or the internet, shall be independent and adequately protected against interference. The process shall be open and transparent, involve the participation of relevant stakeholders including civil society, and shall not be controlled by any particular political party.

34. Any public regulatory authority that exercises powers in the areas of broadcast, telecommunications or internet regulation shall be formally accountable to the public through a multi-party body.

35. A multi-stakeholder model of regulation shall be encouraged for the State, private sector and civil society to develop shared principles, rules, decision-making procedures and programmes to shape the use and evolution of the internet.

Complaints

36. 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.

37. Any regulatory body established to adjudicate on complaints about media content, shall be protected against political, commercial or any other undue interference.

Promoting Professionalism

38. Journalists and other media practitioners shall be free to organise themselves into unions and associations.

39. The right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions.

Safety of Journalists and Other Media Practitioners

40. States shall guarantee the safety of journalists and other media practitioners.

41. 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 and threats which undermine independent journalism and the free flow of information to the public.

42. States shall take effective legal and other measures to investigate, prosecute and punish perpetrators of attack against journalists and other media practitioners and ensure that victims have access to effective remedies.

43. The conduct of law enforcement, security, intelligence and military personnel which threaten, undermine or violate the safety of journalists and other media practitioners shall be the responsibility of the State. Accordingly, States shall be liable for such conduct where no action or insufficient action has been taken to investigate such attacks, prosecute and punish perpetrators, and provide victims with effective remedies.

44. States shall take special 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.
45. 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.

Protecting Reputations

46. States shall ensure that their laws relating to defamation conform with the following standards:
 - a. no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
 - b. public figures shall be required to tolerate a greater degree of criticism; and
 - c. sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.
47. Privacy and secrecy laws shall not inhibit the dissemination of information of public interest.

Criminal Measures

48. States shall review all criminal restrictions of content to ensure that they are justifiable and compatible with international human rights law.
49. The imposition of custodial sentences for offences such as defamation, libel and sedition are a violation of the right to freedom of expression. States shall abolish such criminal offences in favour of civil offences with sanctions which must themselves be necessary and proportionate.
50. 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.

Prohibited Speech

51. States shall not prohibit or impose civil or criminal sanctions in respect of speech that merely lacks tolerance, civility and respect for the rights of others or that offends, shocks or disturbs.
52. Any speech that advocates for national, racial or religious hatred which constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Such law shall be justifiable and compatible with international human rights law.

53. States shall impose criminal sanctions for prohibited speech as a last resort and only for the most severe cases. In determining severity, States shall have due regard to 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- its public nature and size of audience; and
 - f. real likelihood and imminence of harm.

Economic Measures

54. States shall promote a conducive economic environment in which the media can flourish, including through the adoption of policies for the sustainability of under-resourced print, broadcast and online media in an equitable and transparent manner.
55. States shall not abuse their power over the placement of public advertising but shall ensure the allocation of funds for public advertising is transparent and is subject to public accountability.
56. States shall adopt effective and proportionate measures to avoid direct and indirect undue concentration of media ownership whether horizontal (including cross-media ownership) or vertical. Such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

Protection of Sources and other journalistic material

57. 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 public hearing.
58. Disclosure of such sources of information or journalistic material by a Court shall 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.

PART III: RIGHT OF ACCESS TO INFORMATION

The Right of Access to Information

59. 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.
60. 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 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.

Primacy

61. Access to information laws shall apply to the exclusion of conflicting provisions of any other laws or policies that prohibit or restrict the disclosure of information.

Maximum Disclosure

62. In all circumstances, 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 regional and international standards and best practices on access to information.

Proactive Disclosure

63. All information held by public bodies and relevant private bodies shall be presumed to be subject to full disclosure. 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.
64. Proactive disclosure by relevant private bodies shall apply to activities for which public funds are utilised or public functions or services are performed.
65. 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.

Duty to Create, Keep, Organise and Maintain Information

66. States shall create, keep, organise and maintain information in a manner that facilitates the exercise of the right of access to information.

Procedure for Accessing Information

67. Access to information shall be granted as expeditiously and inexpensively as possible, and in accessible and where applicable, reusable electronic formats.

68. No one shall be required to demonstrate a specific legal or personal interest in the information requested or to provide justification for a request.
69. 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 persons with disabilities to make requests for information on an equal basis with others.
70. No fees shall be payable other than the reasonable reproduction cost of the requested information. The cost of reproduction shall however be waived where the requester is indigent.
71. Any refusal to disclose information shall be provided timeously in writing, and shall be well-reasoned and premised on existing regional and international standards and best practices on access to information.

Appeals

72. Any refusal to disclose information shall be subject to an internal appeal process which shall be expeditious and inexpensive. The right of further appeal against the outcome of an internal appeal process shall lie to the oversight mechanism and ultimately, the Courts.

Exemptions

73. 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. Information may only be withheld for the period that the harm could occur.
74. 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.
75. Laws governing classification of information shall stipulate the maximum period of the classification and restrict classification only to the extent necessary, never indefinitely.
76. 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 respectively;
- 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.

Oversight Mechanism

77. 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.
78. The independence of the oversight mechanism shall be guaranteed in law and stipulate a transparent and participatory appointment process, and clear and specific term of office, adequate remuneration and resourcing and ultimate accountability to the legislature.
79. Public bodies and relevant private bodies shall accede to the authority of the oversight mechanism in all matters relating to access to information, including resolving access to information disputes.

Whistleblower Protection

80. No person shall be subject to civil or criminal sanctions for releasing in good faith information on wrongdoing, or information which discloses a serious threat to health, safety or the environment.
81. States shall adopt laws to establish whistleblower protection regimes and independent institutions to oversee the protection of whistleblowers.

Sanctions

82. The failure of an information holder to proactively disclose information and to grant a request for information shall be established as offences punishable by law.
83. The wilful destruction, damage, alteration, concealment and 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

Access to the Internet

84. States shall facilitate freedom of expression and access to information online and the means necessary to exercise these rights.
85. States shall recognise that universal, equitable, affordable and effective access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights.
86. States shall in cooperation with all relevant stakeholders adopt laws, policies and other measures to provide universal, equitable, affordable and effective access to the internet without discrimination, including by:
 - a. developing regulatory mechanisms for effective oversight;
 - b. improving Information and Communication Technology and internet infrastructure for universal coverage;
 - c. enabling market competition for lower pricing and diversity; and
 - d. facilitating digital literacy skills for inclusive, autonomous and accountable use.
87. In providing access to the internet, specific measures shall be taken to ensure that marginalised groups are able to conduct their basic communication, education and economic needs online.
88. 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, protect them from online harm and safeguard their privacy and identity.

Non-Interference

89. 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 removing, blocking and filtering of content, unless such interference is justifiable and compatible with international human rights law.
90. States shall not engage in the wholesale disruption of access to the internet and other digital technologies for segments of the public or an entire population.
91. Any law authorising interference through surveillance regimes, shall provide for:
 - a. the prior authorisation of an independent and impartial judicial authority;
 - b. due process safeguards;
 - c. proactive transparency on the nature and scope of its use; and

d. effective monitoring and regular review by an independent oversight mechanism.

92. States shall only adopt economic measures, including taxes, levies and duties, on internet and ICT service end-users that do not unduly interfere with universal, equitable and affordable access to the internet and that are justifiable and compatible with international human rights law.

Internet Intermediaries and Online Content

93. States shall require that internet intermediaries enable access to all internet traffic and content equally without discrimination against sources of information, and they shall not interfere with the free flow of information by blocking or giving preference to particular content or traffic.

94. States shall not hold internet intermediaries liable for content generated by others which is disseminated through their services, so long as they do not intervene in the content and they shall not be required by law to proactively monitor or filter user-generated content.

95. States shall not require the removal of online content by internet intermediaries unless the request for removal is:

- a. clear and unambiguous;
- b. imposed by an independent and impartial judicial authority;
- c. subject to due process safeguards;
- d. justifiable and compatible with international human rights law; and
- e. implemented through a transparent process that allows a right of appeal.

96. States shall require internet intermediaries to ensure that in moderating online content, they mainstream human rights safeguards into their processes, adopt mitigation strategies to address State restrictions on freedom of expression online, ensure transparency on State requests for removal of content, incorporate appeal mechanisms, and offer effective remedies where rights violations occur.

Privacy and the Protection of Personal Information

97. Everyone has the right to privacy, including the confidentiality of their communications and the protection of their personal information.

98. 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.

99. The adoption of laws prohibiting encryption or of other measures that weaken encryption, including backdoors, key escrows, and data

localisation requirements, are permissible only where justifiable and compatible with international human rights law.

100. The protection of personal information of individuals shall be established by law, including in accordance with the following principles:

- a. The processing of personal information shall be:
 - i. with the consent of the individual concerned;
 - ii. conducted in a lawful and fair manner;
 - iii. in accordance with the purpose for which it was collected, and adequate, relevant, and not excessive;
 - iv. accurate and updated and where incomplete, erased or rectified;
 - v. transparent and disclose the personal information held; and
 - vi. confidential and kept secure at all times.
- b. Everyone shall have rights in relation to the processing of their personal information. This includes the right to:
 - i. be informed in detail about the processing;
 - ii. access personal information that has been or is being processed;
 - iii. object to the processing; and
 - iv. rectify, complete, update, block or erase personal information that is incomplete or outdated.
- c. Everyone shall have the right to exercise autonomy in relation to their personal information and to obtain and reuse their personal information, across multiple services by moving, copying or transferring it without affecting its usability.
- d. Any person whose personal information has been accessed by unauthorised persons has a right to be notified of this fact and the identity of the unauthorised person(s), unless the identity cannot be established.
- e. The harmful sharing of the personal information, including that of marginalised groups, such as the non-consensual sharing of intimate images of women and child pornography, shall be established as offences punishable by law.

PART V: IMPLEMENTATION

101. States shall adopt legislative, administrative, judicial and other measures to give effect to this Declaration and facilitate its dissemination.

102. Without prejudice to paragraph 101 above:

- a. 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.

- b. 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.
103. 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.