



## **Implementing Freedom of Expression**

### **A Checklist for the Implementation of the Declaration of Principles on Freedom of Expression in Africa**

Based on the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa

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## INTRODUCTION

ARTICLE 19 takes its name from the corresponding article of the Universal Declaration of Human Rights, which guarantees the right to freedom of expression and the right to seek, receive and impart information and ideas. Set up in 1987, our mission is “*to promote, protect, develop and fulfil freedom of expression and the free flow of information and ideas in order to strengthen global social justice and empower people to make autonomous choices.*”

After more than a decade of democratisation in many African countries, the protection of freedom of expression remains an important and yet unresolved issue. Indeed, basic human rights like freedom of expression and access to information are still threatened and legal guarantees are either weak or non-existent.

ARTICLE 19 has been involved in many initiatives on the African continent relating to freedom of expression and access to information. The organization was instrumental in assisting the African Commission on Human and Peoples’ Rights to draft a ‘*Declaration of Principles on Freedom of Expression in Africa*’. The Declaration addresses in a holistic and comprehensive manner the major threats to freedom of expression and information on the Continent and serves as a benchmark to evaluate states compliance with Article 9 of the ‘*African Charter on Human and Peoples’ Rights*’. As a follow-up to this work, ARTICLE 19 has developed a “checklist” that can now be used by civil society organizations to analyse the extent to which African countries have implemented the Declaration on Freedom of Expression in Africa.

### ***Why use this checklist:***

This checklist has been specifically designed for civil society organizations in Africa and elsewhere who wish to conduct a thorough analysis of the implementation status of the Declaration of Principles on Freedom of Expression in any African country. The checklist allows civil society organizations working on issues relating to freedom of expression and access to information to establish the deficiencies in terms of concrete provisions for the fulfilment and protection of freedom of expression. For this reason some of the questions cover areas broader than the issue of freedom of expression itself. The checklist interprets each article of the Declaration in a comprehensive manner, providing substantial details on how freedom of expression should be fulfilled and provided for.

The checklist can therefore be used for the following exercises:

- 1) Researching and writing *shadow reports* to be submitted to the African Commission on Human and Peoples’ Rights
- 2) Establishing areas of focus for freedom of expression campaigns and advocacy initiatives to influence policy or legislative reviews.

**How to use this checklist:**

1) *Researching and writing shadow reports to be submitted to the African Commission on Human and Peoples' Rights*

The African regional system and its '*African Charter on Human and Peoples' Rights*' has been described as the most interesting but the most underdeveloped of all regional systems. The African Charter was adopted in Nairobi in 1981 at a time when most African countries were under the tight control of dictators and single-party rule. Still, the Charter is quite unique as the incorporation of civil and political rights and economic, social and cultural rights throughout the text recognizes the interdependence and interrelation of both so-called categories of rights. Concerned by the constant violations of freedom of expression and information throughout the continent despite its clear mention in the Charter, the African Commission adopted the '*Declaration of Principles on Freedom of Expression in Africa*' in 2002. The Declaration expands on Article 9 of the Charter and clearly lays out the necessary measures to be taken to ensure freedom of expression and information for all.

In accordance with Article 62 of the African Charter on Human and Peoples Rights, state parties to the Charter are required to submit reports *every two years* on their countries' implementation of the Charter, specifically in terms of the measures taken to fulfil and protect the rights and freedoms set forth in the Charter and other documents such as the *Declaration of Principles on Freedom of Expression in Africa*.

Although there are many shortcomings regarding the submission of these periodic reports by state parties (for instance, many African countries have not submitted any reports in over 15 years), it remains a great opportunity for civil society organizations to raise awareness on specific human rights issues, such as freedom of expression that may be otherwise overlooked in state reports. For instance, in November 2006, the African Commission was examining reports from the governments of Nigeria, Uganda and Zambia at its 40<sup>th</sup> ordinary session. While considering these state reports, the Commission also took into account *shadow reports* submitted by civil society organizations. *Shadow reports* allow civil society organizations to provide information regarding the state of affairs on the ground, and suggest a list of questions that the African Commission can ask government delegations during the examination of state reports. Shadow reports can also allow civil society organizations to submit recommendations to the African Commission that can thereafter be brought up to state parties.

Shadow reports regarding freedom of expression can easily be modelled according to ARTICLE 19's checklist. Indeed, information contained in the shadow report should be organized according to the articles of the Declaration, exactly in the way the checklist is laid out. The longer version of the checklist can be used for stand alone shadow reports written specifically on freedom of expression, while the shorter version of the checklist can be used for a freedom of expression section to be incorporated in a general shadow report on human rights. Shadow reports should include a straight to the point executive summary of recommendations for reform. If necessary, relevant documentation should be attached to the report, such as excerpts from national laws, policies or academic research.

For further information regarding shadow reports you can contact directly the African Commission:

African Commission on Human and Peoples' Rights  
90 Kaibara Avenue  
P.O. Box 673  
Banjul, The Gambia  
Tel: +220 392962; 372070  
Fax: +220 390764  
Email: [idoc@achpr.org](mailto:idoc@achpr.org)  
[www.achpr.org](http://www.achpr.org)

*2) Establishing areas of focus for freedom of expression campaigns and advocacy initiatives to influence policy or legislative reviews.*

ARTICLE 19's checklist can be used as part of an exercise to establish the main areas of action for national campaigns and advocacy initiatives regarding freedom of expression. The condensed version of the checklist is especially useful for this exercise, as it summarizes the main points of the Declaration and the principal areas where states should provide guarantees for freedom of expression through specific legislations and policies. NGOs can therefore easily identify the specific areas where advocacy is necessary.



## ABBREVIATIONS

**FM:** Frequency Modulation (used for radio frequencies)

**GDP:** Gross Domestic Product



## PART 1

# Checklist for the Implementation of the Declaration of Principles on Freedom of Expression in Africa (Long Version)

### THE GUARANTEE OF FREEDOM OF EXPRESSION

Principles I and II of the Declaration of Principles on Freedom of Expression in Africa state:

#### I The Guarantee of Freedom of Expression

1. Freedom of expression and information, defined as the right to seek, receive and impart information and ideas, whether orally, in writing or in print, in the form of art, or through any other form of communication, and across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
2. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

#### II Interference with Freedom of Expression

1. No one shall be subject to arbitrary interference with his or her freedom of expression.
2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

	ANSWER	DETAILS
<b>Does the constitution contain specific provisions guaranteeing:</b>		
Freedom of expression?		
Access to information?		
Media freedom?		

That restrictions on freedom of expression, access to information and media freedom must be set out by law and be necessary in a democratic society to protect national security, territorial integrity, public safety, public order, public health or morals or the reputation or rights of others, or to prevent disorder or crime?		
The prohibition of all discrimination, whether on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status?		
<b>Does the constitution guarantee the independence of the following bodies (if they exist):</b>		
The public service broadcasting provider?		
The broadcasting regulator?		
The media regulator?		
The freedom of information commissioner or other supervisory body for access to information?		
<b>Have the constitutional provisions been made operational through the adoption of legislation:</b>		
To establish an independent broadcasting regulator?		
To provide for independent public broadcasting?		
To provide for access to information held by public bodies?		
To provide for access to information held by private bodies that is necessary to enforce the requester's right, or that constitutes private information concerning the requester?		

**Explanatory**

Media freedom

Under international law, 'media freedom' or 'press freedom' is part and parcel of the right to freedom of expression and is therefore not mentioned separately in the African Declaration. However, some constitutions do protect media or press freedom explicitly and this can serve the useful function of reinforcing its status.

Constitutional protection for regulatory and supervisory bodies

The independence of media regulatory bodies and related supervisory bodies, such as a freedom of information commissioner or ombudsman, is absolutely vital to their functioning. Constitutional protection is an important step in guaranteeing their independence (see further the sections on 'regulatory bodies' and 'complaints', below).

Restrictions on freedom of expression

Under international law, restrictions on freedom of expression must pass the so-called three-part test: (1) they must be provided by law; (2) their purpose must be to protect a legitimate interest; and (3) they must be truly 'necessary' for the protection of that interest. The first condition means, first and foremost, that the restriction cannot be merely the result of the whim of an official. There must actually be an enacted law or regulation which the official is applying. In addition, the law must meet certain standards of clarity and precision so that it is clear in advance exactly what is prohibited. Vaguely worded edicts with potentially very broad application will not meet this standard. The second condition means that restrictions on freedom of expression may only be enacted in order to protect the legitimate aims listed above. The third condition means that the restriction must be truly "necessary"; not just "reasonable", or "useful". Restrictions should also be proportionate, and only invoked when other, less restrictive measures would not be effective.

**Supplementary information:**

For additional information on restrictions on the right to freedom of expression

Are there any restrictions on what the media may publish or freedom of expression generally that are not set out in law?	
If the answer to the previous question is yes, are these restrictions so severe and/or frequent that they threaten the very heart of the right to freedom of expression?	

**DEMOCRACY AND THE RULE OF LAW**

	ANSWER	DETAILS
<b>Political and legal system</b>		
Does the constitution separate the powers of the executive, legislative and judicial arms of the State?		
Are executive bodies such as the police and the army under the full control of parliament and the judiciary?		
Are there any militia or security forces that operate outside of parliamentary or judicial control?		
<b>Judiciary</b>		
Is the independence of the judiciary guaranteed by law?		
Notwithstanding any legal guarantee of independence, in reality are judges sufficiently protected against political, economic or other undue interference?		
Are judges appointed in a fair and transparent manner, and on the basis of judicial merit?		
Are judges protected from arbitrary dismissal?		
Is the justice system as a whole adequately funded?		
<b>Access to justice</b>		
Is access to justice guaranteed by law, without discrimination?		
Is legal aid available for those who cannot afford their own lawyer?		
<b>Elections</b>		
Are political parties allowed?		
Are there regular multiparty elections, at the local, regional and at the national level?		
Have the last two most recent national elections been considered free and fair by independent monitors?		
Are elections run and monitored by a body that is independent of the government and of political parties?		
Is there sufficient information on the practical aspects of elections, such as how, when and where to vote, who the candidates are and what the purpose of the elections is?		

<b>Elections and the media</b>		
Are broadcasters, including any state-owned or public broadcasters, required by law to provide balanced and impartial coverage of elections?		
In practice, do they provide balanced and impartial coverage of elections?		
Do candidates in elections have equitable access to the media?		

**Explanatory**

Separation of powers

In a democracy, there is usually a strict separation of powers between the executive, legislative and judicial arms of the state. The legislative arm, usually called 'parliament' or 'national assembly', has exclusive power to make laws; the executive arm (government ministers and their departments, and other public bodies) carries out legislation; and judges have exclusive power to decide on legal disputes.

Independence of justice

It is particularly important in a democracy that the judiciary are independent. Individuals accused of a crime or who are embroiled in a legal dispute must be sure that the judge reviewing their case is independent from the government, ministers, or political or commercial interests. The appointment process for judges must therefore guard their independence; judges' tenure should be protected; and their pay should be adequate to safeguard against the temptation of corruption.

**DIVERSITY**

Principle III of the Declaration of Principles on Freedom of Expression in Africa states:

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things:-

- availability and promotion of a range of information and ideas to the public;
- pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;
- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts.

	ANSWER	DETAILS
<b>Does the State or an independent regulatory body take positive measures to promote diversity, such as:</b>		
The promotion of the availability of wide a range of information and ideas to the public?		
The promotion of pluralistic access to the media, targeting vulnerable or marginalized groups, such as women, children and refugees? (For example through public service broadcasting and community broadcasting, and through local and regional media)		
The promotion of African voices, including through media in local languages?		
The promotion of the use of local languages in public affairs, including in the courts?		
The promotion of locally produced media content?		
The availability of non-discriminatory subsidies for local and/or community media?		
<b>Does the state promote access to media/information by investing sufficiently in communications infrastructure?</b>		
Do the media benefit from appropriate tax reductions, such as reduced value added tax on media sales and abolition of import duties on newsprint?		
Do private and community broadcasters have access to the technical means for distribution at a fair and equitable price?		



Are there community Internet access points throughout the country?		
Are there private Internet service providers?		
Is there sufficient Internet bandwidth to cope with demand?		

**Supplementary information:**

The following questions may be useful to obtain an overview of media distribution in the country.

What is the number of:

Private newspapers? (/1000people)	
Public newspapers? (/1000people)	
Private FM radio stations? (/1000people)	
Public FM radio stations? (/1000people)	
Private free to air television stations? (/1000people)	
Public free to air television stations? (/1000people)	
Private subscription television stations? (/1000people)	
Public subscription television stations? (/1000people)	

## FREEDOM OF INFORMATION

Principle IV of the Declaration of Principles on Freedom of Expression in Africa states:

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
  - everyone has the right to access information held by public bodies;
  - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
  - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
  - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
  - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
  - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

	ANSWER	DETAILS
<b>Are the following principles guaranteed by law:</b>		
The right to access information held by public bodies?		
The right to access information held by private bodies if necessary in order to exercise or protect any right?		
The right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies?		
The requirement for public bodies, even in the absence of a request, to actively publish important information of significant public interest?		
Do public bodies publish this information in local languages and in a manner accessible to all?		
Have secrecy laws been amended as necessary to comply with these principles?		
<b>Procedural aspects:</b>		
Are access fees both reasonable and affordable?		

Is there a reasonable deadline within which access requests must be responded to?		
Are written reasons provided for refusals?		
Can a refusal of access be appealed in court or to an independent tribunal?		
<b>Do public bodies proactively publish information related to:</b>		
The environment, public health, natural disasters and/or any other information of significant public interest?		
Their own organisation, and specifically regarding internal procedures, powers and responsibilities, the kinds of information the body is likely to hold, its budget and the procedure for making access requests?		
<b>Whistleblowers</b>		
Does the law ensure that persons who in good faith release information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment (colloquially known as “whistleblowers”) are protected from sanction?		
Are journalists who report news based on information provided to them by whistleblowers protected from sanction?		

## **Explanatory**

### Access to information:

Access to information legislation is based on the principle that public bodies are servants of the people, and that they hold information not for themselves, but on behalf of the people. As a matter of principle, they should allow access to information held by them unless to do so would do serious and demonstrable harm to a legitimate State interest, such as the prevention of crime, that overrides the public interest in disclosure.

### Refusal of access:

A complete list of the legitimate aims which may justify non-disclosure should be provided in the law. This list should include only interests which constitute legitimate grounds for refusing to disclose documents and should be limited to matters such as law enforcement, privacy, national security, commercial and other confidentiality, public or individual safety, and the effectiveness and integrity of government decision-making processes.

### Secrecy laws:

All ‘secrecy laws’ – for example, legislation protecting official secrets or private confidentiality – should be reviewed for compliance with freedom of information principles. These laws should never exempt entire categories of information from disclosure; instead, they should require that all access requests

are reviewed on their merits and that access is granted unless disclosure would do serious and demonstrable harm to a legitimate State interest that overrides the interest in disclosure.

Fees:

A fee may be charged for access requests. However, the fee should not be such as to deter applicants and it should never exceed the actual cost of searching for, preparing and communicating the information. Personal information must always be provided free of charge; and governments should give strong consideration to providing an initial amount of information for any access request free of charge.

Time limits:

Public bodies should respond to access requests as soon as possible, and always within a reasonable time limit. Depending on the volume of material asked for, and the kind of search that might need to be carried out by the public body, a period of up to twenty working days may be reasonable. If the request involves searching an exceptionally large volume of material, or if complying within the twenty working days would interfere unreasonably with the public body's other operations, the deadline may be extended by another twenty working days.

Duty to publish:

Freedom of information implies not only that public bodies accede to requests for information but also that they publish and disseminate widely documents of significant public interest, subject only to reasonable limits based on resources and capacity. Which information should be published will depend on the public body concerned. The law should establish both a general obligation to publish and key categories of information that must be published.

For a complete view of all the principles defining an access to information law, please refer to ARTICLE 19's *Model of Freedom of Information Law*, at [http://www.article19.org/pdfs/standards/modelfreedom\\_of\\_informationlaw.pdf](http://www.article19.org/pdfs/standards/modelfreedom_of_informationlaw.pdf).

**PRIVATE BROADCASTING**

Principle V of the Declaration of Principles on Freedom of Expression in Africa states:

1. States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.
2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:
  - there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
  - an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
  - licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and
  - community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.

	ANSWER	DETAILS
<b>Is private television and/or radio broadcasting allowed?</b> A State monopoly over broadcasting, whether radio or television, is not compatible with the right to freedom of expression.		
<b>Does the regulatory system encourage commercial and community broadcasting in accordance with the following principles:</b>		
Are frequencies allocated equitably among public, commercial and community broadcasters?		
Are licences awarded and enforced by a body that is independent of the government and protected from undue political or commercial interference? (for more questions regarding the independence of the regulator, see the section on Regulatory Bodies for Broadcasting and Telecommunications, below)		
If international broadcasters are allocated national or local frequencies, is there an equitable sharing of the frequencies between local, national and international broadcasters?		
Are there realistic and effective measures in force to prevent private broadcasters acquiring an excessive share of the broadcast market?		

<b>The licensing process</b>		
Are the criteria for awarding a licence set out in law?		
Is the promotion of diversity one of the aims of the licensing system?		
Is there a regular tender process for licences?		
Does the regulator publish sufficient information on the licensing process, including, for each tender, the number of applications received, the number of licences awarded, and full reasons for both licence awards and refusals?		
Are successful applicants automatically awarded a broadcast frequency, or do they have to go through a separate process to get one?		
Are the terms and conditions of the license expressed clearly?		
Is the license period sufficient to allow the licensee a return on investment?		
Are unsuccessful applicants given reasons for a refusal, and can they appeal refusals to a court?		
<b>The promotion of community and public service broadcasting</b>		
Is community broadcasting recognised as a separate and important category of broadcasting?		
Do community broadcasters benefit from a reduced licence fee, or a complete fee waiver?		
Is there a national policy to support community broadcasting, for example by providing financial or material support?		
Do private broadcasters have any public service content obligations?		
Are there any restrictions on private broadcasters concerning news and/or political content?		

### **Explanatory**

#### Broadcast regulation:

Broadcasting is by far the most important source of information, as well as of entertainment, for most people in countries around the world. High levels of illiteracy along with the difficulty of distributing newspapers mean that, often, broadcasting is the only media that is accessible.

As a result of its centrality as a source of information and news, and its growing profitability, governments and dominant commercial interests have historically sought to control broadcasting. All too frequently, the public broadcaster operates largely as a mouthpiece of government rather than serving the public interest. In many countries, broadcasting was until recently a State monopoly, a situation which still pertains in some States. In other countries, private broadcasting is becoming increasingly important and a variety of mechanisms have been used to try to control it. Governments have exerted control through the licensing process while commercial interests have sought to monopolise the broadcasting sector and to focus on low-quality but profitable programming.

Licensing:

Licences should be awarded by a body that is independent from the government, and isolated against undue political or commercial pressure and interference. Licences should be awarded across public, commercial and community broadcasters, at the national, regional and local level. The conditions for the awarding of licences should be clear and fair, and unsuccessful applicants should be able to appeal refusals to a court (and not a ministry or government department).

Diversity in broadcasting:

Diversity implies pluralism of broadcasting organisations, of ownership of those organisations, and of voices, viewpoints and languages within broadcast programming as a whole. In particular, diversity implies the existence of a wide range of independent broadcasters and programming that represents and reflects society as a whole. The State has an obligation to take positive measures to promote the growth and development of broadcasting, and to ensure that it takes place in a manner which ensures maximum diversity. It also has an obligation to refrain from imposing restrictions on broadcasters which unnecessarily limit the overall growth and development of the sector.

Effective measures should be put in place to prevent undue concentration, and to promote diversity, of ownership both within the broadcast sector and between broadcasting and other media sectors. Such measures should take into account the need for the broadcasting sector as a whole to develop and for broadcasting services to be economically viable.

Licensing:

Licences should be awarded by a body that is independent from the government, and isolated against undue political or commercial pressure and interference. Licences should be awarded across public, commercial and community broadcasters, at the national, regional and local level. The conditions for the awarding of licences should be clear and fair, and unsuccessful applicants should be able to appeal refusals to a court.

Community broadcasting

Community broadcasting is broadcasting which is for, by and about a specific community, which need not be geographic, whose ownership and management is representative of that community, which delivers social gain and which is run on a not-for-profit basis.

For an overview of international standards and issues relevant to broadcast regulation, please refer to ARTICLE 19's *Access to the Airwaves - Principles on Freedom of Expression and Broadcast Regulation*, at <http://www.article19.org/pdfs/standards/accessairwaves.pdf>.

**Supplementary information:**

What is the coverage of commercial and community broadcasting?

Does it cover all the population? ( <i>in % of the population</i> )	
Does it broadcast in local languages ( <i>in % of the language used</i> )	
How many radio sets are there per 1000 people?	
How many TV sets are there per 1000 people?	



**PUBLIC BROADCASTING**

Principle VI of the Declaration of Principles on Freedom of Expression in Africa states:

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

	ANSWER	DETAILS
<b>Public service broadcasting</b>		
Is there a public broadcaster?		
Is the public broadcaster required by law to provide impartial and balanced programming for the entire population?		
In practice, is it perceived to provide independent and unbiased news and information?		
During elections, is the public broadcaster required by law to provide equitable access to all parties and candidates?		
<b>Public service remit</b>		
Are the role and functions of the public broadcaster set out in law?		
Does the public broadcaster provide access for vulnerable and marginalised groups, such a women, children and refugees, as well as linguistic and cultural groups?		
Does the public broadcaster publish regular reports (at least once a year) on how it fulfils its public service obligations?		
Does the public service broadcaster – or a network of public service broadcasters – broadcast to the entire territory of the country?		

Does the public broadcaster cater sufficiently to all official languages, as well as to relevant other languages (such as local languages, or widely spoken languages other than the official language(s))?		
<b>Independence, governance, accountability and funding</b>		
Is the legal status of the public broadcaster that of an independent entity, or is it a government department?		
Is the public broadcaster accountable to the public through parliament, rather than through a government department or a ministry?		
Is the public broadcaster governed by a board that is independent from the government and from undue political or commercial interference?		
If there is a governing board, is it appointed by parliament in an open and democratic process (rather than by a government minister or the president)?		
Is there civil society involvement in the appointments process, for example by allowing civil society to nominate members and by holding open hearings?		
If there is a governing board, are its members appointed on the basis of their education, experience and expertise in a field relevant to public service broadcasting, such as broadcasting, policy, law, technology, journalism or business?		
If there is a governing board, are its members protected from early dismissal (save in exceptional circumstances set out in law, such as a violation of their public service duties or physical inability to carry out their functions)?		
Is the editorial independence of the public broadcaster guaranteed by law?		
Does the public broadcaster operate under agreed editorial, advertising and programme codes?		
Does the public broadcaster have (a) stable source(s) of income that are guaranteed over a period of several years?		

Is the public broadcaster sufficiently funded to enable them to fulfil their public service obligations?		
Does the public broadcaster have control over their own budget, subject, in the case of broadcasters that are publicly funded, only to an annual parliamentary vote?		
Does the public broadcaster consult with the public on their functioning (for example, by organising regular audience feedback meetings)?		

### **Explanatory**

#### Public and State broadcasting:

A state broadcaster is controlled by the state or the government of the day and represents the viewpoint of the government and is accountable to the executive. A public broadcaster is owned by the public and is accountable to it, through the parliament or national assembly. Both public and state broadcasters are, normally, at least partly funded out of public funds.

#### Public service broadcasting:

Public service broadcasting is a form of broadcasting that seeks to serve the needs of the people – not the ruling party or government – and that is ultimately accountable to the people. It may take many forms; the BBC model of a large, national machinery is one, but public service broadcasting may also be provided by one or several commercial broadcasters, or by a network of local or regional broadcasters. However, there are some common characteristics. All broadcasters that have a public service remit should be required to provide high quality, independent programming that contributes to a plurality of opinions and an informed public. Viewed as a whole, the public service broadcasting system should provide a wide range of informational, educational, cultural and entertainment programming and it should promote diversity in broadcasting in the overall public interest. Viewed as a whole, again, the public service broadcasting system should possess the following characteristics:

- the provision of comprehensive news and current affairs programming, which is impartial, accurate and balanced;
- the provision of a wide range of broadcast material that strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
- universal accessibility, serving all the people and regions of the country, including minority groups;
- the provision of educational programmes and programmes directed towards children; and
- the promotion of local programme production, including through minimum quotas for original productions and material produced by independent producers.

#### Independence

Public broadcasters should be independent from the government and political interests, and their editorial independence as well as their operational independence should be guaranteed by law. It should be accountable only to parliament, the representatives of the people to whom it is ultimately

accountable, and protected from political or commercial pressures. Public broadcasters that are (part) funded by advertising should not allow advertisers to influence programme content.

#### Governance

The public broadcaster should be governed by a board that is broadly representative of the people, that is independent from the government or from political or commercial interests, and that is appointed in an open and democratic process. Members of the board should serve for a number of years and should only be dismissed in exceptional circumstances, for example if they violate public service principles, if there is a conflict of interest (for example, if they acquire a commercial interest in a rival broadcaster) or if they become unable through illness to carry out their functions. The functions, role and status of the board must be clearly set out in law.

#### Funding:

The public broadcaster must receive sufficient funding to enable it to fulfil its remit; the funding must be stable and guaranteed over a long term and come with no 'strings attached'. For example, there should not be annual 'negotiations' between the public broadcaster and the government, because that would undermine the independence of the system. While public broadcasters should be allowed to derive money from any source, their funding base should ideally be diverse so as to provide stability. Public broadcasters that are (part) funded by advertising should not allow advertisers to influence programme content.

For an overview of international standards and issues relevant to public service broadcasting, please refer to ARTICLE 19's *Access to the Airwaves - Principles on Freedom of Expression and Broadcast Regulation*, at <http://www.article19.org/pdfs/standards/accessairwaves.pdf>, and ARTICLE 19's *Model Public Service Broadcasting Law*, at <http://www.article19.org/pdfs/standards/modelpsblaw.pdf>.

**REGULATORY BODIES FOR BROADCASTING AND TELECOMMUNICATIONS**

Principle VII of the Declaration of Principles on Freedom of Expression in Africa states:

1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
2. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.
3. Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

	ANSWER	DETAILS
<b>The independence of regulatory bodies for broadcasting and telecommunications</b>		
Is the legal status of the regulatory bodies for broadcasting and telecommunications that of an independent entity, or is it a government department?		
<b>The board of the regulatory body</b>		
Is the regulatory body governed by a board that is independent from the government and from undue political or commercial interference?		
If there is a governing board, is it appointed by parliament in an open and democratic process (rather than by a government minister or the president)?		
Is there civil society involvement in the appointments process, for example by allowing civil society to nominate members and by holding open hearings?		
If there is a governing board, are its members appointed on the basis of their education, experience and expertise in a field relevant to public service broadcasting, such as broadcasting, policy, law, technology, journalism or business?		

If there is a governing board, are its members protected from early dismissal (save in exceptional circumstances set out in law, such as a violation of their public service duties or physical inability to carry out their functions)?		
<b>Funding</b>		
Are the regulatory bodies sufficiently funded to enable them to carry out their functions?		
Do the regulatory bodies have control over their own budgets, subject only to an annual parliamentary vote?		
<b>Accountability</b>		
Are the regulatory bodies accountable to the public through parliament, rather than through a government department or a ministry?		
<b>Powers and responsibilities</b>		
Are the powers and responsibilities of the regulatory bodies for broadcasting and telecommunications clearly set out in law?		
Do regulatory bodies for broadcasting and telecommunications have the exclusive power to award, enforce and suspend or revoke licences?		
If the broadcast regulator awards a broadcasting licence, is a broadcast frequency granted automatically or does the applicant need to go through a separate process to obtain one?		
Do the regulatory bodies for broadcasting and telecommunications receive policy instructions from the government?		
Do the regulatory bodies for broadcasting and telecommunications consult with the public (for example, do they publish policy papers for comments)?		
Do the regulatory bodies for broadcasting and telecommunications publish regular reports (at least once a year) on how they fulfil their obligations?		
Are the regulatory bodies for broadcasting and telecommunications able to gather information necessary in the performance of their functions, subject only to legitimate legal		

limits (for example, in order to search premises they would need to seek judicial authorisation)?		
Do the regulatory bodies for broadcasting and telecommunications have the power to impose fines or other sanctions, in legitimate cases of violation of the law or of licence conditions as prescribed by law?		
Does the regulatory body for broadcasting have authority over the public broadcaster?		
<b>Sanctions</b>		
Do licensees have the right to make representations to the regulatory body before any sanction is imposed?		
Does the law limit the ability to impose sanctions to legitimate cases of violation of the law or of licence conditions?		
Does the law require sanctions to be proportionate?		
Does the law require that intrusive sanctions, such as heavy fines or licence suspensions, are imposed only for serious breaches of the law or licence conditions, and only when lesser sanctions have been tried and have failed to remedy the breach?		
Can licensees appeal sanctions that are imposed by the regulator?		
<b>Broadcasting Policy and the Frequency plan:</b>		
Is there a national broadcasting policy, and if so, is it accessible and has it been widely published?		
Is there a national frequency plan, and if so, is it accessible and has it been widely published?		

### **Explanatory**

#### Regulatory bodies for broadcasting and telecommunications

There should be independent regulatory bodies for the broadcasting and telecommunications sector (or one 'converged' body for both) that have exclusive powers to regulate the sector. There should be a clear demarcation between the powers of parliament and the government to set out broad policy guidelines, for example in a national broadcasting policy, and the powers of the regulatory body to implement that policy in accordance with the broadcasting law.

To avoid any arbitrary pressure and ensure their independence, regulatory bodies for broadcasting and telecommunications should also receive sufficient and guaranteed funding. They should be able to control their own budget, subject only to an annual parliamentary vote on the whole of the budget.

**PRINT MEDIA**

Principle VIII of the Declaration of Principles on Freedom of Expression in Africa states:

1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.
2. Any print media published by a public authority should be protected adequately against undue political interference.
3. Efforts should be made to increase the scope of circulation of the print media, particularly to rural communities.
4. Media owners and media professionals shall be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content.

	ANSWER	DETAILS
<b>Regulation of the print media</b>		
Is there a statutory regulator for the print media?		
If a statutory regulator exists, are its functions limited to administrative registration or notification, or does it have broader regulatory powers, such as a power to licence newspapers or journalists, or a power to enforce a code of ethics and impose sanctions?		
If a statutory regulator exists, is its independence protected?		
If a statutory regulator exists, are its members appointed by the media and representatives of the public, or are they appointed by a government minister or by the president?		
Do publications need to be submitted to a central body for approval prior to publication?		
<b>Registration and licensing</b>		
Do print media need to obtain a licence before being allowed to publish?		
If print media are required to obtain a licence, can that licence be refused or withdrawn for content-related matters (such as committing defamation or insulting the President)?		
Do print media need to notify a central authority, or are they		



required to register with a central authority before being allowed to publish?		
Is there a fee for a licence, registration or notification?		
If there is a fee, is it nominal or substantial?		
Are media with a print run of 500 or less exempted from the registration or notification requirement?		
<b>Editorial independence</b>		
Are media owners encouraged to put in place editorial charters that protect the independence of the editorial staff from undue commercial pressures?		
If there are publicly owned or state newspapers, is their editorial independence protected by law?		
<b>Distribution</b>		
Are newspapers available in local languages?		
Is the circulation of newspapers limited to cities?		
Are efforts being made to increase the circulation of print media in rural communities?		

## **Explanatory**

### Print media regulation

Self-regulation is the best system for print media regulation. If there is a statutory regulator for the print media, it should be independent from the government and protected from political, economic or other undue interference. Its members should be appointed democratically and ideally include media representatives as well as representatives from the general public. There should be no government appointees or civil servants on the regulator. If it enforces a code of ethics, its powers should be limited to imposing a public warning or reprimand.

### Licensing and registration

International law disapproves of a licensing system for the print media. A purely administrative registration or notification system, which would require no more than lodging name and contact details of the publisher, is allowed but only if it poses no substantive barrier to publication and is not unduly onerous. For this reason, the registration fee should be nominal; it should never be so high as to deter persons from setting up a print media outlet. Publications with a print run of 500 or less should be exempted from the requirement to register.

### Protecting editorial independence

The editorial staff of print media should not be under undue political or commercial pressures. This means that if there are publicly owned print media, such as state newspapers, their editorial independence should be protected along the same lines as the independence of public broadcasters. Privately owned print media are not under an obligation to set up a mechanism to protect the editorial independence of their staff but they are strongly encouraged to do so.

An editorial charter or other agreement between the owners and editorial staff, setting out the respective areas of responsibility, can be a strong tool in this regard.

<b>INTERNET AND COMMUNICATION TECHNOLOGY</b>
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	ANSWER	DETAILS
<b>National information and communication technologies policy</b>		
Is there a national information and communication technologies policy?		
Does the policy promote equitable and affordable access to information and communication technologies, especially in rural areas?		
<b>Regulation</b>		
Is there a national body responsible for regulating Internet content and/or access to the Internet?		
If there is, is this body independent or is it part of a government department?		
<b>Access to the Internet and control of Internet content</b>		
Is there any restriction on or blocking of Internet content?		
Is there any monitoring of email or other Internet content?		
Is access to the internet free and unfettered, or is there a national filtering system?		
Are Internet service providers liable for the content of sites they host?		

**Supplementary information:**

To obtain a more comprehensive overview of ICT infrastructure and policy, answer the following questions:

What is the number of Internet Service Providers? ( <i>/1000people</i> )	
What is the number of Internet users? ( <i>/1000people</i> )	
What is the number of personal computers? ( <i>/1000 people</i> )	
How many public access points to Internet are there? ( <i>/1000 people</i> )	
Is there an Internet access point/number in every region?	
What is the price of a personal computer? ( <i>in % of average income</i> )	

What is the price of 20 hours of dial up connection? ( <i>% of average income</i> )	
What is the price of a broadband connection? ( <i>% of average income</i> )	

**COMPLAINTS**

Principle IX of the Declaration of Principles on Freedom of Expression in Africa states:

1. A public complaints system for print or broadcasting should be available in accordance with the following principles:
  - complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
  - the complaints system shall be widely accessible.
2. Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.
3. Effective self-regulation is the best system for promoting high standards in the media.

	ANSWER	DETAILS
<b>Self regulation</b>		
Does a self-regulatory system exist for the print media?		
If it exists, is it considered effective?		
<b>A public complaints system</b>		
Does a complaints system exist for the print media?		
If a complaints system exists for the print media, is it self-regulatory or has it been established by law?		
Does a complaints system exist for the broadcast media?		
If a complaints system exists for the broadcast media, is it self-regulatory or has it been established by law?		
<b>Independence</b>		
Is the body that hears complaints independent and protected against political, commercial or other undue interference?		
Are members of the complaints body appointed solely by media representatives and representatives from the general public, or are there also government appointees and/or civil servants on the body?		
<b>Structure and powers</b>		
Does the complaints body operate on the basis of established		

rules and a code of conduct agreed between all stakeholders, including the media?		
Is the complaints system self-regulatory or statutory?		
Are its powers limited to issuing public warnings or can the complaints body also impose fines?		
<b>Fairness</b>		
Is the complaints process considered fair?		
Are media against whom a complaint has been lodged allowed to make representations to the complaints body?		
Can decisions be appealed to the courts?		

**PROMOTING PROFESSIONALISM**

Principle X of the Declaration of Principles on Freedom of Expression in Africa states:

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

	ANSWER	DETAILS
<b>Unions and associations</b>		
Are all media practitioners free to organise themselves into unions and associations?		
Are media unions and associations independent and free from political, economic and other undue interference?		
Are there separate unions and associations for journalists, publishers and/or editors?		
Is there an association for women media practitioners?		
<b>Practice of journalism and legal restrictions:</b>		
Do journalists need to obtain a licence before being allowed to work?		
Do all journalists need to register with a central body?		
Are there educational requirements for practising journalism?		
Are there nationality requirements for practising journalism?		
Are persons with a criminal record barred from practising journalism?		

**Explanatory**

Practice of journalism

Under international law, no-one should be barred from working as a journalist. There is no reason to impose educational requirements, and it is illegitimate to pose nationality restrictions or to bar persons with a criminal record. Journalists should not be required to obtain a licence before being able to work as a journalist.

## ATTACKS ON MEDIA PRACTITIONERS

Principle XI of the Declaration of Principles on Freedom of Expression in Africa states:

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.

	ANSWER	DETAILS
<b>Attacks against media</b>		
Have there been attacks against the media (whether individual journalists or media houses) in the last four years?		
Have threats been made to the media?		
Have police or other state actors been implicated in any of these attacks or threats?		
Have the perpetrators of all attacks against the media been brought to justice?		
Do the police and other public authorities act to protect the media when threats are made against them?		
Have the police and other public authorities taken measures to prevent attacks against the media?		
<b>Redress for victims of violence</b>		
Do victims of violence have recourse to adequate remedies, including restitution of stolen property and compensation for damages?		
<b>Conflict situations:</b>		
Is the status of media practitioners as non-combatants recognised and respected?		

**PROTECTING REPUTATIONS**

Principle XII of the Declaration of Principles on Freedom of Expression in Africa states:

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.

	ANSWER	DETAILS
<b>Defamation laws</b>		
Do defamation laws recognise the principle that no one may be held liable for the publication of true statements?		
Do defamation laws recognise the principle that no one may be held liable for the expression of an opinion?		
Do defamation laws recognise the principle that no one may be held liable for a statement which it was reasonable to make in the circumstances?		
Do defamation laws recognise the principle that public figures are required to tolerate a greater degree of criticism than ordinary persons?		
Are there special provisions that protect the head of state and/or government officials?		
Can public bodies, such as government departments, sue for defamation?		
Are there special laws that protect against 'insult'?		
<b>Sanctions</b>		
Do defamation laws recognise the principle that sanctions imposed for defamatory remarks may never be so severe as to inhibit the right to freedom of expression?		

Do defamation laws impose a ceiling on the amount of damages that may be awarded?		
Is there a requirement that damages awarded should always be proportionate to the defamation committed?		
Do defamation laws prioritise non-pecuniary damages, such as a right of refutation or reply?		
<b>Privacy law</b>		
Do privacy laws recognise the defence of reporting in the public interest?		
<b>Criminal defamation/insult provisions</b>		
Is defamation or insult a criminal offence?		
If it is, how many individuals have been prosecuted in the last year, and how many of these have been found guilty?		
How many people are currently serving prison sentences for defamation?		
Are fines proportionate, and is there a maximum to the fine that may be imposed?		

## **Explanatory**

### Legitimate purpose of defamation laws

Defamation laws cannot be justified unless their genuine purpose and demonstrable effect is to protect the reputations of individuals – or of entities with the right to sue and be sued – against injury, including by tending to lower the esteem in which they are held within the community, by exposing them to public ridicule or hatred, or by causing them to be shunned or avoided. Defamation laws cannot be justified if their purpose or effect is to protect individuals against harm to a reputation which they do not have or do not merit, or to protect the ‘reputations’ of entities other than those which have the right to sue and to be sued.

### Public bodies and officials

Public bodies of all kinds – including all bodies which form part of the legislative, executive or judicial branches of government or which otherwise perform public functions – should be prohibited altogether from bringing defamation actions. Under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status. It is now well established in international law that such officials should tolerate more, rather than less, criticism. It is clear that laws that provide special protection for public officials fall foul of this rule.



### Criminal defamation and insult laws

In many countries, criminal defamation laws are abused by the powerful to limit criticism and to stifle public debate. The threat of harsh criminal sanctions, especially imprisonment, exerts a profound chilling effect on freedom of expression. Such sanctions cannot be justified, particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals' reputations. There is always the potential for abuse of criminal defamation laws, even in countries where in general they are applied in a moderate fashion. All criminal defamation laws should therefore be abolished and replaced, where necessary, with appropriate civil defamation laws.

### Defences

There should be a range of defences to a defamation charge, including a defence of 'truth' and a defence of 'reasonableness'. Proof that a statement is true should exonerate a defendant from any liability. In addition, more and more countries are recognising a 'reasonableness' defence – meaning that a defendant is free from liability even for the publication of a false statement when the publication was 'reasonable' in the circumstances. Even the best journalists make honest mistakes and to leave them open to punishment for every false allegation would be to undermine the public interest in receiving timely information. A more appropriate balance between the right to freedom of expression and reputations is to protect those who have acted reasonably, while allowing plaintiffs to sue those who have not. For the media, acting in accordance with accepted professional standards should normally satisfy the reasonableness test.

### Sanctions

Disproportionate remedies or sanctions can significantly limit the free flow of information and ideas. Freedom of expression demands that the purpose of a remedy for defamatory statements is, in all but the very most exceptional cases, limited to redressing the immediate harm done to the reputation of the individual(s) who has been defamed. Using remedies to serve any other goal would exert an unacceptable chilling effect on freedom of expression which could not be justified as necessary in a democratic society. The 'necessity' part of the test for restrictions on freedom of expression precludes reliance on certain restrictions where less chilling but still effective alternatives exist. Non-pecuniary remedies often have less impact on the free flow of information and ideas than their pecuniary counterparts and may at the same time provide an effective means of redressing any harm done to individuals' reputations. Such remedies should, therefore, be prioritised.

**CRIMINAL MEASURES**

Principle XIII of the Declaration of Principles on Freedom of Expression in Africa states:

1. States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.
2. Freedom of expression should 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.

	ANSWER	DETAILS
<b>Criminal restrictions on freedom of expression</b>		
Does the criminal law prohibit the publication of 'false news'?		
Is defamation or insult a criminal offence?		
Are there other criminal restrictions on the right to freedom of expression?		
In the past year, how many persons have been prosecuted for things they said or wrote?		
In the past year, how many persons have been convicted for things they said or wrote?		
<b>Public order and national security restrictions</b>		
Does the criminal law respect the principle that there should not be restrictions on freedom of expression to protect national security or public order interests unless there is a real and imminent risk of harm caused as a result of the expression?		
<b>Review of criminal restrictions on freedom of expression</b>		
Has the government reviewed all criminal law restrictions on freedom of expression to ensure that they serve a legitimate interest and are truly "necessary" in a democratic society?		
<b>Sanctions</b>		
Are sanctions proportionate?		
In the past year, how many persons have been imprisoned for things they said or wrote?		
In both absolute terms and in % of average income, what is the lowest, highest and average fine imposed for offences?		

## **Explanatory**

### Use of criminal law to restrict speech

International human rights law cautions against the use of the criminal law to restrict the right to freedom of expression. The principles of 'proportionality' and 'necessity' require that the State must use the least restrictive means available to it when acting to protect public interests; this means that where civil law measures or even self-regulation suffices, the State should not use the criminal law. It is for this reason that criminal defamation laws, in particular, are disapproved of; the civil law provides ample protection to individuals' reputation.

### 'False news' provisions

The criminal law of many countries still prohibits the making of 'false statements'. International human rights bodies and constitutional courts in some countries have ruled that such a prohibition violates the right to freedom of expression. The media must be allowed leeway to report timely on all matters of public interest; they cannot always be required exhaustively to check their facts before publishing. Human rights courts have recognised that "news is a perishable commodity". The media must also be allowed to rely on reputable sources without having to check all facts independently.

### Public order and national security restrictions

Offences that restrict speech in order to protect national security or public order interests should require that a direct causal link is established between the impugned statement and the protected interest, and that real harm is done to that interest. Criminal law offences that restrict the publication of anything that is merely "related to" or "concerns" national security or the defence of the country, for example, fail this standard: instead, the criminal offence should require real and demonstrable harm.

**ECONOMIC MEASURES**

Principle XIV of the Declaration of Principles on Freedom of Expression in Africa states:

1. States shall promote a general economic environment in which the media can flourish.
2. States shall not use their power over the placement of public advertising as a means to interfere with media content.
3. States should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

	ANSWER	DETAILS
<b>Economic environment for the media</b>		
Has the government taken any measures to create an enabling economic environment for the media?		
In particular, has it provided any of the following:		
<ul style="list-style-type: none"> <li>• Direct subsidies to private media on fair and non-discriminatory criteria</li> </ul>		
<ul style="list-style-type: none"> <li>• Free access to a publicly funded press agency</li> </ul>		
<ul style="list-style-type: none"> <li>• The abolition of import and other duties on materials used for the production of media product (such as newsprint)</li> </ul>		
<b>Public advertising</b>		
In the last four years, has the government used its power to place advertisements discriminatorily?		
In the last four years, has the government used its power to place public advertisements to influence media content?		
<b>Restrictions on media ownership</b>		
Are there restrictions on ownership of multiple broadcast media outlets, and if so, what are they?		
Are there restrictions on ownership of multiple print media outlets, and if so, what are they?		
Are there restrictions on cross-ownership of print and broadcast media outlets, and if so, what are they?		
Are there restrictions on foreign ownership of broadcast outlets?		
Are there restrictions on foreign ownership of print media outlets?		

## **Explanatory**

### 'Positive' obligations in human rights law

International human rights law requires states not only to refrain from actions that violate people's rights, it also requires that States take positive steps to ensure that people can enjoy their rights. In the context of freedom of expression, this means that it must strive to achieve an environment in which the media can flourish. This helps fulfil the public's right to receive information from a variety of sources, as well as to the expression rights of the media themselves. States are required to abolish restrictions on media freedom, to abolish state monopolies (for example, in broadcasting), to enact regulations to restrict concentration of ownership (while being careful not to set the limits at too strict a level), and they are encouraged to reduce value added tax on media sales and abolish duties on equipment used to produce media output.

**PROTECTION OF SOURCES AND OTHER JOURNALISTIC MATERIAL**

Principle XV of the Declaration of Principles on Freedom of Expression in Africa states:

1. Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:
  - 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;
  - the information or similar information leading to the same result cannot be obtained elsewhere;
  - the public interest in disclosure outweighs the harm to freedom of expression; and
  - disclosure has been ordered by a court, after a full hearing.

	ANSWER	DETAILS
<b>Protection of sources</b>		
Are media practitioners protected from revealing confidential sources of information or disclose other material held for journalistic purposes, except when <u>all</u> following conditions are met?		
<ul style="list-style-type: none"> <li>• Disclosure has been ordered by a court;</li> </ul>		
<ul style="list-style-type: none"> <li>• A full hearing has been held, including the journalist or media outlet affected;</li> </ul>		
<ul style="list-style-type: none"> <li>• The information sought is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;</li> </ul>		
<ul style="list-style-type: none"> <li>• The information sought, or similar information leading to the same result, cannot be obtained elsewhere; and</li> </ul>		
<ul style="list-style-type: none"> <li>• The public interest in disclosure outweighs the harm to freedom of expression?</li> </ul>		

## **Explanatory**

### The right to protect sources

The right of all media practitioners to protect their sources is inherent in the right to freedom of expression. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potential chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with the right to freedom of expression unless it is justified by an overriding requirement in the public interest, in accordance with all the conditions set out above.

**IMPLEMENTATION OF THE DECLARATION**

	ANSWER	DETAILS
Have the African Charter on Human and Peoples' Rights or the Declaration of Principles on Freedom of Expression in Africa been published domestically and widely distributed?		
Has the government actively promoted the African Charter on Human and Peoples' Rights or the Declaration of Principles on Freedom of Expression in Africa among the public, for example by running advertisements in the media?		
Has the government taken steps to promote the African Charter on Human and Peoples' Rights or the Declaration of Principles on Freedom of Expression in Africa among civil servants and public officials, for example by providing human rights training?		
Have government officials, media regulators or judges ever referred to the African Charter on Human and Peoples' Rights or the Declaration of Principles on Freedom of Expression in Africa?		
Have the African Charter on Human and Peoples' Rights or the Declaration of Principles on Freedom of Expression in Africa been referred to or relied on in courts?		



## PART 2

# Checklist for the Implementation of the Declaration of Principles on Freedom of Expression in Africa (Short Version)

### THE GUARANTEE OF FREEDOM OF EXPRESSION

	ANSWER	DETAILS
<b>Does the constitution contain specific provisions guaranteeing:</b>		
Freedom of expression?		
Access to information?		
Media freedom?		
That restrictions on freedom of expression, access to information and media freedom must be set out by law and be necessary in a democratic society to protect national security, territorial integrity, public safety, public order, public health or morals or the reputation or rights of others, or to prevent disorder or crime?		
<b>Have the constitutional provisions been made operational through the adoption of legislation:</b>		
To establish an independent broadcasting regulator?		
To provide for independent public service broadcasting?		
To provide for access to information held by public bodies?		
To provide for access to information held by private bodies that is necessary to enforce the requester's right, or that constitutes private information concerning the requester?		

**FREEDOM OF INFORMATION**

<b>Are the following principles guaranteed by law:</b>		
The right to access information held by public bodies?		
The right to access information held by private bodies if necessary in order to exercise or protect any right?		
The right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies?		
The requirement for public bodies, even in the absence of a request, to actively publish important information of significant public interest?		
Do public bodies publish this information in local languages and in a manner accessible to all?		
Have secrecy laws been amended as necessary to comply with these principles?		
<b>Procedural aspects:</b>		
Are access fees both reasonable and affordable?		
Is there a reasonable deadline within which access requests must be responded to?		
Are written reasons provided for refusals?		
Can a refusal of access be appealed in court or to an independent tribunal?		
<b>Do public bodies proactively publish information related to:</b>		
The environment, public health, natural disasters and/or any other information of significant public interest?		
Their own organisation, and specifically regarding internal procedures, powers and responsibilities, the kinds of information the body is likely to hold, its budget and the procedure for making access requests?		

<b>Whistleblowers</b>		
Does the law ensure that persons who in good faith release information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment (colloquially known as “whistleblowers”) are protected from sanction?		
Are journalists who report news based on information provided to them by whistleblowers protected from sanction?		

<b>BROADCASTING</b>
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<b>Is private television and/or radio broadcasting allowed?</b> A State monopoly over broadcasting, whether radio or television, is not compatible with the right to freedom of expression.		
<b>Does the regulatory system encourage commercial and community broadcasting in accordance with the following principles:</b>		
Are licences awarded and enforced by a body that is independent of the government and protected from undue political or commercial interference? (for more questions regarding the independence of the regulator, see the section on Regulatory Bodies for Broadcasting and Telecommunications, below)		
Are realistic and effective measures in force to prevent private broadcasters acquiring an excessive share of the broadcast market?		
<b>The licensing process</b>		
Are the criteria for awarding a licence set out in law?		
Is the promotion of diversity one of the aims of the licensing system?		
Is there a regular tender process for licences?		

Are unsuccessful applicants given reasons for a refusal, and can they appeal refusals to a court?		
Is community broadcasting recognised as a separate and important category of broadcasting?		
Do community broadcasters benefit from a reduced licence fee, or a complete fee waiver?		
<b>Public service broadcasting</b>		
Is there a public broadcaster?		
Is the public broadcaster required by law to provide impartial and balanced programming for the entire population?		
In practice, is it perceived to provide independent and unbiased news and information?		
Does the public broadcaster cater sufficiently to all official languages, as well as to relevant other languages (such as local languages, or widely spoken languages other than the official language(s))?		
<b>Independence, governance, accountability and funding</b>		
Is the legal status of the public broadcaster that of an independent entity, or is it a government department?		
Is the public broadcaster governed by a board that is independent from the government and from undue political or commercial interference?		
If there is a governing board, is it appointed by parliament in an open and democratic process (rather than by a government minister or the president)?		
Is the editorial independence of the public broadcaster guaranteed by law?		
Are public broadcasters sufficiently funded to enable them to fulfil their public service obligations?		
Do public broadcasters have control over their own budget, subject, in the case of broadcasters that are publicly funded, only to an annual parliamentary vote?		

**REGULATORY BODIES FOR BROADCASTING AND TELECOMMUNICATIONS**

<b>The independence of regulatory bodies for broadcasting and telecommunications</b>		
Is the legal status of the regulatory bodies for broadcasting and telecommunications that of an independent entity, or is it a government department?		
<b>The board of the regulatory body</b>		
Is the regulatory body governed by a board that is independent from the government and from undue political or commercial interference?		
If there is a governing board, is it appointed by parliament in an open and democratic process (rather than by a government minister or the president)?		
<b>Funding</b>		
Are the regulatory bodies sufficiently funded to enable them to carry out their functions?		
Do the regulatory bodies have control over their own budgets, subject only to an annual parliamentary vote?		
<b>Powers and responsibilities</b>		
Are the powers and responsibilities of the regulatory bodies for broadcasting and telecommunications clearly set out in law?		
Do regulatory bodies for broadcasting and telecommunications have the exclusive power to award, enforce and suspend or revoke licences?		
<b>Sanctions</b>		
Do licensees have the right to make representations to the regulatory body before any sanction is imposed?		
Does the law require that intrusive sanctions, such as heavy fines or licence suspensions, are imposed only for serious breaches of the law or licence conditions, and only when lesser sanctions have been tried and have failed to remedy the breach?		
Can licensees appeal sanctions imposed by the regulator?		

**PRINT MEDIA**

<b>Regulation of the print media</b>		
Is there a statutory regulator for the print media?		
If a statutory regulator exists, are its functions limited to administrative registration or notification, or does it have broader regulatory powers, such as a power to licence newspapers or journalists, or a power to enforce a code of ethics and impose sanctions?		
If a statutory regulator exists, is its independence protected?		
If a statutory regulator exists, are its members appointed by the media and representatives of the public, or are they appointed by a government minister or by the president?		
Do publications need to be submitted to a central body for approval prior to publication?		
<b>Registration and licensing</b>		
Do print media need to obtain a licence before being allowed to publish?		
If print media are required to obtain a licence, can that licence be refused or withdrawn for content-related matters (such as committing defamation or insulting the president)?		

**INTERNET AND COMMUNICATION TECHNOLOGY**

<b>Regulation</b>		
Is there a national body responsible for regulating internet content and/or access to the internet?		
If there is, is this body independent or is it part of a government department?		

<b>Access to the internet and internet content</b>		
Is there any restriction on or blocking of Internet content?		
Is there any monitoring of email or other Internet content?		
Is access to the internet free and unfettered, or is there a national filtering system?		

<b>COMPLAINTS</b>
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<b>A public complaints system</b>		
Does a complaints system exist for the print media?		
If a complaints system exists for the print media, is it self-regulatory or has it been established by law?		
Does a public complaints system exist for the broadcast media?		
If a complaints system exists for the broadcast media, is it self-regulatory or has it been established by law?		
<b>Independence</b>		
Is the body that hears complaints independent and protected against political, commercial or other undue interference?		
Are members of the complaints body appointed solely by media representatives and representatives from the general public, or are there also government appointees and/or civil servants on the body?		
<b>Fairness</b>		
Is the complaints process considered fair?		
Are media against whom a complaint has been lodged allowed to make representations to the complaints body?		
Can decisions be appealed to the courts?		

**PROMOTING PROFESSIONALISM**

**Unions and associations**

Are all media practitioners free to organise themselves into unions and associations?

Are media unions and associations independent and free from political, economic and other undue interference?

**Practice of journalism and legal restrictions:**

Do journalists need to obtain a licence before being allowed to work?

**ATTACKS ON MEDIA PRACTITIONERS**

Have the perpetrators of all attacks against the media been brought to justice?

Do the police and other public authorities act to protect the media when threats are made against them?

Have the police and other public authorities taken measures to prevent attacks against the media?

**PROTECTING REPUTATIONS**

**Defamation laws**

Do defamation laws recognise the principle that no one may be held liable for the publication true statements?

Do defamation laws recognise the principle that no one may be held liable for the expression of an opinion?



Do defamation laws recognise the principle that no one may be held liable for a statement which it was reasonable to make in the circumstances?		
Do defamation laws recognise the principle that public figures are required to tolerate a greater degree of criticism than ordinary persons?		
Are there special provisions that protect the head of state and/or government officials?		
Can public bodies, such as government departments, sue for defamation?		
<b>Sanctions</b>		
Do defamation laws recognise the principle that sanctions imposed for defamatory remarks may never be so severe as to inhibit the right to freedom of expression?		
<b>Privacy law</b>		
Do privacy laws recognise the defence of reporting in the public interest?		

**CRIMINAL MEASURES**

<b>Criminal restrictions on freedom of expression</b>		
Does the criminal law prohibit the publication of 'false news'?		
Is defamation or insult a criminal offence?		
Are there other criminal restrictions on the right to freedom of expression?		
In the past year, how many persons have been convicted for things they said or wrote?		
<b>Review of criminal restrictions on freedom of expression</b>		
Has the government reviewed all criminal law restrictions on freedom of expression to ensure that they serve a legitimate interest and are truly "necessary" in a democratic society?		

**ECONOMIC MEASURES**

<b>Economic environment for the media</b>		
Has the government taken any measures to create an enabling economic environment for the media?		
In particular, has it provided any of the following:		
<ul style="list-style-type: none"> <li>• Direct subsidies to private media on fair and non-discriminatory criteria?</li> </ul>		
<ul style="list-style-type: none"> <li>• The abolition of import and other duties on materials used for the production of media product (such as newsprint)</li> </ul>		
<b>Public advertising</b>		
In the last four years, has the government used its power to place public advertisements to influence media content?		
<b>Restrictions on media ownership</b>		
Are there restrictions on ownership of multiple media outlets, and if there are, are they such as to promote diversity whilst allowing media companies to grow to a size that allows them to compete?		

**PROTECTION OF SOURCES AND OTHER JOURNALISTIC MATERIAL**

<b>Protection of sources</b>		
Are media practitioners protected from revealing confidential sources of information or disclose other material held for journalistic purposes, except when <u>all</u> following conditions are met?		
<ul style="list-style-type: none"> <li>• Disclosure has been ordered by a court;</li> </ul>		
<ul style="list-style-type: none"> <li>• A full hearing has been held, including the journalist or media outlet affected;</li> </ul>		

<ul style="list-style-type: none"> <li>• The information sought is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence</li> </ul>		
<ul style="list-style-type: none"> <li>• The information sought, or similar information leading to the same result, cannot be obtained elsewhere; and</li> </ul>		
<ul style="list-style-type: none"> <li>• The public interest in disclosure outweighs the harm to freedom of expression.</li> </ul>		

**IMPLEMENTATION OF THE DECLARATION**

Have the African Charter on Human and Peoples' Rights or the Declaration of Principles on Freedom of Expression in Africa been published domestically and widely distributed?		
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## APENDIX 1

**AFRICAN UNION**

الاتحاد الأفريقي



**UNION AFRICAINE**

**UNIÃO AFRICANA**

*African Commission on Human & Peoples' Rights*

*Commission Africaine des Droits de l'Homme & des Peuples*

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### **Declaration of Principles on Freedom of Expression in Africa**

#### **Preamble**

*Reaffirming* the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms;

*Reaffirming* Article 9 of the *African Charter on Human and Peoples' Rights*;

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

*Convinced* that respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy;

*Convinced* that laws and customs that repress freedom of expression are a disservice to society;

*Recalling* that freedom of expression is a fundamental human right guaranteed by the *African Charter on Human and Peoples' Rights*, the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, as well as other international documents and national constitutions;

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

*Noting* that oral traditions, which are rooted in African cultures, lend themselves particularly well to radio broadcasting;

*Noting* the important contribution that can be made to the realisation of the right to freedom of expression by new information and communication technologies;

*Mindful* of the evolving human rights and human development environment in Africa, especially in light of the adoption of the *Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights*, the principles of the *Constitutive Act of the African Union, 2000*, as well as the significance of the human rights and good governance provisions in the New Partnership for Africa's Development (NEPAD); and

*Recognising* the need to ensure the right to freedom of expression in Africa, the African Commission on Human and Peoples' Rights declares that:

#### I

##### *The Guarantee of Freedom of Expression*

1. Freedom of expression and information, 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.
2. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

#### II

##### *Interference with Freedom of Expression*

1. No one shall be subject to arbitrary interference with his or her freedom of expression.
2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

#### III

##### *Diversity*

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things-:

- availability and promotion of a range of information and ideas to the public;
- pluralistic access to the media and other means of communication, including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups;
- the promotion and protection of African voices, including through media in local languages; and
- the promotion of the use of local languages in public affairs, including in the courts.

#### IV

##### *Freedom of Information*

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
  - everyone has the right to access information held by public bodies;
  - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;

- any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
  - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
  - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
  - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

#### V

##### *Private Broadcasting*

1. States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.
2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:
  - there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
  - an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
  - licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and
  - community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.

#### VI

##### *Public Broadcasting*

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;
- the editorial independence of public service broadcasters should be guaranteed;
- public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;
- public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and
- the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

#### VII

##### *Regulatory Bodies for Broadcast and Telecommunications*

1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
2. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.
3. Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

VIII  
*Print Media*

1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.
2. Any print media published by a public authority should be protected adequately against undue political interference.
3. Efforts should be made to increase the scope of circulation of the print media, particularly to rural communities.
4. Media owners and media professionals shall be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content.

IX  
*Complaints*

1. A public complaints system for print or broadcasting should be available in accordance with the following principles:
  - complaints shall be determined in accordance with established rules and codes of conduct agreed between all stakeholders; and
  - the complaints system shall be widely accessible.
2. Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.
3. Effective self-regulation is the best system for promoting high standards in the media.

X  
*Promoting Professionalism*

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

XI  
*Attacks on Media Practitioners*

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.

XII  
*Protecting Reputations*

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.

#### XIII

##### *Criminal Measures*

1. States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.
2. Freedom of expression should 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.

#### XIV

##### *Economic Measures*

1. States shall promote a general economic environment in which the media can flourish.
2. States shall not use their power over the placement of public advertising as a means to interfere with media content.
3. States should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.

#### XV

##### *Protection of Sources and other journalistic material*

Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:

- 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;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression; and
- disclosure has been ordered by a court, after a full hearing.

#### XVI

##### *Implementation*

States Parties to the African Charter on Human and Peoples' Rights should make every effort to give practical effect to these principles.

**Adopted by The African Commission on Human and Peoples' Rights, meeting at its 32<sup>nd</sup> Ordinary Session, in Banjul, The Gambia, from 17<sup>th</sup> to 23<sup>rd</sup> October 2002**



## APPENDIX 2

**AFRICAN UNION**

الاتحاد الأفريقي



**UNION AFRICAINE**

**UNIÃO AFRICANA**

*African Commission on Human & Peoples' Rights*

*Commission Africaine des Droits de 'Homme & des Peuples*

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### **African [Banjul] Charter on Human and Peoples' Rights**

Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

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#### **Preamble**

The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights",

*Recalling* Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a "preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

*Considering* the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";

*Reaffirming* the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

*Taking into consideration* the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

*Recognizing* on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights;

*Considering* that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

*Convinced* that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

*Conscious* of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, language, religion or political opinions;

*Reaffirming* their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

*Firmly convinced* of their duty to promote and protect human and people' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

*Have agreed as follows:*

## **Part I: Rights and Duties**

### **Chapter I -- Human and Peoples' Rights**

#### **Article 1**

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

#### **Article 2**

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

#### **Article 3**

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

#### **Article 4**

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### **Article 5**

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

**Article 6**

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

**Article 7**

1. Every individual shall have the right to have his cause heard. This comprises:

- (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
- (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
- (c) the right to defence, including the right to be defended by counsel of his choice;
- (d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

**Article 8**

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

**Article 9**

- 1. Every individual shall have the right to receive information.
- 2. Every individual shall have the right to express and disseminate his opinions within the law.

**Article 10**

- 1. Every individual shall have the right to free association provided that he abides by the law.
- 2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

**Article 11**

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

**Article 12**

- 1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
- 2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
- 3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.
- 4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
- 5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

**Article 13**

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

**Article 14**

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

**Article 15**

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

**Article 16**

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

**Article 17**

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

**Article 18**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

**Article 19**

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

**Article 20**

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self- determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

**Article 21**

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

**Article 22**

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

**Article 23**

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:
  - (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;
  - (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

**Article 24**

All peoples shall have the right to a general satisfactory environment favorable to their development.

**Article 25**

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

**Article 26**

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

**Chapter II -- Duties**

**Article 27**

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.

2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

**Article 28**

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

**Article 29**

The individual shall also have the duty:

1. to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

**Part II: Measures of Safeguard**

**Chapter I -- Establishment and Organization of the African Commission on Human and Peoples' Rights**

**Article 30**

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

**Article 31**

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity. . . .

**Article 41**

The Secretary-General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs of the staff and services.

## **Chapter II -- Mandate of the Commission**

### **Article 45**

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:
  - (a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.
  - (b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
  - (c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

## **Chapter III -- Procedure of the Commission**

### **Article 46**

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

Communication From States

### **Article 47**

If a State party to the present Charter has good reasons to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable, and the redress already given or course of action available.

### **Article 48**

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

### **Article 49**

Notwithstanding the provisions of 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

**Article 50**

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

**Article 51**

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

**Article 52**

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

**Article 53**

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

**Article 54**

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.  
Other Communications

**Article 55**

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

**Article 56**

Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

**Article 57**

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.



**Article 58**

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

**Article 59**

1. All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide. . . .
2. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

**Chapter IV -- Applicable Principles**

**Article 60**

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

**Article 61**

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and people's rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

**Article 62**

Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.



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