

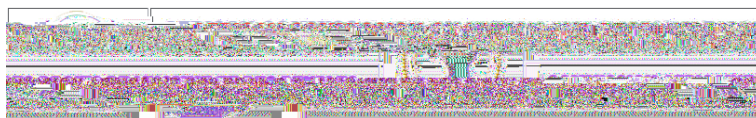
## Working Group Guidelines & Descriptions

### Objectives

The goal of each working group is to provide space for in-depth discussions on a specific issue critical for the advancement of the right of access to information and to allow for the sharing of experiences across the region. Together, each group will identify the challenges and consider potential solutions, ultimately agreeing upon a series of findings and action points that will later culminate in the *African Regional Findings and Plan of Action*, an appendix to the *Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information*.

### Methodology

The second day of the conference, Monday, February 8<sup>th</sup>, will be dedicated to working groups. An



## **Group Assignment**

Designation to each working group was carefully decided with consideration to the following factors:

1. Working group preferences
2. Strong blend of various stakeholders
3. Working languages
4. Country diversity
5. Gender

For this reason, it is imperative that all members of each group remain within their assigned working group. Please do not change your working group for any reason. We apologize in advance if we were not able to assign you to one of your top choices.

## **Working Group Descriptions**

Below is a brief summary of the working group topics. These may be further adapted/focused based on the direction of the facilitator and the evolution of participant discussions.

### **Group One: Politics and Economy: shifting the balance toward openness**

This group will discuss the political context and conditions ("politics of policy") under which a transparency regime thrives, considering the incentives and disincentives to establishing and implementing transparency regimes in Africa. Discussion might include the various political contexts and processes under which access to information laws have succeeded or failed, identifying political obstacles (such as political will, fear, cost etc.), and considering viable recommendations for overcoming these challenges. Further, this group will touch on the particular economic burden of





**Group One**  
**Politics and Economics: Shifting the Balance toward Openness**  
**Concept Note**

As Andrew Puddephatt posited for the international conference on the right of access to information in 2008, there is now a widespread consensus that transparency and accountability are essential underpinnings for accountable governance and that this, in turn, is a pre-condition for tackling poverty and inequality and achieving the Millennium

Moreover, economic considerations may play a critical role in determining the policy options and the advancement that is made in implementation. In countries where the bureaucracy already is considered bloated or there are competing financial priorities, the potential to add new independent bodies or assure necessary budget allocations may be limited. And when appropriate resources are not made available, implementation

## **International Conference on Access to Public Information Summary of Discussion and Findings**

### **Politics and Economy**

This working group dedicated to the topic of the political economy of access to information considered the issue both at the international and state level. Broadly, the group discussed the benefits and challenges of passing and implementing access to information laws, the role of citizen demand, relevant political processes, national security issues and communications technology. They sought strategies to incentivize governments and bolster the argument for establishment of an access to information regime. The group agreed that there is a need to present the case for access to information differently depending on the situation, as some arguments resonate differently depending on the context and actor. Some viewed the case for access to information within the human rights discourse, while others pointed out that if the connection is made only to human rights, the value of access to information becomes abstracted. For example, in the case of stable countries with entrenched political elites, the human rights approach might not be the most effective. Yet, they concurred that the discourse around access to information need not be either-or; it can be promoted as both a fundamental human right and also as a tool for administrative reform. The group recognized the congruence of multiple arguments, ranging from the moral to the technical, and the value of engaging all potential justifications.

A major challenge to any access to information effort is incentivizing public officials when they have competing priorities. Due to the variation in political structures around the world, it is essential to determine the nature of the power politics and obstacles associated with access to information. National security is one such conflict, and the group found a need to redefine the paradigm so that transparency is seen as contributing to security rather than endangering it. The group identified incentives, as well, such as a potential increase in the country's facility for attracting foreign direct investment, improving internal policy deliberation by advancing the government's ability to share information and assuring policy uniformity, bettering its reputation and increasing its legitimacy. Interestingly, the group agreed that when access to information is imposed externally, the legitimacy of that government is not increased. Thus, when transparency is a condition of an IFI loan rather than being demanded by citizens, the effects of these external drivers can inhibit some of the sought after benefits. Such institutions promote a public ethos yet undermine it by defying transparency in their own operations.

There was agreement that in order to ensure that citizens are empowered and equipped to drive an agenda, the community of practice must find ways to make information meaningful and accessible for all, including the involvement of local communities. Ultimately, the key policy m /F4security rcur/F4.0 10000 43

! Growth of the digital network offers new possibilities for public administration's capacity to communicate with its citizenry.

! Effective regulatory environment can help provide a diverse and pluralistic environment.

#### Citizens

! ATI must be driven by the needs of citizens, which obligates government to make information available and accessible.

! Citizen-driven change makes advocacy efforts sustainable and legitimate.

#### International bodies

! International institutions that promote a public ethos yet defy transparency pose a challenge.

### **Recommendations and Action Points:**

#### Government

!



## Working Group Two

### Structural and Cultural Context: creating an environment for transparency

Facilitator: Shekhar Singh  
Rapporteur: Suzanne Piotrowski

- A. Working Group Concept Note
- B. Summary of Group Work from 2008 International Conference
- C. Suggested Reading

- <sup>3</sup>/<sub>4</sub> Neuman, Laura and Richard Calland. "Ming the Law Work: The Challenges of Implementation." In *The Right to Know: Transparency for an Open World* ed. Ann Florini (2007): 179-213. <http://www.cartercenter.org/access/toinformation.htm>
- <sup>3</sup>/<sub>4</sub> Roberts, Alasdair, "Dashed Expectations: Governmental Adaptation to Transparency Rules" In *Transparency the Key to Better Governance*, Ed. Christopher Hood & David Heald (2006) 107-125, first page from <http://www.proc.britac.ac.uk/cgi-bin/somsid.cgi?page=135p107&session=208967B&type=header>
- <sup>3</sup>/<sub>4</sub> Neuman, Laura. "Enforcement Models: Content and Context." World Bank Institute Working Paper Series, 2009, [www.right2info.org/resources/publications/World%20Bank%20Institute.pdf](http://www.right2info.org/resources/publications/World%20Bank%20Institute.pdf)
- <sup>3</sup>/<sub>4</sub> "Fostering trust and transparency through information systems," PREM Notes/Public Sector, The World Bank, No. 97, February 2005. <http://www1.worldbank.org/prem/PREMNotes/premnote97.pdf>
- <sup>3</sup>/<sub>4</sub> Snell, Rick and Peter Sebina, "Information Flows: The real art of Information Management and Freedom of Information," Archives and Manuscripts, Vol. 35 No. 1, 2006, pp. 56-80. <http://www.ricksnellbmau/Articles/am.pdf>
- <sup>3</sup>/<sub>4</sub> Mutula, Stephen and Justus Wamukoya, "Public sector information management in east and southern Africa" Implications for FOI, democracy, and integrity in government," *International Journal of Information Management*, Vol. 29, pp. 333-341, 2009. <http://www.sciencedirect.com/science?ob=MImg&imagekey=B6VB4-4WY5BN2-4-1&cdi=5916&user=655046&pii=S026840120900053X&orig=search&coverDate=10%2F31%2F2009&sk=999709994&view=c&wchp=dGLbVIW-zSkzS&md5=b731cbf1d6ad4ed7b6ed48606ae387cd&ie=/sdarticle.pdf>



Increasingly, advocates are turning to litigation strategies to assert their constitutional rights to information and advance implementation and enforcement efforts, or finding proxy laws and policies to achieve transparency and accountability. New technologies also can assist in seeking creative ways to advance implementation, assist in proactive publication, and aid requesters – particularly in small state societies where fear of retribution for making a request serves as a deterrent.

When asked in the recent survey sent to all participants in the upcoming African Regional Conference about the greatest obstacles to establishing the right of access to information respondents often cited the lack of an enabling environment. For example, many participants mentioned deficient record-keeping systems, restrictive historical legislation, absence of legal and institutional frameworks, and the lack of a strong independent judiciary. One respondent noted the negative impact of a culture of secrecy on one hand and the weak bureaucracy on the other. Yet more than 85% of respondents still believed that an access to information law is appropriate for every country and 73% felt it a priority in their country.

Lastly, in considering the context within which access to information laws function, cultural factors may play a decisive role. Governments continue to perceive an ownership interest in the information that they control, and that requests for these documents is a breach of their authority. Equally, citizens may abide by the historical culture of not asking or “questioning the big man,” as one survey respondent stated. Issues of illiteracy or lack of formal education, rural versus urban dwelling, gender, and marginalization may impact citizen’s ability and interest in the right of access to information and government’s response.

This working group will explore these potentially conflicting responses, with a particular emphasis on the structural and cultural factors that affect the functioning of transparency and access to information regimes.

Some questions that we might consider include:

1. What are the necessary structural characteristics for an access to information regime to thrive? What are the structural impediments to implementation and enforcement? How can we promote the necessary factors where they are missing or weak?
2. Should transparency regimes be attempted if critical support factors are weak?
3. In the absence of enabling legislation, what proxies may be used to advance transparency and access to information? How might these transparency policies get put into practice?
4. What, if any, could be the role of technology in facilitating transparency? How can the potential harms (privacy, digital divide, information dumping) be mitigated?
5. What role does culture play in the establishment and effectiveness of the right?
6. What role does litigation – either national or supranational – play?
7. What influence can the international and regional community bring to bear in these issues – and how?
8. How can structural solutions apply to address political, economic and institutional constraints?

**International Conference on Access to Public Information  
Summary of Discussion and Findings**

**Structural and Cultural Context**

The working group tasked with concentrating on the structural and cultural factors that affect transparency spent their time discussing the necessary infrastructure and administrative

Computer technology and cell phones have an important role to play, although technology should not be viewed as a panacea, and we must be cognizant of the digital divide. Access to information regimes should promote the use of new technology where it furthers but does not frustrate RTI; these efforts must not exclude traditional information dissemination mechanisms.

Some participants argued that every country should have RTI legislation even if it is unable to effectively implement. Other countered that there must be some basic institutionalism in advance of the RTI regime as without that it



**Group Three**  
**Non-State Actors & Multilateral Actors: Examining Roles and Responsibilities**  
**Concept Note**

As Richard Calland posited at the 2008 International Conference, there have been substantial advances in the realization of the right of access to public information in recent years, with the passing of many ATI laws around the world and a general acknowledgment of the importance of the principle of transparency for the leverage of other rights, the deepening of accountability and the strengthening of citizen agency and ‘voice’. This positive trend has occurred against the backdrop of a shift of public power towards the private sector, a growing prominence of the notion of corporate social responsibility and the increasing significance of multilateral institutions in global governance and development policy-making. Nowhere is the power and impact of these “outside” forces experienced more deeply than in the Africa region.

There is, therefore, an important conversation taking place about how best to extend the principle of transparency to non-state actors – both in terms of corporate and multilateral actors, including International Financial Institutions (IFIs). There are a number of questions that deserve serious debate. First, there is a legal question: does the right to access to information apply to non-state actors? On this, immediately it becomes necessary to distinguish and delineate the two sets of actors. Most multilateral bodies are public institutions. Thus, while they may have names that suggest a private sector orientation, for example the International Finance Corporation (a part of the World Bank Group), they are established and ‘owned’ by States. As such, it is a public institution to whom the same principles of public accountability and transparency should apply. In the case of multilateral bodies and IFIs in particular, it is more about how best to achieve and sustain an appropriate level of openness. While some of the IFIs have introduced disclosure policies, there are great differences in the standards of disclosure and because the policies are largely voluntary, serious difficulties around enforcement arise, not least in terms of the independence and efficacy of appeal procedures. For instance, new World Bank policy is a welcome advancement, but little discussion has taken place on how the policy will be implemented or what “teeth” are in place for failure to comply.

The case for openness in relation to corporations is more nuanced, and involves a more challenging conceptual leap. The system of liberal, capitalist





## **International Conference on Access to Public Information Summary of Discussion and Findings**

### **Non-state and Multilateral Actors**

The working group on role of non-state and multilateral actors examined the advancements in access to information over the past two decades, and how these have paralleled a trend of power flowing out of the public sector and amassing in the private sphere. Participants focused on who should be covered under an access to information law, the argument for extending the reach of the right of access to information requirements to non-state actors, whether disclosure laws should cover international organizations, private bodies and corporations, and how to ensure compliance by various actors. They began with a typology of organizations that possess information relevant to the meaningful recognition of the fundamental human right of access to information. A trio of categories quickly emerged: Profit-making bodies, public bodies (non-state but with connection with the state), and social bodies. It was agreed that in each case the disclosure responsibilities may vary.

The group debated a set of principles for non-state actor organizations, considering whether access to information should apply to any organization that manages public or state funds, exercises public functions or provides a public service, exploits a public good, or impacts human rights. There was wider agreement that access to information legislation should apply to any organization in the first three categories. There was lesser consensus in the fourth category: organizations that impact human rights. Conceptually, the group recognized that it is difficult to enforce a human right against private bodies because of the limits that apply when considering its application around the world, with different standards and cultural norms that affect the notion of human rights.

Starting with a discussion of international financial institutions and inter-governmental organizations, participants called for a broad application of transparency laws, arguing that the right of access to information as protected under the International Bill of Rights should apply to all of these organizations, as it does to other public bodies. The international financial institutions have accepted that they must be open, at least nominally

need for companies to recognize that some things they do are so fundamentally entangled with human values that there must be an appreciation of the need for an access to information mechanism. The same applies to those non-state actors that exploit natural public resources, such as extractive industries and water that are essential to human dignity.

The group ultimately found some agreement with the notion that everyone should have the right of access information held by large private profit-making bodies where this is required for the exercise or protection of a substantial human rights interest (i.e. things relating to health, safety, environment, civil liberties). Effect should be given to this right in national legislation that establishes procedures designed to impose a minimum administrative burden on these bodies. All multi-national corporations and large domestic businesses should voluntarily and proactively disclose information that is in the public interest, such as core financial data, and information that is pertinent to the protection of fundamental human rights. Finally, the possibility of appeals would ensure compliance by these different actors and, thus, an independent international appeal authority should be seriously explored.

**Consensus on the crux of the issue:**

- ! The Right to Public Information is now established, but Non-state Actors and Multilateral Bodies powerfully impact human rights.
- ! Therefore: how should the right to access to information be extended to such nonstate actors in principle and in practice?

**Recommendations:**

- ! Application of the Right to Access to Information to three sets of non-state actors and multilateral bodies:
  - ¥ Intergovernmental Organizations, including International Financial Institutions
  - ¥ Non-state actors that perform a public function and/or receive public funds and/or exploit natural public resources
  - ¥ Large Corporations in respect of information required for the protection or exercise of a fundamental human right.

**Action Points:**

- ! Intergovernmental Organizations, including IFIs, should comply with international norms and



**Group Four**  
**Regional Norm-Building: Considering Regional Instruments and Standards**  
**Concept Note**

Access to public information is clearly established as a human right. It has been recognized as such from the Constitutions of modern democratic states to the Universal Declaration of Human rights (Article 19). It has been included in all treaties that conform to the International Law of Human Rights, such as Article 19 of the International Pact of Civil and Political Rights, the United Nations Convention Against Corruption, and the African Charter on Human and Peoples' Rights Article 9 (1) provides that "Every individual shall have the right to receive information."

As early as 1996, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information – a document created by civil society groups and endorsed by the UN special Rapporteur – stipulates that everyone has the right to obtain information from public authorities, including information related to national security. It goes further to call for a public interest test on disclosure of all information and a right to independent review. Regionally, the African Commission on Human and Peoples' Rights 2002 Declaration of Principles on Freedom of Expression in Africa, more exactly details the rights of access to information in Sec. 4, including that everyone has a right to access information held by public bodies and private bodies when necessary for the exercise or protection of any right, rights of appeal, public bodies' duty to publish information, and that secrecy laws should be amended as necessary to comply with freedom of information principles. And although the draft African Charter on Democracy, Elections and Governance does not explicitly mention the right of access to information, it does contain a number of related principles directed at transparency, good governance, improving public administration accountability and fighting corruption, as well as promoting freedom of expression.

Importantly, in 2006, the Inter-American Court of Human Rights, in the seminal *Claude v. Chile* case held that Article 13 of the Inter-American Convention on Human Rights (an Article that exactly mirrors Article 19 of the UNDHR) provides a fundamental right to public information and obligates public authorities to provide information. This decision was the first of its kind, and has been widely cited around the world. The Council of Europe also has taken strides to make binding the right of access to information through its recent Convention on Access to Information.

But are these mechanisms embody a clear "norm" on access to information? And if so, are they sufficient guidance for states to pass and implement legislation that satisfies this "norm" and for citizens to exercise their rights? In addition to international and regional instruments, a few countries in the region have passed domestic legislation to protect access to public information. But these are uneven in their breadth and application.

While there are similarities among these domestic laws, there also remain some important differences. As Jorge Santistevan posited at the international conference in 2008, the gap between the international instruments and domestic legislation and the concrete recognition of human rights in daily life is evident in the modern world. It creates part of the difficulty of applying the right of access to information to specific cases (enforcement/compliance). This is why the task of strengthening access to information is not limited to the creation of norms and institutions. It requires that citizens are energized to be able to oversee that the right that consecrates the norms is duly enforced against the authorities, institutions or businesses that hold information of public interest, as well as promoted in society as a whole.

Some have called for more regional conventions on the right of access to information, which can serve to harmonize and to incentivize but also can ultimately limit the advancement. Regional instruments can aid advocacy efforts in tough environments, as the states regional commitment can be used as leverage for the promotion of domestic rights. Conventions can provide a collective expression of what conduct is and is not acceptable and can create incentives for countries to engage in favorable behavior.

On the other hand, experience has shown that there are potential limitations and detriments to regional instruments. As they are by nature consensus documents, they often embody the lowest common denominator, thus reducing the threshold for acceptable behavior. Moreover, they often are unenforceable and lack sufficient oversight mechanisms. Perhaps most importantly, they may serve as a distraction from the real work of advancing the right or worse, undermine past advances. Other regional instruments for establishing the right of access to information in Africa might be measured, with discussion centered on application of existing norms and key judicial opinions and consideration of lessons learned from related treaties (such as Aarhus and/or the European Convention on Access to Information).

In the recent survey sent to the participants of the upcoming conference, we asked whether a regional convention is necessary to ensure enactment of sufficient access to information laws. 83.7% of the respondents said that a convention is necessary. Commentators went further, stating that a convention would serve to apply political pressure, provide regional standards and a framework to guide national initiatives and would help harmonize implementation. On the other hand, there was concern that a convention would be unlikely to change the mindset of governments and might fall into the trap of a “one-size-fits-all.” Moreover, a number of respondents questioned the efforts that it would take and remarked that its value would only be achieved if it was binding on all states and accompanied by a strong oversight mechanism.

Other regional mechanisms could be considered, or sub-regional bodies such as ECOWAS or SADC may be explored as venues for debate and consensus documents. But would these be sufficient to advance the right of access to information, or might they too fall prey to the same pitfalls as a treaty or convention?

Finally, this group may discuss the role and composition of a regional transparency community, and how to create a regional network to share experience and lessons learned.

Some questions that this working group may consider are:

1. Is there a recognized regional norm for the right of access to information? Is it sufficient?  
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5. What mechanisms may be brought to bear on those nations that do not comply with the regional instruments (including jurisprudence) or norms?
6. What is the role of other regional and international institutions, including civil society, to further national laws and encourage states to sign-on and ratify?
7. Does an African regional –

## **International Conference on Access to Public Information Summary of Discussion and Findings**

### **International Norms**

The working group dedicated to considering the political aspects of an international norm for the right of access to information debated issues such as the need for supra-national conventions or treaties to establish norms of transparency, how treaties affect governments and their interactions with international financial institutions, the role of the private sector, and how a convention would be implemented and monitored. The group was divided (with mainly a geographic division between representatives from Africa and representatives from the Americas) over whether an international instrument would benefit the movement for the right to information. Some expressed concern that treaties have a tendency to veer toward the lowest common denominator and could endanger progress, as well as diluting energy. Others reiterated that access to information is a matter of national law, as a request for information is from one person to their government, not from government to government.

But many group participants were supportive of attempts to create a treaty, particularly as it could support advocacy efforts. Treaties can be useful in tough environments, serving to create an enabling atmosphere rather than a limiting one. When there is no understanding of what access to information is, it is impossible to introduce a law from the outside without working to make the international norm part of the domestic system of norms.

Other mechanisms for influencing states passage of access to information laws were considered. For example, donors, when talking to governments, have the power to push these issues. External pressure from development banks has been one way to get countries to undertake efforts to institute greater transparency and access to information. The World Bank and others are still making aid conditional on access to information policies. The key is to make access to information part of the “policy dialogue” with partner governments, which is one of the requirements of whether there is a good governance environment. This pressure can bring cohesion to governments that are not unitary in their opinion of access to information. As for the private sector, corporations are more amenable to transparency when they realize that it would make doing business for them easier, thus appealing to their interests is essential.

In terms of implementation, the participants focused on two levels. At the national level, there must be specific monitoring groups that will promote the norms and guarantee access. At the international level, any treaty should be accompanied by a follow-up mechanism and monitoring body. Without follow-up or enforcement, the

! Access to information is also a right inherent to democracy, good governance, and development.  
!



## **Working Group Five**

**Group Five**  
**Demand and Use of New Technology: engaging citizens and increasing awareness**  
**Concept Note**

Access to information often is characterized as a critical tool for the exercise of fundamental human and socio-economic rights, such as clean water, a healthy environment, access to education and health care. It is a cornerstone to holding governments accountable and to promoting meaningful citizen participation. Yet even with all of these potential benefits, there is concern that a number of African countries have not witnessed the national movements for the right of access to information or widespread citizen engagement in demanding the right seen elsewhere around the world. Minimal demand for passage of the law may foreshadow a concomitant low level of monitoring and insistence on implementation and portend a concentrated use of the law among a few elite groups.

There is generally a lack of public awareness of the law, its benefits and how it functions. Government-led public information campaigns are often short-lived and ineffective as they fail to reach communities beyond urban locales. Moreover, for many citizens, purely public information – such as contracts and budgets - may not be as critical as their own personal documents, or are so complex as to be unintelligible. After long-term information deficits and restrictions on public information, citizens may believe that state information is reserved for official use only and thus does not demand information.

Moreover, public officials and others tend to believe that the media are the main users of access to information laws and frame the issue as such, rather than recognizing its more extensive benefits and reach. This in turn may have a negative affect on the priority government places on the issue. And civil society groups that promote the passage or use of the laws too frequently frame the right of access to information as an anti-corruption or accountability mechanism, rather than reaching out to a diversity of groups and individuals that would benefit from the law, such as community based organizations, consumer advocates and socioeconomic and human rights proponents.

Various barriers exist that inhibit persons from utilizing access to information laws, such as fee structures, technological constraints, requirements to provide the justification for the request or requester identity, and illiteracy. The local political environment may discourage citizens from requesting information, as it could be viewed as a challenge to the dominance of a single political party or organization. Prevailing perceptions of corruption also may prevent citizens from having any interest in the government's functions, much less any willingness to engage it. Furthermore, socio-political factors such as discrimination against women and indigenous persons may breed further distrust

# Various

Beyond an access to information law, there may be other ways to engage citizens and assure that information flows. In Africa, unique experiments around use of new technologies, social participation, and community radio have had important results.

New technologies for communication often are identified as a potent tool in increasing information flows to citizens, and heightening people's awareness of the value of information. Grassroots movements that utilize cellphones, twitter and Facebook to warn people about areas of violence or notify communities about election fraud have received great publicity. Consideration might be given to how this could be expanded to increasing public information reaches communities on a sustained basis, or how governments could harness the information and communication technologies to both generate and meet citizen demand. What lessons can be learned from these recent successes and how can they be applied to advance the passage, implementation and use of the right of access to information.

Although certainly a potent tool, these same technologies have generated additional challenges, such as the social effects of rapidly advancing technologies serving to further exclude those (governments and citizens alike) without access to digital "know-how" and potential privacy issues. Moreover, in more developed countries, government dependency on technology has in some cases encouraged information dumping onto the internet as a proxy for true access to information. Finally, is there the necessary empirical evidence to demonstrate the value of new technologies for advancing the right of access to information?

In the recent survey sent to participants, when asked about the key issues that should be considered at the conference the number one response after political commitment was how to mobilize people and build a movement for the right of access to information. Respondents suggested that key to the advancement of the right is to examine and disseminate advocacy strategies that work, create stronger links among the interested stakeholder (particularly government and civil society) using non-adversarial methods, and exploring how