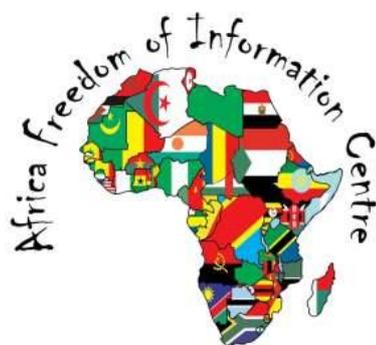


The State



of Right to

Information in Africa Report

in the Context of the Sustainable Development Goals

Africa Freedom of Information Centre

2017

The State of the Right to Information in Africa Report 2017

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The target, SDG 16.10, states plainly that all countries pledge to:
“ensure public access to information and protect fundamental freedoms, in accordance with national
legislation and international agreements.”

People need information to make decisions on personal development, education of their children or health of mothers. They need information in order to influence policies and decisions of government on where more efforts are needed and when. Citizens need information to limit the consequences of climate change and to provide feedback on how well government interventions are working. Without citizens access to information, it will be impossible for any country to achieve Sustainable Development Goals (SDGs).

Africa Freedom of Information Centre (AFIC) is pleased to present the third State of the Right to Information in Africa Report 2017. This report, whose focus is citizens' access to information in the context of SDG 16.10.2, covers 23 African countries and presents baseline information on the state of access to information treaties, laws, implementation and reporting to treaty bodies.

As a mirror, the report highlights areas where the African countries covered by the study have made progress as well as and those that need further in order to realise the right to information as envisaged under SDGs framework.

We invite the respective United Nations Agencies, the African Union, governments and civil society organisations to use findings and recommendations of this study to realise sustainable goals.

Gilbert Sendugwa
Executive Director
Africa Freedom of Information Centre

Foreword by Irina Bokova, Director-General of UNESCO



United Nations
Educational, Scientific and
Cultural Organization

Organisation
des Nations Unies
pour l'éducation,
la science et la culture

Organización
de las Naciones Unidas
para la Educación,
la Ciencia y la Cultura

Организация
Объединенных Наций по
вопросам образования,
науки и культуры

منظمة الأمم المتحدة
للتربية والعلم والثقافة

联合国教育、
科学及文化组织

The *2030 Agenda for Sustainable Development*, with its 17 Sustainable Development Goals (SDGs), charts a new vision for cooperation over the next 15 years, to ensure prosperity and well-being for all societies, while protecting the planet and strengthening peace.

One red thread weaving all throughout the new agenda is that of information -- to ensure all women and men in all societies have equal access to information, which in turn can help empower them with the skills and opportunities to create and share knowledge for the benefit of all.

This Report explores the state of the right to information in Africa in the context of the SDGs. It is a timely contribution to help take forward the requirement for public access to information and protecting fundamental freedoms set out in Target 16.10 of the SDGs, and to sharpen Africa's *Agenda 2063* that seeks to provide direction for the continent's inclusive development.

With only 21 out of the 54 African countries having constitutional, legal or policy guarantees for public access to information, there is a clear need for invigorated advocacy to ensure that more countries respond to the challenge for not only enacting such guarantees but also implementing them in practice.

Against this background, I am pleased that the *Africa Freedom of Information Centre* sought UNESCO's partnership in conceptualising and releasing this first ever-comprehensive report on how African countries are appropriating the universal right to freedom of information. I am confident this will represent an important step in producing sound and robust data that will assist our Member States in policy decision-making and civil society organisations in mounting effective advocacy campaigns for further adoption and implementation of the right to information.

Irina Bokova

Acknowledgments

This report—*The State of Right to Information in Africa Report in the Context of the Sustainable Development Goals of 2017*—provides stakeholders and governments with an assessment on the progress of the implementation of the right to information (RTI) in African countries in line with international legal standards.

The baseline information on the different aspects of the RTI will contribute to the reporting of Sustainable Development Goal 16.10 and will provide information to the African Union (AU) and the African Commission of Human and Peoples' Rights (ACHPR), as well as the Office of the Special Rapporteur on Freedom of Expression and Access to Information in Africa, while helping monitor the compliance of ACHPR state parties with international standards on access to information.

This work would not have been possible without the financial support of Friedrich Ebert Stiftung Africa (FES Media), the International Development Research Centre (IDRC), and the International Freedom of Expression Exchange (IFEX). They have continuously supported Africa Freedom of Information Centre's work to promote access to information in Africa, to build a foundation for knowledge, and to strengthen civil society organisations on the continent.

Africa Freedom of Information Centre (AFIC) is grateful to Carlota Estalella Alba, Research Coordinator and Laura van den Herrewegen, Research Assistant for coordinating the study. We are indebted to all members and collaborators who have contributed with their time and expertise to the creation of this report, including Elisabeth Benkam, Julien Tingain, Sadou Yattara, Fatou Jagne, Ayode Longe, Sylla Sow, John Momo, Habiba Cheikh Merjri, Henri Christin Longendja, Sandra Waswa, Cecilia Mugo, Dr. Joseph R. Nkurunziza, Mr. Moyiga, Fletcher Simwaka, Christina Chan-Meetoo, Alfredo Libombo Tomas, Imraan Abdullah, and Thabani Moyo. We are also thankful to Fola Adeleke and Caroline Giroud for reviewing the report.

Africa Freedom of Information Centre is also deeply grateful to Hon. Faith Pansy Tlakula, the Special Rapporteur for Freedom of Expression and Access to Information in Africa and Dr. Khabele Matlosa, the director of political affairs at the African Union Commission. Both have been AFIC's key partners in access to information campaigns and provided important perspectives on the African Union, its frameworks, and mechanisms to the final document. We are also deeply grateful to Prof. Guy Berger, the UNESCO Director for Freedom of Expression and Media Development, as well as Fackson Banda, the UNESCO Programme Specialist for the International Programme for the Development of

Communication (IPDC). They provided inputs on the methodology and ongoing technical guidance in the advancement of the right to information in Africa consistent to the global agenda.

AFIC acknowledges the 11th AU-EU Human Rights Dialogue held in Kigali, Rwanda, which recognised the need for an African continental study on the status of citizens' right of access to information. We also appreciate the contribution of Toby Mendel, Carole Excell, and Gilbert Sendugwa who elaborated draft methodology for assessing SDG 16.10.2 under the banner of the Freedom of Information Advocates Network (FOIANet) Working Group.

Finally, Africa Freedom of Information Centre would like to express appreciation for the unconditional support of all its members whose experiences and insight have informed this report.

We are convinced that this report and its recommendations provide an important step towards the realisation of citizens' right to information as envisaged in international and African regional mechanisms.

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List of acronyms

General acronyms

ACHPR: African Commission on Human and Peoples' Rights
AFIC: Africa Freedom of Information Centre
ATI: Access to information
AU: African Union
CSO: Civil society organisation
ECOWAS: Economic Community of West African States
EITI: Extractive Industries Transparency Initiative
EU: European Union
FES Media: Friedrich Ebert Stiftung Africa
FOI: Freedom of information
HPR: Human and Peoples' Rights
ICCPR: International Covenant on Civil and Political Rights
ICT: Information and communications technology
IDRC: The International Development Research Centre
IFEX: The International Freedom of Expression Exchange
MDAs: Ministries, departments, and agencies
MDGs: Millennium Development Goals
OGP: Open Government Partnership
RTI: Right to information
SDGs: Sustainable Development Goals
UDHR: Universal Declaration of Human Rights
UNESCO: United Nations Educational, Scientific and Cultural Organization
UNICEF: The United Nations Children's Fund
UN: United Nations

Cameroon

ADISI: The Association for Integrated Development and International Solidarity
ANIF: The National Financial Investigations Agency
CGI: Citizen Governance Initiatives
CONAC: National Anti-Corruption Commission
CONSUPE: The High State Audit Agency

The Gambia

PURA: Public Utilities Regulatory Authority

Ghana

AG: Attorney General

BOST: Bulk Oil Storage and Transportation Co. Ltd

CHRI: Commonwealth Human Rights Initiative

MFWA: Media Foundation for West Africa

NACAP: National Anti-Corruption Action Plan .

PRAAD: Public Records Archives and Administrative Department

Ivory Coast

CAIDP: Commission of Access to Information of Interest and Public Documents (Commission d'Accès à l'Information d'Intérêt et aux Documents Publics)

HACA: High Authority for Audiovisual Communication (Haute Autorité de la Communication Audiovisuelle)

NOC: National Press Council (Conseil National de la Presse)

Mali

CID: Commissioner of Institutional Development

MOC: Mission Development and Cooperation

SAISA: Strategy of Access to Information in the Administration

Nigeria

BPSR: Bureau of Public Service Reform

CLO: Civil Liberties Organisation

MRA: Media Rights Agenda

NUJ: The Lagos Council of the Nigerian Union of Journalists

Senegal

UEMOA: West African Economic and Monetary Union

Sierra Leone

RAIC: Right to Access Information Commission

Tunisia

ARP: Assembly of Representative of the People

Democratic Republic of the Congo

DRC: Democratic Republic of the Congo

METTELSAT: Weather forecasting authority in DRC

Ethiopia

VNR: Voluntary National Reviews

Kenya

CORD: Coalition for Reforms and Democracy

ICJ: International Commission of Jurists

RSF: Reporters Sans Frontières

South Sudan

ACC: Anti-Corruption Commission

AMDISS: Association of the Media Development in South Sudan

SPLA: Sudan People's Liberation Movement

UJOSS: Union of Journalists of South Sudan

Uganda

CEO: Chief Executive Officer

CIPESA: Collaboration on International ICT Policy in East and Southern Africa

NGO Act: Nongovernmental Organisation Act

Malawi

MHRC: Malawi Human Rights Commission

MISA: Media Institute of South Africa

Mauritius

AR: Assembly of the Republic

HCI: Human Capital Index

IBA: Independent Broadcasting Authority

MMSM: Les Verts Fraternelles and the Mouvement Militant Socialiste Mauricien

MR: The Mouvement Républicain

MSM: Mouvement Socialiste Militant

OSI: Online Service Index

PMSD: Parti Mauricien Social Démocrate

PMXD: Parti Mauricien Xavier Duval

South Africa

ATIN: Access to Information Network

PAIA: Promotion of Access to Information Act, 2000

SAHRC: South African Human Rights Commission

Zimbabwe

AIPPA: Access to Information and Protection of Privacy Act

FPL: Food Poverty Line

MCZ: Media Council of Zimbabwe

TCPL: Total Consumption Poverty Line

Introduction

The 17 Sustainable Development Goals, adopted in 2015, build on the success of the Millennium Development Goals and aim to go further to end all forms of poverty. The new Goals are unique in that they call for action by all countries, poor, rich and middle-income to promote prosperity while protecting the planet.

The Agenda 2030 is a historic milestone for freedom of information advocates as the world's governments had, for the first time, jointly recognized the principle that people should have the right to access government-held information.

The State of Right to Information in Africa Report in the Context of the Sustainable Development Goals is the third report submitted by Africa Freedom of Information Centre on the status and progress of the right of access to information on the African continent.

The right of access to information is a fundamental freedom and a human right, an integral part of the right to freedom of expression and the associated right to media freedom.

Numerous international and regional intergovernmental organisations have recognised access to information in their conventions and protocols. In 115 out of the 195 countries in the world today, the right to free access to information is enshrined in the law, and 59 percent of countries have legal frameworks establishing the right of—and procedures for—the public to request and receive government-held information.¹

Presently in Africa, 21 out of 54 countries (39 percent) have specific access to information legislation. Even though the number of countries with these laws has doubled in the last five years, the study findings reveal that achievement on the SDG 16.10.2 is still very low. Indeed there is the need to further encourage African countries to develop and adopt access to information legal frameworks and effectively implement the measures to guarantee this fundamental right.

Access to information laws empower individuals and civil society to understand the policies with which the public administration and legislators make decisions relating to health, education, trade and infrastructure and the objective basis for such decisions. For the private sector, access to good-quality information is vital for tendering, for open competition, and for an efficient marketplace.

¹ FreedomInfo.org: [http://www.freedominfo.org/2016/04/105-foi-regimes-freedominfo-org-count-shows/.](http://www.freedominfo.org/2016/04/105-foi-regimes-freedominfo-org-count-shows/)

Africa is well endowed with mineral and natural resources. The economic benefits of the oil, gas and mineral industry if fairly managed for redistribution to the citizens would significantly enhance revenue generation and increase private sector competitiveness. A critical issue in mineral resource development is the extent to which affected people have voice in decision making, and the public at large can hold governments and investors accountable by way of transparency and public scrutiny.

However, rural communities particularly women, youth and men are affected by poorly regulated mineral investments. They have low or no access to information which undermines their ability to participate in and influence policy processes in their favour. These groups more often than not have low levels of income, low awareness and lack the time, opportunity, organisational structures, or supporting networks to participate meaningfully in policy processes at local, national level or regional level.

Democracy depends on an informed and educated citizenry whose access to a broad range of information enables them to participate fully in public life, help determine priorities for public spending, receive equal access to justice, and hold their public officials accountable. When the government agencies operate under a veil of secrecy, it results in people are denied the right to know about public affairs, the press is only able to speculate and subsist on rumors and allow corruption and misuse of public funds.

Access to information laws empower individuals, youth, women, people with disabilities and others are empowered by one Access to Information laws and civil society to understand the policies with which the public administration and legislators make decisions relating to health, education, trade and infrastructure and the objective basis for such decisions. Access to Information enables businesses to predict the environment and invest in order to take full advantage of opportunities in a fair and open competition environment. This provide for better growth and for creation, enhancing the realization of the SDG. Access to good-quality information is vital for tendering, for open competition, and for an efficient marketplace.

Freedom of expression and access to information are not just fundamental rights; they are also prerequisites for other human rights. When people have access to accurate and quality information, they can unreservedly express their opinions, and they can actively participate in their own social and economic development. The strong linkage between effective access to information and democracy, good governance, peace, and economic development has been confirmed in many studies. There is

a demonstrated connection between a free media and reduced corruption, political stability, rule of law, reduced poverty, and increased expenditure on health systems.

Although more and more African countries have adopted access to information legislation, slow or ineffective implementation of such laws remains a challenge. Civil society organisations say that most African governments have failed to establish well-defined legal provisions for exceptions to that right, lack sufficient requirements for public education, and have done little or almost nothing to advance on implementation.

Despite of all these challenges, the international community has joined together on a common vision to ensure the sustainable development of all countries by 2030, and the right of access to information is a driving principle for this vision.

The target SDG16.10 states plainly that all countries pledge to: “ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.”

This new agreement has potentially positive effects for the free flow of information and independent media development universally. Advancing towards this goal in the next decade depends on the capacity of civil society, media, the private sector, and governments to engage in partnerships.

Although, the SDGs aren't legally binding, the experience of the Millennium Development Goals demonstrated that countries take these global goals seriously, submitting periodic progress reports to the United Nations.

For most developing countries, ensuring public access to information will necessitate not only legal changes but also will require reducing the digital divide and ensuring inclusive and equitable quality education for all.

The present study provides a tool for civil society and governments to assess the progress of the implementation of the right to information in African countries in line with SDG 16.10 and international legal standards. It provides baseline information on the different aspects of the right to information as per its Indicator 2, which is the number of countries that adopt and implement constitutional, statutory, and/or policy guarantees for public access to information.² Furthermore, it establishes the state of

² All Goals, targets and the indicators are accessible: <https://sustainabledevelopment.un.org/sdg16>

public access to information using three key variables: constitutional provisions for the right of access to information, respect for international standards and agreements, and implementation mechanisms.

This report recognises that the baseline for every country is different for a variety of socioeconomic and historical reasons and that each government sets different national priorities with different metrics.

The report will provide the African Union and the African Commission of Human and Peoples' Rights (ACHPR), including the Office of the Special Rapporteur on Freedom of Expression and Access to Information in Africa, with information to help monitor the progress of compliance of ACHPR state parties with international standards on access to information.

International recognition of the right of access to information

Access to information is crucial to achieve peaceful and inclusive societies. International and regional agreements consider the right to information to be the guiding principle for participatory democracies since only an informed population can effectively contribute to the construction of governments and political institutions. People need information to be able to adequately express themselves on matters of governance, holding leaders accountable, and influencing service delivery and decision making, as well as for the promotion and protection of their human rights.¹

The right to freedom of information (FOI) or the right to information (RTI) held by public bodies is a fundamental human right recognised in several international instruments.

In Article 19, the Universal Declaration of Human Rights² (1948) guarantees the right to freedom of expression and information, including “the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Freedom of information is also interlinked with freedom of expression as reflected in Article 19 of the International Covenant on Civil and Political Rights³ (1966), which guarantees the right to freedom of opinion and expression.

Article 19:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

International Covenant on Civil and Political Rights adopted in 1966

Since the office’s establishment in 1993, the UN’s Office of the Special Rapporteur on Freedom of Opinion and Expression has addressed the issue of freedom of information in annual reports and has stated openly that the right to freedom of expression includes the right to access information held by the state.

¹ Africa Freedom of Information Centre, The State of Right to Information in Africa 2014,

² UN General Assembly, Universal Declaration of Human Rights, 10 December 1948.

³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966.

In his Annual Report of 2013,⁴ the UN Special Rapporteur on Freedom of Opinion and Expression underscored the importance of RTI for democracy and the fight against corruption:

Obstacles to access to information can undermine the enjoyment of both civil and political rights, in addition to economic, social and cultural rights. Core requirements for democratic governance, such as transparency, the accountability of public authorities or the promotion of participatory decision-making processes, are practically unattainable without adequate access to information. Combating and responding to corruption, for example, require the adoption of procedures and regulations that allow members of the public to obtain information on the organization, functioning and decision-making processes of its public administration.

A particular dimension of the right to seek and receive information concerns access to information on human rights violations; it is a right in itself and often determines the level of enjoyment of other rights. The right to access to information on human rights violations has been addressed by a number of human rights instruments and documents. Article 6 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly in Resolution 53/144, expressly provides for access to information on human rights. It states that everyone has the right, individually and in association with others, “(a) to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and (b) as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.”

Furthermore, there has been increasing recognition that access to information on the environment is key to sustainable development and effective public participation in environmental governance.⁵ The Rio Declaration on Environment and Development of 1992 addressed this issue in Principle 10 by underscoring that “environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.”

⁴ UN General Assembly, Report of the Special Rapporteur on the *Promotion and Protection of the Right to Freedom of Opinion and Expression*, 4 September 2013.

⁵ Toby Mendel, *Freedom of Information: A comparative survey*. UNESCO, 2003.

Internet freedoms also facilitate participatory information sharing and collaboration and are particularly valuable in countries where there is no independent media, as they enable individuals to share critical views and to find objective information. More generally, by enabling individuals to exchange information and ideas instantaneously and inexpensively across national borders, the internet allows access to information and knowledge that was previously unattainable. This, in turn, contributes to the discovery of truth and progress for society as a whole.⁶

The right to information is very vital for the media as it encourages journalists and society at large to question the status quo, and RTI is a powerful tool in promoting accountability.

Since 1766 when Sweden passed the first access to information law, more than 100 countries have nationwide laws establishing the right of, and procedures for, the public to request and receive government-held information. In terms of national legislation, there is evidence of a “predominant trend towards the adoption of freedom of and/or access to information laws” over the last decade, with the vast majority of countries around the world having constitutional guarantees for freedom of expression and information. Implementation of such regulations, however, has not progressed at the same pace, and, in fact, the media are facing growing legal constraints in many countries, including defamation, slander, insult, and other laws which do not meet “international standards for legitimate limitations on freedom of expression.”⁷

⁶ UN General Assembly, Report of the Special Rapporteur on the *Promotion and Protection of the Right to Freedom of Opinion and Expression*, 16 May 2011

⁷ World Trends in Freedom of Expression and Media Development, UNESCO.

These are the relevant UN treaties and other declarations on the right to information:

- Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III), 10 December 1948 (Article 9.)
- International Covenant on Civil and Political Rights, UN General Assembly Resolution 2200 A (XXI), 16 December 1966 (Article 19) and the First Optional Protocol.
- Convention against Corruption, General Assembly Resolution 58/4, 31 October 2003.
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly in Resolution 53/144.
- General Comment No. 34, UN Human Rights Committee, 12 September 2011. This, arguably constitutes an authoritative interpretation of the freedoms of opinion and expression guaranteed by Article 19 of the International Covenant on Civil and Political Rights, which is binding on more than 165 countries.
- Aarhus Convention (Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), UN Economic Commission for Europe, 25 June 1998.
- The Brisbane Declaration on Freedom of Information: The Right to Know (2010.)
- The Maputo Declaration on Fostering Freedom of Expression, Access to Information and Empowerment of People (2008.)
- The Dakar Declaration on Media and Good Governance (2005.)

The recognition of the right of access to information in Africa

The African Union has also recognised the importance of the right to information to advance on human rights, democracy, and good governance in the continent. Six treaties recognise the right to access to information and oblige state parties to these treaties to observe and promote this right. These treaties are:

- The African Charter on Human and Peoples Rights (Article 9),
- The African Charter on Democracy, Elections and Governance (Article 19),
- The African Union Convention against Corruption (Article 9 and 12.4),
- The African Union Youth Charter (Article 10 and 11),
- The African Charter on Values and Principles of Public Service and Administration (Article 6),
- the African Union Youth Charter (Article 10 and 11) and,
- The African Statistics Charter (Article 3).

Article 9, Right to Receive Information and Free Expression:

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.*

The African Charter on Human and Peoples' Rights,
adopted in 1981 and entered into force in 1986

One of the objectives of the African Charter on Democracy, Elections and Governance, adopted in 2007, is “the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs.” A society free to express itself and free to access information is a society prone to stability and one that can question and hold its government accountable.

The Office of the Special Rapporteur on Freedom of Expression and Access to Information was established by the African Commission on Human and Peoples' Rights with the adoption of Resolution 71 at the 36th Ordinary Session held in Dakar, Senegal, from 23 November to 7 December 2004. Her mandate is to “analyze national media legislation, policies and practice within Member States, monitor their compliance with freedom of expression and access to information standards in general and the Declaration of Principles on Freedom of Expression in Africa in particular and advise Member States accordingly.”

In the last 15 years Since the adoption of the African Platform on Access to Information Declaration in 2009, civil society advocates have campaigned for the adoption of access to information laws.⁸ These efforts have resulted in more African countries passing right to information legislation, increasing the number from five in 2010 to 21⁹ today.

Countries with access to information legislation in Africa and date of adoption



⁸ The African Platform on Access to Information is a network of civil society organisations that are working on the promotion of access to information in Africa. Access information on the story of the Declaration at <http://www.africanplatform.org/who-we-are/apai-story/>

⁹ Angola, Burkina Faso, Côte d'Ivoire, Ethiopia, Guinea, Kenya, Liberia, Malawi, Mozambique, Niger, Nigeria, Rwanda, Sierra Leone, South Africa, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, and Zimbabwe.

The Model Law on Access to Information¹⁰ for AU member states has made a positive contribution in this regard. The Model Law, adopted by the African Commission on Human and Peoples' Rights in 2013, aims at promoting "transparency, accountability and public participation in the decision-making process" as factors contributing to human rights, democracy, and development across the continent. The Model Law represents a significant milestone in the work of the commission, as it is the very first time the commission has developed a model law on any particular human rights issue. It is meant to guide lawmakers in translating obligations emanating from international treaties into detailed national legislation.

However, the adoption of access to information laws is not an end, but a means to an end, which is the respect for peoples' right to access information. It is, therefore, of great concern that some of the countries still display gross violations of peoples' rights to freedom of expression and access to information. Furthermore, access to information laws in some countries contain sections/provisions which are not in line with the African Charter, as well as other regional and international human rights instruments on the right to freedom of expression and access to information. In other countries, access to information laws are being used to clamp down on the free flow of information instead of creating a conducive environment for accessing information.¹¹ For example, in Zimbabwe the main purpose of the law is to protect rather than promote access to information by citizens.

This is especially important at this time when the member states are working to achieve the African Union Vision 2063 strategic framework,¹² which seeks to provide direction for the continent's inclusive development and to respond to growing global attention and interest to the continent. Aspiration 3, which promotes good governance, democracy, respect for human rights, justice, and the rule of law throughout Africa, will only be achieved when citizens are involved in public affairs, empowered to hold governments accountable, and are able to receive and access the necessary information to help make informed decisions.

¹⁰ African Commission on Human and Peoples' Rights, Model Law on Access to Information for Africa, 24 October 2011.

¹¹ Adv. Pansy Tlakula, the special rapporteurSpecial Rapporteur on freedomFreedom of expressionExpression and accessAccess to informationInformation in Africa and a memberMember of the African Commission on Human Rights and Peoples' Rights, Activity Report, presented during the 54th Ordinary Session of the African Commission on Human and Peoples' Rights, 22 October–5 November 2013 Banjul, The Gambia: http://www.achpr.org/files/sessions/54th/inter-act-reps/197/achpr54_comm_actrpt_2013_eng.pdf.

¹² African Union Commission, Africa 2063: The Africa We Want, 2015: <http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf>.

List of relevant treaties and other instruments of intergovernmental organizations, as well as NGO Principles, Declarations and other normative statements on RTI in Africa:

- African Charter on Democracy, Elections and Good Governance, 30 January 2007
- African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981 (Article 19)
- African Charter on Values and Principles of Public Service and Administration, Article 6, African Union, 2011
- African Youth Charter (2006)
- African Charter on Statistics (2009)
- African Convention on Preventing and Combating Corruption, (Article 9) African Union, 7 October 2003
- Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October 2002, Banjul, The Gambia. Declaration affirms the right to information in Africa.
- Model Law on Access to Information for Africa, adopted by the African Commission on Human and Peoples' Rights on 25 February 2013, and launched on April 2013.
- Outcome Statement of the International Conference on Access to African Supranational and Regional Law, held in Johannesburg, South Africa, 5-6 November 2012.
- Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol of the ECOWAS Treaty on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, December 2001
- Regulation MSC/REG.1/01/08 on the ECOWAS Conflict Prevention Framework, ECOWAS, 16 January 2008
- Treaty of the Economic Community of West African States, ECOWAS, 24 July 1993
- African Platform on Access to Information, Declaration, 2011
- Declaration of Principles on Freedom of Expression in Africa, ACHPR, 32nd Session, 17 – 23 October, 2002: Banjul, The Gambia

The Agenda 2030 on Sustainable Development

In September 2015, 193 member states of the United Nations adopted a historic resolution committing themselves to the 2030 Agenda for Sustainable Development. The agenda contains 17 Sustainable Development Goals (SDGs) and 169 targets, seeking to build on the Millennium Development Goals (MDGs) that ended in 2015. The SDGs are ambitious, universal (applicable in both developed and developing countries), and transformational (aimed at balancing economic growth, social development, and environmental protection). The agenda is driven by the principle of leaving no one behind and is rooted in universal human rights practices and standards.

The SDGs are the result of an extensive, exhaustive, consultative process and are strongly owned by various stakeholders—countries, civil society, and international organisations. The passage from the MDGs to the SDGs is an important advancement in national commitments to accomplish the United Nations’ vision of peace, well-being, economic stability, and the realisation of human rights for all. In summary, the 2030 Agenda for the SDGs establishes “a plan of action for people, planet and prosperity” and “seeks to strengthen universal peace in larger freedom.”¹³

Goal 16: Peace, Justice, and Strong Institutions

Goal 16 is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and the creation of effective, accountable institutions at all levels. The goal is the result of the international community’s recognition that peace is fundamental to development, and it can and should be measured for development outcomes. The 12 targets of Goal 16 predominately aim to measure direct violence, drivers of violence, governance, and justice.¹⁴

GOAL 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels.

Target 16.1:	Significantly reduce all forms of violence and related death rates everywhere.
Target 16.2:	End abuse, exploitation, trafficking, and all forms of violence against and torture of children.
Target 16.3:	Promote the rule of law at the national and international levels and ensure equal access to justice for all.
Target 16.4:	By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets, and combat all forms of organised crime.

¹³ UN General Assembly Resolution 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, 25 September 2015.

¹⁴ http://visionofhumanity.org/app/uploads/2017/02/Goal16_2016_webfile.pdf.

Target 16.5:	Substantially reduce corruption and bribery in all their forms.
Target 16.6:	Develop effective, accountable, and transparent institutions at all levels.
Target 16.7:	Ensure responsive, inclusive, participatory, and representative decision making at all levels.
Target 16.8:	Broaden and strengthen the participation of developing countries in the institutions of global governance.
Target 16.9:	By 2030, provide legal identity for all, including birth registration.
Target 16.10:	Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.
Target 16.a:	Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime.
Target 16.b:	Promote and enforce non-discriminatory laws and policies for sustainable development.

Access to information is crucial to achieve peaceful and inclusive societies. For instance, in many countries, lack of transparency on the planning, conduct, management, and announcement of election results continues to be a major source of concern. In a number of unfortunate circumstances, the lack of information and resultant lack of trust has led to widespread violence. The UN Special Rapporteur for Freedom of Expression has, for example, noted that an election can be declared free but not deemed fair when there is disparity of access by the public to information.¹⁵

AFIC's study on access to information and election finances in Uganda and Senegal reveals high and unregulated spending, especially by the ruling political parties and candidates, yet the source of funding, as well as how and where such money is spent, remains unknown. At the same time, the study reveals less awareness among policy makers and the general public of how campaigns are funded and the subsequent impact on public policy, ultimately undermining the ability of citizens to hold leaders accountable.¹⁶ Hence, access to information is a safeguard of peaceful democracy, allowing citizens to make informed decisions during electoral processes. It is also one of the guarantees for a transparent, fair, inclusive, and peaceful transition of power.

¹⁵ Special Rapporteur Abid Hussain, Report on the promotion and protection of the right to freedom of opinion and expression, submitted pursuant to the Commission on Human Rights Resolution 1997/26, Commission on Human Rights, 54th session, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/fb00da486703f751c12565a90059a227/7599319f02ece82dc12566080045b296?OpenDocument#III.B>.

¹⁶ <http://www.africafoicentre.org/index.php/reports-publications/206-report-on-ati-on-political-party-and-election-candidate-financing-in-uganda-and-senegal>.

Concomitantly, access to information is paramount when we are speaking about good governance and accountable, inclusive institutions. Without information, citizens have little or no reference by which they can hold their government accountable. They are unable to identify gaps or failures, nor can they monitor the effectiveness of their rights and ask for redress interventions when needed.

Where there is a lack of access to information, there is more room for maladministration and corruption. For instance, public resources allocated to deliver public services are not always spent on what they were intended for, resulting in poor public-service delivery. Therefore, effective access to information empowers citizens to demand accountability and allows them to participate in decision-making processes, which will positively impact the quality of public services and help achieve a democratic society.

Target 16.10: Ensure public access to information and protect fundamental freedoms

Target 16.10 aims to ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

Once again, the international community has recognised the importance of strong legal and institutional frameworks through which citizens and other actors access and receive information as a matter of human rights and fundamental freedoms.

This target also underscores that the quality of the mentioned systems needs to be evaluated in line with national legislation and international agreements. The term *national legislation* refers to the principle of respect for different national realities, capacities, levels of development, national policies, and priorities. The term *international agreements* indicates how its implementation ought to be measured and monitored. Hence, when implementing this target, governments should consider international regulations, such as instruments dealing with the right to seek, receive, and impart information in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and other regional instruments.¹⁷

Contribution of access to information to the accomplishment of other SDGs

SDG 1: End poverty in all its forms everywhere

Access to information is essential for citizens to access economic opportunities that are mainstreamed by their country's economic growth.

Africa is well endowed with natural resources. The economic benefits of the oil, gas, and mineral industry, if fairly managed for redistribution to citizens, would significantly enhance revenue generation and increase private-sector competitiveness. A critical issue in mineral resource development is the extent to which affected people have a voice in decision making, and the public at large can hold governments and investors accountable through transparency and public scrutiny.¹⁸

¹⁷ International Programme for the Development of Communication (IPDC, Unpacking Indicator 16.10.2 Enhancing Public Access to Information through Agenda 2030 for Sustainable Development, 2015. http://en.unesco.org/sites/default/files/unpacking_indicator16102.pdf

¹⁸ Lorenzo Cotula and Kyla Tienhaara, "Reconfiguring Investment Contracts to Promote Sustainable Development," *Yearbook on International Investment Law and Policy 2011-2012* (Oxford University Press, 2013), 284.

However, rural communities are affected by poorly regulated mineral investments. They have low or no access to information, which undermines their ability to participate in and influence policy processes in their favour. These groups more often than not have low levels of income, have low awareness on policy issues, and lack the time, opportunity, organisational structures, or supporting networks to participate meaningfully in policy processes at the local, regional, or national level.

SDG 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture

Access to information is crucial for rural communities to develop sustainable and sufficient agriculture, to be more aware of the impact of climate change, prepare safeguards, and adapt their agricultural methods, as well as access to market opportunities. However, rural communities have low or no access to information, which undermines their ability to access innovation, government support, and new opportunities in the agricultural sector. Especially in the context of climate change, rural communities are facing new challenges, majorly impacting their capacity to feed themselves. Developing scientific initiatives and technologies could help these communities better prepare for natural catastrophes, but they need access to the existing information.

SDG 3: Ensure healthy lives and promote well-being for all at all ages

Health care is a multidimensional concept that involves a balancing of factors, such as human resources, financing, transportation, freedom of choice, public education, quality, and the allocation of technology. Access to information plays a role in freedom of choice and public education quality as it enables citizens to be aware of the medicine, treatments, and services available to them in the health sector. It is especially predominant in the prevention area. In addition, in countries with high levels of corruption, the health sector is one of the most affected areas. In that regard, citizens' access to information also empowers them to ask for accountability in case of poor service delivery.

SDG 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

UNESCO Institute for Statistics states that in 2014 about 41 percent, or 25 million children, of the current primary-school cohort will never enrol in school. Two-thirds of them are girls. The 2016 Global Education Monitoring Report illustrates the importance of access to information in the education sector, explaining that access to textbooks, teacher guides, and reading books is especially important for learning in low resource and print-poor settings. Access to libraries and the internet are also crucial when it comes to the quality of the education, but a large portion of the rural population is deprived of such access. In that context, access to information and learning materials help achieve inclusive and equitable quality education.

SDG 5: Achieve gender equality and empower all women and girls

Access to information has specific benefits for women as it empowers them to make more effective decisions. For example, it broadens their opportunities with relation to education, crop production, land ownership, and health care; enables them to understand and exercise their full range of rights; helps them to participate more fully in public life; is critical for holding government and service providers accountable; bridges gender gaps and helps to shift power in decision-making processes; and can link women with the needed resources for achieving economic empowerment.

Under this goal the following targets make specific reference to ATI:

Target 5.b. Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women. And the indicator 5.b.1: Proportion of individuals who own a mobile telephone, by sex

SDG 9: Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation

Access to information through research, studies, and analysis is key for the development of new technologies and building a solid industry. It provides an enabling environment for investment, trust, and stability in the market. It provides the private sector with crucial information on the market and enables them to develop their capacity accordingly. Transparency in the sector of public infrastructure development is also paramount for overseeing the quality and sustainability of delivery.

Under this goal the following targets make specific reference to ATI:

Target 9.C Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020. And the indicator 9.C.1 “Proportion of population covered by a mobile network, by technology”

SDG 10: Reduce inequality within and among countries

Access to information can help advance the access of vulnerable people to resources, employment, social services, and political space and therefore reduces inequality within countries. Despite considerable efforts to promote equality in recent decades, discrimination based on gender, age, and disabilities remains pervasive in many dimensions of life worldwide. Because of marginalisation, these groups often have limited access to resources, employment, and social services, such as education and health. The power inequalities are reflected and compounded by the absence of the “voice” of women, people with disabilities, older people, or the young within the household, community, and political sphere. This lack of voice is linked to the isolation, low social and economic status, and low levels of participation of these groups in all areas of life (including decision-making processes),

combined with a generally poor understanding and awareness of these issues among stakeholders and decision makers.

The World Report on Disability, 2011 by the World Health Organisation and the World Bank clearly defines access to information as an enabling tool for advancing the rights of people living with disabilities. In addition, as underlined in the report of the European International Model United Nations 2015, Economic and Social Council on Empowering Youth through Access to Information and Communication Technology and Media, access to information has been defined as a major component for youth to access development opportunities and employment.

Progress and challenges in implementation

Assessing the impact of RTI legal frameworks and levels of implementation is not an easy task. Even though the value of RTI laws has been widely recognised as a key tool for the public and journalists to hold governments accountable, promote participation, and public-service delivery, there are still challenges in how to measure the effective implementation of RTI regimes and how these practices contribute to broader good governance goals.

The existence or the quality of a given RTI law tells us little about how well it is being implemented. Additional challenges can be identified within the effective implementation of the RTI frameworks, such as the validity of government data in administrative systems, poor records systems, variances in the quality of performance-monitoring systems, and difficulties public officials have when dealing with record keeping and processing information requests in a timely manner.

All countries face implementation challenges, underscoring the importance of gaining a clearer picture of what drives effective implementation and how it can be achieved and sustained.

Examining the drivers of implementation—such as enabling conditions (legal frameworks, compliance with international standards, and civil society advocacy efforts to shape RTI policies), the levels of demand for information (public awareness and accessibility), institutional capacities to effectively implement laws, oversight mechanisms, and other transformative factors—can help assess the progress of an RTI system in a particular country.¹⁹

¹⁹ Victoria L. Lemieux and Stephanie E. Trapnell, . Public Access to Information: A Guide to the Effective Implementation of Right to Information Laws, . The World Bank, 2016..

Objectives of the report

The overall objective of this report is to provide a tool for stakeholders and governments to assess the progress of the implementation of the right to information in African countries in line with international legal standards.

A second objective is to provide baseline information on the different aspects of RTI that will contribute to the reporting of the Sustainable Development Goal 16 (promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels) with a particular focus on Target 10 (ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements) and Indicator 2 (number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information).

As per the metadata submitted by UNESCO and its allies to the UN Statistical Division, it is proposed that the monitoring of Indicator 16.10.2 should establish the state of public access to information in terms of three key variables:²⁰

- 1) Whether a country (or at the global level, the number of countries) has constitutional, statutory, and/or policy guarantees for public access to information;
- 2) The extent to which such national guarantees reflect “international agreements” (e.g., Universal Declaration of Human Rights, etc.); and
- 3) The implementation mechanisms in place for such guarantees, including the following variables:
 - a) Government efforts to publicly promote the right to information;
 - b) Citizens’ awareness of their legal right to information and their ability to utilise it effectively;
 - c) The capacity of public bodies to provide information upon request by the public; and
 - d) The existence of an independent redress mechanism.

²⁰ Metadata for SDG indicators for Target 16.10,. UN Statistical Division (UNSD.)

Furthermore, the baseline data gathered to report on Target 16.10 can also be used to monitor other targets such as Target 9.c on internet access and affordability; Target 16.3 on access to justice; Target 16.5 on anti-corruption; and Target 16.6 on transparent and accountable institutions.

The report will provide AU and ACHPR, including the special rapporteur on freedom of expression and access to information in Africa, with information to help monitor the progress of state compliance of ACHPR state parties with international standards on access to information.

This report aims to contribute to the realisation of the AU-EU cooperation strategy²¹ 2014–2017, specifically to its “Priority Area 2: Democracy, Good Governance and Human Rights,” whose objective is “to ensure a transparent, democratic and accountable environment in the respect of human rights and rule of law, contributing to reducing fragility, fostering political stability and effective governance, and enabling sustainable and inclusive development and growth.”

In short, this report is a research and advocacy tool for all stakeholders involved in the promotion of RTI in Africa to address the problems and challenges identified by Africa Freedom of Information Centre and other partners:²²

- The necessity to adopt freedom of expression and access to information laws and to ensure the effective implementation of legal frameworks,
- To strengthen and expand the adherence to international treaties and mechanisms on the freedom of expression and access to information,
- To support civil society to use international mechanisms, such as reporting to the Special Rapporteur, and
- To improve skills to identify, denounce, and express views on state observance of human rights.

Finally, following the principles that the Agenda 2030 establishes, taking into account different national realities, capacities, and levels of development and respecting national policies and priorities,²³ this report does not try to rank countries, but instead seeks to help stakeholders identify priorities and areas of improvement. This report acknowledges the valuable legal framework agreed upon by

²¹ Roadmap 2014–2017, Fourth EU-Africa Summit 2–3, Brussels, April 2014.

²² Edetean Ojo, Freedom of Information: Current Status, Challenges and Implications for News Media http://portal.unesco.org/ci/en/files/30331/12728954013World_Press_Freedom_Day_2010_Presentation_-_EO.pdf/World+Press+Freedom+Day+2010+Presentation+-+EO.pdf.

²³ UN General Assembly, . Transforming our world: the 2030 Agenda for Sustainable Development. 25 September 2015.

African member states of the African Union and the United Nations and aims to be a useful resource document by any actor involved in the achievement of the international sustainable agenda.

AFIC country partners collaborated in the collection of data in order to provide current information on the state of ATI in the studied countries. Existing data from reliable and recognised initiatives has been used to furnish additional aspects of the effectiveness of ATI implementation.

Methodology

Keep in mind that SDG The Sustainable Development Goal 16.10 cannot be monitored because it only considers whether a country has adopted an ATI law. The effective implementation of these legal frameworks needs to be assessed through the measurement of the actual and effective exercise of the fundamental right. Considering these assumptions, the tool elaborated for this report provides a comprehensive delineation of the current state of ATI by taking into account not only legal and institutional dimensions but also other dynamics that have an impact on effective implementation and exercise of the right of access to information.

In other terms, it aims to provide a comprehensive picture of the current state of RTI, as well as information on the different aspects that impact the effective implementation and exercise of the right of access to information when compared at a regional level. It compiles information from different sources in order to answer questions on the different aspects of Target 16.10 in accordance with international standards as well as regional and national realities.

Twenty-three AFIC country partners have collaborated in the collection of data in order to provide the most current information on the state of RTI in the studied countries. Existing data from reliable and recognised initiatives have been used to detail additional aspects of effective implementation of RTI.

The state of implementation of RTI in African countries is determined by pooling qualitative and quantitative data collected by country partners. The criteria for the selection of the collected data were devised by AFIC. The criteria evaluated by in-country partners are as follows: the capacity of public bodies to provide information upon request by the public, public officers' awareness of RTI, and the quality of the government's system to monitor RTI implementation.²⁴

This qualitative analysis is combined with quantitative data from existing sources on state ratification of international legal frameworks, the quality and compliance of the existing national RTI regimes with international standards, enabling environments, and government efforts to disclose information during the period evaluated.

The study design, methodology, and scope has been developed in consultation with key stakeholders including the African Commission on Human and Peoples' Rights (ACHPR), the Office of the Special

²⁴ Guidelines to support country reporting on the Sustainable Development Goals, 2016.

Rapporteur on Freedom of Expression and Access to Information in Africa, AFIC members and partners in 20 countries, public officials, and academia. The methodology was elaborated by FOIANet experts and used guidelines from the 19 September 2016 technical workshop organised by UNESCO and the Global Forum for Media Development in Jakarta, Indonesia, which aimed at developing “data partnerships” around Indicator 16.10.2.

Legal assessment

Initially, in order to assess the quality of the legal framework, research is focused on whether the countries have ratified the six instruments of the African Union that recognise the right of access to information. Researchers also consider other initiatives, such as the Open Government Partnership (OGP) and the Extractive Industries Transparency Initiative (EITI).

During the second stage, researchers look at whether there is a constitutional provision or a specific law that regulates ATI. The study of the quality of the national legal framework is based on the methodology developed by Global RTI Rating, an initiative of AccessInfo and Centre for Law and Democracy.²⁵ A simplified version of the indicators was implemented at the country level to assess the different chapters of the national legal framework. The scope, procedures, exceptions, appeals, and other measures are evaluated against the African Union Model Law on Access to Information.

Measures for the effective implementation

The assessment of the effective implementation of the right to information combines different types of research and testing activities. The evaluation of the information available on government websites provides a picture of government efforts to proactively disclose information and the accessibility of that information. Compliance with reporting obligations of government authorities and with the oversight mechanism, such as the information commission on the implementation of the law, provides insights on the general commitment of the central government to the advancement of transparency and participation in government affairs. Researchers also consider the development of regulations and guidelines for ministries, departments, and agencies in each country.

By submitting two to three information requests to five different agencies in every country, in-country researchers collected data on responsiveness, fees, availability of forms, assistance provided by the responsible officer, and so forth. In-country partners developed and used a request form to collect information on the process of submitting information requests, and they monitored the final outcome.

²⁵ Global Right to Information Rating: <http://www.rti-rating.org/>.

Researchers considered indicators related to civil society space, literacy rates, a favourable business environment, freedom of the press, Internet presence, and other data on conflicts and human rights to help analyse and interpret the enabling environment of RTI realisation. These dimensions are considered to be conditions that can affect the effective exercise of the right to information.

Limitations of the research

Types of monitoring, such as compliance testing by civil society organisations or oversight bodies on the rate of response, are done only for a sample of agencies. Generalisations about the entire set of government agencies with the collected data must be made with qualification.

Despite the limitations that the number of information requests provide in terms of testing the capacity at the different levels of government, the exercise provides useful information related to the actual implementation of the law, assessing the process step by step and helping determine the quality of responses, relevance of the released information, or satisfaction of users.

Recommendations on future assessments

The present report is an effort to collect baseline information on the state of ATI in Africa countries. Research on the progress to the achievement of the SDG 16, Target 10 should be conducted at least every two years.

The assessments should focus on different aspect of the RTI regimes. Where an ATI framework is missing, the political situation and governments' efforts to the enactment of an ATI should be assessed in order to help civil society and other stakeholders to develop advocacy strategies.

In countries where an RTI framework has been enacted, the progress on its implementation should be periodically evaluated, looking for strenghs and weaknesses that need to be addressed. This should help government departments and stakeholders to define strategies and initiatives to strengthen the effective implementation and assess the circumstances that curb the process.

The United Nations, the African Union and other regional bodies should support the conduction of research of this kind to ensure that all SDGs are being monitored. Research on the impact of SDG 16.10 on the achievement of other goals should also be conducted.

Country reports



Cameroon

A report by Elisabeth Benkam, Présidente du Conseil Syndical, Syndicat National des Journalistes du Cameroun.

Recognition in the Constitution

Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972

No ATI Law

RTI legal framework

Framework Law on the Environment

Decret No. 94/199 de 7 Octobre 1994 Portant statut général de la Fonction Publique de l'Etat

Loi 90/052, 19 December 1990. on social communication

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

African Charter on Democracy Elections and Governance

AU Convention on Preventing and Combating Corruption

African Union Youth Charter

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Cameroon is late by two reports.

Member of EITI

6 recommendations related to RTI from UPR in 05/2013

Legal recognition of access to information in Cameroon

This study reveals that, although Cameroon does not have a general law on access to information, its Constitution recognises and enshrines in its preamble the African Charter on Human and Peoples' Rights and the Universal Declaration of Human Rights (Law No. 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972). These international texts are an integral part of the national legislation of Cameroon. Furthermore, Article 45 of the Constitution establishes the supremacy of

international treaties signed and ratified by Cameroon over national laws. These provisions establish the right of access to information in Cameroonian legislation.¹

In addition to these constitutional provisions, there are provisions on access to information in a number of laws, (Law No. 90/052 of 19 December 1990 on social communication) policies, and institutional practices of the government, but these instruments are not effectively applied. This may be due to a number of reasons, including a lack of knowledge among public officials and the public. Moreover, an attitude of fear and nonchalance on the part of the public strengthens these factors. However, this does not conceal the fact that this right actually exists in Cameroon.

Although there is no uniform legislation on access to information and administrative documents in Cameroon, there are laws that allow access to information and administrative documents.

In the absence of a general law on the freedom of information, the sources of access to information in Cameroon include the provisions of international law applicable in Cameroon, as a result of the country's ratification of certain international conventions which enshrine the right of access to information. These include, among others, the International Covenant on Civil and Political Rights, not signed but ratified on 27 June 1984; the African Charter on Human and Peoples' Rights, signed on 23 July 1989 and ratified on 20 June 1989; the African Charter on Democracy, Elections and Governance, signed on 16 January 2012 and ratified on 24 August 2011; the AU Convention on Preventing and Combating Corruption, signed on 30 June 2008 but not yet ratified; the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, signed on 25 July 2006 and ratified on 9 December 2014. Cameroon has also been a member of the Extractive Industries Transparency Initiative (EITI) since 2005.

In addition, public and even private administrations have adapted to new information and communication technologies and have developed web pages, which contain a significant portion of information relevant to the public interest. And nothing prevents individuals, Cameroonian legal entities, or foreign legal entities from requesting information from government or private structures that manage public funds.

In principle, the information held by public authorities is communicated on the basis of a simple request made by any citizen to the public official whose authorisation is required.

¹ Constitution of the Republic of Cameroon:
http://www.icla.up.ac.za/images/constitutions/cameroon_constitution.pdf.

The only handicap is the internet penetration rate in Cameroon, which remains low. According to the latest studies on this issue, the penetration rate is 18 percent for a population estimated at 22 million.² The digital divide is greater between rural areas and urban areas due to lack of energy resources. Also, literacy rates of about 63 percent among women and 83 percent among youths aged 15 to 25 years³ hamper the promotion and advancement of the right to information. In addition, there are many other de facto barriers to access to information in Cameroon: language barriers and the absence of systematic translation of documents into English or French, a lack of bilingualism among most civil servants, the disparity between urban and rural areas in regards to information availability, a lack of documentation and poor record keeping, the absence of a centralised access to legislation system, discrepancies between the legislation in force and their application by public authorities, and the absence of defined deadlines for administrative replies.

Implementation of the legal framework

The right of access to information in Cameroon is quite complex because, in practice, all communication with the administration must be in writing, even though this is not stipulated in any legislation or formal code. This situation gives officials broad powers to reject at any time requests from the public, especially when it is an oral request made by an illiterate person, because state agents are not obliged to assist the applicant to write his/her request.

Freedom of access to information is a corollary, if not a prerequisite, to the freedom of expression, which in itself is a fundamental human right recognised by international conventions on the protection of human rights as stipulated in Article 19 of the Universal Declaration of Human Rights of 10 December 1948. Moreover, Article 19, Paragraph 2 of the International Covenant on Civil and Political Rights of 16 December 1966, which has been ratified by Cameroon, stipulates a similar protection: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Finally, Article 12 of the Charter stipulates that “the administration shall establish or strengthen reception and information stations for users with a view to assisting them in accessing services and obtaining their opinions, suggestions or complaints.” Cameroon has also signed and adopted two legislative texts adopted by the African Union, which are outstanding for their specific reference to the freedom of access to information.

² International Telecommunication Union (ITU), United Nations Population Division, Internet & Mobile Association of India (IAMAI), World Bank. Accessible: [http://www.internetlivestats.com/internet-users-by-country/2015/.](http://www.internetlivestats.com/internet-users-by-country/2015/)

³ United Nations Educational, Scientific, and Cultural Organization (UNESCO),) Institute for Statistics.: <http://data.worldbank.org/indicator/SE.ADT.1524.LT.ZS>.

These include the African Charter on Democracy, Elections and Governance and the African Union Convention on Preventing and Combating Corruption.

The section dealing with the legal framework for the right of access to information in Cameroon has shown that there is a gap between theory and practice, between the rhetoric on the need for an open administration and the reality on the ground.

The above notwithstanding, an examination of the legislative framework shows that it theoretically contains fragments of laws that could serve as a starting point for the adoption of a general law on access to information in Cameroon.

Cameroon has made a fairly commendable, though insufficient, effort to promote access to information through the regular publication of the *Official Gazette*, which is published in English and French. Public and private administrations also publish information bulletins and activity reports, operate official websites, and carry out other public awareness-raising campaigns. Local leaders are often used as relays (traditional chiefs and municipal councillors). Posters, local public meetings, and other means of disseminating information to the public are also used.

It should also be noted that the majority of administrations, whether public or private, have appointed communication officers or public relations officers within their organisations. The role of these officers is to serve as an interface between the public and the structure that employs them, but they do not have the power to promote access to information.

It is also interesting to note that most Cameroonian administrations have set up websites in order to disseminate information on their activities. Unfortunately, the information is not updated regularly. It is not uncommon to see website information that has not been updated for four years. At the same time, we regret the absence of a website for the Ministry of Communication, which is supposed to be the country's showcase in such matters.

Meanwhile, some administrations have taken steps to minimise corruption. At the Ministry of Public Service, for example, state agents can work remotely, updating their files from their homes via the internet without having to travel to the ministry. Young people now can apply online for various competitive entrance examinations to enter the civil service, such as the police recruitment examination. The country has made other significant advances, such as providing the results of official examinations and competitive recruitment examinations on the internet.

Moreover, with regard to the fight against corruption and misappropriation of public funds, nonjudicial mechanisms and judicial mechanisms have been set up and deployed. The National Anti-Corruption Commission (CONAC), the National Financial Investigations Agency (ANIF), and the High State Audit Agency (CONSUPE) carry out anti-corruption activities.

Concerning the media in Cameroon, the freedom of the press is guaranteed by the Constitution, but it is also regulated by a 1990 law on social communication (Law No. 90/052 of 19 December 1990). It defines the legal and institutional framework for the practice of press freedom. It also provides information on the dissemination of information to citizens as guaranteed by the Constitution. According to Article 1 of this law, the freedom of the press as guaranteed by the Constitution shall be exercised within the framework of the provisions of this law. Article 2 (1) stipulates that the law shall apply “to all forms and methods of social communication, in particular printing enterprises, press organs, publishing, distribution, posting and audio-visual enterprises.” Article 49 describes the procedures for access to administrative information and documents by journalists.

That said, the freedom of the press and the related freedom of access to information for journalists promote the free flow of information and ideas. The Law on Social Communication also provides for the protection of sources of information. Article 50 of the law states that (1) “the protection of information sources is recognized and guaranteed for journalists and related professionals. (2) This protection can only be lifted before the judge and in camera.” Unfortunately, journalists continue to be harassed and are forced to disclose their sources of information to the police or the gendarmerie and not before a judge.

Access to information for the press in Cameroon is quite difficult, especially for the so-called private press. More often than not, the administrations refuse to give information to journalists of the private press on the pretext that they will use the information to denounce government acts. Sometimes they are labelled as opponents who are working for opposition political parties which seek to overthrow the current government.

This discrimination carries over to issuing the national press card; the government gives priority to journalists working in government-owned news channels and print media.

In the current context, the government and citizens have taken legal actions against journalists at the request of citizens who claim journalists have infringed their rights. The most recurrent offences are

defamation, dissemination of lies, incitement to revolt, non-denunciation of terrorist acts, and use of funds derived from terrorism. To date, about 15 Cameroonians journalists are in custody, and five others are being prosecuted in the courts.

Regarding access to information, there is confusion among civil servants about the release of public information, and officials can sometimes refuse to release information without any justification. This is known as professional discretion, professional secrecy, and the obligation of reserve and stems from the principle of professional discretion as defined in Article 41 (1) of Decree No. 94/199 of 7 October 1994, which outlines the General Civil Service Regulations. It stipulates that “(1) Every civil servant should exercise professional discretion in all matters relating to facts, information or documents that he learns in the course of or in connection with the performance of his duties. Apart from the cases explicitly provided for by the texts in force, the civil servant may only be released from this obligation by an express decision of the competent authority to whom he reports. (2) Any diversion, subtraction of service items or documents is strictly prohibited. The same shall apply to their communication or reproduction, unless they are performed for reasons of service and in the forms prescribed by the rules and regulations in force.”

For their part, NGOs are striving to uphold the right of access to information. This is the case, for example, with the Citizen Governance Initiatives (CGI), the Association for Integrated Development and International Solidarity (ADISI), and Nouveaux Droits de l'Homme, all of which have been lobbying the government to have Parliament pass a law on access to information. These NGOs have already taken a number of steps in this direction and have even proposed legislation on this matter. Nevertheless, it is necessary for other civil society organisations to join forces with them in this advocacy effort, further compelling the government to pass the law.

Enabling environment

In the absence of a general law on access to information, this study demonstrates that when constitutional and regulatory provisions on the right of access to information exist, as is the case of Cameroon, the general public, civil society activists, religious groups, university and academic institutions, the business community, and all other actors must be involved to ensure proper implementation.

There are also several laws, regulations, and directives containing specific provisions on the right to information. The application of these constitutional and regulatory provisions that guarantee access to information requires sustained advocacy, and such advocacy should be extended to the judicial

system, where specific case law on the matter may be developed. In reality, there are many obstacles to achieving this objective, and to circumvent them, we must think about ways of simplifying and reducing procedural costs for access to information from public bodies.

The current situation, characterised by the coexistence of legal norms that promote access to information held by public bodies and other norms which impede or limit such access, reflects the need for Cameroon to enact a general law on access to information, which would provide a clear and effective framework for access to information for both citizens and public authorities.

There are certainly legitimate reasons, such as the security of the state and the need to protect the privacy rights of individuals, which may justify impeding access to information, but a general law defining a framework for access to information in Cameroon would settle many of these pressing questions. From a legislative standpoint, the adoption of a general law is urgent. Additionally, it is urgent to develop mechanisms for the application of existing international, regional, and national standards that contain provisions on access to information.

This includes improving the effectiveness of the *Official Gazette*, as the most reliable instrument for systematic and equitable access to legislative information in Cameroon. There is also a need for the systematic and correct translation of all laws as prescribed by the implementing legislation; regular publication in accordance with the implementing legislation; availability of the laws in all places, including places outside urban centres; and the creation of a website to complement the printed version and, above all, allow access to Cameroonian laws from any place.

Although there are a multitude of binding legislative provisions directly or indirectly related to access to public information and administrative documents, it is necessary to create a harmonised universal system that extends freedom of information to all citizens in all aspects and sectors of public affairs.

In developing this law, it will be necessary to take into account the particularities of the country and involve all citizens and stakeholders. Public institutions are the key players regarding access to public information and administrative documents. It is, therefore, important that they should be sufficiently equipped to meet the information needs of the public.

Recommendations

The government of Cameroon should ratify the African Charter on Statistics.

In order to achieve SDG 16 Target 10, the Government of Cameroon should:

1. Urgently adopt and effectively implement an access to information legislation to ensure the fundamental right of access to information by all citizens; such law on access to information has to be consistent with international and regional standards on the right to information and the AU Model Law.
2. Fully comply with reporting obligations and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. A central point should be created where citizens can have access to legislation and other key public information.
2. Ensure a consistent geographical coverage of internet services. These actions would contribute to narrowing the digital divide between the rich and the poor and between citizens in urban and rural areas.
3. CSOs, the media, religious groups and others should plan an important role in raising awareness and educating citizens about RTI.

The Gambia

Report by Samuel Osseh Sarr, managing editor at Women for Democracy and Development.

RTI legal framework

Women's Act, Section 8

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

AU Convention on Preventing and Combating Corruption

African Union Youth Charter

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

The Gambia is late by eleven reports.

Legal recognition of access to information in The Gambia

The Constitution of The Gambia does not recognise freedom of information as a right. It is, however, an obligation under Section 214 for the government to “foster accountability and transparency at all levels.” The Gambia is undergoing a transition from an undemocratic era that did not allow freedom of expression to a new era of democracy that supports the free exchange of ideas. Presidential elections were held in The Gambia on 1 December 2016, and a new coalition government replaced the former ruling party on 19 January 2017. While the former regime suppressed freedom of expression and showed no interest in access to information, the newly elected government has committed itself in its manifesto¹ to guarantee freedom of expression and information.

The Gambia has no specific freedom of information law. The first attempt to establish a foundation for a freedom of information law was on 1 November 2012, when government representatives, the Gambia Press Union, and other media stakeholders agreed on a media reform package that included its enactment. The meeting was part of the preparatory work for the implementation of the “Journalists and the Media” component of the Governance Programme as per the joint agreement between The Gambia and the European Union. The proposed media reform did not take place.

¹ Manifesto of the Coalition of the Opposition Parties (See the Pata PJ Vault: GAMBIA: COALITION 2016 MANIFESTO).

Now media personnel are at the forefront of this issue, seizing the opportunity to start the process of enacting a freedom of information law. They are relying on the pronouncements of the executive and the initiative of the Ministry of Information.

The newly elected government declared that it will create a new Gambia by engaging in legal, institutional, and administrative reforms that safeguard fundamental rights and freedoms, good governance, the rule of law, accountability, transparency, and probity. Included in the promise is the enactment of a freedom of information of law and the revocation or amendment of laws that impede freedom of expression, such as sedition and criminal libel laws.

Furthermore, a committee of media experts set up by the minister and the Gambia Press Union has worked out a framework for media development, which will include reforming laws that impede media freedom. The reform will call for the recognition of the right to information as a fundamental right, bringing the country's legislation into conformity with Article 19 of the Universal Declaration of Human Rights, and for the enactment of a freedom of information law.

Apart from this, the United Nations Office on Drugs and Crime in collaboration with the Ministry of Information and Article 19 concluded a two-day workshop on 11 August 2017 with media personnel on the enactment of the Freedom of Information Bill. Participants agreed on an outcome document² calling for the bill to include the following principles: access to information by default for all public documents, unless stipulated otherwise by law; the proactive disclosure of information for a wide range of documents held by the public administration; easy procedures for requesting information; and only cost-of-service fees. The importance of sensitisation of the public and public servants, all of whom are used to a culture of secrecy, was emphasised. The next step is further consultation with a wide audience, and the final step is legislation.

Though there is no freedom of information law, some legislation provides for access to information in some sectors: The register of voters in the custody of the Independent Electoral Commission can be inspected free of charge; a company's file kept at the Registrar of Companies can be inspected for a fee; and all government files kept at the National Records Office can be accessed free of charge, especially after 30 years.

Some laws also provide for proactive disclosure. For example, the law provides for the Gambia Public Procurement Authority to publish a quarterly public procurement bulletin "which shall contain

² Outcome Document

information germane to public procurement, including proposed procurement notices, notices of invitation to tender and contract award.”³ In addition the law mandates that certain government ministries, statutory bodies, and corporations provide annual reports. Those institutions include the Office of the Ombudsman, the Office of the Auditor General, the Independent Electoral Commission, all public corporations, the Central Bank, the Gambia Competition and Consumer Protection Commission, etc. It also requires that the government provide annual estimates of revenue and expenditure. In addition, the regulatory authority of the utilities is empowered by law to convene “consumer parliaments” (consumer service groups) where representatives of the utilities answer customers’ questions and discuss issues with them. However, this participatory process, which gives voice to citizens regarding service delivery, did not result in the desired outcome and was discontinued.

Article 62 of the Charter on Human and Peoples’ Rights⁴ has a monitoring mechanism in place: it requires each member state to submit a report to the African Commission on Human and Peoples’ Rights on legislation or other measures related to the rights and freedoms recognised and guaranteed by the charter. According to the ACHPR website,⁵ only two reports have been submitted by the Gambian government. The initial report (1986–1992) was submitted in January 1992, and it was considered by the 12th Ordinary Session in October 1992. Then in January 1994, the first periodic report (1992–1994) was submitted, and it was considered in October 1994. Then the former president seized power in July 1994, and for the past 22 years his government has not submitted any reports. His government had a poor human rights record, which included a lack of access to information.

Implementation of the legal framework

At the moment, the government, through the Ministry of Information, has initiated a process of enacting freedom of information legislation by holding a workshop on the Freedom of Information Bill. Furthermore, the government and the Gambia Press Union have jointly launched a strategic framework for media reform which includes “the enactment of a right to information law that grants persons the legal right to access information.” This also part of the president’s manifesto:

The Coalition government will enact a Freedom of Information law in consultation with the GPU and the media fraternity to enhance access to official information and strengthen media oversight of governance. This will facilitate transparency and accountability.

³ Gambia Public Procurement Authority Act: www.gppa.gm/procurement/gppa-acts-and-regulations/.

⁴ www.achpr.org/.

⁵ Ibid.

In the absence of a freedom of information law, citizens rely on proactive disclosure, which is mostly limited to annual, biannual, quarterly, and monthly reports of government ministries, public corporations, and other statutory bodies that are obliged by law to do so. The public learns a lot about the actions of public corporations and other statutory bodies through the annual reports, which are submitted to the National Assembly (Parliament) for scrutiny and are subjected to questions and queries by the Public Accounts/Enterprise Committee of the National Assembly.

The *Government Gazette* also publishes information, such as appointments and promotions of civil servants and goods auctioned by the Gambia Revenue Authority. The salary and allowances of the president are not disclosed in the government's estimates of revenue and expenditure. The declaration of assets by ministers, in accordance with the Constitution, is not subject to disclosure or public access.

Procurement of goods and services by government agencies is an area where transparency is essential. A few years ago, the government established the Gambia Public Procurement Authority, which is required by law to "publish a quarterly public procurement bulletin which shall contain information germane to public procurement, including proposed procurement notices, notices of invitation to tender and contract award information." However, the authority has not met its obligations.

The Public Utilities Regulatory Authority (PURA), which regulates telephone, electricity, and water service providers, is empowered under the Public Utilities Regulatory Authority Act⁶ to convene "consumer parliaments" where service providers listen to the complaints and answer the questions of consumers. This exercise in participation, which gave voice to the voiceless regarding service delivery, was aborted after two years because the process did not lead to the desired outcome. The explanation given by the director of consumers is that they are now engaged in the rural areas, and he said he hopes PURA will resume the consumer parliament before the end of the year.

The Public Utilities Regulatory Authority Act makes provisions for access to information and disclosure of information, such as rates. But disclosure has been limited, although it increased a few months after the change of government. Under the act, PURA is required to "publish appropriate information relating to the Authority's functions and activities."⁷ But a lot more needs to be done in terms of proactive disclosure, including "guidelines on rates and fees for the provision of regulated public services"⁸ as stipulated in the act. PURA is a public body regulating the operations of companies with

⁶ www.accessgambia.com/information/pura.html.

⁷ Ibid.

⁸ Ibid.

huge investments, and it, therefore, needs to be as transparent as possible. It has to do more in terms of proactive disclosure of fees and rates, the outcome of investigations into public utility service standards, lack of compliance, etc.

To conclude, there is no policy on how the public can access information from a public office. There is a lack of transparency and a culture of secrecy within the government.

The following are the strengths of the current state of access to information:

1. Some laws covering specific areas make provisions for the proactive disclosure of information.
2. Though rare, institutional measures, such as the consumer parliament, facilitate access to information and public debate.
3. The government is preparing the ground for the enactment of a freedom of information law.
4. The government and its partners have seen the need to engage in a promotional campaign to help develop a freedom of information law.
5. The Constitution stipulates in the preamble that it affirms the commitment to “probity and accountability.” It also affirms the principle that all power emanates from the sovereign will of the people.⁹ The Constitution further states in Section 214, Subsection (5) that “the Government, with due regard to the principles of an open and democratic society, shall foster accountability and transparency at all levels of Government.”¹⁰

The following are weaknesses of the current state of access to information:

1. There is no right to information law nor is there a policy on how the public can access information.
2. Where the law requires proactive disclosure, apart from reports that are submitted to the National Assembly, public servants hardly comply.
3. An institutional framework, such as the consumer parliament, has not resulted in the desired outcome.
4. The culture of secrecy in government is predominant.
5. Public awareness of the importance of the right to information is lacking.

Enabling environment

Citizens, including the vulnerable and the excluded, have rights and entitlements, but they must be empowered to claim them. Hence access to information is critical for enabling citizens to exercise

⁹ <http://hrlibrary.umn.edu/research/gambia-constitution.pdf>.

¹⁰ Ibid.

their voice, to effectively monitor and hold government to account, and to enter into informed dialogue about decisions which affect their lives.

In The Gambia, there is need for a legal framework, and a Freedom of Information Act must be put in place to secure the right of citizens to access information. There should be a provision for an effective process free of bottlenecks, and there should also be a provision for proactive disclosure and for the establishment of institutions to facilitate the process. Requestors should not have to give reasons for wanting information, and public officials should not hoard information.

The media plays an important role as well, and this function is recognised in the Constitution, which empowers the media to hold the government responsible and accountable to its citizens. This constitutional provision gives the media oversight capabilities when it comes to government activities, which, when adequately applied, can enhance transparency and make the government more accountable to the people.

Under the previous regime, only few media groups were critical of the government or held it accountable because of fear of government reprisal, which included the unwarranted arrest, detention, jailing, harassment, and even death of media personnel. Since the new government has taken over, however, the media environment in The Gambia has opened up, and the media are more likely to question the government and expose maladministration. The old, repressive media laws are still on the books, but the government is beginning the process of reform.

Needless to say, access to information is not just dependent on legislation. A variety of other factors affect the right to information as well, including education levels. According to the 2013 census report, the literacy rate in The Gambia stands at 52.1 percent.¹¹ Currently, nearly every child attends primary school for six years because it is universal, though not totally free. And according to government statistics, more than 80 percent attend junior secondary school for three years.

Corruption is another factor. Corruption is rife in The Gambia as reflected in Transparency International's 2017 report which gives the country a ranking of 145 out of 176 and a score of 26 out of 100.¹² The issue of corruption is a challenge because it is culturally entrenched, and to change that culture the public and public officials will have to start looking at government service in a different way, as a position dedicated to the public good with inherent responsibilities and obligations.

¹¹ www.unesco.org/fileadmin/MULTIMEDIA/HQ/ED/pdf/Gambia_01.pdf

¹² <https://www.transparency.org/country/GMB>

Civil society organisations have an important role to play in ensuring access to information as well. Due to the former regime, they have not taken an active stance, but they are gradually adjusting to the new, more open environment.

Recommendations

1. Raise awareness and conduct capacity building exercises so that citizens know their civil and political rights, especially their right to access public information from government authorities.
2. Build the capacities of civil servants at all levels of government so that they know their duty to disclose information and raise awareness of the value of transparency principles.
3. The Constitution recognises freedom of information as a fundamental human right. This should be included in a revised constitution which will go before the public in a referendum.
4. Enact a freedom of information law to grant citizens the right to access information.
5. Put an oversight institution in place to enforce compliance and provide redress in cases of noncompliance.
6. A freedom of information law should provide for a requesting procedure free from bureaucratic bottlenecks.
7. A freedom of information law will also make provisions for proactive disclosure.
8. Review all laws that impinge on access to information and either revoke or amend them.
9. Comply with the reporting requirement of Article 62 of the African Charter on Human and Peoples' Rights.
10. Ratify all treaties and protocols that have provisions for access to information.

Ghana

A report by Esther Ahulu, Programme Office at Commonwealth Human Rights Initiative, Africa Office.

Recognition in the Constitution

Article 21(1) (f) of the Constitution of Ghana 1992

No ATI law

RTI legal framework

Local Government Act, 1993 (Act 462); Section 16 a-e

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

African Charter on Democracy Elections and Governance

AU Convention on Preventing and Combating Corruption

African Union Youth Charter

African Charter on Statistics

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Ghana is late by nine reports.

Member of EITI

Member of OGP

2 recommendations related to RTI from UPR in 10/12

Ghana has a constitutional regime that explicitly protects citizens' right to access information as an entrenched human right. Article 21(1) (f) of the Constitution states that "all persons have the right to information subject to such qualifications and laws as are necessary in a democratic society."¹³ However, it is difficult for Ghanaian citizens to exercise this right, especially in the absence of specific legislation to operationalise this constitutional provision.

For instance, the African office of the Commonwealth Human Rights Initiative's (CHRI), as the Secretariat for the Coalition on the Right to Information from 2011 to 2015, carried out an access to information monitoring exercise at selected districts. Their findings showed that public officials in

¹³ 1992 Constitution of Ghana.

general and local authorities, including community heads, more specifically do not understand or appreciate their obligations in granting citizens access to information. Another monitoring exercise conducted in Accra in 2015 confirms that obtaining information from local authorities is difficult. Requests for information are sometimes seen as an attempt to make the government appear unpopular, particularly in the district assemblies, to the extent that some requesters have been accused of spying on the government merely because they exercised their right to access information. Citizens are confronted with a myriad of bureaucratic bottlenecks in their attempt to access basic information that normally should be proactively disclosed. These bottlenecks include, among others, the unavailability of the authorizing officer to provide information; the excuse that the Civil Service Act (1993), the State Secrecy Act (1962), and/or the Oaths Decree (1972) prevent public officials from giving out information; and in certain cases, the excuse that information cannot be given to an individual.

In the face of all these challenges, it is worth noting that in addition to the constitutional provision the Local Government Act enjoins elected assembly members of district assemblies to maintain close contact with their electoral areas, to consult with their constituents on matters before the district assemblies, and to report those views, opinions, and proposals to the district assemblies.¹⁴

Although the Constitution of Ghana guarantees every citizen and noncitizen the right to access information from public institutions, the government needs to develop a legal framework that will standardise the methods or processes for accessing the required information for the people to fully enjoy this right. The legislative process to enact an access to information law in Ghana has been ongoing for over a decade now. The process first started in 2002 when the government drafted the first Right to Information Bill. Since then, efforts by civil society organisations (CSOs)—especially the Coalition on the Right to Information (RTI Coalition), Ghana spearheaded by the CHRI, Africa office—to persuade governments to pass the bill have not resulted in a finalised law. However, progress has been made to get the bill's contents in line with international standards and best practices.

After several reviews, Ghana's draft bill was brought before Parliament (5th Parliament) in 2010 and was referred to the Joint Committee on Communication and Constitutional, Legal and Parliamentary Affairs. Subsequent to this, the RTI Coalition held several meetings with the joint committee to review problematic clauses of the draft bill. The joint committee, however, never submitted its report on the bill to Parliament before the end of session in January 2013, due to the 2012 elections. Consequently, the bill reverted to the Cabinet for resubmission to the 6th Parliament as per parliamentary procedure.

¹⁴ Local Government Act, Act 462; Sub (1) (a.)

In 2013, the bill was brought before the 6th Parliament and was referred to the Select Committee on Constitutional, Legal and Parliamentary Affairs for review and report to the House. In 2014, the committee worked to bring the problematic clauses of the bill in line with international standards and best practices so that when Parliament passes it into law it will be effective in promoting the right to access information. The committee's proposed amendments on the RTI bill are in line with the Coalition on the Right to Information's proposals¹⁵ and the provisions of the African Union Model Law on Access to Information. Parliament commenced discussion on the bill in 2015 following the submission of the committee's report on the bill. The sluggish pace of the discussion, which according to Parliament was due to the numerous amendments the committee proposed, was a major concern.

Consequently, the coalition held a series of engagements with Parliament and the attorney general (AG), and this resulted in the AG withdrawing¹⁶ the bill from Parliament and in October 2016 tabling a new bill (RTI Bill, 2016) which contains all the proposed amendments to the old bill in one document under a certificate of urgency. Despite this progress, the 6th Parliament did not pass the bill into law before its tenure lapsed in January of this year.¹⁷ The bill has, therefore, reverted once more to the Cabinet for resubmission to Parliament (7th Parliament), beginning the legislative process once again. Presently, the executive branch has indicated on several platforms that Parliament will pass the bill this year; however, the Cabinet has yet to present the bill before Parliament. Although government has been in power for just eight months, there is a sense that this government, like those before it, lacks the political will to pass the bill. Because the last Parliament did so much preliminary work on the bill, Ghanaians are expecting it to be passed in the first year as promised by this new administration. However, current development shows that the bill might not be passed this year, and following past experience, Ghanaians are not sure when it will be passed.

With regards to Ghana's effort to comply with reporting obligations under the African Charter on Human and Peoples' Rights, Ghana has submitted only one report—and that was in 2001—since it signed on to the charter in 1989. Currently, Ghana has nine reports in arrears.

The 1992 Constitution of Ghana guarantees freedom of speech and expression, including freedom of the press and other media. Ghana is also a state party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR). In the last decade, Ghana has developed some of the best media freedom conditions in the world. Criminal libel

¹⁵ www.informghana.com/rti-commends-select-committee-on-constitutional-legal-and-parliamentary-affairs/.

¹⁶ <https://www.ghanaweb.com/GhanaHomePage/.../Government-withdraws-RTI-bill-478>.

¹⁷ <http://citifmonline.com/2017/01/06/parliament-fails-to-pass-rti-bill-despite-mahas-appeal>.

has been repealed, and no journalist has been thrown into jail.¹⁸ To a large extent, journalists are free to report or communicate what they want to as long as it is within the law. Despite constitutional and legal protections, the media in Ghana do face some challenges. Some of the challenges include difficulty in accessing information due to the absence of access to information legislation, inadequate training, and unpunished cases of violations against journalists. Reports show that the incidence of media violations in Ghana increases especially during the election period and the perpetrators of these violations are mainly the security services.¹⁹ In the first quarter of 2017, the West African Free Expression Monitor Report by the Media Foundation for West Africa (MFWA) revealed that Ghana recorded five violations, and three out of the five were perpetrated by security officials. The violations include physical attack, arrest/detention, and seizure/destruction of property.²⁰

With regards to previous violations, within the period of January 2015–December 2016, the MFWA reported that Ghana had the highest number of free expression violations in the West African subregion between July–September 2016, recording a total of seven violations, with six of those violations perpetrated by security agents. Ghana also had the second highest number of violations from January–June 2016 with eight violations, two of which were perpetrated by security agents and three by state officials. According to the MFWA, these violations generally went unpunished.

Thus, although Ghana has obligations under the Constitution as well as international laws to respect, protect, and fulfil the right to freedom of expression, the failure to punish perpetrators of violations against freedom of expression often serves to empower perpetrators, leading to further abuse of journalists and media organisations.

Ghana has an adult literacy rate of 71.5 percent and a youth literacy rate of 85.72 percent.²¹ The increase in youth literacy over the adult population reflects positive trends in education. Per this, we can conclude that the literacy rate in Ghana is satisfactory enough. Most individuals classified as “illiterate” in Ghana are not fluent in the English language, but they speak other local languages very well. They can, therefore, request information relevant to them either from their members of Parliament or even the media. To that extent, when government information is made accessible, everyone should be able to access it.

¹⁸ Sulemana Braimah, “*Media Freedom vs Vs Responsibility in Ghana: The complexities and way forward,*” <http://www.myjoyonline.com/news/2014/March-15th/media-freedom-vs-responsibility-in-ghana-the-complexities-and-way-forward.php>.

¹⁹ <http://citifmonline.com/2016/11/18/ghana-leads-africa-in-violation-of-press-freedom/>.

²⁰ http://www.mfwa.org/wp-content/uploads/2017/06/Freedom_Monitor-Jan-March-2017.pdf.

²¹ United Nations Educational, Scientific and Cultural Organization, Statistics: <http://en.unesco.org/countries/ghana>.

In Ghana, people view corruption as one of the main problems with the country's democracy. There are allegations of corruption in almost every ministry, department, and agency in the country, the most recent being the Bulk Oil Storage and Transportation Co. Ltd. (BOST) saga.²² The situation on the ground is that public institutions operate in an opaque manner. It is difficult to access relevant information, which impedes transparency in the public sector and leads to corrupt practices. Most of the corruption scandals in the country only become public after the harm has been done, and this is having a toll on service delivery and development in general. Ace Ankomah, a legal practitioner, says "There is corruption everywhere in the world, but it is systematic in Ghana because we don't punish unlawful greed. ... Corruption is expected!"²³ This statement reflects the views of many Ghanaians about corruption and the need to check it.

Civil society's environment in Ghana is indeed favourable to freedom of association and collective action. In the current democratic dispensation in Ghana, civil society groups are free to come together to achieve a common goal. The environment provides opportunities and platforms for civil society groups to constructively engage with the three arms of government on various issues. An example of such freedom of association and collective action is the Coalition on the Right to Information in Ghana, which is made up of various civil society groups working tirelessly together to ensure the passage of the Right to Information Bill in Ghana.²⁴ The coalition has had several engagements with both the executive and legislative branches and through that has contributed immensely towards ensuring that Ghana's draft RTI Bill meets international standard and best practices to a large extent. Another example is the collaboration between the government and the Ghana Anti-Corruption Coalition (a group of CSOs working on anti-corruption) in developing the National Anti-Corruption Action Plan (NACAP).

Recommendations

In order to achieve SDG 16 Target 10, the Government of Ghana should:

1. Urgently adopt and effectively implement an access to information legislation to ensure the fundamental right of access to information by all citizens; such law on access to information has to be consistent with international and regional standards on the right to information and the AU Model Law.

²² "Open letter to President: The BOST scandal and its implications:" <http://citifmonline.com/2017/07/05/open-letter-to-president-the-bost-scandal-and-its-implications-article/>.

²³ Ace Annan Ankomah, "Why is Ghana corrupt?"

²⁴ "The Coalition on RTI:" <http://www.rticampaignghana.org/coalition/>.

2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. Institutional reforms to ensure effective record keeping and management systems in public institutions. Public institutions do not keep proper records; as a result, most information requests often receive no reply. Effective record keeping is one of the major challenges hampering development and specifically the fight against corruption. For example, in 2013 Justice Yaw Apau was the sole-commissioner of the Commission of Enquiry, which investigates payments of judgement debts. While explaining the delay in getting more witnesses to testify before the commission, Justice Apau noted that “the lack of proper record keeping particularly by state agencies appeared to have hampered the work of the Commission as most of the agencies have indicated that they were relying on Public Records Archives and Administrative Department (PRAAD) to furnish them with vital documents needed by the Commission.”²⁵ In order to promote national development, the government needs to take the appropriate steps for the storage, maintenance, and retrieval of information, especially at public institutions.
2. RTI training programs for public officials, with a focus on those at local level, to enable them to appreciate their obligation in promoting citizens’ right to information. Public institutions should understand that they have an obligation to provide information to the public. Public officials should attend regular educational programmes to promote access to information as a public good and to promote a culture of openness within public institutions. Obviously, an established culture of disclosure will help to enhance implementation of the RTI Law when it is passed.
3. Empowering the citizenry to demand their civil and political rights. As much as government has the responsibility to protect the people’s rights, citizens must also demand accountability from leaders, which can be achieved if citizens are empowered to advocate for their rights.

²⁵ <http://yawowusu.blogspot.com/2013/01/sole-commissioner-explains-delay.html>.

Ivory Coast

Recognition in the Constitution

Article 18 of Law No. 2016-886 of 8 November 2016 on establishing the Republic of Ivory Coast

RTI legal framework

Act No. 2013-867 of 23 December 2013 on access to public interest information

Organic Law No. 2014-337 of 5 June 2014 on the code of transparency in the management of public finances

Decree No. 2013-660 of 20 September 2013 on the prevention and the fight against corruption and related offenses as amended by No. 2013-805 orders of 22 November 2013 and No. 2015-175 of 24 March 2015

Ratification

The Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

AU Convention on the Prevention and Fight against Corruption

The African Union Youth Charter

African Charter on Statistics

Compliance with reporting obligations

Ivory Coast has submitted all their reports.

Member of OGP

Member of EITI

1 recommendation related to RTI from ACHPR in 10/2012

Legal recognition of access to information in Ivory Coast

Every citizen has the right to be informed, which implies that the public authority must make information it holds available. The right to information gives an individual or entity the ability to access government-held data, including written, auditory, or electronic information.

The Ivory Coast Constitution mandates the public's right to information, specifically in Article 18: "Citizens have the right to information and access to documents as provided by law." In addition to the constitutional guarantee on the right to information, the Ivorian authorities, for effective and efficient implementation of that provision, have adopted Law No. 2013-867 of 23 December 2013, which provides a framework for access to information and establishes and defines the functions of the Commission of Access to Information of Interest and Public Documents (CAIDP—Commission d'Accès à l'Information d'Intérêt et aux Documents Publics) CAIDP is the independent administrative authority responsible for ensuring compliance and enforcement of this law. However, it is important to mention that in most of the texts governing the auditing institutions, such as the Court of Auditors

(Cour des Comptes), the High Authority for Good Governance (HABG—Haute Autorité pour la Bonne Gouvernance), the Regulatory Authority for Public Procurement (ARMP—Autorité de Régulation des Marchés Publics), the General Inspectorate of Finance, etc., the sole recipient of their reports is the president of the republic. It is therefore appropriate to harmonise the laws governing these institutions. Ultimately, we can say that these two texts, namely the Constitution and the Access to Information Law, do a good job of establishing the right to access to information.

On analysis of the following texts, we find that there are similarities. For example, Section 9 of the African Charter on Human and Peoples' Rights says, "Everyone has the right to information. Everyone has the right to express and disseminate his opinions about laws and regulations." Article 18 of the Ivorian Constitution says, "Citizens have the right to information and access to public documents, as provided by law," and Article 3 of the Law on Access to Information says, "Any natural or legal person has the right to access, without discrimination, to public interest information and official documents held by public bodies." These texts mandate that information is accessible to all, without distinction, and the Constitution and the African Charter on Human and Peoples' Rights specify the conditions prescribed by the laws. Moreover, both Article 19 of the Universal Declaration of Human Rights (UDHR) and the Ivorian Constitution guarantee freedom of expression for all without risk of persecution.

Despite a well-developed legal foundation, the real-world implementation of the Access to Information Law in Ivory Coast falls short. Public officials, for the most part, are not fully aware of the provisions in this law, a condition that has hindered proper implementation. Also, few citizens are aware of this right and rarely make use of its provisions. In light of the above, we can say that the implementation of access to information legislation has not met its full potential.

The Ivory Coast is up to date on all of its reporting obligations to various international entities, but there is still much work to be done on implementing access to information legislation. One worrying development, according to industry experts, is a new draft press law. The draft law could result in a sharp decline in press freedom and subsequently freedom of expression and opinion.

Implementation of the legal framework

To evaluate the implementation of the Access to Information Law, we sent requests to five administrative bodies asking them for a variety of information and documents. We targeted the ministries of Health and Public Health, National Education and Vocational Training, Communication and the Digital Economy, the Autonomous District of Abidjan, and the CAIDP. We used the provisions in the Access to Information Law and public documents to make our assessment of each ministry,

and we followed the statutory time line set forth in Article 12 of the Access to Information Law, which mandates that public administrations turn over information within a month of an initial request. Moreover, we also checked the availability of documents and information on the ministries' websites. We sent seven requests for information and documents to the five ministries. These requests were issued on 2 June 2017. The following results were observed:

The Ministry of Health and the Public Health did receive the request but would not release the information because the doctor who could provide the information was absent. In violation of Article 12 of the Access to Information Law, more than a month passed without a response from the ministry. At the Ministry of Education and Vocational Training, we submitted two requests. For one of the requests, we have been notified, during a phone call initiated by us, that the application was being processed at the minister level. However, for the second request, we were told that the person who could give the information was unavailable and busy with preparations for end-of-year exams. Again, we did not receive the requested information within 30 days, despite our reminders. The ministry did finally respond on 18 July, 46 days after the request and outside the legal deadline.

At the Autonomous District of Abidjan, a decentralised administration, the request for information was filed and registered. Then, the administration said they would keep us informed of the progress of the request process, but the 30-day deadline passed without a response from the administration.

At the Ministry of Communication, the Digital Economy, and the Post Office, we received the requested document within a week. Furthermore, the document was 31 pages, and the ministry provided it free of charge.

Regarding the CAIDP, the body responsible for ensuring the right to information, the response received was timely but incomplete. We sent our request on 2 June 2017 and received the incomplete reply on 29 June 2017, 27 days after the request and within the legal deadline. We made two requests for documents: the 2017–2020 Action Plan and reports for 2014, 2015, and 2016. The CAIDP sent the 2017–2020 Action Plan but not the reports. Moreover, the commission did not explain why it did not fully respond to our request. When we tried to find out why the CAIDP did not send the reports, we were told that the 2016 annual activity report was being finalised.

It is clear that the application of the Access to Information Law varies among government agencies and that citizens and government entities have not completely adapted to its legal framework.

However, it was only at the end of 2016 that CSOs conducted outreach activities,¹ explaining the Access to Information Law and the CAIDP's mission to the population. And the CAIDP, according to our source who is a commissioner there, has suffered budget cuts that have affected its ability to conduct outreach activities to the public. These factors might have contributed to the mixed results on proactive disclosure we encountered at the five ministries.

The establishment of the CAIDP and the remedies available to citizens in relation to the right to information are major institutional measures that impact implementation of the legal framework. The CAIDP holds significant enforcement powers regarding the Access to Information Law, which is a major step forward in terms of institutional measures. Like the CAIDP, other entities, such as the National Press Council (NOC—Conseil National de la Presse) and the High Authority for Audiovisual Communication (HACA—Haute Autorité de la Communication Audiovisuelle), are responsible for the implementation of the right to information enshrined in the Ivorian Constitution and also to regulate various aspects of the information and communication sector. It is important to say with regard to these bodies that implementation of institutional measures is fairly achieved.

Enabling environment

The exercise of access to information and freedom of expression is framed by national laws and international conventions that have been ratified by the Ivory Coast. It is upon these texts that all stakeholders (the private sector, civil society organisations, journalists, activists, and citizens) base their demand for more transparency, more clarity, and more rights of expression within public affairs. Journalists and other media professionals are able to express themselves through radio and print media, but this access is limited. For one thing, only nationalised television is broadcast countrywide, which according to popular criticism is controlled by the government.

Moreover, the participation of civil society organisations in the access to information process was observed during the development of the Access to Information Law No. 2013-867 of 13 December 2013.² These organisations have taken an active part through exchange workshops and discussions, as well as through formal collaborations. For instance, one representative from civil society is a member of the CAIDP. In addition, the Platform of Civil Society for the OGP serves as a framework for discussions with the government.

¹http://www.caidp.ci/accueil/detail_video/sminaire-de-presentation-et-dexplication-de-la-loi-n2013-867-du-23-dcembre-2013-relative-a-lacces-a-CityInfo-interest-public-story-roast-23-06-2016.

² Act No. 2013-867 of 13 December 2013 on access to information: <http://www.caidp.ci/uploads/86dc0b7227c41f5053334147b7ec76a6.pdf>.

In regards to the press and especially journalists, there is Law No. 2004-643 of 14 December 2004 on the legal regime of the press, which governs the media's actions.³ The case of Ivory Coast is special due to the previous political-military crisis, which caused an unstable socio-political situation that is still present. In this climate, journalists can suffer major repercussions from the government, and government repression of journalists is common, often resulting in arrests for actions that are not criminal and are, in fact, protected by the previously mentioned law.

Indeed, the law on the legal regime of the press stipulates in Article 68, Paragraph 1, that press offenses should not result in imprisonment. But the government often arrests journalists anyway, using trumped up charges. For example, the government arrested six journalists from four newspapers in February 2017 for allegedly inciting soldiers to rebel and spreading false information.⁴ Moreover, the government is conducting a review of law, and there are fears among journalists and press-freedom advocates that a new law would reduce journalistic liberties. Civil society organisations have taken their argument before the Constitutional Council, attacking the new bill for its unconstitutionality given the values of the African Charter of Human and Peoples' Rights proclaimed by the Ivorian Constitution. The government has, therefore, decided to revise the bill.

Legislative and implementation challenges aside, access to information remains a challenge in Ivory Coast because of literacy and access issues. According to UNESCO, 51 percent of the population was illiterate in 2013. Even if information is available, it is difficult to disseminate throughout the population when many cannot read or cannot access government-held data. Also, civil society is protected by a freedom of association law, Law No. 60-315 of 21 September 1960. However, this law needs to be updated and needs to take into account state financial support for civil society organisations.

Recommendations

In order to achieve SDG 16 Target 10, the government of Ivory Coast should urgently:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.

³ Act No. 2004-643 of 14 December 2004 on the legal regime of the press: Press
<http://www.lecnp.com/loi/loi.pdf>.

⁴ Jeune Afrique, "Ivory Coast: six journalists arrested for inciting soldiers to revolt, officials said," 13 February 2017, . [http://www.jeuneafrique.com/402896/politique/cote-divoire-six-journalistes-arretes-incite-soldats-a-revolte-selon-autorites/.](http://www.jeuneafrique.com/402896/politique/cote-divoire-six-journalistes-arretes-incite-soldats-a-revolte-selon-autorites/)

2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

To the government

1. Advance the promotion of the Access to Information Law by eliminating regulations that are in violation of the law and by making various institutions and ministries display it visibly on their premises and on their websites;
2. Further strengthen the work of the CAIDP by giving it the financial means and human resources to carry out awareness activities and enforcement actions in the implementation of the Access to Information Law.

To the CAIDP

3. Further promote information disclosure by publishing all documents and information related to the law and by creating public spaces for exchanges on implementation of the law;
4. Increase awareness on the Access to Information Law among local-level governments and promote the work of local civil society organisations and citizens in their effort to hold public entities accountable.

To the technical and financial partners

3. Support the promotion of access to information technically and financially, in particular the work of the CAIDP and civil society organisations;
4. Strengthen civil society capacity in monitoring the implementation of the Access to Information Law and other texts related to communication and information in Ivory Coast.

Case Study #1: study Jurisprudence in access to public documents in Ivory Coast

As part of its budgeted budget monitoring activities, SOCIAL JUSTICE had to monitor the publication and the accessibility of eight documents, including the annual report of the Court of Auditors.

Following the group requested that our requests the Court of Auditors make available a copy of a report called the "General Declaration of Compliance." The court, they replied that Article 154 of the law that organises which organizes the Court of Auditors would not allow the document to be released to another body other than that the National Assembly. But SOCIAL JUSTICE we persisted, collaborating advocating with the Open Government Partnership (OGP). With the support of OGP and legal evidence, such as the Organic Law No. N 2014-337 of 5 June 2014, which delineates the transparency code in the management of public finances, they we were able to obtain the document.

Since then, SOCIAL JUSTICE has been able to we have access to the document without any obstacles. And it is now regularly obstacle. Regularly published on the website of the Court of Auditors, www.courdescomptes.ci.

Case Study #2: Workshop on access Access to information Information at the local government level Local Government Level

SOCIAL JUSTICE has trained officials at five local municipalities in accountability and access to information. Within initially, the authorities did not understand their obligations regarding the disclosure of information public. People did not ask for information on different government-run projects, knowing that they could not get the data them. But after further education sensitization during the workshops and meetings, the authorities changed and began to provide information to citizens and particularly the follow-up committees SOCIAL JUSTICE put in place. For example: one of the town halls, following the advice of SOCIAL JUSTICE's our monitoring committee, carried out a workshop for to its annual management. This workshop was attended by citizens people as well as community the leaders, all of whom expressed their views on the various projects. This dispelled many misunderstandings.

Mali

A report by Sadou Abdoulaye Yattara, Coordinateur general, Institut pour la Démocratie et l'Education aux Médias au Mali.

No constitutional recognition of ATI

No ATI Law

RTI legal framework

Act 98-012 of 19 January 1998,¹ governing relations between the administration and users of public services

Decree No. 03-580 / P-RM of 30 December 2003, outlining the procedures of application of the law governing relations between the administration and the users of public services

Law No. 02-052 of 22 July 2002 on archives

Decree No. 2014-0607 / P-RM of 13 August 2014, concerning arrangements for access to information and administrative documents relating to the management of public finances and publication

Circular Letter No. 004-001 / PM-RM of 30 January 2004 on improving government communication

Ratification

African Charter on Human and Peoples' Rights

African Charter on Democracy, Elections and Governance

AU Convention on Preventing and Combating Corruption

African Charter on Values and Principles of Public Service and Administration

African Charter on Statistics

African Youth Charter

Compliance with reporting obligations

Mali has submitted all its reports.

Member of EITI

2 recommendations related to RTI from UPR in 01/2013

Legal recognition of access to information in Mali

Opacity in the conduct of public affairs cumulatively hampers the economic, social, and political fabric of any country. A lack of transparency institutionalises corruption, abuse of power, and mismanagement, but access to information combats these problems by allowing citizens to better know, understand, and monitor public affairs.

¹ Act 98-012 of 19 January 1998 governing relations between the administration and users of public services. This is the main law used to regulate text access to information in Mali.

Mali, although it does not have specific legislation on access to information, is concerned with the issue of citizens' right to government-held information.

This research will look at the state of right to information laws in Mali, reflecting on the real-world state of access to information and giving an overview of the situation in the country. We will assess the legal framework and implementation of access to information legislation and make recommendations for better access to information in accordance with international standards, such as the Model Law of the African Union on access to information, Article 9 of the African Charter on Human and Peoples' Rights, and SDG 16.10.2.

The Malian authorities, over the last twenty years, have taken significant actions to mark the state's commitment to the right to information. The legal and institutional framework for the free flow of information and mechanisms to protect the right to information are established by several national texts,² including:

- The Constitution of 25 February 1992;
- The 98-012 Act of 19 January 1998,³ governing relations between the administration and users of public services;
- Decree No. 03-580 / P-RM of 30 December 2003, which set procedures for the application of the law governing relations between the administration and the users of public services;
- Law No. 02-052 of 22 July 2002, which governs archives;
- Decree No. 2014-0607 / P-RM of 13 August 2014 concerning arrangements for access to information and administrative documents relating to the management of public finances and their publication; and
- Circular Letter No. 004-001 / PM-RM of 30 January 2004 on improving government communication.

The Constitution of 25 February 1992 provides for freedom of information, declaring "everyone has the right to freedom of thought, conscience, religion, worship, opinion, expression and creation in respect of the law" (Article 4). However, Article 4 does not explicitly state a right of access to information in Mali.

² All these texts are available and searchable on the website of the General Secretariat of the Government of Mali <http://www.sgg-mali.ml/>.

³ Act 98-012 of 19 January 1998.

Law No 98-012 of 19 January 1998, which governs relations between the administration and the users of public services, refers to the right of access to information. It is based on a number of other laws and regulations. Those laws are as follows: Law No. 93-008 / AN-RM of 11 February 1993, which determines the free administration of local authorities; Law No. 95-034 / AN-RM of 20 March 1995, which provides staff regulations for local authorities; and Decree No. 96-084 / P-RM of 20 March 1996, which lays down the conditions and modalities at the disposal of local authorities for decentralised states **services**.

The law governing relations between the administration and the users of public services guarantees access to public services for all users within the same legal position (Article 5) without discrimination based on social origin, race, sex, language, religion, or political or philosophical views. Thus, it says that “public service users have the right to be informed of the reasons for adverse individual or collective administrative decisions affecting them” (Article 7).

Some documents cannot be disclosed to the public, and those are labelled secret defence, top secret, confidential defence, confidential, and restricted.

Upon further analysis, it appears that Law No 98-012 of 19 January 1998, which governs relations between the administration and the users of public services, is not a complete access to information law. This law aims to improve the quality of public services, and part of the law provides access to public documents, partially ensuring the right to access information. However, this law is not a comprehensive law for access to information. It contains very broad exceptions regarding the available information, regardless of the public interest, and provides a minimum of procedures and tools, such as user guides, to help citizens know what information is available, the agents responsible for the information to implement the law, and the request instruction mechanisms and remedies.

Freedom of access to administrative documents does not extend to a wide variety of information, such as documents pertaining to the deliberations of the government; national defence or foreign policy; state security and public safety; the conduct of proceedings before the courts or preliminary to such proceedings, except as authorised by the competent authority; personal information and medical records; some commercial and industrial information; tax and customs offenses; and general information protected by law.

That said, the law was adopted with the specific intention of improving the performance of public-service users and was not intended to create a full right of access to information. But in 2004, the Mission Development and Cooperation (MOC), an ad hoc structure within the Presidency of the

Republic of Mali and supported by the Carter Center, and the Commission of Institutional Development (CID) within the Ministry of Public Service and the State Reform collaborated to develop a strategy to improve access to information in Mali. It started from the observation that existing laws are not evenly applied, hence the idea of a Strategy of Access to Information in the Administration (SAISA). The strategy aimed to improve relations between the administration and users of public services and to strengthen the performance and credibility of the Malian government.

To do this, the collaboration relied on pilot programmes to pinpoint challenges and solutions in the right to information arena, thereby improving access to information and strengthening the performance of the administration. The strategy aimed to help the government move towards a more comprehensive system of access to information based on international standards and best practices. The pilot programmes were in the largest sectors of the Malian government. They included the Directorate General of Customs, the General Tax Directorate, the National Directorate of Trade and Competition, the National Directorate of Public Service, etc.

The strategy, founded by presidential directive and supervised and managed by the Commission for Institutional Development until late 2008, is no longer in formal use. However, the strategy has left a legacy in the public sphere. A few examples are as follows:

- Entry point or process provision of information: The entry point for data is described in Decree No. 03-580 / P-RM of 30 December 2003, which details the rules governing enforcement relations between the administration and the users of public services.
- Folder management: This is the starting point for the identification of documents.
- Communication campaign: This is an educational effort to inform the public about Act 98-012, 03-580, which applies the decree and the strategy. The campaign details the importance of transparency and the government's commitment to greater openness.
- Training and capacity building: It is crucial for all officials within the pilot structure.
- Commitment of users and civil society: They play a key role in supporting structures and drivers that implement the SAISA, and they help identify the most useful information for citizens while also informing users about government efforts towards transparency.
- Coordination, monitoring, and evaluation: The pilot structures were used to understand lessons learned and to share that experience with other administrations.

In Article 7, Law No. 02-052 of 22 July 2002, which governs archives, states, "The documents that were freely communicated before filing public records continue to be released without restriction of

any kind to any person who requests. Consultation and communication requirements of other public archives are established by decree of the Council of Ministers.” However, the implementing decree, No. 02-424 / PM-RM of 9 September 2002, increases the exceptions in Article 22. It states, “The records kept by the National Directorate of Mali’s archives and the archives of local authorities when they have thirty years are freely communicated, except:

- Documents relevant to the state security, national defence or put into question the privacy of citizens;
- Documents in advanced state of deterioration, in very poor condition or insecure;
- On the one hand tax, estate, commercial and policies documents regarding unresolved disputes of interest to the state, war damage, the financial negotiations, monetary, trade with foreign countries, on the other hand medical records, marital status, reports of judgments, reports and fact sheets to nominal character involving privacy, the communication period is extended to sixty (60) years or more after the event.”

Malian citizens, at least in theory, can request access to public information subject to the exemptions listed in the law and the decree. The public entity is required to respond to any written request within 30 days (Article 21), and the user has remedies to dispute the government’s decision through several mechanisms: an internal appeal, an administrative appeal to higher authorities, an appeal to an oversight body; and the courts (Article 22). The administrative response must include the following information in writing: the stamp of the service; places and date of the act; the name, capacity, and qualifications of the person signing the document; or the reasons for the rejection as appropriate.

Civil society and the private sector are not covered by Act No. 98-012 of 19 January 1998, which governs relations between the administration and the users of public services. Within Article 3 of the law, the administration is defined as the state, local authorities, public institutions and organisations engaged in public-service missions.

Freedom of information implies not only that public bodies respond to access to information requests, but also that they publish and disseminate documents and transmit information of major interest to the public. But, like many other countries that have adopted legislation creating a right to access to information, Mali has certain challenges that impede a completely open public administration. For instance, there is a culture of privacy within the government, and citizens often act with deference to the government instead of holding it accountable. The problem is a disconnect between the public, who often have low levels of information, and the current legal framework. Many people, users as well as administrative officials, are unaware of the existence of right-to-information laws and the practical

implications of their implementation. Indeed, there are a variety of texts that promote access to information, such as the Procurement Code, the law on equal access to state media, and the law on archiving, but the public and officials often don't use them or follow their directives.

The right to information is fundamental, enabling citizens to participate on an equal basis within democratic governance. It is recognised in Article 19 of the Universal Declaration of Human Rights, it is an international law, and it is the duty of all states to guarantee it for their citizens and to protect against any potential abuse.

The Malian government has signed on to the Universal Declaration of Human Rights. In fact, every year since 1995, the government has organised an event on December 10 called the "Espace d'Interpellation Démocratique". On this day, citizens are able to pose questions to the government, and all injustices are denounced publicly and directly on television and the radio. Each ministry provides its solutions, and those proposed solutions are discussed and then, if agreed to, implemented by the Médiateur of the Republic.⁴

Mali has acceded to the International Covenant on Civil and Political Rights and has ratified the African Charter on Human and Peoples' Rights. From 1982 to 2016, Mali has submitted all reports to international groups. It is up to date with its obligations to the African Commission on Rights and Peoples' Rights, according to the commission's website.⁵ On 6 July 2000, Mali adopted the African Charter on Democracy, Elections and Governance and the Additional Protocol. Mali ratified the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (HPR) on 10 May 2000.

On 17 December 2004, Mali ratified the African Union Convention on Preventing and Combating Corruption. The country has also been a member of the Extractive Industries Transparency Initiative (EITI) since 2006. Finally, Mali ratified the African Charter on the Values and Principles of Public Service and Administration through Law No. 2013-026 on 9 July 2013.

Recommendations

In order to achieve SDG 16 Target 10, the Government of Mali should:

1. Urgently adopt and effectively implement an access to information legislation to ensure the fundamental right of access to information by all citizens; such law on access to information

⁴ www.mediateurdumali.com/

⁵ <http://www.achpr.org/states/>

has to be consistent with international and regional standards on the right to information and the AU Model Law.

2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. Install information desks, guidance centres, and information portals in all public-service facilities, including within public entities
2. Conduct a real citizen-education campaign for the general population and a training campaign within the government, with a particular focus on educating secretaries, officials, and service agents who handle public information.
5. Develop a national charter detailing the state's obligations and mechanisms, ensuring better information for citizens on the practices of governance at all levels.
6. Create a monitoring body to enforce the right of access to information. The monitoring agency should be an independent authority with oversight of any person, entity, or government body (<http://www.achpr.org/states/>).

Niger

A report by Sylla Sow, Docteur en droit international public, Juriste chercheur Associé à Article 19 Afrique de l'ouest.

Recognition in the Constitution

Article 31 of the Constitution of the Republic of Niger (1999)

RTI legal framework

Decree No. 2011-22 of February 23rd, 2011, under the Charter of Access to Public Information and Administrative Documents

Ratification

The Universal Declaration of Human Rights
The International Covenant on Civil and Political Rights
African Charter on Human and Peoples' Rights
African Charter on Democracy, Elections and Governance
AU Convention on Preventing and Combating Corruption
African Youth Charter
African Charter on Statistics

Compliance with reporting obligations

Niger is behind by one report.

Member of EITI

4 recommendations related to RTI from UPR in 01/2016

1 recommendation related to RTI from ACHPR in 08/2015

Legal recognition of access to information in Niger

In Niger, the Constitution of the Seventh Republic proclaims in its preamble its attachment to the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social, and Cultural Rights of 1966, and the African Charter on Human and Peoples' Rights.¹ Niger also participates in the African Union Convention on Preventing and Combating Corruption,² the African Union Youth Charter, the African Charter on Democracy, Elections and Governance,³ and the African Charter on Statistics.⁴

¹ https://au.int/web/sites/default/files/treaties/7770slafrican_charter_on_human_and_peoples_rights_2.pdf.

² https://au.int/web/sites/default/files/treaties/7786-slafrican_union_convention_on_preventing_and_combating_corruption_9.pdf.

³ The African Charter on Democracy, Elections and Governance.

⁴ https://au.int/web/sites/default/files/treaties/7794-sl-african_charter_on_statistics_1.pdf.

Additionally, within the Constitution, the right of access to information is protected in Article 31: “Everyone has the right to be informed and to access information held by the services under the conditions determined by law.”⁵ In accordance with the constitutional provisions, a law has been adopted to organise the right of access to information. In Article 4, the law states, “Public information shall be disclosed to persons who make the request under the conditions provided for in this Decree,” and Article 5 provides that “access to public information shall be guaranteed and equal for all users without discrimination.” According to these articles, the right of access to information is not restricted to only citizens and is conferred on natural or legal persons without distinction. Moreover, under the decree, the user is not obliged to provide reasons for making a request.

With regard to the administration’s requirement to provide information, Article 16 of the aforementioned decree says that “the authorities required to provide administrative documents and information are: the heads of the central and decentralized administrative bodies of the State; Managers of public programs and projects; local authorities; the directors of public enterprises and establishments; heads of bodies governed by public law and those governed by private law with a public service mission.” All public administrations are covered under this provision. Private persons remain subject to the law only when they have a public-service mission. It is therefore legitimate to conceive that private bodies with state support but without a public-service mandate are subject to the law as well.

Niger does work with transparency institutions, such as the Extractive Industries Transparency Initiative (EITI), but the country is not yet a member of the Open Government Partnership (OGP) because it does not meet the eligibility standards. However, Niger has the status of a compliant country in the EITI. In March 2005, Niger joined EITI, one of the first francophone countries in West Africa to do so.⁶

In general, the Nigerien law on access to information largely conforms to international standards, though there are some shortcomings. For example, the exceptions to the law are vague and broad.

Implementation of the legal framework

For Niger, implementation remains a challenge due to the absence of an administrative decree that is needed to provide structure for the legislation. Plus, even when there is a law on access to

⁵ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/90281/103975/F1778860199/NER-90281.pdf>.,

⁶ <http://www.itieniger.ne/index.php/fr/mission>.,

information or legislation on the right of access to information, this right becomes illusory without good and effective implementation.

Researchers looked at information provided by the following institutions: the Ministry of Economy and Finance, the Presidency of the Republic, the National Statistics Institution, the Office of the Prime Minister, and the Food Crisis Unit

In general, the institutions' information portals highlight the missions assigned to these institutions. Though the information varies among institutions, each information portal makes contact names and email addresses available to the public. Though the missions of the institutions are clear, the institutional websites are vague when it comes to the overall strategies to achieve the missions. For example, on the Food Crisis Unit website, newsletters and studies are posted, but there is little information on the institution's strategy to achieve its objectives.

The majority of the websites publish laws governing their sectors, in particular the site of the Ministry of Finance⁷ and the National Statistics Institution,⁸ and the Ministry of Finance's website posts the state budget. The other portals make available only partial information on institutional budgets. The majority of portals do not mention procurement procedures or results from published public contracts.

Enabling environment

Niger adopted Decree 2011-22 of 23 February 2011, governing the Charter on Access to Public Information and Administrative Documents. The decree states in its Article 35 that "a decree issued in Council of Ministers shall lay down the detailed rules for the application of this Decree." To date, the Council of Ministers has not created those detailed rules to organise the implementation of the law. This negates much of the effectiveness of the law. In addition, there has been little support for freedom of expression in Niger in recent times. Indeed, Niger plunged in the ranking of Reporters Without Borders from 29th place to 61st in the past five years. Even though Niger has decriminalised press offenses, journalists are still imprisoned, such as the journalist Baba Alpha,⁹ or they can lose their press accreditation, like in the case of Nathalie Prévost.

⁷ <http://www.finances.gouv.ne/index.php/le-ministere/historique/les-textes-portant-organisation.;>

⁸ <http://www.stat-niger.org/statistique/index.php/ins/ins/direction-generale-3/72-mot-du-direction-generale1-2.;>

⁹

See Article 19's declaration on the situation of freedom of expression in Niger during the 60th Ordinary Session of the ACHPR Niamey.

Moreover, there are other obstacles to the right of access to information. For one, there is a low internet penetration rate (2.1 percent), and for another, there is a high rate of illiteracy among women (11.01 percent). These factors are challenges to creating an enabling environment for the right of access to information.

Recommendations

The government of Niger should ratify the African Charter on Values and Principles of Public Service and Administration.

In order to achieve SDG 16 Target 10, the Government of Niger should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. The adoption and publication of the Implementing Decree 2011-22 of 23 February 2011 on the Charter for Access to Public Information and Administrative Documents;
2. Administrative training in the new procedures of the aforementioned law;
3. A wide-ranging awareness-raising campaign on the right of access to information to administrations and citizens; and
4. The provision of more proactive information through information portals and updates.

Nigeria

A report by Ayode Longe, Director of Programmes at Media Rights Agenda.

No constitutional guarantee of the right of access to government-held information

RTI legal framework

- Freedom of Information Act, 2011
- Central Bank of Nigeria Act of 2007
- Companies Income Tax Act of 2007
- Criminal Code Act of 1916
- Economic and Financial Crimes Commission Act of 2004
- Electoral Act
- Factories Act of 1987
- Evidence Act of 1945
- Investment and Securities Act
- Marriage Act
- Motor Spirit (Returns) Act of 1954
- National Drug Law Enforcement Agency Act
- National Universities Commission Act
- Nigerian Railway Corporation Act
- Nursing and Midwifery Act
- Police Act

Laws that hinder access to information in Nigeria

- Criminal Code Act
- Subsidiary Legislation on Prohibited Publications
- Evidence Act of 1945
- Fire Service Act
- National Bank for Commerce and Industry Act
- Public Complaints Commission Act

Ratification

- The International Covenant on Civil and Political Rights
- African Charter on Human and Peoples' Rights
- African Charter on Democracy, Elections and Governance (signed but not ratified)
- AU Convention on Preventing and Combating Corruption
- African Union Youth Charter
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Nigeria is late by one or two reports.

Member of OGP

Member of EITI

3 recommendations related to RTI from ACHPR in 11/2015

Legal recognition of access to information in Nigeria

Nigeria's Freedom of Information (FOI) Act, 2011, grants every person—citizens, noncitizens, natural and legal persons—the right of access to government-held information subject only to a limited number of exemptions. Access to information provisions also exists in several other Nigerian laws, and they complement the right guaranteed by the FOI Act.¹ Nigeria's FOI Act has features which meet international human rights standards and practices on access to information, though some of its provisions fall short of those standards.

Section 1(1) of the law overrides restrictions on information disclosure, such as secrecy provisions in other legislation. It requires public authorities to respond to requests for information within seven days, with clear conditions for a possible extension of the initial seven days by another seven days. This makes the time frame among the shortest in the world.

The FOI Act protects whistleblowers that, in good faith, disclose information that reveals wrongdoing. Such persons cannot be prosecuted under the provisions of the Criminal Code, Penal Code, the Official Secrets Act, or any other law.

One of its shortcomings is that the FOI Act does not have an independent ombudsman to whom requesters can lodge complaints. Instead, complainants must rely on the attorney general of the federation and the minister of justice, who have oversight responsibility under the act. The attorney general is a political appointee of the president and is not independent of the executive. The promotional measures are also weak because, though the act mandates that institutions publicise the act, the act does not specify which official is in charge of carrying out this task.

Requesters who have been denied access to information or who wish to complain about any form of noncompliance with any aspect of the act can only seek redress through the courts. However, in judicial proceedings, public institutions bear the burden of proving that they were justified in denying requests for information.

All the public institutions to which the FOI Act applies are required to submit annual implementation reports. These reports, which are submitted to the attorney general, detail actions the institutions have taken to implement their disclosure obligations, including statistics on how many requests were received and how the institutions dealt with the requests.

¹ See MRA's publication: Windows for Transparency – Nigeria, http://mediarightsagenda.net/web/publications/Windows_for_Transparency-Nigeria.pdf.

The attorney general has a duty to present a consolidated report to the relevant committees of the National Assembly, Nigeria's Parliament, on implementation of the law and also must disseminate the report to the public. The attorney general has fulfilled this obligation consistently since 2012.²

Not all the exemptions in the FOI Act are absolute; some exempted information may be disclosed under certain circumstances, which are specified in the act, including, for instance, when there is overriding public interest in the disclosure or when a person consents to disclosing personal information.

The campaign for the FOI Act was a civil society initiative, which began in Nigeria in 1993 during the military era. Three organisations—Media Rights Agenda (MRA), the Lagos Council of the Nigerian Union of Journalists (NUJ), and Civil Liberties Organisation (CLO)—jointly agreed to launch the campaign.

The FOI Act was first presented to the National Assembly in 1999, following the restoration of democratic rule in Nigeria under the administration of President Olusegun Obasanjo.

The campaign lasted for 12 more years, from 1999 to 2011. Although the National Assembly first passed the FOI Act in 2007, it was not signed into law by President Obasanjo. The process was restarted in June 2007, and the act was again passed by the National Assembly in May 2011. President Goodluck Jonathan signed it into law on 28 May 2011.

Nigeria has ratified all African Union treaties that recognise the right of access to information with the exception of the African Charter on Values and Principles of Public Service Administration and the African Statistics Charter.

It has also met its reporting obligations in terms of Article 9 of the African Charter on Human and Peoples' Rights. In April 2015, at the 56th Ordinary Session of the African Commission on Human and Peoples' Rights in Banjul, The Gambia, it presented its fifth periodic report on how it is meeting its human rights obligations, including the right to freedom of expression and access to information.³

² The Attorney General's consolidated annual reports are available online at <http://justice.gov.ng/foia/index.php/annual-compliance-report>.

³ Report available at http://www.achpr.org/files/sessions/56th/state-reports/5th-2011-2014/staterep5_nigeria_2013_eng.pdf.

Implementation of the legal framework

Coming from a culture of secrecy, where it is “safer” to err on the side of secrecy than disclosure, Nigerian public institutions are still finding it difficult to comply with the right of access granted by the FOI Act.

Both the Office of the Head of Civil Service of the Federation and the attorney general of the federation have issued directives and guidelines on the implementation of the FOI Act but without the expected impact.

In November 2011, six months after the FOI Act was adopted, then-Attorney General Mohammed Bello Adoke, issued the first implementation guidelines on the Freedom of Information Act titled “Operational Guidelines for Public Authorities on the Implementation of the Freedom of Information Act, 2011.”

This was followed by a circular he issued on 29 January 2012 outlining the reporting requirements under Section 29 of the act. In February 2013, the attorney general published the revised “Guidelines on the Implementation of the Freedom of Information Act, 2011.”⁴ The circular directed all ministries, agencies, departments, and all other public institutions to start implementing the FOI Act, saying that “all government institutions are required, subject to certain exceptions, to disclose information pursuant to a request by any person.”

The circular further urged all public institutions to put in place adequate machinery for record keeping and to publish information as specified under Section 2 of the act.

On 3 November 2011, President Jonathan put together an 11-member committee on the implementation of the FOI Act. The committee was mandated with the creation of operational guidelines for the implementation of the FOI Act in all government ministries, departments, and agencies.

Alhaji Bello Sali, the head of the Civil Service of the Federation at the time, who inaugurated the committee, said it was part of measures to commence full implementation of the FOI Act. Alhaji Sali said the Presidency had instructed his office to collaborate with the attorney general to develop the guidelines.

⁴ The attorney general’s Attorney General’s guidelines on the implementation Implementation of the FOI Act, at <http://justice.gov.ng/foia/index.php/attorney-general-guidelines>.

On 17 May 2012, Alhaji Sali directed all ministries, departments, and agencies of the federal government to institutionalise the provisions of the act in the conduct of government business. He urged them to establish in-house FOI committees to ensure the effective implementation of the act, adding that they should be proactive in information gathering, storage, and document security to ensure the FOI Act is effectively implemented.

The lower chamber of the National Assembly, the House of Representatives, also established a Committee on Reform of Government Institutions, also called the FOI Committee. The committee was charged with the responsibility of overseeing institutional compliance with the FOI Act.

However, the government has made little progress in implementing the FOI Act. Public institutions have done little to comply with directives and guidelines that were issued to ensure the effective implementation of the act. They have continued to cite the Official Secrets Act and other regulations in order to either deny or ignore requests for information, despite the act's clear provisions stating that it supersedes any other law, including the Official Secrets Act, and despite the implementation guidelines issued by the attorney general.

Additionally, the majority of public institutions have failed to comply with their publication obligations, neglecting to publish various categories of information that the FOI Act requires. The institutions are leaving important information, which would enhance the public's right to know, unpublished.

Nevertheless, a few federal agencies have set up compliance structures that now enable them to respond to requests for information within the time frame provided by the law.

The Bureau of Public Service Reform (BPSR)⁵ and the EITI Nigeria⁶ have adopted electronic freedom of information portals on their websites that give real-time information to citizens and encourage voluntary disclosure.

The Office of the Attorney General of the Federation in the Federal Ministry of Justice also maintains a dedicated FOI web portal⁷ that provides FOI resources, including the full text of the law, the implementation guidelines, reports submitted by various public institutions to the attorney general under Section 29 of the FOI Act, and news and information about FOI events.

⁵ <http://bpsr.gov.ng/index.php/publications/external-resources/foi-act>.

⁶ <http://www.neiti.gov.ng/index.php/freedom-of-information-portal>.

⁷ [http://justice.gov.ng/foia/index.php/./](http://justice.gov.ng/foia/index.php/)

However, just submitting freedom of information requests can be a daunting experience at many institutions. Some public institutions that still do not have designated freedom of information officers refuse to accept FOI requests, using the excuse that such letters are wrongly addressed if the letters are addressed to FOI officers. They ask that such letters be addressed to the CEO of the institution instead.

Research conducted by Media Rights Agenda (MRA) on public institutions' implementation of the FOI Act reveals that a majority of institutions that have FOI units, departments, or officers do not comply with the implementation guidelines, such as give tracking numbers and contact details when members of the public submit FOI requests.

Even when the FOI request is submitted without these challenges, the request still goes through the institution's normal bureaucratic process, and in most cases the institution cannot meet the seven-day deadline as mandated by law.

MRA submitted 15 FOI requests in the course of this research. The group received information in all three requests to the Ministry of Justice and to the Office of the Attorney General of the Federation. MRA was unable to submit one request because, according to the Ministry of Education, the request was addressed to a nonexistent officer. For the other 11 requests, the institutions failed to respond, resulting in a classification of "mute refusal."

Enabling environment

There is a need for a constitutional guarantee of access to information. Section 39 of the 1999 Constitution of Nigeria (as amended) guarantees freedom of expression for everyone but contains no specific guarantee of access to information.

The training of public officials on the Freedom of Information Act is haphazard. Neither the individual institutions nor the Office of the Attorney General have designed standardised training regimens or training curricula on FOI Act implementation.

The courts also need to deal with FOI cases in a timely manner. Typically, it takes the courts an average of a year to 18 months to process a freedom of information case. Appeals are taking even longer. In fact, only one FOI case before the Appeals Court—out of dozens of FOI cases that have gone on appeal—has reached its conclusion, and that case took about four years. Expeditious

hearings and conclusions of FOI court cases would create a conducive atmosphere for the effective implementation of the act.

Few civil society organisations are carrying out advocacy work on the FOI Act. Media Rights Agenda has conducted sensitisation workshops meant to empower other stakeholders. Since the enactment of the FOI Act, it has trained over 2,000 civil society representatives, journalists, public servants, and students on the FOI Act. The training goal is to have participants take information about the FOI Act back to their places of work or schooling and spread awareness and conduct further trainings for their colleagues, partners, and beneficiaries.⁸ MRA has also conducted several studies and has published and disseminated a number of resources for public use. It is also helped provide free legal assistance to individuals and civil society organisations that have been denied access to information and records by public officials.

The Right to Know (R2K) Nigeria is also working on various aspects of the FOI Act, focusing mainly on public institutions to ensure that they put proper machinery in place to effectively implement the FOI Act. It has also translated the FOI Act into local languages, including Pidgin English,⁹ Hausa,¹⁰ Igbo,¹¹ Yoruba,¹² Ijaw,¹³ and Tiv¹⁴ to make the law accessible to citizens who are not proficient in English.

The Public and Private Development Centre (PPDC) conducts an annual ranking of Nigerian public institutions in the procurement sector based on their transparency and responsiveness to requests for procurement records and information.¹⁵

⁸ MRA's printed materials are available for download at <http://mediarightsagenda.net/web/publications-produced-by-media-rights-agenda/>.

⁹ The pidgin English version of the FOI Act is available at <http://www.r2knigeria.org/index.php/publications/r2k-publications/the-foi-act-and-iec-materials-in-english-and-translations/pigdin-english>. <http://www.r2knigeria.org/index.php/publications/r2k-publications/the-foi-act-and-iec-materials-in-english-and-translations/pigdin-english>

¹⁰ The Hausa version of the FOI Act is available at <http://www.r2knigeria.org/index.php/publications/r2k-publications/the-foi-act-and-iec-materials-in-english-and-translations/hausa>.

¹¹ The Igbo version of the FOI Act is available at <http://www.r2knigeria.org/index.php/publications/r2k-publications/the-foi-act-and-iec-materials-in-english-and-translations/igbo>.

¹² The Yoruba version of the FOI Act is available at <http://www.r2knigeria.org/index.php/publications/r2k-publications/the-foi-act-and-iec-materials-in-english-and-translations/yoruba>.

¹³ The Ijaw version of the FOI Act is available at <http://www.r2knigeria.org/index.php/publications/r2k-publications/the-foi-act-and-iec-materials-in-english-and-translations/ijaw>.

¹⁴ The Tiv version of the FOI Act is available at <http://www.r2knigeria.org/index.php/publications/r2k-publications/the-foi-act-and-iec-materials-in-english-and-translations/tiv>.

¹⁵ The latest PPDC Annual FOI Compliance Rankings is available at <http://procurementmonitor.org/ppdc2016/>.

The PPDC makes requests for records on public expenditure information related to the procurement process and contract implementation and operates under the belief that there is a close link between such information and the delivery of public services.

The Freedom of Information Coalition, formed in the year 2000, also conducts sensitisation workshops for civil society organisations and public officials aimed at ensuring the effective implementation of the act.

Recommendations

The government of Nigeria should ratify the African charter on statistics.

In order to achieve SDG 16 Target 10, the Government of Nigeria should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework

Further recommendations:

1. The right to information should be made a constitutional right

In order to ensure a conducive access to information environment in Nigeria, it is recommended that the right to information should be made a constitutional right and guaranteed under Chapter Four of the Constitution.

2. Repeal laws that hamper access to information

Nigeria should amend or repeal laws and policies that continue to hamper the access to information regime, particularly the Official Secrets Act which public officials still cite to deny access to information.

3. Sensitise public institutions

To change bureaucratic inertia and resistance to the access to information regime, the government of Nigeria should make deliberate efforts to educate public institutions and officials at all levels of government about the rights of the public to access information held by public institutions. Sensitisation should not be limited to freedom of information officials alone but should include all staff so that they are able to properly guide members of the public, including directing them on how to locate the freedom of information desks within their institutions.

4. Budgetary provisions

The government of Nigeria should make specific budgetary provisions for public institutions to help in the proper discharge of their obligations under the FOI Act. They should, as a matter of priority, allocate resources in the national budgets to fund FOI units in each public institution; and where adequate budgetary allocations are not made, the National Assembly, or relevant committees of the National Assembly, must ensure such allocations are made in order to effectively implement the FOI Act.

5. Proactive disclosure

Public institutions should comply with the proactive disclosure provisions in Section 2 of the FOI Act. Effective implementation of this aspect of the act will reduce the burden on public institutions to process numerous individual requests for information. Accordingly, public institutions should take advantage of this important mechanism in the law to make information available to the public, as this will also enhance citizens' trust in the institution.

6. Record keeping

Public institutions should use digital/electronic records management systems to enhance the implementation of the FOI Act. In particular, they should take advantage of the internet, information and communications technology (ICT), and social media tools in receiving, processing, and responding to requests for information and in fulfilling their proactive disclosure obligations, including using infographics to present and explain complex data. The government should, however, put in place facilities and infrastructures to ensure the availability and effectiveness of such tools.

7. Monitoring public institutions

Citizens, civil society organisations, and the media should systematically monitor whether public institutions are complying with their proactive disclosure obligations under the FOI Act, as well as other aspects of the law. Whenever monitoring reveals noncompliance, monitoring groups should apply available remedies and report the violation to the oversight body and the National Assembly or relevant committees of the National Assembly that have responsibility to oversee or supervise the implementation of the law. Implementation monitoring of the FOI Act should be regular and systematic with the aim of generating reliable data on all aspects of the implementation of the law.

8. Enforcement of the FOI Act

Enforcement of the FOI Act should not be confined to already overburdened courts. There should be a system or mechanism for internal review, and parties should have the option to appeal to an

administrative body for a review of decisions. Where necessary, access to courts should be simple, fast, and cost effective.

9. Public awareness

Various stakeholder groups, particularly the media, civil society, and government public enlightenment agencies, should undertake awareness-raising activities to ensure a better public understanding of the provisions of the FOI Act and how to use it. Such communication endeavours should be sustained over time to achieve the desired impact.

Senegal

A report by Sylla Sow, Docteur en droit international public, Juriste chercheur Associé à Article 19 Afrique de l'ouest.

Constitution recognition

Title II, Article 8 of the Constitution of Senegal

No ATI Law

Ratification

The Universal Declaration of Human Rights
The International Covenant on Civil and Political Rights
African Charter on Human and Peoples' Rights
AU Convention on Preventing and Combating Corruption
Youth Charter of the African Union

Compliance with reporting obligations

Senegal is behind by two reports.

Member of EITI

2 recommendations related to RTI from UPR in 10/2013

Legal recognition of access to information in Senegal

The legal framework for access to information in Senegal comes from two fronts: through the international conventions that promote this fundamental right and by the Senegalese Constitution and domestic legislation.

With regard to international conventions, Senegal included the Universal Declaration of Human Rights of 1948 in the preamble of its Constitution of 22 January 2001. With regard to international human rights treaties, Senegal is a signatory of the International Covenant on Civil and Political Rights,¹ the African Charter on Human and Peoples' Rights,² the African Union Convention on Preventing and Combating Corruption,³ and the African Union Charter on the Rights of the Child.⁴ Senegal is not yet

¹ Senegal signed the pact on 6 of July 1970 and ratified it on 13th February 1978:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=fr,

² Senegal signed the CADHP on 23 of March 1981 and ratified on 13 of August 1981:

<http://www.achpr.org/fr/instruments/achpr/ratification/>.

³ <https://au.int/web/sites/default/files/treaties/7786->

[slafrican_union_convention_on_preventing_and_combating_corruption_9.pdf](https://au.int/web/sites/default/files/treaties/7786-slafrican_union_convention_on_preventing_and_combating_corruption_9.pdf);

⁴ https://au.int/web/sites/default/files/treaties/7789-sl-african_youth_charter_1.pdf.

a party to the African Charter on Elections, Democracy and Governance⁵ or the African Charter on Statistics.⁶

The Constitution of Senegal incorporates the African Charter on Human and Peoples' Rights into its preamble, which is also an integral part of the constitutional corpus. More specifically, Title II of the Constitution protects public freedoms and the human person and economic, social rights, and collective rights, and Article 8 states that “pluralistic information” is guaranteed to all citizens. However, the government has not adopted a specific law on access to information, though there are sector-specific laws that touch on this right.

First, Law No. 2006-19 of 30 June 2006 on archives and administrative documents repeals Act No. 81-02 of 2 February 1981 on archives. The 2006 law states that “... the administration has a duty to be transparent and respectful of the private life of its citizens. Users in general, especially researchers, wanting to lift their knowledge, want to have access to the sources of information almost immediately and consider that this is a right to information.”

Article 6 of Act No. 2013-10 of 28 December 2013 on the General Code of Local Government, repeals Section 3 of Law No. 96-06 of 22 March 1996 on the Code of Local Government and confers the right of any inhabitant or taxpayer to request, at his own expense, information regarding the minutes of the county council or of the municipal council, their budgets and accounts, and the decrees issued by the local authority.

In terms of access to financial information, Senegal has an important legislative arsenal for public contracts. The country is a member of the West African Economic and Monetary Union (UEMOA) and of the Economic Community of West African States (ECOWAS), which are economic integration organisations in the subregion, and Senegal is obligated to the organisations' original or derived standards. Accordingly, Decree No. 2014-1212 of 22 September 2014 on the Public Procurement Code governs the matter. This regulatory text is complemented by the UEMOA Directive No. 01/2009 / UEMOA on the Code of Transparency in Public Financial Management within the UEMOA. This supranational text states in its preamble that “public money is at the heart of the rule of law and democracy ... citizens are empowered to exercise public scrutiny over their finances of all public administrations.”

⁵ Senegal signed the charter on 15 December 2008.

⁶ <http://www1.uneca.org/Portals/cfm2012/CrossArticle/1/Papers/French/COM12-Status-of-theImplementation-of-theAfricanCharter-onStatistics-andStrategy-for-theHarmonization-of-Statistics-in-AfricaFR.pdf>;

In implementing this directive, Law No. 2012-22 of 27 December 2012, according to its explanatory statement, aims to ensure transparent, efficient, and economical management of financial resources in the community area. It is based on the following principles: the formulation of transparent rules governing the awarding of public contracts, public-service delegations, and public/private partners and regular and complete public reporting on budgetary choices. In order to ensure this information reaches the public, the administration must publish information on public finances within an appropriate time frame.⁷

In an effort to strengthen political governance, the Senegalese legislature has adopted Law No. 2014-17 of 2 April 2014 on the declaration of assets. This law obliges many administrators and public authorities to declare their assets, even though the law on the declaration of patrimony states that the process of declaration of assets is confidential. Any person contributing to its implementation shall be bound by professional secrecy.

In the extractive sector, Law No. 2016-32 of 08 November 2016 on the Mining Code requires the publication of all mining contracts in the *Official Gazette* of Senegal. And currently, the Petroleum Code is being reviewed.

Senegal is a member of the Extractive Industries Transparency Initiative (EITI). Senegal committed to join EITI in February 2012, and the commitment was followed in June 2013 by the adoption of the decree on the creation, organisation, and operation of the National Committee of the Transparency Initiative in Extractive Industries. During the same year, Senegal applied for the International EITI Secretariat, and in October the EITI Board approved the candidature of Senegal. Since then, Senegal has produced reports in 2013 and 2015; this year it is expected to publish two EITI reports.⁸

Furthermore, Senegal formally announced its intention to join the Open Government Partnership (OGP) at the Paris summit through the Ministry of Foreign Affairs and Senegalese Abroad. Senegal has become an eligible country, according to OGP's criteria.

Implementation of the legal framework

⁷ See on the "Study on Transparency in Public Procurement in Senegal."

⁸ <http://itie.sn/historique/>.

In the absence of a specific law on access to information, the right of access to information is difficult to implement. Sector-specific laws that grant individuals the right of access to information are more focused on the provision of information, with the exception of the decentralisation law which gives individuals the option of requesting information.

However, several portals are now online. We chose to examine several government websites in order to analyse proactive disclosure. They are as follows: the Ministry of Economy and Finance's website; the Central Public Procurement Department's website; the EITI website in Senegal; and the Ministry of Health and the Statistics Directorate's website.

The level of information on institutional objectives varies according to the website. For example, the website of the Directorate of Public Contracts does not present clear objectives; instead of the objectives, there is a report for the presentation of the decree on the Public Procurement Code.

Detailed information on the public procurement process, criteria, results of bids, copies of contracts, and reports on the status of published contracts is generally not available on the websites of ministries and institutions. But the site marchespublics.sn generally publishes information relating to the procurement process of public contracts and the results of the procurement process. Concerning mining contracts, the new Mining Code stipulates that completed contracts are published in the *Official Gazette*. However, on the EITI website, links to information regarding mining and oil contracts were not functional at the time of research.⁹

Information on the processing of citizens' information is generally not disseminated in the portals. There are at most questions, suggestions, and contributions from citizens on websites, such as the Ministry of Health's website.¹⁰

On the question of the availability of the budget, the portals provide information on financial reports, but their sectorial budgets are not published except on the Ministry of Finance website, which reports quarterly implementation.

⁹ <https://www.gouv.sn/Point-de-situation-sur-les.html>, <https://www.sec.gouv.sn-conventions-minieres-.html/>,

¹⁰ <http://www.sante.gouv.sn/les-idees-citoyennes.php?jtheme=Zm9ybXM=&jpage=aWRIZXM=.>,

Enabling environment

While there is no formal access to information law, some sector-specific laws establish the right of access to information, such as the law on decentralisation, the Mining Code, the Public Procurement Code, the Code of Transparency in Budgetary Management, etc. Similarly, there are several mechanisms for proactive disclosure of information, such as the EITI. Also, there is a very diverse and varied media landscape and an engaged civil society.

However, the right of access to information encounters a variety of obstacles as well as resistance. These difficulties stem from legislation that protects state and military secrets, such as Act No. 70-23 of 6 June 1970 on the general organisation of national defence and Decree No. 2003-512 of 2 July 2003 on the organisation on the protection of secrets and information concerning national defence and the security of the state.¹¹ Public officials have a number of obligations that impede access to information, in particular the obligation of discretion. Besides these obstacles, which are legally binding, there are de facto obstacles, especially the culture of secrecy within government.

These de facto barriers also have effects on the proactive disclosure of information. Despite the efforts made by institutions to establish information portals online, those same institutions leave much information unpublished. Further complicating the situation in Senegal, is the low rate of internet penetration, which sits at 23.4 percent, and internet accessibility varies greatly between urban and rural areas. Additionally, the adoption of the new Press Code on 20 June 2017 is further hampering access to and disclosure of information. This code does not meet international standards of freedom of the press. It places political pressure on the online press, imposes large administrative and penal sanctions, and forces problematic ethics requirements on journalists.¹²

Finally, the absence of a law guaranteeing the public access to information remains troubling. Without that basic framework, the country cannot promote transparency and accountability in government.

Recommendations

The government of Senegal should ratify the African charter on statistics, African Charter on Democracy Elections and Governance and the African Charter on Values and Principles of Public Service and Administration. order to achieve SDG 16 Target 10, the Government of Senegal should:

¹¹ JO special from the 13th of 13 December 2003, pp. 1554—1556.

¹² <https://www.article19.org/resources.php/resource/38831/fr/s%EF%BF%BDn%EF%BF%BDgal:-article-19-d%EF%BF%BDplore-l%E2%80%99adoption-d%E2%80%99un-code-de-la-presse-r%EF%BF%BDgressif-et-demande-au-pr%EF%BF%BDsident-de-la-r%EF%BF%BDpublique-de-ne-pas-promulguer-le-code.>

1. Urgently adopt and effectively implement an access to information legislation to ensure the fundamental right of access to information by all citizens; such law on access to information has to be consistent with international and regional standards on the right to information and the AU Model Law.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

- 1- Adopt a law on access to information in accordance with international standards, in particular the Model Law on Access to Information; and
- 2- Amend and revise the Press Code, which was recently adopted, in order to ensure freedom of the press.
- 3- RTI training programs for public officials, with a focus on those at local level, to enable them to appreciate their obligation in promoting citizens' right to information. Public institutions should understand that they have an obligation to provide information to the public. Public officials should attend regular educational programmes to promote access to information as a public good and to promote a culture of openness within public institutions.
- 4- Empowering the citizenry to demand their civil and political rights. As much as government has the responsibility to protect the people's rights, citizens must also demand accountability from leaders, which can be achieved if citizens are empowered to advocate for their rights.

Sierra Leone

Recognition in the Constitution

Section 25 (1) of the Constitution

RTI legal framework

Right to Access Information Act 2013

Local Government Act 2004

Public Procurement Act 2004

Public Finance Act 2016

Ratification

African Charter on Human and Peoples' Rights

African Charter on Democracy, Elections and Governance

AU Convention on Preventing and Combating Corruption

Reporting compliance

Sierra Leone is late by two reports.

Member of OGP

Member of EITI

7 recommendations related to RTI from UPR in 01/2016

2 recommendations related to RTI from ACHPR in 02/2016

Legal recognition of access to information in Sierra Leone

In 2013 Parliament enacted right to access information legislation. The law is geared towards promoting inclusive and open governance in Sierra Leone, and it seeks to achieve this objective by enhancing transparency, accountability, and good governance through the facilitation of information to all classes of the population, whether literate or not.

It is mandatory for public entities, the private sector, and civil society organisations (CSO) to supply information to the public when that information is necessary for the enforcement or protection of any right.¹ However, the Right to Access Information Act (RAI Act) in Sierra Leone is not an absolute right. It recognises that there are certain types of sensitive information whose release may cause harm and therefore may need to be protected. Therefore, sensitive information may be withheld from the public under exemption provisions as stipulated in Sections 12–26 of the Right to Access Information Act 2013.²

¹ RAI law 2013.

² RAI law 2013, Sections section 12–26.

The act's extensive coverage, coupled with its robust nature and inherent checks and balances, has been widely commended by good governance agencies worldwide, and the act is considered the fifth strongest in the world,³ according to an analysis by the Centre for Law and Democracy. However, it should be noted that the centre's rating is provided on the basis of the quality of the legislation, and not on the extent and quality of implementation. On that front, there are critical challenges.

Additionally, Sierra Leone has the Right to Access Information Commission (RAIC), which is responsible for promoting open governance for sustainable socioeconomic development through transparency and accountability. Also, the commission is responsible for overseeing the proactive disclosure of seventeen classes of information by public authorities. It is hoped that the commission will adhere strictly to Section 32(2)(C) of the Right to Access Information Act, which will help with effective implementation by public authorities.

In practice, there has been limited progress on effectively implementing the government's commitments and legislation related to access to information, which raises doubts regarding the strength of political leadership in this regard. The implementation of the RAI Act in Sierra Leone and the potential gains remain a huge challenge for the government, the private sector, and civil society organisations across the country.⁴ Additionally, the ineffective functioning of the RAIC is another issue.

The full benefit of the Right to Access Information Act will only be seen when it is implemented according to its provisions.⁵ Also, citizens and government can only benefit from the law if citizens are aware of their rights and if the government is willing to follow the act's mandate to provide relevant, accurate, and up-to-date information to the public. In this vein, a sustained political commitment that propels access to information must be upheld.

Adopting the Model Law⁶ has the potential to highlight the importance of access to information within specific context of Sierra Leone, thereby bringing to the fore the need for the adoption of access to information legislation or the review of existing legislation. The Model Law serves as a tool for access to information advocates across Africa and stimulates public debate on access to information at the national level. It aims to raise awareness of the crosscutting nature of the right of access to information

³ www.freedominfo.org.

⁴ Report on Systems Audit Research on Access to Public Information in Sierra Leone.

⁵ Assessing Sierra Leone's Readiness to Implement the Right to Access Information Law.

⁶ AU Model Lawmodel law 2012.

and the potential of this right to address issues such as poor service delivery, underdevelopment, and the effective functioning of the justice system.

The Model Law seeks to reinforce a commonality of approaches on access to information in Africa, while at the same time leaving room for state parties to adapt the Model Law's provisions on the basis of their own legal systems and constitutional frameworks.

Implementation of the legal framework

The current Right to Access Information Act in Sierra Leone is not fully implemented. Moreover, the absence of an RAI regulatory framework is a challenge for the RAI Act to work effectively. The law⁷ clearly talks about proactive disclosure. But during the study, it was revealed that public confidence in the ability to access information from public officials is low. Citizens are dubious of provisions in the act that require them to submit requests for information first to public institutions before the information is made available. Sometimes it takes a very long time to process these requests, or the affected institutions ignore the requests altogether. This is a source of serious frustration for those seeking information from public institutions under the RAI Act. Also, the absence of a regulatory framework makes it difficult for affected people to seek redress. The commission has been fully constituted to drive the implementation of the act, but the operational resources that would make their work impactful are still not yet in place. Therefore, people perceive access to information requests as a waste of time because government is so slow to respond to queries from the public.

All respondents interviewed agreed that it is the responsibility of citizens to submit information requests. But, it is equally the right of citizens to have access to information, and it is also equally the responsibility of public institutions to provide such information upon request within the shortest possible time. Civil society and other citizen organisations believe that public officials are deliberately refusing to proactively disclose and disseminate information to the public. They opined that the seeming failure to enforce existing laws on access to information removes the public's ability to scrutinise data on relevant government sectors. Moreover, public institutions have yet to provide adequate public access to information facilities and to appoint trained information officers.

A serious lapse noted during the study is that there are no personnel assigned at the Ministry of Information and Communication to act as information officers. Information officers deal with public matters and proactively respond to citizens' information requests. This personnel vacuum may create suspicion about the sincerity of the ministry to uphold the practice of proactive disclosure.

⁷ Right to Access Information Actlaw 2013, Sections sections 27--29.

Additionally, the use of the RAI Act to challenge ministries, departments, and agencies (MDAs) in order to obtain information is still low because, while the RAIC has been copied on some of the information requests made, they have received few formal complaints from the requesters.⁸

Nonetheless, the procedure for submitting information requests is simple, straightforward, and cost effective. But there is a lack of political will, interest, or ability to ensure the implementation of the RAI Act.⁹

Enabling environment

Illiteracy rates in Sierra Leone remain very high, climbing from 31 percent in 1995 to 48.1 percent in 2016,¹⁰ Half the population 15 years and older are illiterate. Sadly, most illiterate people reside in rural communities where facilities for a quality education are limited. Moreover, whether literate or not, most citizens are unaware that access to information is their fundamental right. The Right to Access Information Act tries to remedy some of these challenges. For instance, people can make requests for information orally, instead of only through writing, and individuals can use a variety of languages when making requests for information, such as Krio, other national languages, or English.¹¹ Still, most people do not know about the RAI Act or its provisions for opening up accessibility to all individuals, regardless of language or reading abilities.

The urban-rural divide also affects the effective implementation of the act. In Sierra Leone, most of the public institutions are centralised in the capital, Freetown. Even those institutions with regional offices still lack fundamental resources, particularly in the area of IT infrastructure and internet and email capabilities. And even if the regional offices are willing to cooperate with respondents, the wherewithal is not just there. Some of these offices go for days without proper internet connectivity or electricity. Also, public officials have intimidated and harassed critical civil society voices. It's common to hear public officials aligning civil society actors with the political opposition, and the officials are wary of cooperating with them. This perception about civil society also makes public officials reluctant to divulge information to civil society groups even on request.

⁸ Open Data Readiness Assessment Report Sierra Leone.

⁹ Assessing Sierra Leone's Readiness to Implement the Right to Access Information Law.

¹⁰ UNDP Human Development Report 2016.

¹¹ RAI law Act 2013, Ssection 3(3) and &(4).

Recommendations

The government of Sierra Leone should ratify the African charter on statistics, the African Union Youth Charter and the African Charter on Values and Principles of Public Service and Administration.

In order to achieve SDG 16 Target 10, the Government of Sierra Leone should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. **Increase the presence of public information officers in every ministry, department, and agency (MDA):** Government should commit to increase the presence of public information officers in all MDAs and local councils across the country. At the moment, there are very few public information officers deployed who are directly responsible for handling RAI issues.
2. **Strengthen the capacities of public information officers to deliver relevant, reliable, accurate, and up-to-date information to the public:** Government and the Right to Access Information Commission should prioritise the training of public information officers who are deployed in the MDAs so that they can provide the public with relevant information. They can be trained on the provisions of the Right to Access Information Act and the AU Model Law. By so doing, they will build confidence and a capacity to engage.
3. **Strengthen the RAIC offices in the provinces in terms of logistics and personnel:** Government should strengthen the RAIC offices in the provinces, both in terms of logistics and personnel. An enhanced information infrastructure with essential components, such as uninterrupted internet and archival facilities, would be a good start. Also, the deployment of access to information officers in the provinces is greatly needed. This also gives citizens living in rural areas access to information.
4. **Increase efforts in public education on RAI for citizens:** The Right to Access Information Commission should increase sensitisation of citizens and government officials on the Right to Access Information Act so that they know how to request information and so that they understand the work of the Right to Access Information Commission (RAIC). Once citizens

know when, where, and how to request information, government officials will be more prepared to disclose information when requested. This may happen through public lectures, town hall meetings, media, etc. Then people can test the provisions in the Right to Access Information Act by requesting access to data, procurement records, etc.

5. **Strengthen coordination with MDAs:** The RAIC should strengthen its coordination with and among MDAs, increasing collaboration and synergy for effective service delivery.
6. **Fast track the operationalisation of the Open Data Portal:** Government should increase its commitment to minimise the burden of accessing information by fast tracking the operationalisation of the Open Data Portal. Once this is up and running, people in distant parts of the country will be able to access information through the portal. This mechanism is transparent and simple for citizens to use.
7. **Fast track amendment of the RAI Act to be consistent with the African Union Model Law:** The government should amend the Right to Access Information Act in order to reflect recent provisions from the African Union Model Law, which will help adhere to global best practices for access to information without bottlenecks. Moreover, the government should fully implement the Right to Access Information Act of 2013.

Tunisia

Recognition in the Constitution

Article 32 of the Constitution of Tunisia of 2014

RTI legal framework

Organic Law No. 22 of 2016, 24 March, 2016, on the right to access to information. Tunisian *Official Gazette* No. 26, 29 March 2016.

Decree No. 2011-115 of 2 November 2011 on freedom of the press, printing and publishing.

Decree No. 2011-116 of 2 November 2011 on the freedom of audiovisual communication and establishing a High Authority Independent of Audiovisual Communication (HAICA).

Decree No. 2011-115 of 2 November 2011 on freedom of the press, printing and publishing.

Decree No. 2011-116 of 2 November 2011 on the freedom of audiovisual communication and establishing a High Authority Independent of Audiovisual Communication (HAICA).

Law No. 88-95, 2 August 1988, relating to archives. JORT 052, 2 August 1988.

Law No. 99-32, 13 April 1999, relating to the national statistics systems.

Law No. 2009-33, 23 June 2009, amending and completing law No. 94-36, 24 February 1994, relating to literary and artistic property.

Law No. 2007-33, 4 June 2007, relating to the public audio-visual establishments.

Decree No. 93-1880, 13 September 1993, relating to the system of information and administrative communication.

Decree No. 2015-1593, 30 October 2015, establishing a national committee for the coordination, the elaboration, and the presentation of reports and to follow up on recommendations within the scope of human rights. JORT No. 088, 3 November 2015. (Published only in Arabic and French.)

Organic Act No. 63 of 2004, regarding privacy and the inviolability of the home and confidentiality of correspondence, communication, and personal information.

Penal Code, JORT No. 79 of October 1, 1913.

Code of Criminal Procedure - JORT N ° 32 of 2 and 6 August 1968.

Government Decree No. 2016-663 of 30 May 2016, amending Government Decree No. 2015-1593 of 30 October 2015 concerning the establishment of the National Commission for the Coordination, Preparation, Reporting and Follow-up of Recommendations in the the field of human rights JORT N ° 047 of 10/06/2016.

Government Decree No. 2016-465 of 11 April 2016 establishing the Ministry of Relations with Constitutional and Civil Society and Human Rights and establishing its powers and powers. JORT N ° 047 of 10/06/2016.

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

African Charter on Statistics

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Tunisia is late by five reports.

Member of OGP

Legal recognition of access to information in Tunisia

In 2014, Tunisia designated the right to access information and freedom of expression as constitutional rights. Adopted in 26 January 2014, the new Constitution¹ has strengthened the Tunisian legislative framework through key civil, political, social, economic, and cultural components. Article 32 of the Constitution states, “The state guarantees the right to information and the right of ATI and communication networks.”

Furthermore, Tunisia has specific right to access information legislation, Organic Law No. 22/2016, 24 March 2016.² The Access to Information Act (ATI Act) established the national legal framework for access to information in accordance with the Constitution as well as regional and international standards. Its scope is no longer limited, as it was in past years, to the disclosure of “administrative documents” but goes much further, protecting the right of access to information for all of Tunisia’s 11 million citizens. International observers and civil society organisations³ consider the ATI Act to be a real opportunity to protect the principles of transparency and integrity within Tunisia’s government. Article 19 wrote in its Individual submission for the universal periodic review of Tunisia at the 27th Session in April/May 2017 that “the law has complied with international standards for exceptions that are now subject to the injury test and the general interest test.”⁴

However, the ATI Act is not the only law the government uses to regulate access to information. A mixture of new and prerevolution legal provisions heavily impact the enjoyment of this right at the legal and practical level. For instance, Article 163 of the Penal Code⁵ is used in the case of sanctions against civil servants who damage information, intentionally and illegally.⁶ The new anti-terrorism law⁷

¹http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_4884-15-yIVvaNCtbE/ConstitutionNew/SYNC_1262978140.

²Organic Law No.N° 22/2016 related to access to information. JORT No. N° 26 of 29 March 2016,/
www.legislation.tn.

³<https://www.article19.org/resources.php/resource/38288/fr/Tunisie:%20%E2%80%99adoption%20de%20la%20loi%20sur%20l'acc%C3%A8s%20%C3%A0%20l'information%20est%20une%20%C3%A9tape%20importante%20vers%20la%20transparence>.

⁴<https://www.article19.org/data/files/medialibrary/38517/A19-Soumission-Individuelle-pour-l'EPU-de-la-Tunisie.pdf> (French).

⁵ Penal Code, JORT No. 79 of 1 October 1913; Penal Procedure Code – JORT No.N 32 of 2 and 6 August 1968,- www.legislation.tn.

⁶ Article 57 of the Organic Law No. 22/2016 of 24 March 2016 relating to the access to information. JORT No. N26 of 29 March 2016.

⁷ Organic Law No. 2015-26 of 7 August 2015, on the fight against terrorism and the suppression of money laundering. JORT No.N 063 of 7 August 2015, . www.legislation.tn.

passed in July 2015, includes provisions exempting journalists from having to disclose confidential information or the identities of sources in order to aid an investigation.

The ATI Act underwent a long evolution before the Assembly of People's Representatives (APR) deliberated and endorsed it in its public session on 11 March 2016. It took more than six years (January 2011 to July 2017) before Tunisians had the full legal means to access information. Many national and international civil society organisations, strongly supported by partners and other stakeholders,⁸ have supported the legislation. There was agreement on conformity of the provisions of the ATI Act with international standards, notably for exceptions that are now subject to the injury test and the general interest test. The ATI Act also complies perfectly with the African Union Model Law.

In May 2011, Tunisia passed a decree-law regulating the right of access to “administrative documents.” On 30 September 2013, the minister responsible for good governance announced the revision of the decree-law (Decree-Law 41) because of several shortcomings.⁹ A new draft right of access to information law was developed and submitted for an online consultation¹⁰ in August 2013. The bill was approved by the Council of Ministers in July 2014 and submitted on 18 August 2014 to the Constituent National Assembly. Several associations working on transparency and open government, including Article 19, the Tunisian League for Human Rights (LTDH) (www.ltdh.tn), Al Bawsala (the compass, www.albawsala.com), I Watch (Yaqadha www.iwatch.tn), the association “Touensa” (Tunisians, www.touensa.org), and the Tunisian Association of Public Controllers (www.atcp.org.tn), noted that the new draft law was more detailed, more organised, and more comprehensive than Decree-Law 41 of May 2011. They, however, called for several improvements, specifically those related to the wide range of exceptions.

The government presented the draft to the Constituent National Assembly on August 2014. The assembly's committee in charge of its review started its consideration in April and presented its report on 22 June 2015. As soon as the parliamentary Committee on Rights and Freedoms had completed its review, the government withdrew the bill on 7 July 2015.¹¹ The media and civil society sector saw the withdrawal of the bill as a bad sign.¹²

⁸<http://www.banquemondiale.org/fr/news/press-release/2012/03/29/tunisia-acts-on-open-government-and-access-to-information-reforms>.

⁹<http://archivev2.mosaiquefm.net/fr/index/a/ActuDetail/Element/26546-revision-du-decret-41-pour-garantir-le-droit-du-citoyen-a-l-information>.

¹⁰ http://www.huffpostmaghreb.com/2013/09/30/transparence-tunisie-decret-41_n_4018615.html.

¹¹ <http://www.gnet.tn/actualites-nationales/al-bawsala-appelle-au-vote-du-projet-de-loi-sur-lacces-a-l-information/id-menu-958.html>.

¹² <https://nawaat.org/portail/2015/08/07/ultimatum-autour-de-la-liberte-dinformation-en-tunisie/>.

On 11 March 2016, the ARP adopted the appropriately amended bill after heated debates on Article 24, which was accused of unconstitutionality because it would contain “too many exceptions to the law.” The final version, largely limiting the number of exceptions, was passed.¹³ On 29 March 2017, the ATI Act, published in the *Official Gazette* No. 26 on 29 March 2016, entered into force in accordance with its Article 59. The ARP then elected nine board members to the Committee on Access to Information, which was set up in accordance with Article 37 of the ATI Act.

Despite the new legal provisions, the disclosure process is slow to work in the real world. Many public institutions fail to provide information on budget allocations, including detailed data relating to the budget at the central, regional, and local level; the data on public debt and national accounts; the distribution of public expenditure and the main indicators of public finances; public contract information; data on oversight entities; the conventions which the state intends to accede to or ratify; and census data. Also, the Tunisian government is late with its reporting obligations. Regarding ACHPR, Tunisia is behind by five reports. It presented its last periodic reports in November 2007 (42nd Ordinary Session¹⁴).

In a joint statement, issued on 7 October 2012, the United Nations special rapporteur on the situation of human rights defenders and the special rapporteur on human rights defenders of the African Commission on Human and Peoples’ Rights noted that the human rights situation had improved since the revolution. There is a higher degree of freedom of expression, freedom of peaceful assembly, and freedom of association. With regard to freedom of expression, they highlighted the higher degree of respect for this right compared to before the revolution. However, they stressed that the government was encroaching on that right.

Implementation of the legal framework

While the government has taken steps to implement the ATI Act as well as Decree No. 41/2011,¹⁵ which provides access to administrative documents, it has not achieved full implementation for many financial, socioeconomic, and political reasons.

¹³<https://www.nessma.tv/new/nationale/adooption-du-projet-de-loi-relatif-au-droit-d-acces-a-l-information-8564>.

¹⁴<http://www.achpr.org/states>.

¹⁵Decree-Law No. 2011-41 of 26 May 2011 on access to administrative documents of public bodies.; JORT No. °39 of 31/05/2011, – www.legislation.tn.

In 2014, Tunisia became a member of the Open Government Partnership (OGP), and it is working to meet the eligibility criteria of the Extractives Industries Transparency Initiative (EITI)¹⁶ and will thereby introduce transparency measures for natural resource payments.

But the passage from the “all hidden” to the “all published” does not seem so easy in Tunisia. Access to public information remains difficult because public servants often do not respond to requests when submitted electronically or refuse to release information, citing the hierarchy and reserve right. Additionally, citizens themselves rarely use their new right.¹⁷

Things may change with the operationalisation of the Access to Information Commission (AIC). In compliance with the ATI Act, the AIC is tasked with investigating complaints against public institutions in relation to access to information. It may, if necessary, carry out the required investigations on the spot, perform all review procedures, and interview relevant persons.¹⁸ To date, the AIC is not working at full capacity. For one thing, it just elected board members on 18 July 2017, and the government has not published all the implementation decrees needed to fully enforce the ATI Act despite several civil society organisations calls to release them, particularly those concerning its organisational chart.

The process of submitting information requests is very simple. All information requesters, be they natural or legal persons, are allowed to submit a written request, either by hand, registered letter, fax, or email in accordance with a pre-established model or on free paper. The request shall include the applicant’s name and address and the necessary details concerning the information requested, without any justification for the request.¹⁹

Though the prescribed process may be simple, real-life experiences are not so easy. Beyond a “culture of secrecy,” the right to access information has another challenge: the inertia of the administration or bureaucratic behaviour.²⁰ Not many public servants understand their obligations to divulge public information, and many still refuse to go beyond being “guardians of the temple” and will not respond to emails or telephones calls. While all public institutions have very well-designed websites, as stipulated by the ATI Act,²¹ officials do not regularly update the contents, and almost all

¹⁶ <https://eiti.org/news/tunisia-commits-to-natural-resource-transparency-through-eiti>.

¹⁷ <http://www.webdo.tn/2015/04/02/tunisie-examen-du-projet-de-loi-sur-laces-a-linformation-au-parlement/>.

¹⁸ Article 38 of the Organic Law No.N° 22/2016 related to access to information. JORT No.N° 26 of 29 March 2016.

¹⁹ Article 9 of the Organic Law No.N° 22/2016 related to access to information. JORT No. N26 of 29 March 2016.

²⁰ http://www.albawsala.com/marsad_budget.

²¹ Article 7 of the Organic Law No.° 22/2016 related to access to information. JORT No. ° 26 of 29 March 2016.

contacts are blocked. Tunisian requesters are obliged to go to a physical location, such as a public institution's building, to get the desired information.

Enabling environment

More than six years after the revolution, the Tunisian democratic process is far from complete. Tunisia is facing a range of challenges posed by political, economic, and social difficulties. A range of critical and likely insurmountable financial issues undermine efforts to reach stability. Terrorism and corruption make the situation even more problematic.

Decree 115/2011, 2 November 2011, on the press, printing, and publishing²² and Decree 116/2011, 2 November 2011, on the freedom of audio-visual communication and the creation of a supreme independent body of audio-visual communication²³ are, in principal, the two major laws regulating free speech and media issues in Tunisia. They enable journalists to access information and publish without prior authorisation from the Interior Ministry. However other legal provisions are used to crack down on free speech.²⁴ Articles 128 and 245 of the Penal Code punish defamation with imprisonment for two to five years, while Article 121 calls for a maximum punishment of five years in jail for those convicted of publishing content “liable to cause harm to public order or public morals.” Tunisia’s Code of Military Justice criminalises any criticism of the military and its commanders. Emergency powers and anti-terrorism laws are used to impose restrictions on liberty and freedom of movement.²⁵ Article 86 of the Telecommunications Code²⁶ states that anyone found guilty of “using public communication networks to insult or disturb others” could spend up to two years in prison and may be fined.²⁷

Freedom House’s 2017 report²⁸ gives Tunisia the following scores: Freedom of the Press, 54/100; Legal Environment, 18/30; Political Environment, 18/40; and Economic Environment, 18/30. Internet freedom registered a confirmed and continued downward curve. According to Freedom House’s

²² Decree-Law No. 2011-115 of 2 November 2011, concerning freedom of the press, printing, and publishing, JORT No. 084/2011 of 4 November /2011, . www.legislation.tn.

²³ Decree-Law No. 2011-116 of 2 November 2011, relating to the freedom of audiovisual communication and establishing a high authority independent of audiovisual communication (HAICA); JORT No.N 084 of 04 November /2011, www.legislation.tn.

²⁴ <https://www.amnesty.org/en/latest/news/2017/05/tunisia-must-seize-opportunity-to-reboot-reforms-after-un-human-rights-council-review/>.

²⁵ <https://www.amnesty.org/en/latest/news/2015/12/tunisia-sweeping-crackdownsignals-abuse-of-emergency-measures/> .

²⁶ Law No. 2001-1 of 15 January 2001 promulgating the Telecommunications Code. JORT No.N 005 of 16 January 2001,- www.legislation.tn.

²⁷ <https://freedomhouse.org/report/freedom-press/2016/tunisia>.

²⁸ <https://freedomhouse.org/report/freedom-press/2017/tunisia>.

internet freedom score of 2016,²⁹ Tunisian fell from 81 in 2011 to 38 in 2016 (46 in 2012; 41 in 2013; 39 in 2014; and 38 in 2015). The 2016 internet freedom scores are as follows: Overall Score: 38/100; Obstacles to Access: 10/25; Limits on Content: 8/35; Violations of User Rights: 20/40. In 2017, 48.5 percent of the population had access to the internet.

The literacy and education rates are satisfactory. The total adult literacy rate in 2008–2012 was 79.1 percent, and the primary school net enrolment in 2008–2011 was 99.4 percent. Among people 15–24 years of age, the literacy rate in 2008–2012 was 98.2 percent for men and 96.1 percent for women.³⁰

Corruption is a major problem that has been intensifying. Transparency International ranks Tunisia as 75th out of 176 countries in 2016. Its score is 41/100 (38 in 2015).³¹ And the president has faced monstrous opposition, including from his own party, since he launched a campaign against corruption this summer.

Civil society is able to work in an enabling environment that ensures freedom of association and collective action. However, their actions are increasingly restricted on counter-terrorism grounds, including the suspension of hundreds of organisations and several radio stations for allegedly promoting violence and having links to “terrorist groups.”³²

Recommendations

The government of Tunisia should ratify the African Charter on Democracy Elections and Governance, AU Convention on Preventing and Combating Corruption, African Union Youth Charter. In order to achieve SDG 16 Target 10, the Government of Tunisia should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

²⁹ <https://freedomhouse.org/report/freedom-net/2016/tunisia>.

³⁰ https://www.unicef.org/infobycountry/Tunisia_statistics.html.

³¹ https://www.transparency.org/news/feature/corruption_perceptions_index_2016.

³² https://www.upr-info.org/sites/default/files/document/tunisia/session_27_-_may_2017/ai_upr27_tun_e_main.pdf.

1. Training and capacity building. A focus must be placed on enhancing the capacities of both institutions and society to identify, publish, and disseminate useful information. Training sessions should be regularly organised for access to information officers.
2. Advocacy campaign. There is an urgent need to develop and implement a culture of transparency. Public officials must recognise that the information they hold belongs to the public and that citizens have the right to obtain information for equal enjoyment of civil and political rights and accessibility to government information as stipulated in the ATI Act. This process should include advocacy and awareness campaigns and awards for officials as well as for citizens.
3. Debate and exchanges. Civil society activists, journalists, and all citizens should be able to play an effective role in the use of this right. In order to popularise the ATI Act and explain its scope, there should be healthy debates among the parties concerned: journalists, media organisations, trade unions, and the government.
4. Awareness campaign to citizens on their right to access information.

Democratic Republic of Congo

A report by Henri Christin Longendja Isamboyo, Executive Secretary of Collectif 24.

Recognition in the Constitution

Article 18, 20, and 24 of the Constitution of the Democratic Republic of Congo as amended by Law No. 11/002, 20 January 2011, revising certain articles of the Constitution of 18 February 2006 and published on 5 February 2011 in the *Official Journal*

No ATI Law

RTI legal framework

Family Code in Articles 91 and 99

Property Code general scheme (Article 228)

The Law on the Bar (Article 15)

The Revised Uniform Act on General Commercial Law (Articles 34, 35, 36, and 74)

The Mining Code (Article 12)

Law 87-005 determining the composition, organisation, and functioning of the Court of Auditors (Article 33)

Ordinance No. 78-013, 11 July 1978, on the general system of archives (Articles 23, 26, 29, 30, and 31)

Ordinance 89-010, 18 January 1989, establishing the National Library of the Congo (Article 3)

Law No. 11/009, 9 July 2011, on fundamental principles relating to the protection of the environment (Article 8)

Law No. 14/003, 11 February 2014, on the conservation of nature, in relation to Ordinance No. 69-041 of 22 August 1969 on the conservation of nature (Article 5)

Organic Law on the organisation and functioning of the public services of the central government, provinces, and decentralised territorial entities (Articles 20, 21, and 23)

Contracts Transfer Act

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

African Union Convention on Preventing and Combating Corruption

Compliance with reporting obligations

The Democratic Republic of Congo is behind by five reports.

Member of EITI

5 recommendations related to RTI from UPR in 04/2014

Legal recognition of access to information in the Democratic Republic of Congo

Access to information is recognised as a fundamental human right worldwide and as a tool for the promotion of the rule of law, the fight against corruption, and the enjoyment of other human rights.

The Democratic Republic of the Congo (DRC) has not yet passed the Access to Information Act. The Senate voted on the ATI Bill in October 2015, and it still needs to go to the second reading in the National Assembly. This law was inspired by the African Union Model Law, the Universal Declaration of Human Rights, other international instruments, and other countries' access to information laws.

This law, which could be passed in September 2017 by the National Assembly, respects all the principles of the right of access to information. The main weakness of the law is that it does not designate a supervisory body for its implementation or which ministerial authority will be the lead on implementation.

Nevertheless, the Democratic Republic of the Congo has ratified and signed declarations, treaties, covenants, and conventions at the international, regional, and subregional level guaranteeing the right of access to information and has national-level provisions recognising this right. These are:

- The Constitution of the Democratic Republic of Congo as amended by Law No. 11/002 of 20 January 2011, which revised certain articles of the Constitution of 18 February 2006 in Article 24 in general and in Article 18 with regards to judicial proceedings.
- Law No. 16/008, 15 July 2016, amending and supplementing Law No. 87-010 of 1 August 1987 on the Family Code, which guarantees the consultation of civil registers by all persons authorised by the president of the court of peace or the public prosecutor (Articles 91 and 99).
- Law No. 73-021 of 20 July 1973 on the general property regime, land and real estate regime, and security regime as amended and supplemented by Law No. 80-008 of 18 July 1980, which guarantees consultation by any person in the registration book and the alphabetical index in the registration of land and property rights in Article 228.
- The Revised Uniform Act on General Commercial Law: Articles 34–36 state that the primary objective of the Trade and Property Credit Register is to provide information to the public on registered traders (natural and legal persons). To this end, a national file is organised, which contains the complete indications of traders registered throughout the country. The clerk who manages this file is required to reply within 48 hours of receipt of the request for information (Article 74 of the Revised Uniform Act on General Commercial Law).
- Law No. 02-07 of 11 July 2002 on the Mining Code stipulates in Article 12 that the mining register keeps records and maps of mining open to public consultation.
- Law 87-005 establishes the composition, organisation, and functioning of the Court of Auditors. Article 33 requires the court to publish an annual report on the management of public finances and property.

- Ordinance-Law No. 78-013 of 11 July 1978 on the general regime of archives, specifically in Articles 23, 26, 29, 30, and 31.
- Ordinance 89-010 of 18 January 1989 on the establishment of the National Library of the Congo, specifically Article 3.
- Law No. 11/009 of 9 July 2011 on the fundamental principles relating to the protection of the environment (Article 8).
- Law No. 14/003 of 11 February 2014 on the conservation of nature, in relation to Ordinance-Law 69-041 of 22 August 1969 on the conservation of nature (Article 5).
- Organic Law No. 16/001 of 3 May 2016 determining the organisation and functioning of the public services of the central authority, provinces, and decentralised territorial entities (Articles 20, 21, and 23).

Implementation of the legal framework

The DRC recognises and guarantees the right of access to information through a variety of laws. Although it does not have a specific law on access to information yet, it is important to note that Ordinance No. 78-013, 11 July 1978, on the general system of archives and the Organic Law No. 16/001, 3 May 2016, on the organisation and functioning of public authorities largely incorporate all the principles and procedures relating to access to information.

The government supports its action on the principles of governance and transparency:

- The DRC joined the EITI;
- There are multistakeholder frameworks in several sectors of governance where members of government, civil society, and other stakeholders come together to share information on public finances, the environment, education, health, elections, and mines; and
- Regarding the internet and information and communication technologies (ICT), there is also a multistakeholder group which brings together civil society, the Ministry of ICT, cellular operators, and researchers.

However, none of these multistakeholder groups are formal.

The participation of civil society in the governance of the country is effective, but the entrenched culture of secrecy does not allow civil society actors to fully access to information. To date, the government has not committed to the development of formal institutional measures to ensure access to information.

As stated above, the Organic Law No. 16/001 of 3 May 2016 on the organisation and functioning of the public services of the central government, the provinces, and the decentralised territorial entities attempts to provide some access to information, but so far the decentralised territorial entities do not have their own public services with local officials.

Collectif 24 conducted a study that shows that public administration is still governed by a culture of secrecy. For instance, some ministries, such as the Ministry of Budget, proactively publish budgetary information. However, others like the Institutions of the Republic have websites that are not updated.

In North Kivu, the provincial government has introduced an e-government portal¹ to ensure secure access to information and payment of taxes. But the public's internet access is limited, and the system is rarely used. Nevertheless, it shows a dedication to the public's right to know on the part of the governor of North Kivu.

Freedom of the press also faces challenges. The minister of communication and media has prohibited foreign media from operating in the DRC without going through the local media, and currently, foreign journalists cannot enter the country without the prior approval of the media minister. Some of the opposition television channels of Moise Katumbi remain closed.

Freedom of assembly is also restricted. The governors have banned public demonstrations in cities. Pro-government demonstrations are allowed, but peaceful protests organised by the political opposition or civil society are heavily repressed.

The Ministry of Justice refuses to sign the decrees granting legal status to NGOs until further notice. This decision is in violation of the Constitution and Law 004 on nonprofit organisations in the DRC.

Despite these issues, the right to access information is in demand. The government of the republic is fighting corruption and advocating for civic participation, and access to information is a prerequisite and even a requirement for these objectives. The challenge is that there is no enforcement of the legal framework for access to information; instead, the culture of secrecy sustains corruption and embezzlement of public funds. Collectif 24 (www.collectif24.org), based in Kinshasa, is fighting to enforce these laws and to bring better access to information legislation, but it lacks the financial means to ensure the training, awareness-raising, and the popularisation of this right.

¹ www.eGov.cd.

And the population and civil society continue struggling to obtain information. Those who resist normally find the public administration, such as the General Secretariat of the Government, in opposition. The requests for information made by citizens, communities, and especially civil society organisations, are generally verbal. Most of the time, the answer is based on the relationship between the applicant and the information holder. Eight people contacted by Collectif 24 feel they get information by going through their acquaintances or through bribery. Nine out of ten people were denied access to information on the grounds that they did not justify the request; eight out of ten journalists access information only by granting interviews (they have access to opinions but not to data, which makes investigative journalism difficult).

Public institutions believe that the population has the right to access information but only through the media. Yet Congolese journalists, themselves, do not have access to information.² The news of certain information is reserved for the foreign press and abroad. The foreign press print stories about the misappropriation of funds and illicit enrichment, which then is relayed by the local press.

There is no online information request system. Collectif 24 attempted to set up a site but did not receive any financial support. Collectif 24 also made three requests for information to the Secretariat of the Government of the Republic but received a negative response. On the other hand, other institutions like METTELSAT (weather forecasting authority in DRC) provided the requested information.

Despite all this, we have to underscore that without a binding law, without information officers in each public authority, and without an online system that monitors the demand for information, it is difficult to collect exact statistics of the status of applications and the outcome of information requests in the DRC.

Enabling environment

In order to advance the right of access to information in the DRC, it is important for the country to adopt the law on access to information that is currently making its way through the legislature. The law should state which ministry should have enforcement powers.

There are major reforms taking place for press freedom through the revision of the Press Freedom Act No. 96-002 of 22 June 1996.

² Extract from the pre-investigation report on access to information in DRC, Collectif 24 will publish the report published on Universal Access to Information Day, 28 September 2017.

In 2014, 18 million people were illiterate in DRC, out of a population estimated at more than 80 million.³ The low literacy rate impacts the effectiveness of access to information laws. In addition, public administration at all levels must be trained, have the necessary technology, and create public information services.

Since the law under review has not envisaged an oversight body, Collectif 24 should be recognised as an independent body that will oversee the promotion and protection of the right of access to information. To this end, it will have, in addition to the task of training and awareness raising, the mandate of producing tools and guidelines, developing an online site, supporting applicants when public institutions refuse to release information, producing reports, and proposing revisions of certain laws and codes contrary to the principles of the right of access to information.

Despite the changing political landscape, the context for the promotion the right of access to information is favourable. Most of the laws passed by the Congolese legislature now take into account the principles of access to information.

Recommendations

The government of DRC should ratify the African charter on statistics, African Charter on Democracy Elections and Governance, African Union Youth Charter and the African Charter on Values and Principles of Public Service and Administration. order to achieve SDG 16 Target 10, the Government of Democratic Republic of Congo should:

1. Urgently adopt and effectively implement an access to information legislation to ensure the fundamental right of access to information by all citizens; such law on access to information has to be consistent with international and regional standards on the right to information and the AU Model Law.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

³ <http://www.radiookapi.net/actualite/2014/09/09/la-rdc-compte-18-millions-danalphabetes>.

1. Within the bill under review take into consideration monitoring report from CSO and endow it with a special loan status from the African Union and a supervisory ministry. Create an online information request site that has the ability to track the submission of requests and the status of responses;
2. Help key ministries (finance, mining, education, health, infrastructure, energy, and internal affairs) to put in place access to information services; and
3. Recognise the right of access to information in advancing ATI implementation including awareness raising, training, and capacity building of civil servant.

Ethiopia

Recognition in the Constitution

Article 29 (2) of the Constitution of the Federal Democratic Republic of Ethiopia

RTI legal framework

Freedom of the Mass Media and Access to Information Proclamation (No. 590/2008)
Proclamation for Definition of Powers and Executive Organs of the FDR (No. 691/2010)
Broadcasting Service Proclamation (No. 533/2007)
Criminal Code (No. 414/2002)
Civil Code (No. 1/1961)

Ratification

African Charter on Human and Peoples' Rights
AU Convention on Preventing and Combating Corruption
African Union Youth Charter
African Charter on Statistics
African Charter on Democracy, Elections and Governance

Reporting compliance

Ethiopia is late by one report.

16 recommendations related to RTI from UPR in 05/2014

1 recommendation related to RTI from ACHPR in 08/2015

Legal recognition of access to information in Ethiopia

In Ethiopia, the rights of access to information for citizens have a strong legal foundation. Article 29 of the 1995 Ethiopian Constitution provides citizens of Ethiopia the right to opinions, thoughts, and free expression. Specifically, Article 29 protects freedom of expression without interference, including the freedom to seek, receive, and impart information. It also provides for freedom of the press and the mass media by ensuring the opportunity for access to information of interest to the public, and it prohibits censorship.

In July 2008, Ethiopia became the second country after Uganda in the Eastern African region to pass a framework on access to information (ATI) after the Parliament adopted the Mass Media and Access to Information Proclamation, which became the operational law on ATI in 2012. Part three of the proclamation exclusively addresses access to information and aims to provide the right to access, receive, and impart information held by public bodies, subject to justifiable limits. It also aims at establishing mechanisms and procedures for quick institutional responses to information requests, enabling people to obtain information as easily and inexpensively as possible.

The enactment of the proclamation came at a time when Ethiopia had major restrictions on ATI and the freedom of the media, and it was hoped that the adoption of the proclamation would ease these problems. However, the provisions in the law and their application resulted in the government retreating even further from the international norm on access to information and media rights.

Implementation of the legal framework

While the proclamation sought to guarantee and operationalise the public's right to information, it simultaneously infringed on media freedom, stifling the main source of information. A major concern among freedom of expression advocates, the law imposed excessive fines for minor offences, and it gave the government broad censorship powers, including the ability to ban media organisations for three years for press law violations. The proclamation also established a 29-member Press Council, comprised of representatives from the government, the press, and civil society, whose powers and procedures are determined by the government. Counter to international standards, the law also provided for broad exceptions to the right to access information.

In practice, therefore, the freedom of expression in Ethiopia over the years has deteriorated rather than improved. The system is marked by the absence of a transparent, responsible, and accountable flow of information between public authorities and citizens. This has contributed greatly to lack of good governance, out-of-control corruption, and miscarriages of justice. There still exists a fundamental problem in Ethiopia in terms of accessing accurate and timely information from government sources and proactively disseminating information of public interest.

The media play a strategic and crucial role in ensuring access to information for citizens, but the media are besieged. According to a report by Human Rights Watch released in January 2015, there has been systematic repression of independent media, limiting the rights to freedom of expression and access to information, since the 2010 elections. According to the report, at least 60 journalists have fled their country since 2010 while at least another 19 languish in prison.

Ethiopia now has the most journalists in exile of any country in the world other than Iran, according to the Committee to Protect Journalists' statistics. Using repressive laws, the authorities frequently charge and the courts invariably convict journalists for their reports and commentaries on events and issues. Journalists critical of government policies live in constant fear of harassment and arrest, and this has resulted in self-censorship in the coverage of politically sensitive issues.

Ethiopian journalists are faced with an excruciating decision between whether to self-censor or to conduct critical reporting, putting themselves and their families in danger. Increasingly, journalists' sources are also targets, and people are now more afraid of talking to the media. Private media also faces numerous regulatory challenges and regular harassment from security personnel.

Other than the repressive media laws, other laws introduced ostensibly to address security issues have had a negative impact on freedom of the media. These include the anti-terrorism law passed in 2009 and the Criminal Code. According to a statement by Article 19 during the 56th Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR, the Anti-Terrorism Proclamation had been used to prosecute 22 journalists and bloggers in the period between 2009 and 2014/5.

The government routinely shuts down the internet in Ethiopia, paralysing access to information and communication across the country. The latest shutdown, which happened in May 2017 following the arrest of two prominent activists, was the broadest shutdown to date and prevented both private and government actors from accessing information on the internet. This is the third time the government has shut down the internet since November 2015. Additionally, the government has banned and blocked many blogs and websites run by the Ethiopian diaspora. The ongoing state of emergency epitomises the shrinking civic space, and many civilians have been arrested and detained.

SDG 16 maintains that justice and good governance are at the centre of development policies and frameworks. The goal specifically includes in 16.10 a target for state parties *to ensure public access to information in accordance to international standards.*

It is apparent that Ethiopia needs to undertake crucial reforms and invest significantly in putting in place mechanisms that will ensure the implementation of Goal 16. As it stands, it is questionable whether Ethiopia will be able to overcome the prevailing circumstances and successfully implement Goal 16.

To the country's credit, it did volunteer, along with 31 other UN member states, to be part of the Voluntary National Reviews (VNR) mechanism of the Sustainable Development Goals implementation undertaken in July 2017 by the High Level Political Forum in New York. Kenya was the other country in the Eastern Africa region to volunteer.

The VNR mechanism is part of the follow up and review mechanism for the 2030 Agenda. It is intended to facilitate the sharing of experiences, including successes, challenges and lessons learned at the national level, to accelerate the implementation of the 2030 Agenda.

At the forum, Ethiopia presented a comprehensive written report¹ that documented the successes and challenges of the implementation of the Sustainable Development Goals so far and summarised its findings under four main headings: government commitment, national ownership, performance trends, and lessons and challenges in the implementation of the Sustainable Development Goals.

The report captures Ethiopia's national priorities in relation to the Sustainable Development Goals, but notably Goal 16, which pledges to ensure peace, justice, and the setting up of effective and independent institutions, features in the report only once under the priority to "*eliminate rent seeking behavior and ensuring the predominance of developmental frame of mind.*"

It is startling that a country with well-detailed challenges in terms of freedom of expression failed to elucidate those issues and did not provide a framework for how to address them.

The report, therefore, fails to appreciate the transformative value of Goal 16—in particular the instrumentality of access to information in the realisation of other rights and in ensuring the establishment of strong and independent institutions that provide effective service delivery.

The VNR report identified the most significant challenges to the implementation of the Sustainable Development Goals as the following: financial capacity limitations, a weak policy environment, leadership and political will, improper management, and intrastate agency coordination. The VNR report recognises the need for input from civil society, the private sector, donors, and the international community to overcome these challenges.

The Sustainable Development Goals have given all states the opportunity to entrench openness and the rule of law into their development frameworks and develop country-specific targets, indicators, and evaluation procedures for them. Ethiopia has a good chance under the Sustainable Development Goals to address the myriad of freedom of information and expression challenges that are present in the country. In spite of being one of the first countries to pass freedom of information legislation in the Eastern African region, it has lagged behind in implementation, and in many ways it has lost some of its gains.

¹ The 2017 Voluntary National Reviews on SDGs of Ethiopia: Government Commitments, National Ownership and Performance Trends: <https://sustainabledevelopment.un.org/content/documents/16437Ethiopia.pdf>.

Given Ethiopia's strategic position as the headquarters of the African Union, the country should also take advantage to join crucial transparency platforms like the OGP).² OGP seeks to ensure participating states make commitments to promote transparency and fight corruption and requires the implementation of access to information laws as a minimum. In order to participate in OGP, states must meet the minimum eligibility criteria in four critical areas of open government: fiscal transparency, access to information, asset disclosure, and citizen engagement. According to the OGP secretariat, Ethiopia has demonstrated that it has met the minimum eligibility criteria and can join OGP.

Recommendations

The government of Ethiopia should ratify the African Charter on Values and Principles of Public Service and Administration.

In order to achieve SDG 16 Target 10, the Government of Ethiopia should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework

Further recommendations:

1. The Ethiopian government should cease all restrictions and practices which threaten the fundamental freedom of expression.
2. The Ethiopian government should drop charges against and release detained and convicted journalists and bloggers.
3. The government should ensure amendments to repressive media and security laws that both restrict access to information and freedom of the media, particularly the Freedom of Mass Media and Access to Information Proclamation, the Criminal Code, and the Anti-Terrorism Proclamation.
4. The government should cease Internet shutdowns and enable all forms of communication and access to information over the Internet framework.

² The Open Government Partnership is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

Case Study - Impeding access to information online. The case of *Zone 9* bloggers

In April 2014, 6 bloggers, and 3 freelance journalists in Ethiopia from *Zone 9*, an independent collective of bloggers that provides commentary on current events in Ethiopia, were charged and detained under the Anti-Terrorism Proclamation of 2009 and the criminal code with terrorism and incitement for exercising their freedom of expression. They spent 80 days pre charge in detention, and remained in custody for a further 18 months, in a move that was roundly condemned internationally and by freedom of expression advocates as evidence of Ethiopia's further decline towards total disregard of the freedom of expression rights.

In July 2015, one of the journalists and 5 of the bloggers were released ahead of former President Barack Obama's visit to the country. The last of the bloggers was released in October 2015 but his freedom of movement and association remained curtailed as his passport was detained and he was not allowed to move out of the country. The arrest spread fear among bloggers and online activists and had a chilling effect on freedom of expression in the country. Eventually, charges against the bloggers were dropped on October 9th 2015.

Kenya

A report by Cecilia Mugo, Programme Officer at the International Commission of Jurist.

Recognition in the Constitution

Article 35 of the Constitution

RTI legal framework

Access to Information Act 2016

Ratification

African Charter on Human and Peoples' Rights

African Charter on Democracy, Elections and Governance

African Charter on Values and Principles of Public Service and Administration

African Union Youth Charter

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Kenya is late by one report.

Member of OGP

9 recommendations related to RTI from UPR in 01/2015

Legal recognition of access to information in Kenya

Over the past three decades, Kenya has struggled with a deep-rooted culture of secrecy and a lack of government transparency and accountability. Recently the country has made significant steps to improve access to information by enacting the Access to Information Act (ATI Act) of 2016. However, even with legislation in place, there exist other social and capacity barriers that hinder full implementation of the right to information.

The Constitution of Kenya 2010 enshrines citizens' right to information under Article 35. In addition, the constitutional framework demands high levels of transparency, accountability, and public participation in governance. Article 10 lays down principles and values of governance, which include transparency, accountability, and public participation.¹ Chapter 11 of the Constitution introduces the devolved system of governance: objectives include self-governance, public participation in governance, equitable sharing of national resources, among others.² Article 235 lays out the values

¹ Principles and values of governance are outlined under Article 10 of the Constitution of Kenya 2010.

² Article 177 of the Constitution of Kenya 2010.

and principles of public service including access to information. Parliament is also obligated to carry out its affairs in a transparent manner while including public participation.

The realisation of access to information in Kenya has been a challenge despite a constitutional right to information. A culture of opacity and a lack of consultation and citizen participation continue to linger in Kenya's public service. Secondly, Kenya has laws that impede the right of access to information such as the Official Secrets Act and the Penal Code. Thirdly, implementation of the Access to Information Act 2016 has not yet begun. These, among many challenges, hinder the realisation of access to information in Kenya.

Kenya is a party to various African Union instruments that recognise the right of access to information.³ These include: (1) the African Charter on Human and Peoples' Rights; (2) the Convention on Preventing and Combating Corruption; (3) the African Charter on Values and Principles of Public Service and Administration; and (4) the African Youth Charter. In addition, the AU has developed the Model Law on Access to Information that has served as a template for various national access to information laws, including Kenya's Access to Information Act.

The Model Law helped guide the drafting and development of the Access to Information Act of 2016 and has also advised the jurisprudence in our courts. In the *Nairobi Law Monthly vs Kengen* and two others case,⁴ the High Court dismissed the petition on the grounds that the rights extend only to natural citizens, but observed the importance of the constitutional right to freedom of information. The judge in this case observed that a requester should not have to show any particular interest or reason for their request and that information should include all information held by a public body. The burden of proof lies with the public institution; in other words, an institution must provide legitimate reasons for the withholding of information.⁵ This reasoning mirrors guidelines contained in the AU Model Law.

At the national level, the right of access to information is enshrined in the nation's Constitution. As stated in Article 35, "(1) every citizen has the right of access to: (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom; (2) every person has the right to the correction or deletion of untrue or misleading information that affects the person; and (3) the State shall publish and publicize any important information affecting the nation."⁶ In August 2016, President Uhuru Kenyatta signed into

³ Article 2(5) of the Constitution of Kenya.

⁴ *Nairobi Law Monthly Company Limited vs Kenya Electricity Generating Company & 2 others*, Petition No. 2780f 2011.

⁵ *Supra* Note 7 at Paragraph 37.

⁶ The constitutional right of access to information is also found in Article 10, Article 33, and Article 260.

law the Access to Information Act, which in essence built on the constitutional provision ensuring the right of access to information and complied with international standards of the right of access to information.

The Access to Information Act gives effect to Article 35 of the Constitution and grants all citizens the right of access to information with minimal exceptions outlined under Section 6 of the act.⁷

The ATI Act introduces a culture of openness and complies with the ACHPR in various respects. For instance, Article 62 of the African Charter on Human and Peoples' Rights requires periodic submission of reports on the measures taken to ensure the right of access to information.⁸ Under Article 26 of the Access to Information Act, "the Commission shall submit an annual report to Parliament and may, at any time, submit special reports to the Cabinet Secretary on any matter relating to any of its functions." In addition, under Section 27 of the act, public entities must submit annual reports to the commission giving a detailed account of the previous year.

Implementation of the legal framework

The Access to Information Act mandates that the Commission of Administrative Justice oversees the implementation and enforcement of the act.⁹ The commission is tasked with investigating, whether upon complaint or not, any violation of the provisions of the act. The Commission of Administrative Justice was established by the Commission of Administrative Justice Act of 2011 to investigate complaints of abuse of power, unfair treatment, manifest injustice, or unlawful, oppressive, unfair, or unresponsive official conduct within the public sector, among many other tasks.¹⁰ The commission must also investigate any conduct in state affairs that is alleged or suspected to be prejudicial or improper.¹¹

Under the ATI Act, the commission has the power to: (1) issue summons requiring the attendance of any person before the commission (and the production of any relevant documentation); (2) question any person in respect to the present subject matter; and (3) require any person to disclose information

⁷ Section 6 of the Access to Information Act provides instances where information may be exempted from public disclosure.

⁸ Article 62 of the African Charter on Human and Peoples' Rights states, "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."

⁹ Section 20.

¹⁰ 8(b.)

¹¹ 8(a.)

within such person's knowledge.¹² If the commission finds an infringement of any provision of the act, the commission may release any information withheld unlawfully, and it may levy compensatory damages.¹³ In the event that an individual is unsatisfied with an order made by the commission, that individual has 21 days to file an appeal to the High Court.¹⁴

The Access to Information Act contains a provision on proactive disclosure, requiring public entities and private bodies to proactively disclose information that they hold and to provide information on request in line with the constitutional principles.¹⁵ Section 5 of the ATI Act details the requirements of proactive disclosure, which requires the publishing of all relevant facts while formulating important policies or before initiating any project, and the particulars of any signed contracts. Additionally, these entities must disseminate the information, taking into consideration cost, access to individuals with disabilities, and local language, as well as mediums of communication.

During this research information request forms were submitted to various ministries and government bodies to test their level of responsiveness to information seekers. The information requests were sent to the Ministry of Information, the Ministry of Health, the Commission of Administrative Justice, and the County of Government of Nakuru. The information requests were submitted electronically. The Commission of Administrative Justice was responsive after one day. However, there was no response from the other bodies, and their websites had not been fully updated.

This clearly shows the practical challenges to requesting information, despite the robust legal framework in place.

In order to fully recognise the potential of the ATI Act in Kenya, measures must be taken to prohibit the silencing of media personnel and to ensure nationwide access to any information disclosed by order of the act.

Enabling environment

The passage of the Access to Information Act in Kenya should ensure greater transparency and accountability, which massively underpins good governance. Access to information is a vital ingredient for reducing poverty and achieving the Sustainable Development Goals. Over the years,

¹² 23(1.)

¹³ 23(2.)

¹⁴ 23(3.)

¹⁵ Section 3 of the ATI Act.

one of the key obstacles to good governance has been the lopsidedness in information between public officials and the public, which the ATI Act can rectify.

Indicators of the impact access to information laws can have are found in the statistical analysis of access to education, literacy rates, freedom of expression and freedom of press laws, and access to the internet and other mediums of communication. Furthermore, the public and private entities required to disclose information can better disseminate such information by understanding the statistical analysis provided by agencies like UNICEF. As of 2012, according to UNICEF, the youth literacy rate among males and females was 83.2 percent and 81.6 percent, respectively.¹⁶ Other important statistics include the amount of internet users (32.1 per 100 people), the percentage of urbanised population (24.4 percent), and the use of mass media by adolescents (for males it is 91.3 percent and for females it is 80.5 percent).

A major hurdle for the full recognition of Kenya's Access to Information Act is the treatment of journalists and other media personnel and sources. According to Reports Sans Frontières' (RSF) World Press Freedom Index, Kenya is ranked 95 out of 180 countries.¹⁷ RSF's reasoning for Kenya's low ranking includes the threats and attacks on independent journalists by both the public and authorities as the nation prepared for its general elections in August 2017. RSF cites the Security Laws Amendment Act of 2014 and a September 2016 proposed law on internet security and protection as additional reasons for Kenya's low ranking on the free press index.

The Security Laws Amendment Act of 2014 curtails media freedom and the right to information under the guise of protecting national security and is a good example of increased government interference on human rights and freedoms. This law was passed with provisions, among them the criminalisation of a person who publishes "insulting, threatening or inciting material or images of dead or injured persons which are likely to cause fear and alarm to the general public or disturb public peace"¹⁸ and "any information which undermines investigations or security operations."¹⁹ Lastly, Section 12(3) of the act limits the constitutional protection of freedom of expression and media by criminalising the publication of material likely to "cause public alarm, incitement to violence or disturb public peace."²⁰ These rights may be limited, but such limitations must be justified in law. Unfortunately, the government of Kenya adopted this law without justifying the limitation on human rights. This led to litigation by the Coalition for Reforms and Democracy (CORD), challenging the constitutionality of the

¹⁶ https://www.unicef.org/infobycountry/kenya_statistics.html#117.

¹⁷ <https://rsf.org/en/kenya>.

¹⁸ Section 12(1) of the Security Laws Amendment Act.

¹⁹ Section 12(2).)

²⁰ Section 12(3).)

security laws, and the court ruled eight of the clauses unconstitutional.²¹ Among the clauses challenged was the above-mentioned Section 12. The five judges presiding over the trial explained in their ruling that the eight clauses violated fundamental human rights without adding value to the fight against terrorism. The attorney general then filed an appeal to reinstate the eight clauses, but the Court of Appeals declined reinstatement and affirmed the lower court's decision that these provisions were an abuse to human rights and the principles of the Constitution of Kenya 2010.²²

Though Kenya still faces challenges in the realm of protecting the media and freedom of expression, the ruling by the High Court and the Court of Appeals, placing fundamental human rights above other interests, is a victory for citizens. It is essential that human rights organisations continue fighting government measures to suppress the free press, free expression, and access to free information.

The role of the judiciary in the RTI discourse cannot be ignored. Article 20 (4) of the Constitution of Kenya 2010 provides that courts and other adjustment authorities shall, in interpreting the provisions of the bill of rights, "promote the spirit and objects of the bill of rights and promote the values that underlie an open and democratic society, humanity, equality, equity and freedom."

In the case of *Famy Care Limited vs. Public Procurement Administrative Review Board & Another*, the court noted that "the right of access to information is one of the rights that underpin the values of good governance, integrity, transparency and accountability and other values as set out in the Constitution. It is based on the understanding that without access to information the achievement of higher values of democracy, rule of law, social justice set out in the preamble to the Constitution and Article 10 cannot be achieved unless the citizen has access to information."²³

Furthermore, the role of civil society cannot be underestimated, as this legislative milestone was brought about by years of advocacy by civil society groups. To monitor the implementation of the ATI Act, civil society groups will often be the principal actor on the "demand" side of the information equation, raising public awareness, and emphasising the importance of exercising the right to information. In addition to this, it is important for civil society to constantly hold the government accountable for prohibiting the free flow of information.

²¹ [http://kenyalaw.org/caselaw/cases/view/104799/.](http://kenyalaw.org/caselaw/cases/view/104799/)

²²

http://www.judiciary.go.ke/portal/assets/filemanager_uploads/Court%20Decisions/CIVIL%20APPLICATION%20NO.%20NAI%202%20OF%202015%20.pdf.

²³ <https://www.article19.org/data/files/medialibrary/38388/Kenya-RTI-for-web.pdf>.

Implementation of the ATI Act is complex, and one of the major challenges is to adjust the mindset of public officials within the bureaucracy. Civil society organisations must remain determined to challenge a culture of secrecy and establish a transparent regime in Kenya. Civil society, citizens, media, and the private sector must create a demand side for public information; otherwise, the law will fail to meet the public policy objectives of transparency.

In an Openness Survey conducted by ICJ Kenya in 2015, one of the key findings was government ministries and their respective agencies are not interconnected, making it difficult for the public to access related information in one place. From the survey, few ministries' websites were linked to subsidiary state agencies operating under them.²⁴

Additionally, on average, the ministries use television, radio, or print media (68.9 percent) to disseminate information to the public, despite the fact that only four percent of those who seek information access it through these avenues. This is followed by ministry websites (66.7 percent) and decentralisation (66.7 percent) even though only 9.2 percent of all information seekers looked for information in ministry websites.²⁵ This reality creates an opportunity for advocacy as various government ministries need to build capacity for RTI and transparency on their websites, as well as other modes of publishing information for public use.

Recommendations

The government of Kenya should ratify the African charter on statistics, AU Convention on Preventing and Combating Corruption.

In order to achieve SDG 16 Target 10, the Government of Kenya should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

²⁴ The ICJ Kenya Openness Survey, www.icj-kenya.org.

²⁵ Ibid.

1. Conduct campaigns to promote a culture of openness and transparency alongside the law. This will involve training public officials on their obligations on the supply side and most importantly creating trust between them and information seekers.
2. Public education and awareness needs to be continuously conducted so as to reduce apathy and ensure that citizens make use of the access and transparency guarantees to seek information to enable them to fully participate in governance, hold their leaders to account, and take advantage of government services and opportunities.
3. For an effective access to information regime, effective record management is imperative. It is important for Kenya to review and improve its record-keeping systems to ensure information is readily accessible
4. With the law in place, awareness-raising activities are needed to create a sufficient demand side. This will involve development of simplified versions of the act and information request tools for the citizens.

Martha Kerubo Moracha vs. University of Nairobi, Petition No. 459 of 2016

The petitioner was a former student of the University of Nairobi's respondent School of Economics. Seconomics he was pursuing her bachelor's degree in economics and statisticsa. However, theThe petitioner was expelled from the respondent's institution during her final semester of school on contested facts. But the university was the custodian of all of the information about the hearing, letters of suspension, expulsion, and expulsion upon appeal, and refused to release any of the aforesaid documents to the petitioner despite her diligent effortswhich . This event was inis violation of Article 35(1) (b) of the Constitution of Kenya and Sectionssection 4, 5, 8, and 9 of the Access to Information Act (No. 31 of 2016). The petitioner requested the documents formally in writing through a letter dated 30 August30thAugust 2016, and more than 21 days later the respondent had not yet replied to her request which, the court found, was a violation of her right to information.

The court held that "...in refusing or neglecting to give the information sought by the petitioner by way of suspension and expulsion letters and letter or ruling rejecting her appeal, despite intimation that the letters which it may have dispatched were not received by the respondent, and consequently a request with offer to pay photocopy charges, that copies of the documents be handed over to the petitioner or to her counsel's office, is an unreasonable denial of the request for information and, in my view, amounts to a violation of the petitioner'spetitioner right to information which is entrenched in Article 35 (1) of the Constitution and given effect through the Access to Information Act, 2016."

Rwanda

A report by Dr. Joseph Nkurunziza and Gatari Teddy, Never Again Rwanda.

Recognition in the Constitution

Article 38 of the Constitution of Rwanda (2003)

RTI legal framework

Law No. 04/2013 of 08/02/2013 relating to access to information

Ratification

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

African Charter on Democracy, Elections and Governance

AU Convention on Preventing and Combating Corruption

African Union Youth Charter

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Rwanda has submitted all their reports.

14 recommendations related to RTI from UPR in 11/2015

Legal recognition of access to information in Rwanda

Rwanda has ratified essential international instruments on the access to information and freedom of expression, such as the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the United Nations Convention against Corruption. Rwanda has also ratified the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

Regarding regional instruments, the country is a state party of the African Union Youth Charter, the African Charter on Democracy, Elections and Governance, the East African Community Treaty, and the African Union Convention on Preventing and Combating Corruption.

The Access to Information Law was adopted in March 2013. The law reflects international norms and standards, passing after recommendations from the Universal Periodic Review process and also following the guidelines of the African Model Law on Access to Information. The law in its entirety is very strong, but there's a need for government ministries and state institutions to implement it in a timely manner.

Rwanda has promptly reported to the ACHPR, and has adopted its recommendations, except for the ratification of certain treaties such as the African Union Convention on Cyber Security and Personal Data Protection.

The right to information is assured by the Constitution and the ATI Law, which also ensures transparency in the conduct of public affairs and public participation in governance. Regarding enforcement, public institutions have to designate a focal point where information is proactively disclosed or given on request. Limitations are in place if the information request runs counter to the public interest.¹

The ATI Law, itself, does not extensively detail how the right to access information will be imposed upon the state; those elements were left to ministerial orders, which are analysed below.

Article 2 of Ministerial Order No. 007/07.01/13 of 27 December 2013 determines the time limit institutions have to respond to requests for information, whether with the actual information or with an explanation for delay.² The ministerial order provides for a maximum period of three days from the date of receipt of the application. According to the order, where the request concerns the life or liberty of a person or for journalistic purposes, information shall be provided within 24 hours to two days, respectively. In some circumstances, there may be an extension of the period within which access to information is granted. The failure to provide information within the statutory period is treated as a muted refusal, but in Rwanda this period is not specified within the ministerial order, an issue that needs improvement.³

Article 9 of the ATI Law sets out the way the information can be requested: orally, in writing, and through other channels, including the internet. The only criticism is that there is no uniform format. A format that is the same for all ministries would help make the process easier.

Costs have an impact on the enjoyment of the right to information, and information should ideally be provided by public bodies at nonprohibitive costs. The costs associated with access to information have not been specified in the Rwandan law. The only mention of fees is in Article 2 of Ministerial Order No 008/07.13 of 19 December 2013,⁴ which says that “information shall be provided free of

¹ Law No 04/2013 of 20 August 2013 relating to access to information.

² https://ombudsman.gov.rw/IMG/pdf/amateka_access_to_info.pdf.

³ https://cipesa.org/?wpfb_dl=245.

⁴ https://ombudsman.gov.rw/IMG/pdf/amateka_access_to_info.pdf.

charge. A requester of information may bring the necessary equipment to retrieve the required information or may be charged for making copies or for sending information.”⁵

An information request may either be fully granted, partially granted, or rejected. When an applicant is not satisfied with the decision of the information officer, the applicant should be able to appeal the decision or raise a complaint; however, Rwandan law does not provide a mechanism for a requester to appeal. Requesters find themselves with no means to redress the situation, and no other method is made available to hold government accountable.

Additionally, Article 17 of the ATI Law says that Office of the Ombudsman shall monitor the implementation of the law, but the law does not detail the powers and the duties of the office. Moreover, international standards suggest that governments set up a special office solely for monitoring compliance with the law and enforcing its implementation.

Finally, the law does not set up a monitoring system where all government institutions have to disclose on a yearly basis the number of requests received, how many were granted, and how many were rejected. This would ensure accountability and also show the impact of the law.

On the positive side, the Rwanda ATI Law says that requestors do not have to justify seeking information. The right of access to information is guaranteed as long as it does not hinder public order; good morals; the right of every citizen to honour, a good reputation, privacy, and family life; and the protection of youth and minors.

Implementation of the legal framework

Never Again Rwanda submitted a request for information inquiring about the percentage of school dropouts in the District of Nyabihu in the Western Province. The request was sent to the Ministry of Education on 7 July 2017 through the information request email available on the website. The ministry did not acknowledge receipt of the information request and did not respond to the request. If the institution does not reply within three days, that is considered a refusal to provide the requested information.

On 31 July 2017, another request was sent to the Ministry of Health asking for the number of women who gave birth and were on “mutuelle de santé” in the Kabaya Hospital, also in the Western Province.

⁵ Ministerial Order No 008/07.13 of 19 December 2013, determining the procedure of charges of fees related to access to information.

There was no response to the request. Lastly, an attempt was made to send a request to the District of Gasabo in the City of Kigali, but the online system to send information requests was not functioning. This experience shows that although an access to information law has been in place for the last four years, it is not effectively implemented or enforced.

However, some institutions do proactively disclose policies, laws, statistics, procurement plans, and relevant documents.

Recommendations

The government of Rwanda should ratify the African Charter on Value and Principles of Public Service and Administration.

In order to achieve SDG 16 Target 10, the Government of Rwanda should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. Make the government Gazette more available and invest in communication infrastructures in order to strengthen ATI.
 2. There should be an independent body that oversees that all requests are replied to in a timely manner and that institutions provide an annual report on information requests.
 3. Details for information officers at each institution should be provided, so they are known and can be contacted directly. This is mandated in the ministerial order.
 4. Conduct awareness raising activities on the ATI law by the general public
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Somalia

Report by Abdi Adan Guled, vice president of the Supreme Council of the National Union of Somali Journalists (NUSOJ).

Recognition in the Constitution

Article 32 of the Provisional Constitution of the Federal Republic of Somalia

Ratification

African Charter on Human and Peoples' Rights

Reporting compliance

Somalia has not submitted any reports.

Legal recognition of access to information in Somalia

Constitutions by nature regulate the political, social, and economic interests of citizens and state institutions. As a result of a long and contested process, Somalia's leading national and regional politicians agreed on an incomplete, provisional Constitution in 2012. However, the country's post-transitional government failed to complete the constitution-making process. In late 2016, new legislators were selected and inaugurated.

Some significant features of the provisional Constitution of Somalia are an inclusion of a bill of rights that declares everyone to be equal, regardless of clan or religion. The provisional Constitution enshrines progressive provisions that guarantee fundamental human rights, and Article 18 of the provisional Constitution specifically protects the fundamental right to freedom of expression, including freedom of speech, opinion, and the press. It says:

- (1) Every person has the right to have and express their opinions and to receive and impart their opinion, information and ideas in any way.
- (2) Freedom of expression includes freedom of speech, and freedom of the media, including all forms of electronic and web-based media.
- (3) Every person has the right to freely express their artistic creativity, knowledge, and information gathered through research.

The recognition of the right of access to information is an important principle of democracy. Somalia's provisional Constitution provides for the enjoyment of this right. Openness and accessibility to information about government activities is a vital component of the development of democracy in

Somalia and a positive aspect of good governance. Article 32 of the provisional Constitution clearly specifies the right to freedom of information. It says:

- (1) Every person has the right of access to information held by the state.
- (2) Every person has the right of access to any information that is held by another person which is required for the exercise or protection of any other just right.
- (3) Federal Parliament shall enact a law to ensure the right of access to information.

Accessing accurate information helps Somali citizens make informed decisions on issues that affect them. The right of access to information also helps make the federal government and federal member states more accountable and transparent. Access to information gives meaning to freedom of expression because people express themselves more competently when they are accurately informed. The right of access to information also covers media freedom and allows journalists to provide correct information and produce accurate reports.

The 2012 government was supposed to enact an access to information law, but its four-year term has ended without the passage of an access to information law. Furthermore, the majority of Somali citizens are neither aware of nor were informed of the country's constitutional guarantees of access to information. Many in the political elite, including the ninth Parliament and other opinion makers, have not had the chance to weigh in and push for the adoption of access to information.

The Somali people's right to access information is vital in two major ways. First, in order for the people to exercise their full rights as citizens, they must have access to information, advice, and analysis that will enable them to know what their personal rights are and allow them to pursue those rights effectively. Second, they must have access to the broadest possible range of information, interpretation, and debate on areas that involve public political choices, and they must be able to use the media in order to register criticism and propose alternative courses of action.

Implementation of the legal framework

The federal government, at the highest level, has committed itself over several years to a process of transformation and democratisation and has also voluntarily entered into treaty agreements with international organisations and other states that require the government to respect human rights, including freedom of expression and information.

The federal government failed to enact a law for access to information as stipulated in Article 32 of the provisional Constitution of Somalia. Instead, it enacted a repressive media law in January 2016, which further curtailed the right to freedom of expression.

Several journalists who have had access to sensitive information that exposed maladministration and abuse of power by government leaders were arrested and prosecuted under Somalia's old Penal Code of 1962. The 1962 Penal Code, which is the de facto criminal law of Somalia, limits access to information. The law criminalises defamation, false news, and critical reports of government leaders. The provisions in this law impose criminal penalties for freedom of expression and are of particular concern to journalists because of their broader chilling effect on free speech.

While the Penal Code is ostensibly directed at protecting highly sensitive political and military material, as well as the reputation of leaders, the classification scheme is exceptionally broad, allowing for almost any information to be excluded from public view, and it facilitates a culture of government secrecy and lack of accountability by repressing the media's role as a public watchdog. This law prohibits the disclosure of any information that might damage the interests of the country and has provisions preventing persons from obtaining or disclosing official secrets.

It is unsustainable to couple severe criminal sanctions with strict liability offences that have broad and undefined applications. These provisions require further consideration and redrafting to reflect their proposed purpose.

Somalia needs to enact access to information legislation that is based on the principle that public bodies, be they federal or regional, have an obligation to disclose information and that every member of the public has a corresponding right to receive information. But public officials believe that they are not obligated to publish key information that it is in the public interest.

Enabling environment

The legal conditions under which news media operate are crucial factors to the sector's success. A liberal and empowering legal regime can enable the growth of media and allow journalists to fulfil their function as watchdogs without fear of legal sanction, thus helping to make the government more accountable. But in Somalia several journalists have been arrested, and a number of media groups were closed down for exercising their right to freedom of information.

The federal government of Somalia has enacted several laws which fall short of international standards, such as the previously mentioned media law, an anti-terrorism law, and a

telecommunications law. In addition, the criminal justice system still uses Somalia's old, draconian Penal Code, which can be used to punish anyone to who exercises the right to freedom of expression and access to information.

The government regularly demonises and vilifies independent and outspoken civil society organisations, and security forces harass them for exercising their right to access government-held information and for expressing their views independently.

Recommendations

1. The government of Somalia must honour its constitutional and international obligation to provide its people of the right to access information. The government should put in place legal provisions that guarantee the enjoyment of the right of access to information.
2. Somalia should retain progressive provisions that guarantee freedom of expression and access to information in the current constitutional review process.
3. Somalis should lobby their members of Parliament in both the upper and lower houses to repeal and/or amend the Penal Code, which impinges on the right of access to information.
4. The government of Somalia must make the new media law adhere to international standards of freedom of expression and guarantee the safety of journalists.
5. The Somali government must guarantee space for civil society, particularly free civil society, and should desist in attacking and stigmatising critical journalists, independent media organisations, and outspoken civic groups.

South Sudan

Recognition in the Constitution

The Transitional Constitution of South Sudan of 2011, Article 24 (1)

RTI legal framework

Right of Access to Information Act, 2013

Investment Promotion Act, 2009.

Ratification

African Charter on Human and Peoples' Rights

African Charter on Democracy, Election and Governance

Reporting compliance

South Sudan has not submitted any reports.

6 recommendations from UPR in 11/2016.

Legal recognition of access to information in South Sudan

Of the six instruments of the African Union that recognise the right of access to information, South Sudan has only ratified the African Charter on Human and People's Rights and the African Charter on Democracy, Election and Governance. The government has signed the African Charter on Values and Principles of Public Service and Administration. It has yet to sign and ratify the African Charter on Statistics, the African Peer Review Mechanism, and the African Union Convention on Cyber Security and Personal Data Protection. South Sudan is also having issues in other areas. It scored 11.5 out of 100 in the Mo Ibrahim Foundation's 2015 Ibrahim Index of African Governance.⁶ Though the country has announced its intention to join the EITI,⁷ organisations such as Global Watch have advised South Sudan, rich in oil and minerals, not to rush but to put its house in order before joining EITI.⁸

The Transitional Constitution of the Republic of South Sudan, 2011, offers provisions to access information. Specifically, Article 24.1 provides every citizen "the right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to public order, safety or morals as prescribed by law."

⁶ Mo Ibrahim Foundation: http://s.mo.ibrahim.foundation/u/2017/03/08200324/South-Sudan-Insights-2016-IIAG.pdf?_ga=2.136137521.1000985163.1502787915-550028364.1501914015.

⁷ President of South Sudan commits to global transparency standard: <https://eiti.org/news/president-of-south-sudan-commits-to-global-transparency-standard>.

⁸ Global Watch: <https://www.globalwitness.org/archive/eiti-south-sudan-case-caution/>.

Stakeholders began lobbying for media laws, including the right to access information, before the end of Sudan's civil war in 2005. After years of advocacy, the bills were finally introduced to Parliament in 2012 and passed in 2013. The Right to Access to Information Act (ATI Act), 2013, signed by President Salva Kiir in September 2014, offers legal recognition to South Sudan in areas of ATI.⁹ Using the guiding principles outlined in the Transitional Constitution, Article 24 (1), (2), and (3), the ATI Act established the Access to Information Commission, an autonomous commission to monitor and promote ATI.¹⁰ The chair and deputy of this commission are permanent employees of the government. However, the two do not have many resources, have yet to hire additional staff, and are in need of more funding to function smoothly.

The ATI Act conforms to international agreements and standards. However, South Sudan, which achieved its independence in 2011, has yet to comply with the ACHRP reporting obligations, and the ACHRP website has made no entry on South Sudan's reporting obligation.¹¹

South Sudan's Parliament moved with relative speed to pass the country's three media bills—relating to broadcasting, media authority, and access to information—in 2013, and the country became the 11th country in Africa to pass a complete set of media bills.¹² This is a significant move, given the country's short period of existence as a nation. The chairperson of the Parliamentary Committee of Information, Ms. Joy Kwaje Elujah, who presented the bills in Parliament, described the adoption of the documents as “another step to democracy.” Since then, in every major pronouncement, the government has been emphasising its commitment to the freedom of expression as well as to ATI.

Implementation of the legal framework

The current actors and players in South Sudan's government developed their attitudes on governing during the 1983–2005 liberation war that culminated into South Sudan's independence in July 2011. This was an environment where advocating an alternative view or requesting a piece of information from superiors was regarded as treason, punishable, at times, by death. Even before the Sudan People's Liberation Movement (SPLA) launched its bush war in 1983, the current crop of leaders,

⁹ South Sudan signs media bills into law amid press freedom concerns: <https://www.mediasupport.org/south-sudan-signs-media-bills-into-law-amid-press-freedom-concerns/>.

¹⁰ The Transitional Constitution of South Sudan, 2011: https://www.constituteproject.org/constitution/South_Sudan_2011.pdf.

¹¹ African Commission on Human and Peoples' Rights: <http://www.achpr.org/states/>.

¹² Journalists Applaud Passing of Media Bills: <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/11971/categoryId/1/Journalists-Aplaud-Passing-Of-Media-Bills.aspx>.

who are now in charge of South Sudan, grew up under a totalitarian state, devoid of freedom of expression.

The culture of proactive disclosure is virtually nonexistent in South Sudan. Only a former minister of petroleum Stephen Dhieu Dau used to periodically issue brief reports or media advisories as part of accountability and transparency on oil production and its sale in the international market. Since he was moved to the Ministry of Finance and Planning in 2016, this practice has slowed down in the Ministry of Petroleum. Dau has, however, continued to issue media advisories in the Ministry of Finance and Planning ahead of any news conferences or when he's on an official visit outside the country.

The country's Anti-Corruption Commission (ACC), an autonomous and impartial commission set up in 2006, attempted to make senior government officials, including top army officers, disclose their assets, income, and bank accounts, and these efforts raised hopes that these details would become public. However, the ACC's annual exercise of collecting disclosure forms, which began in 2009, ended in 2012. Up to the time of publishing this report, the Anti-Corruption Commission had not delivered any form to senior government officials. Unconfirmed reports attribute a lack of political will and allegations of threats against ACC officials as the main factors that have slowed down the activities of the ACC in a country where the corruption perception index is 11 out of 100. Furthermore, ACC does not have a functioning official website, making it difficult for the public to access the information it collects.

It remains to be seen whether a website—launched by the Ministry of Trade in Juba on 13 July 2017 to promote trade—will promote access to information. The official government website, administered by the Ministry of Information, Technology, and Postal Services, has not functioned since 2012 due to maintenance problems. The ministry maintains a Facebook account where it occasionally posts the activities of the minister. To make matters more difficult, internet connectivity is not widespread in South Sudan, a country with an internet penetration rate of 17.1 percent for a population of 12.5 million.¹³ This puts the onus on the youth, who make up the majority of literate people in the country, to put pressure on the authorities to expand the access and use of technology in the country. The condition of technological resources, including the five government websites used in this assessment, vary from up-to-date to outdated websites.

¹³ Internet penetration: Penetration
<http://www.internetlivestats.com/internet-users/south-sudan/>.

Public authorities are still bogged down with structural issues, such as capacity building and hiring the right personnel to run government agencies, instead of promoting access to information. With a skeletal budget, only enough to cover salary, government agencies, such as the Access to Information Commission and the Media Authority, are grappling with the challenges of fundraising for their activities, but donors have stopped funding most projects, except humanitarian aid initiatives. Unless peace is restored, the probability of advocacy groups such as the Access to Information Commission receiving donor assistance is remote.¹⁴

The Access to Information Commission has begun performing its duty to oversee and promote ATI. Civil rights groups and media institutions, such as the Association of the Media Development in South Sudan (AMDISS) and the Union of Journalists of South Sudan (UJOSS), are also acting as pressure groups to guarantee the right to ATI. More importantly, young people, who enjoy a literacy rate of 44.4 percent, are unlikely to give up their right to use the internet and to access information.

Despite attempts to promote ATI, the country's public institutions lack a mechanism to implement the act and cannot yet build capacity to guarantee ATI. Court rulings, if any, to demand access to information are largely ignored by the powerful, including the intelligence services and the military. Most public institutions lack political will and resources for basic tools, such as website design and maintenance and the internet, to function in the 21st century. The fact that the government is taking its time to ratify international instruments such as the African Charter on Values and Principles of Public Service and Administration and the African Union Convention on Cyber Security and Personal Data Protection suggests that the delay will impact local laws and affect access to information by denying citizens the rights and opportunities enjoyed by citizens in other countries.

The government's priorities include restoring peace through an internal process called national dialogue and providing relief assistance to an estimated 5.5 million people (roughly 50 percent of South Sudan's population) who are in need.

Submitting information requests to government institutions is a daunting task in South Sudan. In June 2017, Researchers submitted two requests to the Ministry of Transport and the Juba Town Council respectively. The outcome of the exercise shows that effective access to information from government institutions is still a challenge. The two exercises—one a written request filed to the Ministry of Transport and the other an oral request over the telephone to the Juba Town Council for information

¹⁴ No Foreign Aid, No Peace in South Sudan: <http://foreignpolicy.com/2015/12/11/no-foreign-aid-no-peace-in-south-sudan/>.

on contracts—amounted to a muted refusal by the officials in the two public institutions. Neither authority responded, no fees were charged, and no reasons were given for the lack of response.

Enabling environment

A fully fledged democratic environment is required to promote ATI in any country. But South Sudan only scored 7 out of 100 in the Freedom House's political rights category in the UN Statistics regional classification, which does not bode well for the promotion of access to information. The enabling conditions are further constrained by shrinking civil liberties and civil society activities. South Sudan attained only 6 out of 100 points in civil liberties and civil society activities. As previously mentioned, the Corruption Perception Index is 11 out of 100, and the internet penetration rate is 17.1 percent. But there are glimmers of hope. For one thing, the literacy rate among people aged 15–24 years is at 44 percent and the 2017 World Press Freedom index gave South Sudan 48.16 points.

The media in South Sudan should play a watchdog role, informing, educating, and entertaining the public. But the media sector is weak, highly regulated, and tightly controlled, and the post-independence media practitioners in South Sudan require capacity building. In order to ensure the survival of a publication or a radio or television station, journalists have resorted to self-censorship, a practice that is undermining the promotion of ATI.

Most media in South Sudan have no website to provide online services. Only the major media groups have websites. Those groups include the Catholic Radio Network, which enjoys a string of nine radio stations around the country; the US-funded Eye Radio; the UN-funded Radio Miraya; and the *Juba Monitor*, a newspaper.

Journalists have also realised that hosting a website outside the country can still lead to government prosecution. On 20 July 2017, the Association for Media Development in South Sudan (AMDISS) accused state agencies and authorities of blocking the Paris-based *Sudan Tribune* online and the Netherlands-based *Tamazuj* online. The association said in a press release that the blockade denied South Sudanese and other nationals residing in the country access to information, which, it said, amounts to denial of basic human rights, including freedom of expression and press freedom, guaranteed and enshrined in the Transitional National Constitution of South Sudan. AMDISS called upon the authorities to rescind their decision.

Government restrictions on a free press extend to out-of-country journalists as well. In 2017, the Media Authority issued a statement saying that it had refused entry to 20 journalists between January and May 2017 for publishing inaccurate reports on the country in the past.

Corruption is a major problem in South Sudan. In June 2012, President Salva Kiir wrote to 75 current and former officials to return \$4 billion in unaccounted for (or, simply put, stolen) public money to the government coffers.¹⁵ None have responded to the appeal. And the names of the 75 officials have not been published, thus denying the people of South Sudan crucial information: the identities of the people who stole their money.

In its 2016 report, Transparency International rated South Sudan 175/176 with a score of 11/100 on its table league in Africa, a perception that was vigorously challenged by the government. Transparency International said although “there is little data and research on governance and corruption” in South Sudan, the vice “permeates all sectors of the economy and all officials take advantage of inadequate budget monitoring to divert public funds apparatus.”¹⁶

South Sudan has yet to create a vibrant civil society. The country’s civil society organisations, which ranked nearly 0.5 points on civil society classification and 6 out of 100 on Freedom House’s civil liberties category, either support the government or play it cool to avoid government persecution. Like media groups, civil society is weak and largely dependent on foreign donors. For any civil society gathering or meeting, the group must obtain a written approval from the National Security Service.

Recommendations

The government of South Sudan should ratify the African charter on statistics, the African Charter on Democracy Elections and Governance, the AU Convention on Preventing and Combating Corruption, the African Union Youth Charter and the African Charter on Value and Principles of Public Service and Administration.

In order to achieve SDG 16 Target 10, the Government of South Sudan should:

- Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
- Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.

¹⁵ South Sudan president accuses officials of stealing \$4 billion4bn of public money:

<https://www.theguardian.com/world/2012/jun/05/south-sudan-president-accuses-officials-stealing>.

¹⁶ Transparency International: <https://www.transparency.org/country/SSD>; and

Overview of Corruption and Anti-corruption in South Sudan:

https://www.transparency.org/whatwedo/answer/overview_of_corruption_and_anti_corruption_in_south_sudan.

- Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1.

1. Restore the ATI Commission's independence. Currently, the commission enjoys the status of a semi-autonomous body, with its commissioners hired by the government. The commission should be accountable to Parliament instead of to the executive branch.
2. Provide more resources to the Access to Information Commission to promote ATI. Currently, only the commission's chair and deputy have been hired. More staff would improve service delivery in the country.
3. Publish and distribute documents related to access to information widely to enable the public to understand the materials. Translate the materials into the country's 64 local languages to allow those who do not speak English or Arabic access to information from both public and private sources.
4. Lobby and hold regular meetings of stakeholders—involving key actors such as the ATI Commission, human rights groups, media watchdogs, and the intelligence services—to sensitise and build consensus around the promotion of ATI.
5. Target school children through consistent awareness campaigns, as well as through presenting key elements of the ATI Act into the school curriculum to prepare the next generation of children to cherish the ideals represented in the ATI Act.
6. The promotion of ATI to donor funding. Any donor assistance to institutions dealing with ATI, directly or indirectly, should be made to uphold the principles of ATI. Failing to do so should result in the immediate termination of donor funding.

Case Study

One morning in January 2017, journalist Laku James (not his real name), visited a clinic set up by King Mohamed VI of Morocco in South Sudan's capital, Juba, to interview medical doctors and patients about the service the hospital was providing to the sick in the city. It proved to be a memorable error. James was immediately apprehended by the dreaded national security service and subjected to an interrogation session interrogations before he was released in the evening. He was warned not to talk about his ordeal. James had just been doing his job as a journalist, to inform the public about the clinic's service.

James's James' ordeal is regarded as minor compared to what some of his colleagues have experienced; some South Sudanese journalists have lost their lives as a result of their work. The terrifying environment journalists work in is another major impediment to reflects accessing information in South Sudan. The security apparatus accusesaccuse journalists and researchers of damaging the image of the country through their writings.

The Union of Journalists of South Sudan (UJOSS) recorded 23 cases of harassment, arrest, detention, and torture between January and July 2017 alone. And the Committee to Protect Journalists (CPJ) ranks South Sudan the second deadliestdeadly for journalists in Africa, after Somalia. The latest to lose his life was a local radio journalist who was murdered by government soldiers when they raided the Terrain Hotel in Juba in July 2016.

2017 violations Violations against journalists in South Sudan compiled by the Union of Journalists of South Sudan: <https://cpj.org/reports/2016/10/impunity-index-getting-away-with-murder-killed-justice.php>.

Uganda

Recognition in the Constitution

Article 41 of the Constitution 1995

RTI legal framework

Access to Information Act, 2005

Access to Information Regulations 2011 No. 17

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

AU Convention on Preventing and Combating Corruption

African Union Youth Charter

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Uganda is late by one report.

3 recommendations related to RTI from UPR in 11/2016

2 recommendations related to RTI from ACHPR in 11/2015

Legal recognition of access to information in Uganda

Access to public information is a strong tool against corruption, enabling good governance and development and enhancing the implementation of fundamental human rights. In Uganda, the 2016 presidential elections were tainted with violations against freedom of expression and human rights, including internet shutdowns and the arbitrary arrest and detention of journalists and opposition leaders. A repressive law, the Nongovernmental Organisation Act (NGO Act), which was signed by President Museveni in 2016, also threatens civic space. The NGO Act limits the operations of thousands of NGOs operating in Uganda due to vague provisions that favour abuse or threaten the independence of civil society organisations (CSOs). Recent developments show that leaders have the political will to restrain freedom of expression and digital rights in the country.

Legal recognition

Article 41 of the Constitution guarantees citizens the right to access information held by the state or by any other organ or agency of the state except when the disclosure of information would harm the security or sovereignty of the state or interfere with an individual's right to privacy. Uganda also adopted the Access to Information Act (ATIA) in 2005 and the Access to Information Regulations

2011 No. 17. The ATIA promotes the right to information, details the type of information that can be released, and establishes the procedures for making a request.

Additionally, Uganda has ratified the Universal Declaration of Human Rights,¹ the International Covenant on Civil and Political Rights,² the African Charter on Human and Peoples' Rights,³ the AU Convention on Preventing and Combating Corruption,⁴ the African Union Youth Charter,⁵ the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on HPR,⁶ the African Charter on Statistics, the AU Convention on Preventing and Combating Corruption, and the African Charter on Values and Principles of Public Service and Administration. However, Uganda is not a country member of OGP or the EITI, which are both initiatives that provide international standards on government transparency.

Even though Uganda was one of the first African countries to adopt ATI legislation, there are still huge gaps in the quality of the law when compared to the AU Model Law on Access to Information.⁷ The right of access to information is limited to citizens. Only information from public entities is available for access. Information from private entities with a public function or that receive public funding cannot be accessed. The law does not set clear rules on access fees. Exceptions are not subject to harm tests, and in case of refusal, the law does not state that when the exceptions no longer apply the information must be released. In addition, the ATIA does not provide for an independent appeal mechanism, leaving citizens with only the option of the Chief Magistrate's Court. Ordinary people cannot easily access the courts due to prohibitive costs, delays, bureaucratic procedures, etc. Moreover, there are not any clear guidelines on internal appeals, and in practice appeals have been sent to the Chief Magistrate's Court. Parliament oversees the functions of the oversight body, and members are not appointed in a manner that is protected from political interference and arbitrary dismissal. There is not an external appellate body that manages appeals. In regard to promotional measures, the law does not require an information officer within governmental departments, and neither public awareness-raising efforts nor training programmes for officials are mandatory by law.

¹ <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>.

² https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en.

³ <http://www.achpr.org/instruments/achpr/ratification/>.

⁴ https://www.au.int/web/sites/default/files/treaties/7786-sl-african-union-convention-on-preventing-and-combating-corruption_9.pdf.

⁵ https://www.au.int/web/en/treaties?field_treaty_ratifiedby_tid%5B%5D=63.

⁶ Ibid.

⁷ <https://www.cartercenter.org/resources/pdfs/peace/ati/uganda-iat-country-report.pdf>, p P. 13.

Regarding compliance with ACHPR reporting obligations, Uganda is late by one report.⁸ In 2013, Uganda made its last report to ACHPR and stated that the government needs to develop a different form of implementation for access to information. However, ACHPR identified the “Failure of the State to fully implement the Access to Information Act (2006) by not proactively disclosing information, and instituting measures for responding to all information requests to public bodies” and the “wide scope of exemptions under the Access to Information Act (2006), and the absence in practice, of an accessible, simple and transparent complaints and appeals mechanism under the Act.”⁹

Implementation of the legal framework

The government has shown its commitment to improve communication with its citizens in the Government of Uganda Communication Strategy of 2011. The government has also published access to information guidelines, which give clear and uniform guidance, and government agencies have to appoint a public communications officer.¹⁰ These commitments have enhanced the implementation of the ATIA in Uganda.¹¹ Furthermore, civil society (Africa Freedom of Information Centre and CIPESA) and the government have collaborated on an access to information project; they have developed the website www.askyourgov.ug, which allows the public to make requests for information.¹²

Proactive disclosure, which is recommended in Articles 7, 8, and 9 of the ATIA, has been analysed for five different governmental agencies/ministries.¹³ The analysis shows that proactive publication has not been completely successful because the ministries mainly publish information that is not sensitive.¹⁴

The ATIA does not provide for an independent oversight mechanism, which strongly undermines implementation and enforcement of the law. According to Article 43 of the ATIA, an annual report on the status of implementation of the ATIA has to be submitted to the Parliament. The report should include the number of requests granted, the number refused, and the amount of time taken to respond. Since the implementation of the ATIA, there has never been a report, and the Parliament

⁸ [http://www.achpr.org/states/.](http://www.achpr.org/states/)

⁹ http://www.achpr.org/files/sessions/57th/conc-obs/5-2010-2012/concluding_observations_5th_state_report_uganda.pdf, p P.11.

¹⁰ <https://www.cartercenter.org/resources/pdfs/peace/ati/uganda-iat-country-report.pdf>, p P. 13.

¹¹ Ibid.

¹² <http://askyourgov.ug/>.

¹³ Ministry of ICT and National Guidance, the Ministry of Education, the Ministry of Health, Parliament, and the Public Procurement Disposal of Public Assets Authority (PPDA).)

¹⁴ <https://www.cartercenter.org/resources/pdfs/peace/ati/uganda-iat-country-report.pdf>, p P. 27.

has not requested compliance. Information on how to make an information request and data on how many requests have been granted have not been published online contrary to Article 7 of the ATIA.

To implement access to information, the government has to establish a nodal agency¹⁵ and an independent RTI oversight mechanism, such as an information commission. A recent reorganisation of the government has shifted this responsibility from the Office of the Prime Minister to the Ministry of ICT, which could significantly undermine the implementation of ATIA. The Office of the Prime Minister is a coordination centre for government programmes and has a high profile, which could have positively impacted implementation.

Information officers have been appointed. However, there are major issues. For one thing the public is not aware of who the information officers are, and they have not been formally appointed to this function and are not appraised in terms of ATIA obligations. Another issue for the ministries is that the law still designates the chief executive officer (CEO) as the information officer. The CEO and the accounting officer constitute the permanent secretary position, but the information officer, who is also the CEO, has to obtain the approval of the permanent secretary in order to release sensitive information.¹⁶

Uganda has established an implementation plan for the ATIA that should enhance accountability and transparency.¹⁷ However, there are major concerns. First, the implementation plan was made in 2008 and was only valid for five years. It has not been renewed.¹⁸ Second, Information officers have not been trained on the ATIA, as the only training session, conducted in 2011, was really a public-awareness event. Finally, the chief administrative officers (CAOs) at the district level do not have an in-depth understanding of the ATIA, making them less helpful to information officers.

Uganda's Constitution and the ATIA promote the right to information, which is a great step forward.¹⁹ The legal framework does have challenges, however, which have been discussed above. And there are still major issues regarding implementation.

On the part of the government:

¹⁵ A nodal agency is a central authority within of government that is responsible for coordinating, capacity building, and RTI standard setting for other agencies in the country.

¹⁶ <https://www.cartercenter.org/resources/pdfs/peace/ati/uganda-iat-country-report.pdf>, p. 26.

¹⁷ Information and National Guidance Office of the Prime Minister, "Access to Information Programme (ATIP)", August 2008.

¹⁸ Ibid.

¹⁹ <http://www.africafoicentre.org/index.php/reports-publications/216-ati-baseline-study-final-report/file>, p P. 21.

- Official communication, such as information requests, need to pass through a ministry's central registry, slowing down the process.²⁰
- Records management is not efficient.²¹
- The government does not seem to take online or electronic requests seriously, and the ATIA only address “hard copy” requests.
- Agencies have not established specific budgets for ATI activities or mechanisms for monitoring their implementation.²²
- Most ministries do not practice proactive disclosure adequately.²³
- There are no detailed guidelines on how to implement the law’s provisions. For example, there are no clear guidelines and procedures on how a citizen can make an information request and how institutions should respond to information requests.
- The culture of secrecy needs to be overturned. The government's agencies and departments are still reluctant to fully provide information to the public.²⁴ The scope of exemptions is too wide, and there is an absence of accessible, simple, and transparent complaint mechanisms.
- The law is not always followed. For example, some officials ask for a letter explaining the reasons for access even though the law does not require requestors to provide justification. And sometimes civil servants try to intimidate requestors who ask for information on sensitive subjects.²⁵

On the part of the citizens:

- Citizens are not aware of the true value of information and need to be better informed about the fact that the right to information provides power.²⁶ Moreover, they do not know how to use their right to access to information.²⁷
- There are several challenges to the promotion of access to information to the public. For one thing, about a quarter of the public is illiterate (26.19 percent of the population above 15 years old).²⁸ There is little radio coverage for remote areas of the country, and most of the information is in English when many Ugandans do not speak or read this language.

²⁰ <https://www.cartercenter.org/resources/pdfs/peace/ati/uganda-iat-country-report.pdf>, p. P.26.

²¹ Ibid. p. P.28.

²² <https://www.cartercenter.org/resources/pdfs/peace/ati/uganda-iat-country-report.pdf>, p . 29.

²³ Ibid., pP. 29.

²⁴ <https://www.cartercenter.org/resources/pdfs/peace/ati/uganda-iat-country-report.pdf>, p P. 13.

²⁵ <https://www.cartercenter.org/resources/pdfs/peace/ati/uganda-iat-country-report.pdf>, p P. 27.

²⁶ Ibid.

²⁷ <http://www.africafoicentre.org/index.php/reports-publications/216-ati-baseline-study-final-report/file>, p P. 29.

²⁸ <http://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=UG>.

The lack of implementation of the ATIA has made it difficult to access information from public institutions. For this study, eight information requests were made to the Ministry of ICT and National Guidance, the CAO Serere District Local Government, the CAO-Gulu District Local Government, and the Ministry of Education and Sports. The information requests were on records, reports on mandatory disclosure, ATIA implementation plans, and payroll. The requests were hand delivered. Out of the eight requests, researchers received only one response. For the other seven information requests, the entities did not reply or gave an explicit refusal. Only the CAO Serere District Local Government replied, but only after the 21-day deadline and several follow-up inquiries.

Enabling environment

There are challenges to transparency in Uganda: bureaucracy, intimidation by public officers, the weak legal and regulatory framework on corruption, and a lack of political will for accountability and transparency.²⁹ Uganda has scored 35 (with 0 being the worst and 100 the best) on the Freedom in the World 2017 index and was classified as a “not free” country.³⁰

According to the baseline survey done by AFIC in June 2016, the major challenges experienced by the population for access to information are illiteracy,³¹ difficulty accessing information from public offices, distances from the organisations to the district headquarters, delays in releasing information because officials fear reprisals, denials of information on the basis that personnel are not official spokespersons, lower staff seeking permission from superiors before releasing the information, and the absence of officers from their offices.³²

On the World Press Freedom Index, Uganda scored 35.94 and is classified at 112 out of 180 countries on the ranking. Nearly every day, government entities threaten and perform acts of violence against journalists. During 2016 due to the presidential election, there was an increase in violations against media freedom with threats to ban media outlets, several internet shutdowns, and violence against journalists.³³

²⁹ <http://www.africafoicentre.org/index.php/resources/reports-publications/173-state-of-rti-in-africa-report-2015/file>, p. P.58.

³⁰ <https://freedomhouse.org/report/freedom-world/freedom-world-2017>.

³¹ The literacy rates are 66.78 percent for adult females (age 15 and above) and 86.99 percent for youth female (ages 15–24).

³² <http://www.africafoicentre.org/index.php/resources/reports-publications/216-ati-baseline-study-final-report/file>, p. P.45.

³³ <https://rsf.org/en/uganda>.

Even though Uganda has made steps to promote RTI and combat corruption, in practice there is a lack of political will to ensure the right to information for citizens and to end political corruption.³⁴ The Corruption Perception Index in Uganda is 25 out of 100 (100 being a very low level of perceived corruption).³⁵ Corruption has also led to different challenges, such as reduced economic growth, lower investment, reduced financial aid, reduced efficiency in public programmes and projects, reduced functioning of public offices, a currency crisis, and an increase in threats to democratic rights (bribery of voters and voter intimidation).³⁶

According to the Enabling Environment Index, which analyses the conditions within which CSOs are working, Uganda scores a 0.42, while the global average is 0.55.³⁷ The relationship between the government and CSOs and the media has deteriorated compared to past regimes. The government is threatening CSOs and media because the government sees them as opponents and often interferes with their activities.³⁸

Recommendations

The government of Uganda should ratify the African charter on statistics, African Charter on Democracy Elections and Governance and the African Charter on Value and Principles of Public Service and Administration. In order to achieve SDG 16 Target 10, the Government of Uganda should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. Amendment of the Access to Information Act 2005 should be expedited and should include:
 - a. The right to access information from private entities that have public functions;
 - b. A revision of exemptions in line with the Constitution;

³⁴ <http://www.africafoicentre.org/index.php/resources/reports-publications/173-state-of-rti-in-africa-report-2015/file>, p. P.60.

³⁵ file:///C:/Users/Admin/Downloads/2016_CPIReport_EN.pdf.

³⁶ <http://www.africafoicentre.org/index.php/resources/reports-publications/173-state-of-rti-in-africa-report-2015/file>, p. P.59.

³⁷ http://www.civicus.org/eei/downloads/Civicus_EEI%20REPORT%202013_WEB_FINAL.pdf, p. P.25.

³⁸ <http://www.africafoicentre.org/index.php/resources/reports-publications/173-state-of-rti-in-africa-report-2015/file>, p P. 58.

- c. A revision of the appeals process;
 - d. The right of noncitizens to access information;
 - e. A specific definition of “national security” so that it cannot be misused as a reason to not disclose information;
 - f. A regulation requiring the ministries to file annual reports to Parliament on requests for information;
 - g. The establishment of independent, impartial judges or oversight bodies in order to limit the infringements of rights; and
 - h. An amendment to the ATIA based on AFIC recommendations.
1. The government should revise legislation affecting CSOs to allow CSOs and NGOs to operate in a free and open environment.
 2. The government should increase public awareness to inform citizens of their rights and the process to access information.
 3. The Ministry of ICT and National Guidance should request that the government allocates a budget for training officials and for implementation of the ATIA. AFIC training manuals for public officials, CSOs, and journalists could be used to aid training.
 4. Record should be kept in a digital format to improve access to information.

Case Study¹

There was a training on access to information on 13 and 14 October 2015 in Kabale, and the objective of the session was to promote a better understanding of ATI mechanisms and utility among citizens in Uganda. After the training,, a citizen filed an information request to the National Water and Sewage Corporation (NWSC) on 25 November 2015. The citizen sought information regarding the inconsistent water supply in Kabale Municipality.

The branch managerBranch Manager of the NWSC was out of thenot in office for two weeks.. The requester went back two weeks later, and the manager gave himgiven the information he had requested. The information showed that the water shortage was caused by a variety of factors. For one, a faulty generator used for pumping water was broken and the power supply from Umeme was inconsistent. Furthermore, road construction in the district had resulted in broken pipes, meaning that the water was flowing out into the ground and pipesnot reaching clients. The requester passed this information NWSC to one of the journalists of Voice of Kigezi FM. The issue was discussed on ain radio programme, informing the publicinformed of what actually caused the water shortage in the municipality. As a result of media engagement, the management of NWSC and UMEME held a meeting about the issue, and they decided that water should be pumped when power is in supply in order to have an adequate supply of water during times of power shortages. And theshedding. NWSC has fixed the damaged pipes through regular repairs, hence the improved water supply in the municipality.

In this case, ATI allowed citizens and civil society to identify the reasons for a problemdefection in public-service deliveries. TIthey can then alertcould theto responsible institutionsinstances and/or amplify the matter in the media.debate. The media have a major role to play and should helpto citizens hold accountable their government accountable regarding public-service deliveries. The media amplificationmediatisation of a public issue can trigger and accelerate the process towards resolution, as illustrated in this case.

Malawi

Recognition in the Constitution

Section 37 of the Constitution of Malawi

RTI legal framework

The Access to Information Law of 2016

Declaration of Assets, Business Interests and Liability Act

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

African Charter on Democracy, Elections and Governance

AU Convention on Preventing and Combating Corruption

African Union Youth Charter

African Charter on Statistics

Reporting compliance

Malawi is late by two reports.

Member of OGP

Member of EITI

1 recommendation related to RTI from UPR in 05/2015

1 recommendation related to RTI from ACHPR in 11/2015

Legal recognition of access to information in Malawi

During the past decade in Malawi, there hasn't been a legal provision as contentious as the Access to Information Law. Prior to 1994, Malawi was largely a closed society. The country was under one-party leadership that had a strong aversion to open governance, including providing access to information for its citizens. However, Malawi's return to multiparty democracy in 1993, heralded by the formulation of a new, democratic Constitution in 1994, began the process of opening up civil and political space. All of Chapter IV (also known as the Bill of Rights) of the Constitution of Malawi expressly provides citizens with various human rights.

ATI is built into the country's legal framework, including the Constitution of Malawi. Section 37 of the Constitution reads, "...Every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise

of his rights.”¹ It is also important to underscore that the ATI Law in Malawi, to a reasonable extent, reflects the African Union’s Model Law of Access to Information. This was after the executive branch attempted to weaken the ATI Bill but was thwarted by opposition parliamentarians who demanded comprehensive ATI legislation. Moreover, adoption of the ATI Law in 2016 is in line with Malawi’s commitment to provisions in international human rights instruments, such as Article 9 of the African Charter on People and Human Rights (ACPHR), Article 19 of the International Covenant on Civil and Political Rights (ICCPR), and Article 19 of the Universal Declaration of Human Rights (UDHR).

The passing of the ATI Law had additional hurdles. Around 2003, the Media Institute for Southern Africa (MISA)-Malawi Chapter led the fight to pass ATI legislation.² The Malawi government, however, resisted calls to formulate ATI legislation because of a lack of supportive ATI policies. Thus, MISA-Malawi initiated the formation and adoption of the ATI Policy in 2014. The adoption of the ATI Policy solidified civil society’s push for the enactment of a law specific to ATI, and in February 2017 after much debate and political wrangling, the president signed the bill into law.

The ATI Law is a tool to help establish a culture of transparency and accountability in the country through a well-informed and active citizenry. Moreover, the ATI Law is expected to inform the Malawi government’s reports to the African Commission on People and Human Rights (ACPHR) and the UN Human Rights Council. Malawi started complying with ACPHR reporting obligations in 2015, and the government has since established the Human Rights Section in the Ministry of Justice and Constitutional Affairs to coordinate reporting tasks.³

Implementation of the legal framework

Implementation of the ATI Law is slow going. Since the president signed the bill into law, there hasn’t been any meaningful action by the Malawi Human Rights Commission (MHRC), a key player in the implementation of the law. Earlier in the year, the MHRC released a statement on the roadmap for implementation. According to the statement, the MHRC will first conduct several tripartite meetings with relevant government ministries, namely the Ministry of Information and Civic Education and the Ministry of Justice and Constitutional Affairs.⁴ The overall objective of such meetings is to agree on

¹ Section 37 of the 1994 Constitution of the Republic of Malawi.

² <http://misa.org/media-centre/press-releases/statement-misa-malawi-applauds-government-for-adopting-ati-policy>.

³ <https://www.nyasatimes.com/malawi-justice-ministry-launches-human-rights-section/>.

⁴ “We need a clear road map,” Justin Dzonzi, MHRC chairperson, <https://malawi24.com/2017/03/21/mhrc-reveals-roadmap-ati-implementation/>.

the working modalities among the three institutions. Currently, the MHRC has not finalised the meetings with the ministries.

The commission has set up a multi-sectorial committee on the ATI Law with clear terms of reference and has developed a comprehensive implementation strategy to address areas such as public sensitisation, resource mobilisation, and stakeholder engagement. Based on the outcomes of the first set of initiatives, the commission will develop and implement an awareness strategy on the act and identify rules that information holders and seekers ought to put in place. MHRC is also expected to develop public information manuals for information holders to use, including request forms for applying for and providing information, and the commission needs to determine the best ways for members of the general public to access such information. The commission will then design a strategy for obtaining regular reports from information holders that show how often those institutions provide or refuse to give information, and the commission will develop a strategy to monitor and track progress on the act's implementation, as well as establishing effective mechanisms for dealing with reviews under the act.

It remains to be seen if the working modalities between the three institutions will tilt towards a robust implementation of the ATI Law in the country. Because of government attempts to dilute the power of the ATI Law, there is a general public fear that the two ministries—the Ministry of Justice and Constitutional Affairs and the Ministry of Information and Civic Education—could obstruct the law's implementation.

The ATI Law has a number of strengths. In the first place, Section 18(2) of the law states that fees shall be limited to reasonable, standard charges for document duplication, translation, or transcription, where necessary.⁵ Also, the law will be implemented by an independent institution, the MHRC, which will help guarantee citizens' right to information. Additionally, the ATI Law provides protection for whistle-blowers, which will help to instil a culture of transparency and accountability in government institutions. Furthermore, the ATI Law provides protection for private information,⁶ and there is room for proactive disclosure under Section 17, which demands that every public authority appoint one or more officers to deal with matters of providing institutional information to the public.

⁵ Access to Information in Malawi: The Journey to Date and a Quick Survey of the ATI Bill of 2016: <http://www.southernaficalitigationcentre.org/1/wp-content/uploads/2017/01/GOAL-16-Book-Mambulasa>.

⁶ Access to information bill passed in Malawi, MISA Malawi hails Parliament for passing the Bill.; https://www.ifex.org/malawi/2016/12/16/bill_passed.

Despite those strengths, implementation of the ATI Law will likely have some challenges. For starters, despite the constitutional provision for access to information, Malawi has a wide range of statutory provisions that prohibit disclosure of some types of public information to members of the public. The uncertainty created by the continued existence of restrictive legislation sometimes makes it hard for public officials to know exactly how much to disclose. If one law tells them to release information but another tells them they will be prosecuted for any unauthorised disclosures, officials will most likely err on the side of caution and continue to withhold information. Such statutes include the Banking Act (1989), Capital Market Development (1990), the Competition and Fair Trading Act (1998), the Corrupt Practices Act (1995), the Criminal Procedure and Evidence Code (1967), the Defence Force Act (2004), the Employment Act (2000), the Malawi Revenue Authority Act (2000), the Malawi Bureau of Standards Act (1972), the Mental Treatment Act (1948), the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act (2006), the National Assembly (Powers and Privileges) Act (1957), the Official Secrets Act (1913), the Political Parties (Registration and Regulation) Act (1993), the Preservation of Public Security Act (1960), the Presidential and Parliamentary Elections Act (1993), the Protected Places and Areas Act (1960), the Public Audit Act (2003), the Reserve Bank of Malawi Act (1989), the Science and Technology Act (2003), the Treaties and Conventions Publication Act (1984), and the Veterinary and Para-Veterinary Practitioners Act (2001).⁷

Worse still, the ATI Law does not dovetail well with the entrenched culture of secrecy within the Malawi government. The days of one-party rule still cast a shadow over the government with regards to proactive disclosure of relevant information. For instance, at the height of financial crisis—leading to an acute drug shortage in public hospitals in 2015—the Malawi government issued a circular to district health officers that instructed them not to speak with the media about the status of the public hospitals in the country. The Malawi government then placed a gag order on all controlling officers. To make matters worse, the government, through the Ministry of Justice and Constitutional Affairs, embarked on an exercise in 2016 that would result in all public officials taking an oath of secrecy.⁸

These developments have made it hard to access information from public institutions. For instance, in the months of May and June this year, Centre for Human Rights and Rehabilitation (CHRR) made information requests to five different public institutions. CHRR requested information on budgetary allocations for school improvement grants, budget allocations for drugs, environmental impact assessments, and lists of public officers. CHRR submitted the requests electronically. Out of these institutions, only two—the Salima District Council and the Ministry of Environment, Energy and

⁷ Tilitonse Fund, *The Political Economy of Access to Public Information in Malawi*, May 2013.

⁸ SpokespersonSpokesprson in the Ministry of Justice and Constitutional Affairs could not respond to a questionnaire: <http://mwnation.com/govt-gags-civil-servants-over-information/>.

Mining—responded with the information. The coordinator of the Green Belt Initiative under the Ministry of Agriculture simply acknowledged receipt of request but has yet to provide the information. The rest did not respond. These findings confirm fears that Malawian citizens will continue to face challenges in accessing information even when the ATI Law becomes fully operational.

Enabling environment

In order for ATI legislation to be effective, a country needs strong democratic institutions supported by a free press, an enlightened and active citizenry, and a vibrant civil society. Malawi still faces challenges in this regard. Its civil society is polarised and under resourced. There are high illiteracy rates, fluctuating media freedom, and an entrenched culture of secrecy in government. Currently, the CIVICUS' Enabling Environment Index, which ranks the governance, sociocultural, and socioeconomic environments for civil society, puts Malawi at 0.46 points⁹ (the global average is 0.55). The literacy rate among females age 15 and older is 59 percent, and¹⁰ in 2016 Freedom House gave the country a score of 45 out of 100 for press freedom. The internet penetration rate is at 6.5 percent,¹¹ and the country scored a 31 on the Corruption Perception Index. Malawi ranks 120 out of 176 countries on Transparency International's 2017 Corruption Perception Index.¹²

The grim statistics highlighted above echo the 2013 Research Report by Tilitonse Fund, a Malawian grant-making facility. According to the report, which was titled *Political Economy of Access to Public Information in Malawi*, insufficient and unsustainable political will, political marginalisation, politicisation of private institutions, weak parliamentary systems, and low public awareness on access to information are some of the potential barriers to effective implementation of the ATI Law in Malawi.¹³ On low levels of public awareness, for instance, the reports notes that this barrier could obstruct the ability of people to demand access to information, let alone seek to enforce it. The low level of public awareness is compounded by low awareness of the nature and type of information that is held by the state and its organs, notes the report. This is attributable to a combination of factors including low literacy and formal education levels among Malawians, a culture of secrecy within the bureaucracy, and physical and social marginalisation of the majority of Malawians.

⁹ Civil society enabling conditions: <http://www.civicus.org/eei/>.

¹⁰ <http://data.worldbank.org/indicator/SE.ADT.LITR.FE.ZS>.

¹¹ <http://www.internetlivestats.com/internet-users-by-country/2015/>.

¹² http://www.transparency.org/news/feature/corruption_perceptions_index_2016.

¹³ Tilitonse Fund, *The Political Economy of Access to Public Information in Malawi*, May 2013.

On political marginalisation, the Malawi government has always tended to perceive citizens associated with opposition political parties with suspicion, resulting into its resistance to granting them information. The situation is no different with the private media and civil society. A case in point is the commemoration of Malawi's 53rd anniversary of its independence on 6 July 2017 when the Malawi government blatantly refused to disclose the budget for the commemoration to the media, civil society, and opposition political parties.¹⁴ It is interesting and important to note that this happened five months after the enactment of the ATI Law.

Compounding the situation is the polarisation of the civil society in Malawi. A united, vibrant, well-informed, and well-resourced civil society in Malawi is critical to effective implementation of the ATI Law. However, in recent times civil society has split along political lines, leaving few to fight for public interest issues. The current administration is resorting to a divide-and-conquer tactic in order to weaken and isolate civil society. The government has done this by appointing vocal human rights defenders to government positions. Moreover, the government has been influencing the elections of leaders in civil society networks and platforms with the hope of gaining allies.¹⁵

Recommendations:

The government of Malawi should ratify the African Charter on Value and Principles of Public Service and Administration.

In order to achieve SDG 16 Target 10, the Government of Malawi should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. Bring other legislation in line with the ATI Law

The country needs to harmonise all the information-related laws with the spirit of the ATI Law. Laws such as the Official Secrecy Act and the Promissory Oaths Act, which potentially could cripple

¹⁴ Yankho Msukwa, "Malawi: 'Modest Budget' for Malawi 53 Years of Independence, Says Mwanamvekha—Regional Celebrations to Precede Main Event," *Nyasa Times*. <http://allafrica.com/stories/201707040634.html>.

¹⁵ Malawi makes good reforms on civic space but new NGO policy sidelines human rights CSOs;; <http://www.civicus.org/index.php/media-resources/news/interviews/2796-malawi-makes-good-reforms-on-civic-space-but-new-ngo-policy-sidelines-human-rights-csos>.

implementation of the ATI Law, need to be revised and aligned with the ATI Law. This would create a more conducive legal environment, easing the path for citizens to get information from the government. The government should comply with its reporting obligations before the ACHPR, including the measures adopted to implement the legal framework on the right to information.

2. Strengthen national oversight structures

The MHRC, the Malawi government, and the donor community should strengthen the knowledge and coordination capacity of the institutions mandated to oversee the ATI Law's implementation. Specifically, the Media and Communication Committee and the Legal Affairs Committee in the Parliament and the yet-to-be appointed ATI Commission require capacity-building initiatives. That could result in enhanced coordination and oversight of implementation.

3. Strengthen CSO and media capacity in the ATI Law

The need for the MHRC and willing donor partners to strengthen the capacity of CSOs and the media for proper implementation cannot be overemphasised. Currently, there are evident capacity gaps in nongovernmental stakeholders, despite playing key democratic roles in providing oversight and conducting advocacy on governance and human rights issues in the country. Building up their capacity will help CSOs and the media provide more information to the public while also keeping the government accountable.

4. Enhance public awareness on the ATI Law

The Malawi Human Rights Commission, government, CSOs, and the media need to join efforts in conducting robust public-awareness events on the ATI Law and its significance in sustaining and strengthening democracy. Such a campaign could lead to a more vibrant and active citizenry which could demand access to information and use it to hold government accountable.

5. Improve and expand technological access for citizens

Government needs to improve and expand access to technology for its citizens, especially in the rural areas. Doing so would enable citizens to easily demand and access key information from government agencies, thereby supporting their rights.

Case Study: Access to information flushes out ghost workers in safety net program

In April 2017, Centre for Human Rights and Rehabilitation (CHRR) received a complaint from concerned citizens about the public works program (PWP) called in the Salima District. The program provided a social safety net for citizens, and citizens complained that the Salima District Council was not forthcoming on the exact number of the project beneficiaries, a development that made them suspect corruption. CHRR wrote the Salima District commissioner about Commissioner on the issue and requested information regarding the exact number of the project beneficiaries in the district. One day after the request was made, the district council District Council furnished CHRR with the information, including the complete whole list of project beneficiaries. CHRR together with its grassroots partners structures compared the data to the number of the people working under the PWP in selected areas of the district. The research checks unearthed massive irregularities in the project, including the creation of ghost workers by the council and community authorities. CHRR compiled a report and recommendations on the findings. The district council moved swiftly to remove the all ghost workers from the list and. also suspended all those involved in the malpractice project.

Mauritius

A report by Christina Chan-Meetoo, Senior Lecturer in Media and Communication, Head of Mediacom Studio, Faculty of Social Sciences and Humanities, University of Mauritius

No Constitutional recognition of ATI

No ATI Law

Ratification

African Charter on Human and Peoples' Rights

African Charter on Values and Principles of Public Service and Administration

African Union Youth Charter

African Charter on Statistics

African Charter on Democracy, Elections and Governance

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Mauritius has submitted all the reports.

2 recommendations related to RTI from UPR in 10/2013

Legal recognition of access to information in Mauritius

Despite the absence of access to information legislation in Mauritius, the country has been faring well in terms of rights, including freedom of expression and of the press. It has been categorised as generally free by Freedom House and has performed well in the Reporters Without Borders Press Freedom Index despite a decline in scores. Over the past two decades, different governing coalitions frequently have criticised and have sometimes verbally threatened the private media, but the government has not engaged in direct repression, such as arrests or other outrageous abuses, against the local media. In spite of the absence of freedom of information (FOI) and access to information (ATI) laws, the state does release a wealth of data, albeit not always complete, user friendly or well organised. The public believes that there is a high level of corruption, especially regarding the awarding of big government contracts. FOI legislation would help strengthen transparency and ensure that the maintenance of rights and freedoms does not merely rely on the goodwill of the governing parties. It would also allow the local media to provide more in-depth investigative reporting as opposed to its current surface-level reporting of news.

There is, as yet, no legislation pertaining to ATI in Mauritius. However, Section 12 of the Constitution¹ specifically guarantees freedom of expression, which it defines as the freedom to impart ideas and information, but it does not go any further in defining this freedom and in fact, refers to a long list of constraints such as national security, public safety, morality, and health, as well as the protection of reputation, privacy, court proceedings, confidential information, and regulation of public communication channels. It also clearly refers to the imposition of restrictions on public officers. Indeed, civil servants of Mauritius are governed by the Official Secrets Act² and the Human Resource Management manual³ (prepared by the Ministry of Civil Service and Administrative Reforms), and these laws clearly prohibit the dissemination of information related to government matters without authorisation from supervisory levels.

Section 12 states the following:

Protection of freedom of expression

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(c) for the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

All winning political parties and coalitions have regularly referred to freedom of information as a goal in their electoral manifestos prior to being elected. The earliest documented instance is that of the 2005 *Alliance Sociale*, comprising the Labour Party (Parti Travailleiste – PTr), the Parti Mauricien Xavier Duval (PMXD), the Mouvement Républicain (MR), Les Verts Fraternelles, and the Mouvement

1 <http://mauritiusassembly.govmu.org/English/constitution/Pages/constitution2016.pdf>.

2 <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/O/OFFICIAL%20SECRETS%20ACT.pdf>.

3 http://civilservice.govmu.org/English/Documents/HRM%20Directory/HRMM_08042011.pdf.

Militant Socialiste Mauricien (MMSM). This winning coalition, with the Labour Party as the leading partner, specifically referred to freedom of information in its political manifesto.⁴ This was subsequently transcribed in the official government programme 2005–2010,⁵ which was then read by the president in Parliament. He said, “My government will provide citizens with a right of access to personal information held by state agencies and to information relating to government business by enacting a Freedom of Information Act.”

Following this pledge, an international NGO called the Commonwealth Human Rights Initiative⁶ wrote an official letter to Prime Minister N. Ramgoolam to propose its assistance in drafting the FOI legislation in August 2005.

In February 2006, the NGO wrote to the minister of information technology, Etienne Sinatambou, to reiterate its proposal.⁷ However, no legislation was introduced. In fact, new elections took place in 2010, and the winning coalition called *l’Alliance de l’Avenir* was comprised again of the Labour Party with the PMXD restyled as Parti Mauricien Social Démocrate (PMSD) and a new partner, the Mouvement Socialiste Militant (MSM). The manifesto for this winning coalition did not refer at all to the previous pledge for freedom of information.⁸

Over the years an antagonistic relationship has developed between political actors (ruling parties and opposition alike) and the country’s press. Political parties are used to having undisputed hierarchies within their own ranks (party leaders have never been replaced except by their own progeny, despite claims of having democratic elections within the party structures). Freedom of information legislation is thus a very difficult step for political parties to take because such legislation could result in constant scrutiny and questioning by the mass media and by ordinary citizens.

Due to government unhappiness with press coverage from the private media, Prof. Geoffrey Robertson was specially appointed as a consultant to review the media sector and to consolidate all media laws and regulations through the introduction of the Media Commission.

4 <https://www.lexpress.mu/article/lalliance-sociale-%C3%A0-la-crois%C3%A9e-des-chemins>.

5 <http://mauritiusassembly.govmu.org/English/Pages/Address%20by%20the%20President/Government-Programme-2005.aspx>.

6

http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/mauritius/mauritius_pm_letter_23aug2005.pdf

7

http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/mauritius/letter_to_info_min_offering_assistance_for_foi_bill_feb06.pdf

8 <https://web.archive.org/web/20100601212558/http://www.bleublancrouge.mu/files/Programme.pdf>

However, in April 2013 Robertson went beyond the mandate and made three main recommendations in his preliminary report “Media Law and Ethics in Mauritius,”⁹ suggesting:

- The review of all laws related to the media (sedition, defamation, contempt of court, etc.),
- The introduction of a code of ethics for the media and a media commission to regulate the media, and
- The introduction of freedom of information legislation.

To date, the final report has not been published.

At the last general elections organised at the end of 2014, the *Alliance Lepep*, comprising the MSM as leading partner in coalition with the PMSD and a new party called Mouvement Libérateur (ML), won. Surprisingly, the pledge for a Freedom of Information Act resurfaced in this coalition’s manifesto:¹⁰

“Un ‘Freedom of Information Act’ sera introduit pour garantir la transparence et permettre la libre circulation des informations.” [A Freedom of Information Act will be introduced to guarantee transparency and allow the free circulation of information.]¹¹

This was again transcribed in the official government programme of 2015–2019¹² and read by the president in Parliament. He said, *“The Constitution of Mauritius guarantees fundamental rights and freedom of a citizen of the country, such as: freedom of expression and speech, political opinion, assembly, and association. Government is determined to protect these rights and widen the contours of our democracy.”* And *“A Freedom of Information Act will be brought forward to promote transparency and accountability in public administration and more particularly in contract allocations.”*

Implementation of the legal framework

All governing parties have pledged to introduce such legislation, but none have made much visible progress. Under the present government, there is some movement forward; the Cabinet announced work on FOI legislation on 22 January 2016:¹³

“1. Cabinet has taken note that the Freedom of Information Bill, as announced in the Government Programme 2015-2019, is being prepared. The main objective of the Bill will be to promote transparency and accountability in public administration.”

9 <http://gis.govmu.org/English/Documents/Media%20Law%20-%20Preliminary%20Report.pdf>

10 <http://www.msmparty.com/manifeste-electoral/>.

11 Writer’s translation.

12 <http://mauritiusassembly.govmu.org/English/Documents/Add%20president/govprog2015.pdf>.

13

<http://pmo.govmu.org/English/Documents/Cabinet%20Decisions%202016/Cabinet%20Decisions%20%2022%20January%202016.pdf>.

The commitment has been reiterated within the last ACHPR Mauritius country report for 2009–2015 submitted in March 2016. The section on implementation of recommendations from previous periodic reports comprises the following item:

“20.0 To finalise the drafting of the Freedom of Information legislation and pass it into law. In the Government Programme 2015-2019, it is stated that a Freedom of Information Act will be enacted to promote transparency and accountability in public administration in contract allocations. Given that the nature and scope of such legislation is an evolving one, Government is presently doing the necessary ground work for the preparation of a legislation which will adopt innovative processes to improve access to information. Once this initial process is completed drafting instructions will be given to the Attorney-General’s Office to proceed with the preparation of the Bill.”

It is thus possible that the groundwork for the draft law is indeed currently being done at the level of the State Law Office, but there is no further information about the work’s status.

The last ACHPR country report also states that:

“42.0 Section 12 of the Constitution provides for freedom of expression, that is freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence. The local media enjoy a long tradition of freedom and pluralism with a number of dailies, weeklies, fortnightlies and monthlies whilst the audiovisual landscape consists of the national radio and television, the Mauritius Broadcasting Corporation and equally private radio stations. Freedom of the press is guaranteed and is an essential component of the right to freedom of expression provided for under section 12 of the Constitution.”

It is true to say that there is relative diversity in the Mauritian media landscape, except for television broadcasting. There has been a long tradition of private print media since colonial times. Broadcasting was liberalised in 2002 and saw the introduction of the Independent Broadcasting Authority (IBA), which approved licenses to three private radio stations in addition to the state broadcaster. However, television, though technically covered by the IBA Act, did not see the emergence of private stations due to restrictive conditions and limited viable applications for such licenses in a small domestic market. However, the question of private TV is increasingly becoming obsolete, and private media companies are slowly supplementing public television through the provision of web TV channels.

Despite the fact that there is no ATI or FOI legislation, the state does provide extensive information

on its official portal, <http://govmu.org/>, whereby all ministries, departments, parastatal, and other government bodies produce websites as part of the domain.

To date, there are 26 ministries, 44 government departments, 68 parastatal organisations, and 17 other bodies with dedicated websites. The portal gives access to an extensive database listing the laws and government notices as well as the Constitution of the country.

The National Assembly website contains the transcriptions of all parliamentary questions and answers as well as the Hansard for all parliamentary debates. Since mid-June 2016, the National Assembly of Mauritius carries live and archived coverage of National Assembly proceedings on a dedicated website at: <https://parliamenttv.govmu.org/>.

It is worth noting that the United Nations E-Government survey in 2016 classified Mauritius in the high E-Government Development Index (EGDI) category and as the top African performer. The country is among the three African countries that are in the Top 50 for e-participation thanks to high ratings on the Online Service Index (OSI) and the Human Capital Index (HCI) despite a lower performance in terms of telecommunications infrastructure.

Overall, the Mauritian government does engage in proactive disclosure of much of its official business despite the absence of ATI/FOI legislation. The main issue is that the disclosure does not systematically cover all areas of government business. Also, the information is not necessarily organised in a well-structured, user-friendly manner. The depth of content is not the same throughout the 155 websites listed on the government portal. Some government agencies provide minimal information on their websites, whereas others are more information-rich. Some provide their data in various formats (such as Statistics Mauritius); others only provide PDF forms, which need to be filled in and deposited at the physical office, defeating the purpose of an “e-application.” Finally, only 10 government services provide e-payment facilities to date.

As there is no provision for ATI currently, we have submitted requests for information through the official email addresses listed on the websites of ministries and other governmental departments as follows:

- **Ministry of Health and Quality of Life:** Request for information about safety of milk brands following communique by the Seychelles.
- **Ministry of Education:** Request for information about deductions on the paycheck of a pre-

service primary school educator.

- **Civil Status Division:** Request for information about the list of persons authorised by the Registrar of Civil Status to celebrate a Religious Marriage Having Civil Effect.
- **Flacq District Council:** Request for information about old photographs used at an exhibition on the Flacq old railway station.

Only one has responded to the query so far: the Flacq District Council replied that they have no such photos. None of the others have acknowledged receipt of the requests to date. As there is no legal obligation for government bodies to respond to any information request, there is no possibility of appeal for requestors. In fact, the legal constraints that are imposed on civil servants through the Official Secrets Act and the Human Resource Management manual may make it impossible for officials to respond to external requests for information. However, in the last edition of the government newsletter *GNews* in July 2017,¹⁴ an article mentioned that the recently launched Citizen Support Unit has “resolved” 1604 requests out of a total of 3894 received that is 41 percent since launching. No explanation is provided on the meaning of the term “resolved,” that is, whether those that were resolved were acknowledgments, provision of information requested, or resolution of complaints. No breakdown is provided in terms of which ministry or government body received requests.

Enabling environment

Overall, despite the absence of ATI in Mauritius, the country fares well in terms of governance trends with commendable performance in freedoms for political rights and civil liberties and average performance for press freedom and transparency.

The media enjoy good levels of freedom despite what look like estranged relationships with political actors due to the advent of regular confrontational episodes and violent verbal exchanges. In effect, close ties do exist between the political sphere and media workers, many of whom become employed as advisers on information matters during each election cycle. This love/hate relationship between the media and political actors (whether government or opposition parties) has been the prevailing sentiment for a very long time.

Confrontations have sometimes led to unpleasant attitudes and reactions on the part of politicians, including the symbolic burning of newspapers, intimidating actions by the police following media reports related to the health of a prime minister, and the short, temporary ban of one journalist to the

¹⁴ http://pmo.govmu.org/English/Documents/Gnews_July_2017_Edition.pdf.

National Assembly. On the other hand, the press has recourse via editorial content and even selective reporting and agenda-setting tools to retaliate against specific political actors and parties, depending upon their own prevailing interests, affinities, or biases.

We have currently reached a stage where such confrontations are a part of the system and are even secretly enjoyed by the press (as they are conducive to sensationalist content and thus heighten their reach and sales). This is undoubtedly unhealthy and constitutes an impediment to the realisation of a more mature democracy.

The revolving door of media workers to and from employment as spokespeople for government institutions has made the situation more complex. The affinities of such journalists towards a particular political candidate or party only become public after elections when they are recruited to become political advisers/mouthpieces. Then when election season comes around again, the press attachés go back to being journalists, leaving the public with legitimate questions about the journalists' objectivity. None of the journalists acknowledge their stints as political advisers to their audiences.

Cynically, one can say that within the ranks of journalists who have been political advisers, all mainstream political parties are represented, thus creating an artificial balance in coverage. The critical role of oversight/reporting by the media is existent, albeit in an unorthodox manner.

Regarding literacy and education rates, the Mauritian population enjoys very commendable performance on both indicators with a 90.6 percent adult literacy rate in 2015,¹⁵ a gross enrolment ratio of 97 percent in primary education, 72 percent in mainstream secondary education (the rest being in pre-vocational and vocational systems), and 47.4 percent in tertiary education.¹⁶ Education is compulsory until the age of 16 as per the Education Act.¹⁷

There is a vibrant civil society in the country which is quite vocal and visible in the public sphere, albeit at times fragmented and dispersed. Freedom of association is protected under Section 13(1) of the Constitution and the Registrar of Associations Act.¹⁸ Under the Public Gatherings Act,¹⁹ public

15 <https://www.cia.gov/library/publications/the-world-factbook/geos/mp.html>.

16 http://statsmauritius.govmu.org/English/Publications/Documents/EI1269/Edu_Stats_Yr2016.pdf.

17 <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/E/Page%201/EDUCATION%20ACT.pdf>.

18

<http://labour.govmu.org/English/Documents/Legislations/Registration%20Associations%20Act/THE%20REGISTRATION%20OF%20ASSOCIATIONS%20ACT%201978%20updated.pdf>.

19 <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/P/Page%201/PUBLIC%20GATHERINGS%20ACT.pdf>.

gatherings may be organised provided that written notice is given to the police commissioner seven days before the event. No such gatherings are authorised on National Assembly Day in the capital city of Port-Louis. However, since the law defines meetings as assemblies of 12 or more persons, public protests are often held by trade unions and other groups with up to 11 persons in front of Parliament.

Individuals and groups are also very active on social networking sites and do not hesitate to speak out about issues, sometimes in a very confrontational manner. Thus, there is significant potential for collective action.

There is no outright censorship (except for an unfortunate day in 2007 when the Information and Communication Technology Authority blocked access to Facebook because of a fake profile of the then prime minister). However, complaints about content that incites racial hatred are treated seriously and can lead to police arrests.

Recommendations

In order to achieve SDG 16 Target 10, the Government of Mauritius should:

1. Urgently adopt and effectively implement an access to information legislation to ensure the fundamental right of access to information by all citizens; such law on access to information has to be consistent with international and regional standards on the right to information and the AU Model Law.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. Insist on the need for the state (and whatever department is or becomes engaged in crafting the legislation) to organise public consultations of multiple stakeholders on FOI/ATI legislation, including, but not restricted to, media owners, representatives of journalists from multiple news desks, political actors from multiple parties whether in government or not, NGOs, civil society, etc. Ideally, consultation should be conducted as widely as possible with visibility on online platforms.
2. Ask for regular progress reports on the draft legislation and on consultations being planned

and held as well as participation levels for all stakeholder groups.



Mozambique

A report by Alfredo Libombo, Executive Coordinator of Mozambique Network on Education for All

Recognition in the Constitution

Article 48: Freedom of Expression and Information

RTI legal framework

Right to Information Act (2014)

Press Law (1991)

Ratification

African Charter on Human and Peoples' Rights

AU Convention on Preventing and Combating Corruption

African Charter on Values and Principles of Public Service and Administration

African Union Youth Charter

African Charter on Statistics

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

Mozambique is late by one or two reports.

Member of EITI

8 recommendations related to RTI from UPR in 01/2016

Legal recognition of access to information in Mozambique

The Mozambican Parliament unanimously passed the Right to Information (RTI) Act in November 2014 after almost 10 years of advocacy work by civil organisations. The law covers public bodies and “private bodies invested with public powers, by law or by contract...”

In fact, the adoption of the bill was no more than the materialisation of freedoms included in the country’s Constitution, which was passed in 1990 and amended in 2004. Article 48 states that “all citizens shall have the right to freedom of expression and to freedom of the press, as well as the right to information.”

The Press Law (1991) is the other legal instrument guaranteeing the exercise of freedom of expression, which by its definition consists of the ability to impart one’s opinions by all lawful means. The Press Law states in Article 3 that “the right to information means the right of every citizen to inform and be informed of relevant facts and opinions about the national and international levels as well as the right of every citizen to disseminate information, opinions and ideas through the press.”

The exercise of the right to information “shall not be restricted by censorship and the freedom of the press shall include, in particular, the freedom of journalistic expression and creativity.” The Press Law guarantees the access to sources of information, protection of independence and professional secrecy, and the right to establish newspapers, publications, and other means of dissemination of information.

Additionally, the country has ratified the six African Union treaties that recognise the right to access information: the Charter on Human and People’s Rights, the African Union Convention on Preventing and Combating Corruption, the African Union Youth Charter, the African Statistics Charter, the African Charter on the Values and Principles of Public Service Administration, and most recently the African Charter on Democracy, Elections and Governance.

The country has no reports pending to the African Commission on Human and Peoples’ Rights. Mozambique is not yet part of the Open Government Partnership.

The RTI Act obliges public bodies, and some private ones as well, to release information to any citizen requesting it. Private entities covered under the law are those that perform a public function, carry out activities of public interest, or use public funds. The law allows both individual and collective legal persons access to information and says that requestors do not have to provide justification for seeking information. Additionally, the RTI Law follows the principle of maximum disclosure, which calls for a presumption that all information held by public bodies is subject to disclosure except in very limited circumstances. Requests can be made in writing or orally, and institutions are obliged to process requests expeditiously and within stipulated time frames. Institutions should provide information at a low price, limited to the cost of copies. It also mandates an express requirement for the identification and designation of a specific “entity” responsible for implementation of the provisions of the draft law as well as systematic record keeping and the right of appeal.

The Mozambican Parliament, known as the Assembly of the Republic, on 26 November 2014 unanimously passed the bill on freedom of information. The process to adopt the RTI Act started early in 2000 when a group of journalists led by the Mozambican Chapter of MISA (Media Institute of Southern Africa) met to discuss what was then known as the Access to Information Law. It took about 15 years before the bill was ready to be signed into law by former President Armando Guebuza in December 2014.

Almost one year later, President Jacinto Nyusi signed the law's regulations, which apply to all state bodies, municipalities, and relevant private entities.¹The regulations outline the details of how state bodies must respond to requests for information, including guidelines stating that government institutions must have websites where information is made available to the public and that requests for information must be provided within 21 days, subject to variety of exemptions.²

In general terms, the Right to Information Act in Mozambique reflects some of the international human rights conventions on the matter. However, there are concerns about some of the exemptions. For instance, information that is the subject of pending court cases, and is therefore *sub judice*, cannot be provided, and neither can state secrets.

The law also exempts the private lives of citizens from freedom of information requests and states that no information that could endanger the victims of crimes, witnesses, or whistleblowers should be made public.

The law states “the permanent democratic participation of citizens in public life presupposes access to information of public interest so as to formulate and express value judgments on the management of public affairs, and thus influence decision making.”

The law stipulates that public documents and archives must be open to anyone wishing to see them, but this is still far from reality. And although under the law people requesting information do not need to state what they intend to do with the information, government officials do not always comply. Even though the petitioner may request the information verbally or in writing, and needs do nothing more than identify himself or herself, government officials will often question the petitioner at length and often do not provide the requested information with the 21-day time frame. Officials who create obstacles to accessing information are a serious problem for the implementation of the law and a main complaint from the media.

Implementation of the legal framework

Although the law is almost two years old, there is little progress on its implementation, and public institutions are not following the clear regulations on how state bodies must respond to requests for information.

¹ Lei do Direito a Informação

² Lei do Direito a Informação, 2014.

The Ministry of State Administration and Public Service is the body responsible for implementing the Right to Information Act, and the ministry has been training public officials on RTI regulations and has been raising awareness about the act.

The law states that all citizens have the right to information and stipulates that all the institutions of the public administration must have websites where this information is made available to the public in electronic form. The Mozambican Cabinet has 21³ websites, but unfortunately only about seven are operational.⁴ Those seven only display ordinary information about the ministries. One source working on RTI issues in Mozambique said that, for instance, all ministries' websites should at least have a link on the Right to Information Act and contact details of the persons responsible for giving information of public interest. Currently, the websites do not provide this information.

Under the law the government must disclose annual activity plans and budgets, audits, inquiry and inspection reports, environmental impact reports, and information about contracts. But there are exceptions. The RTI Act states, "More controversially, sensitive information on banks and their clients cannot be revealed, and commercial and industrial secrets are also protected, if knowledge of these matters by competitors could damage the productivity of the company concerned."

Despite the fact that Mozambique has passed fairly comprehensive RTI legislation, governmental institutions are still refusing to divulge information of public interest.

Two examples:

1. Mozambique is now facing a financial and economic crisis as foreign partners have withdrawn their support after the disclosure of hidden debts of \$2 billion for projects around tuna fishing and maritime security. The loans were arranged by Switzerland's Credit Suisse and Russia's VTB Capital. Foreign media disclosed the debts, and the government alleged that it didn't disclose them because of national security interests.
2. When auditors from the UK-based firm Kroll Inc. went to Mozambique to investigate the debt, they had problems collecting needed information because some government officials refused to give information because of alleged security issues.

³ Portal do Governo de Moçambique.

⁴ Websites visited on 8 August 2017.-

Some civil servants are accused of being the main obstacle to access to information as they consider all documents in their possession as "state secrets." One other aspect to add, most of them are not familiar with their obligations under the Right to Information Act.

As part of this research, four requests for information were submitted to three government ministries and to one municipality.⁵ The requests included simple questions like "Is there any specific department dealing with right to information requests?" Only the Maputo City municipality replied in writing within the 21 days as prescribed by the law, one ministry called the requester for a meeting, and the other two didn't reply at all.

Coincidentally this report was written at a time when civil society organisations⁶ are threatening to take legal action against state institutions that refuse to respond to requests for information of public interest, such as legislation on fundamental rights, transparent management of public resources, accountability, and access to public buildings.

In June 2016, the organisations sent 10 letters requesting information to the same number of institutions, including the Assembly of the Republic (AR), but only three responded within the 21-day deadline.

Recommendations

The government of Mozambique should ratify the African Charter on Democracy Elections and Governance. In order to achieve SDG 16 Target 10, the Government of Mozambique should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

⁵ Submitted on 12 July 12, 2017 to the mMinistries of Health, Energy and Mineral Resources, Economy and Finances, and the Maputo City Municipality.

⁶ Mozambican Bar Association (OAM) SEKELEKANI, MISA-Moçambique, Rural Environment Observatory (OMR) SEKELEKANI and MISA Moçambique.

Further recommendations:

1. Increase dissemination of information about the public's right to know and increase training of public servants on their obligations in the Right to Information Act.
2. Create information offices within institutions to process requests and to practice proactive disclosure.
3. Organise joint seminars with civil society and local governments on the Right to Information Act.
4. Relook at the relevance of the government/private bodies websites.
5. Sensitise public servants on the need for proactive dissemination of information of public interest, including exemptions and the rights of citizens.

South Africa

A report by Imraan Abdullah, Research Officer at Freedom of Information Programme of South African History Archive (SAHA)

Recognition in the Constitution

Section 32 of the Constitution of the Republic of South Africa, 1996

RTI legal framework

Promotion of Access to Information Act 2 of 2000 (PAIA)

Section 26 of the Companies Act 71 of 2008

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

African Charter on Democracy, Elections and Governance

AU Convention on Preventing and Combating Corruption

African Charter on Values and Principles of Public Service and Administration

African Union Youth Charter

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Ct. on HPR

Reporting compliance

South Africa has submitted all reports.

Member of OGP

10 recommendations related to RTI from UPR in 05/2017

4 recommendations related to RTI from ACHPR in 06/2016

Legal recognition of access to information in South Africa

When the Republic of South Africa transitioned into a fully-fledged democracy, it was clear that access to information was going to feature in the Constitution. Section 23 of the Interim Constitution included a narrow construction of this right,¹ but when the final version of the Constitution was passed in 1996, it was represented in a broader context by removing the caveat that accessing information from the state requires a right that needs to be protected or exercised, as well as extending the right of access

¹ Section 23 of the Interim Constitution provided that “everyEvery person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any of his or her rights.”.

to information to the private sector.² In addition, Section 32 of the Constitution compels Parliament to enact legislation that gives effect to the right.³

In 1994, former President and then-Deputy President Thabo Mbeki established a task force to develop the Open Democracy Bill, which covered more than just the right of access to information. It included privacy protection, whistleblower protection, and open meetings rules. However, the complete Open Democracy Bill remained shelved for a couple of years after it was introduced to the Cabinet. The Cabinet, instead, opted to remove all the peripheral goals of the Open Democracy Bill, leaving only the ATI element, and the bill was renamed the Promotion of Access to Information Bill. The Promotion of Access to Information Bill was enacted in 2000 and came into effect on 9 March 2001, giving legislative effect to Section 32(2) of the Constitution.

When the Promotion of Access to Information Act (PAIA), 2000 became operational in 2001, it was viewed as one of the most progressive laws of its kind. By enabling access to privately held information, South Africa expanded the right far beyond internationally accepted norms. PAIA allows for the right to be exercised by foreign nationals, not just South African citizens, and it was drafted with the express intention of incentivising the proactive disclosure of information because government departments are absolved from having to comply with individual requests if the information is already in the public domain.

It is noteworthy that in addition to having one of the most progressive laws with respect to ATI, South Africa is also party to several treaties that recognise the right of ATI, such as the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; the UN Convention against Corruption; and the African Charter on Human and Peoples' Rights.

Over and above compliance with international standards, South Africa is an Open Government Partnership member and has fully complied with its African Commission on Human and Peoples' Rights (ACHPR) reporting obligations.⁴ Furthermore, the ACHPR has commended the enactment of

² Section 32(1) of the Constitution provides that "everyoneEveryone has the right of access to (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights.""

³ Section 32(2) of the Constitution provides that "nationalNational legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state."

⁴ See Republic of South Africa Combined Second Periodic Report Under the African Charter on Human and Peoples's Rights and Initial Report Under the Protocol to the African Charter on the Rights of Women in Africa, which covers the period 2002 to 2013 and combines its second, third, fourth, fifth, 2nd, 3rd, 4th, and sixth periodic reports6th Periodic Reports under the African Charter and covers the period 2005 to 2015 under the Protocol to the African Charter on the Rights of Women in Africa:

PAIA as well as the guide developed by the South African Human Rights Commission (SAHRC) on how to use PAIA.⁵ Nevertheless, as South Africa celebrates 16 years of PAIA, the country has not fully implemented the act.

Implementation of the legal framework

The first consideration when analysing the implementation of PAIA in South Africa is the work of the SAHRC. As per provisions in the act, the SAHRC has to publish an annual report on the status of PAIA implementation and has to present that report to Parliament.⁶ The executive summary within the 2008–2012 report shows low levels of compliance with PAIA by public bodies. That report specifically identified several problems. For instance, only a quarter of public bodies knew who their deputy information officer was, and only a quarter knew how to process a PAIA information request. Furthermore, only a third of public bodies had an internal procedure for handling PAIA requests. These issues warrant serious concern about the implementation of PAIA, especially considering the report dealt with the period 2008–2012 and PAIA had been in effect since 2001.⁷

The SAHRC's most recent report paints a similar picture; in fact, the report states that there has not been any change at all. The most pressing issue the 2014–2015 report raises is the fact that more than a decade has passed since the enactment of PAIA, yet public bodies are failing to comply with the basic technical requirements of PAIA, such as the requirement that public institutions have a Section 14 manual.⁸

The implementation failures are made more apparent when we compare the SAHRC report to that of the Access to Information Network's (ATIN) shadow report.⁹ The 2014–2015 Shadow Report reflects a much worse situation. According to the shadow report, public institutions refused 21 percent of the

http://www.achpr.org/files/sessions/58th/state-reports/2nd-2002-2015/staterep2_southafrica_2003_2014_eng.pdf.

⁵ Concluding Observations and Recommendations on the Combined Second Periodic Report Under the African Charter on Human and Peoples's Rights and Initial Report Under the Protocol to the African Charter on the Rights of Women in Africa, p. 12: http://www.achpr.org/files/sessions/20th-eo/conc-obs/2nd-2003-2014/co_combined_2nd_periodic_republic_of_south_africa.pdf.

⁶ Section 84 of PAIA.

⁷ See the entire 2008–2012 report on the SAHRC website:

<http://www.sahrc.org.za/home/21/files/Consolidated%20PAIA%20Audit%20Report%202012.doc2.pdf>.

⁸ Section 14 of PAIA states that a public institution needs to compile a manual that sets out amongst other things the contact details of the information officer (the person designated by operation of law to take responsibility for PAIA compliance) and any deputy information officer (a person appointed to assist the information officer in the performance of their duties) of that public body, as well as the Section 15 list of categories of records that are proactively available (that is, available without the need to submit a PAIA request).

⁹ The ATIN 2014–2015 Shadow Report:

report <http://foip.saha.org.za/uploads/images/PAIA%20Civil%20Society%20Network%202015%20Shadow%20Report.pdf>.

169 requests that were submitted during the reporting year, and only 55 percent of those denials were substantiated (as required by law) using legitimate grounds contained in Chapter 4 of PAIA.

The point being emphasised by both the SAHRC reports as well as the ATIN's shadow reports is that public institutions have a long way to go before achieving a 100 percent compliance rate with PAIA. For the purposes of this report, researchers sent a number of requests to five public bodies to test compliance with PAIA. A total of five requests were submitted to the City of Johannesburg Metropolitan Municipality; eight requests to the Department of Justice; three requests to the Department of Basic Education; three requests to the Department of Health; and two requests to the Government Communication and Information System (the Information and Communications Ministry equivalent). The results from these requests mirrored the poor compliance described in the SAHRC and ATIN reports.

Of the 21 requests, eight resulted in the release of the requested information in full, and one was a partial release. This means that less than 50 percent of the requests submitted yielded records. One finding differed from those in the ATIN reports; the researchers received only one "mute refusal," while this figure in the ATIN reports represents a greater percentage of the data sample. This low mute refusal percentage is encouraging as it points to public bodies acknowledging the fact that they have a constitutional and statutory duty to respond to the public with respect to formal requests for information.

Furthermore, the public institutions transferred six of the 21 requests, and only one of those institutions provided reasons (as required by law) for the transfer. The growing trend of transferring requests is concerning because there is no appeal mechanism for when a public body transfers a request in error, nor a requirement that the transferring institution provides notification of the transfer. SAHA believes that this increasing use of transfers might be attributable, at least in part, to the fact that it is a lot easier to transfer a request than to provide a sworn affidavit explaining the steps taken to ascertain whether the records do or do not exist as is required by the law in those instances (or to do the hard work of searching in the first place).¹⁰

Enabling environment

Fortunately, in South Africa there is a strong legislative framework in place that encourages openness and transparency. The media and the judiciary are also independent and free, to a great degree, from influence. This has a tremendous impact on advancing ATI in South Africa as the media is able to

¹⁰ Section 23 of PAIA.

expose state noncompliance largely without fear of reprisal, and similarly the judiciary is able to adjudicate fairly on ATI related matters and often the findings are just and equitable.¹¹ Civil society has a strong presence in South Africa, especially in relation to ATI work, and more organisations are becoming aware of their right to access records from the state, which can aid their programmes.

However, with every rose there must be thorns, and one of the prickliest thorns for South Africa is the low level of awareness of basic human rights among poor communities. This is no small issue as both poverty and education levels remain extremely low in South Africa, and a disproportionate number of black South Africans are affected due to the legacy of apartheid. This means that a large section of the population does not benefit from their civil and political rights because of disempowerment and socioeconomic problems. Therefore, more needs to be done in order to educate South Africans on their rights and to show them how to use ATI in order to advance their agendas. At the same time, government officials should have training on their obligations regarding PAIA requests, so that the public is not met with either silence or incompetence from officials.

In addition to this major issue, the apartheid government was extremely secretive and enacted laws to entrench secrecy. Additionally, the very repressive nature of the regime meant that the opposition was forced to operate in secret to avoid retaliation. In SAHA's experience, some government departments are still inherently reluctant to embrace principles of openness and transparency because of this deeply entrenched culture of secrecy, which will take some time to dismantle.

Finally, a note on the progressive legislative framework that currently exists in South Africa: there has been a bill tabled in Parliament for some time that could dismantle transparency gains. The Protection of State Information Bill is likely to curtail ATI in South Africa if it is passed, however the feeling is that the bill in its current form may not be constitutional and would be struck down by the Constitutional Court on review.¹²

Recommendations

The government of South Africa should ratify the AU Convention on Preventing and Combating Corruption, the African Union Youth Charter and the African Charter on Statistics.

In order to achieve SDG 16 Target 10, the Government of South Africa should:

1. Effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens.

¹¹ See, for example, the many cases SAHA has litigated: <http://foip.saha.org.za/static/foip-litigation>.

¹² For the strongest opposition to the bill see the statements and publications by Right2Know: <http://www.r2k.org.za/secrecy-bill/>.

2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR.
3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. Deformalise the PAIA request process

The process by which PAIA requests are submitted needs to be amended in order to allow the public to access records more informally. As it currently stands, a requester must complete a prescribed form in order for the request to be valid. Whilst the current process has its benefits particularly when distinguishing between public- versus private-body requests (as the private body requests have more stringent requirements like the need to demonstrate that the information requested is required to protect or advance a right), it also is limiting because a great number of South Africans do not have access to the prescribed forms. Thus, we recommend that PAIA be amended to allow more informal written requests, as long as those requests comply with Section 18 or 55 of PAIA (the sections which lay out what information must be contained within a request form).

2. Provision of sufficient empowering resources by government

The National Archives and the newly established Office of the Information Regulator must be sufficiently resourced and the records management measures strengthened at the national, provincial, and local levels. This will ensure that the government maintains and manages records, leading to greater accountability. In addition, the government must make resources available for both PAIA processing and training with the information regulator, with a particular emphasis on training local government as information held by municipalities can have the biggest impact on communities.

3. Increase the amount of proactively available records

Public bodies must consider what records should be made routinely available, without the need for a PAIA request, in line with the constitutional imperative and the South African government's commitments to international accountability initiatives like the Open Government Partnership (OGP). The pre-emptive provision of timely, accessible information to the public will help foster transparency.

4. Proactive availability of records relating to human rights violations

Records relating to human rights violations, especially from the apartheid era, should be treated as records in the public interest and be made proactively available. The government should pass a

specific regulation that requires public bodies and private bodies that hold information relating to human rights violations to make that information proactively available to the public as part of their obligations under Sections 15 and 52 of PAIA respectively (the two sections that govern the voluntary disclosure and automatic availability of certain records).

5. Stronger regulation of records relating to public-private partnerships

There needs to be a clear set of regulations that deal with instances where private bodies perform a public function, particularly in those instances where public-private partnerships have been formed. While PAIA does have a threshold requirement for accessing information from private entities (namely, that the requester has to demonstrate that the information is required in order to exercise or protect a right), it also makes a separate provision for situations in which private entities perform public functions on behalf of the government. Section 8 of PAIA provides that those entities, in relation to that information, must be treated as public bodies for the purposes of PAIA. The trouble in SAHA's experience, having submitted a number of request over the last few years to test this provision, is that private entities hide behind an unregulated gap in the law: they form "consortiums" in order to tender for such government contracts. The companies forming the consortium all claim never to have created or retained records, and then they dissolve the consortium so that it cannot be held to account. Legislation dealing with government contracts of this nature ought to require that every company involved keep copies of all records related to the business of the consortium.¹³

¹³ For more information on SAHA's PPP requests see http://www.saha.org.za/news/2016/May/with_great_power_comes_great_confusion.htm.

Case Study: The study: the Communication Department's lack of communication

SAHA requests submitted two requests to the Government Information and Communication System (GCIS), and both) were initially both mute refusals despite being sent to the exact email address of the DIO listed in the GCIS's Section 14 manual. The internal appeals were also mute refusals, which was extremely frustrating considering the GCIS is charged with state communication. If it is so lax about complying with the provisions of PAIA, what can be expected of other departments?

Despite SAHA's advocacy and receiving strong support from civil society partners, including the Right2Know Campaign and the Open Democracy Advice Centre, the department still failed to get in touch with SAHA to provide a substantive decision on the requests. Even after the minister promised to release the records, the department still did not respond to SAHA, and the organisation, which is a registered law clinic took legal action. Unfortunately, SAHA sent a letter of demand to the DIO of the GCIS and within one day received a response from the legal department (which shows that the email address was correct and working and that the DIO must have received their initial requests and subsequent appeals).

It then took less than two weeks to receive a written letter from the Minister of Communications granting access to the request at the appeal stage. Thereafter, it took another week to pay the access fee and obtain access to the records. Unfortunately, a key record in the bundle had no title or key for figures within the record. When SAHA; when we wrote back to the legal department to follow up, it did not receive a response once again. The point to take away from this case study is twofold: The first part is that the GCIS's DIO blatantly disregarded his constitutional and statutory duty to respond to their PAIA request, and the second part is that it took the threat of court action to get a decision to release the records. As court action is beyond the resources of most South Africans, it is likely that public institutions simply ignore requests from the general public, trampling on their constitutional right to access to information.

Zambia

A report by Mr Paul Monde Shalala, reporter with the Zambia National Broadcasting Corporation

Constitution recognition

Article 20 () of the Constitution of Zambia

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

African Charter on Democracy Elections and Governance

AU Convention on Preventing and Combating Corruption

African Charter on Values and Principles of Public Service and Administration

African Union Youth Charter

African Charter on Statistics

Reporting compliance

Zambia is late by six reports

Member of EITI

Zambia is among 14 African countries that have protected the right to information within the context of the broader right to freedom of expression, which includes the right to seek, receive and impart information. Freedom of expression is one of the fundamental rights guaranteed by the Zambian Constitution under Article 20 (1) which provides:

“Except with his own consent, a person shall not be hindered in Protection of the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.”

The above provision in the Zambia Constitution is all encompassing and guarantees the freedom of the individual to hold opinions and communicate those opinions without interference. Since the constitution is the fundamental law of the land, Article 1(3) of the Zambian Constitution entrenches the Supremacy of the Constitution by providing thus:

“This Constitution is the supreme law of Zambia and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.”

Though access to information is recognized in the constitution there is need to actualize its legislation as the constitution does not expressly provide for this right.¹ Zambia was one of the first countries to start the process of enacting an Access to Information law but remains one of the last to actually have one in place.

Attempts to have an FOI law in Zambia can be traced to way before to 1991. As Zambia was transitioning into a multiparty democracy, the enactment of the Freedom of Information law was proposed. But this recommendation remained unattended.²

In 1999, the parliamentary committee on Information and Broadcasting noted the lack of action by government in the enactment of the FOI law. However, it was only in February 2001 that government published a draft bill for stakeholder input. The media community made inout but government didn't move. Due to this inertia, the media community galvanized itself and enlisted a law firm that then drafted an FOI Bill which was later published in the government gazette on 18th October 2002.³

During that process, when the media tried to present this bill to parliament, government used a technicality to block the presentation of the bill on 3 occasions. The government then borrowed the bill drafted by the media and used it to draft its own bill which it then presented to parliament on 22nd November 2002 as National assembly Bill 22 of 2002 for first reading. Second reading followed on 28th November 2002. In a surprising twist, the government withdrew the Bill from parliament on 18th December 2002. Then Minister of Information Mutale Nalumango promised to table the bill in the session of parliament that was to sit starting in January 2003.⁴

With no bill be presented by government, the most serious attempt at this legislation was in 2003 when a private members bill was moved in the National Assembly of Zambia by opposition lawmaker

¹ Access to information is not a privilege but an entitlement for every citizen-MISA <https://www.lusakatimes.com/2014/03/11/access-to-information-is-not-a-privilege-but-an-entitlement-for-every-citizen/> Published on March 11, 2014 (Retrieved on August 18, 2017)

² Patrick Matibini (2009) The quest for freedom of information law - the Zambia experience University of Zambia <https://www.ajol.info/index.php/idd/article/viewFile/54808/43296> (Retrieved on July 22, 2017)

³ Ibid

⁴ Ibid

and then Livingstone Constituency MP Sakwiba Sikota. The bill did not pass. Instead government promised to come back later with its own bill after consultations.⁵

By 2006, Minister of Information Vernon Mwaanga was preaching caution and patience in enacting an FOI Law. By 2009, the government was still not ready to table the FOI Bill before parliament.⁶

In 2008, President Mwanawasa gave the nation a flicker of hope when he announced that the government would re-introduce the Freedom of Information Bill.

New impetus to the process was added when the Patriotic Party won the 2011 general elections. The party had campaigned on many things, inter alia, that it would enact a Freedom of Information Act once in government and it had castigated the previous government as having had no political will to bring about such progressive laws. Republican Vice President Dr. Guy Scott announced that the Zambian government would pass the FOI Bill within 90 days. Scott said the government would enact “progressive pieces of legislation like the Freedom of Information law aimed at delivering development to the people of Zambia” and appealed to the Opposition not to block it in Parliament.⁷

The euphoria that came with this announcement was wiped out when, a month after the Vice President’s pronouncement, Government’s timeline for enacting the FOI Bill was shifted from 90 days to six months by the then Information Minister, Given Lubinda. His ministry, the Ministry of Information and Broadcasting Services, even announced that the Freedom of Information Bill would be “launched” on June 26, 2012.⁸ But the FOI was not “launched” as promised. Ministry of Information Permanent Secretary Amos Mapulenga said the Bill would not be “launched” because the Attorney-General had not yet signed the draft Bill; he even promised a new launch date to be announced later. No new date was set. The Minister of Information was replaced. The new Minister, Kennedy Sakeni, made his own announcement that the FOI Bill would be presented to Parliament in the first quarter of 2013. He said

⁵ Chris Phiri (2015) Sakwiba Offers Guidance on Freedom of Information Bill May 11, 2015 <https://zambiareports.com/2015/05/11/sakwiba-offers-guidance-on-freedom-of-information-bill/> (Retrieved on July 22, 2017)

⁶ “CHIEF Government spokesperson Ronnie Shikapwasha has said the Freedom of Information (FOI) Bill will not be tabled before Parliament during the current session. Lieutenant-General Shikapwasha said this yesterday after he toured Joy FM, Zambia News and Information Services (ZANIS) headquarters and Times of Zambia Lusaka offices.” (Times Of Zambia (2009) Freedom Of Information Bill To Wait, Says Shikapwasha Times Of Zambia 17 July 2009 <http://allafrica.com/stories/200907170430.html> (Retrieved on July 22, 2017))

⁷ Edem Djokotoe (2014) STATE OF RIGHT TO INFORMATION IN AFRICA: “Zambia Promises but no Action: 12 years waiting and still counting” Africa Freedom of Information Centre http://www.africanplatform.org/uploads/media/State_RTI_Africa_2014_AFIC.pdf Published in September 2014 (Retrieved on July 30, 2017)

⁸ Ibid

the preparation process had necessitated the delay and he asked for patience from the general populace.⁹

That promise was broken because the ATI Bill was not tabled in first quarter of 2013 as Sakeni had announced. *“Instead, his successor, Mwansa Kapeya, a former broadcaster, told Parliament that on October 11, 2013 his ministry and the Ministry of Justice had contracted a consulting legal firm and given it a month to review the 11 existing laws that would conflict with the ATI Bill, including the Constitution, the Zambia Security Intelligence Service Act No 14 of 1998 and the Official Oaths Act.”*¹⁰

2014 came and went; no bill was presented in parliament. Suddenly, the ministry was no longer committing to a timeline for submission and enactment of the draft FOI law. Cornelius Mweetwa, an Opposition MP for the United Party for National Development (UPND) accused the government of running out of excuses about why the draft law had taken long to enact. He added that an Access to Information Act would give life to other anti–corruption–related laws such as the Public Interest Protection Whistleblowers Act of 2010.

The following year, in 2015, there was a glimmer of hope when the then new president Edgar Chagwa Lungu told Zambians that he would not deny them the FOI laws. However, all these hopes were dashed when the head of state later said he was having reservations with enacting the FOI laws because of the unprofessionalism and behaviour of *“some media institutions in Zambia”*.¹¹ The president’s statement received wide-spread anxiety from the legal fraternity and the civil society alike. Media Liaison Committee (MCL) Spokesperson Patson Phiri said in a statement at the time that *“the statement by the President does not resonate with democratic discourses that are spreading the world-over”*. Phiri noted within Africa, countries like Zimbabwe, Uganda, South Africa, Rwanda and Liberia had vibrant ATI Laws and 95 per cent of the users were non-media practitioners. He explained that the Access to Information Law was not meant for media practitioners, but for the people of Zambia to use to settle anxieties for missing information necessary for their economic, social and related desires. Phiri said journalists would not find ATI any useful because of the long processes involved in

⁹ Ibid

¹⁰ Ibid

¹¹ “PRESIDENT Lungu says he will not deny access to information and freedom of expression to the media and the citizenry because it is a constitutional right.” (Lusaka Times (2015) I will not deny you the right to information because it is a right-President Lungu Lusaka Times <https://www.lusakatimes.com/2015/05/01/i-will-not-deny-you-the-right-to-information-because-it-is-a-right-president-lungu/> May 1, 2015

accessing such information and he submitted that “..the Access to Information Bill should still be made law.”¹²

A few months later, the situation had not changed in that the government was still saying it was committed to enacting the FOI laws. However, it was blaming the media for not acting well. Minister of Information and Broadcasting Services Chishimba Kambwili said: “Government remains committed to enacting the Freedom of Information Bill but will do so cautiously”. He added that: “Government would like to open up and allow citizens to have access to information but is concerned that some media organisations are focused on making it fail instead of providing credible checks and balances”.¹³

Early this year, there was another glimmer of hope when Minister of Justice Given Lubinda said that the Access to Information Bill was ready to be presented before parliament. A few months later however, a presidential spokesperson blamed the failure of the referendum to pass during the preceding general elections for not having an Access to Information Act in place. He added that cabinet would not therefore discuss the matter to approve it again.¹⁴

These laws enacted even where there is inertia. In these cases, the Right to Information is usually enshrined by these governments in Access to Information or Freedom of Information legislation and regulations. The more free information is readily available, the less the chances of citizens to push for the information to be given to them and this reduces on times and resources lost by the needless physical interaction. In other words, access to information laws, should be means by which barriers to accessing information are overcome. The laws should not be barriers in themselves nor should they create new barriers.

The challenge does not end at getting the law enacted. Applying it can be a problem. In most countries, whether there is a law helping citizens to have access to information, governments try by default to use the legislation or administer against citizens having this access to the information. Many

¹² Chris Phiri (2015) Sakwiba Offers Guidance on Freedom of Information Bill May 11, 2015 <https://zambiareports.com/2015/05/11/sakwiba-offers-guidance-on-freedom-of-information-bill/> (Retrieved on July 22, 2017)

¹³ Linda Nyondo, State will be cautious on FOI – Kambwili May 20, 2015 <https://www.daily-mail.co.zm/state-will-cautious-foi-kambwili/> ((Retrieved on July 22, 2017)

¹⁴ “State House says there is no need for Cabinet to approve any Bill on Access to Information which is being requested to be part of Zambia’s laws.” “Cabinet approved the legislation on Access to Information as provided for in the Bill of Rights.” “Mr. Chanda states that had the Bill of Rights therefore adopted through a referendum last year Access to Information would have been part of Zambia’s Constitution.” (Lusaka Times Cabinet cannot approve Access to Information Bill twice – State House February 19, 2017 <https://www.lusakatimes.com/2017/02/19/cabinet-cannot-approve-access-information-bill-twice-state-house/> (RETRIEVED ON 22/JULY/2017))

times government will cite security concerns in denying citizens access. When Botswana decided not to enact a FOI Act in 2015, the Zambian Minister of Information jumped at the chance to praise Botswana and cite security concerns as the reason even Zambia was behind!¹⁵

By June 2017, civil society in Zambia was still fighting for the FOI bill. Lilian Saka-Kiefer, the Executive Director of Panos Institute Southern Africa (PSAf) urges the Zambian government to “*ensure that the proposed laws to control the use of information and communication technologies (ICTs) do not impede smooth flow of information.*” She said “*if the process is properly handled, the laws can protect citizens from cyberbullies, scammers, fraudsters, child pornography and online identity theft. However, if not properly handled the laws have potential to restrict citizens access to information and hamper the enjoyment of fundamental human rights such as the right to information and right to privacy.*” She was reacting to the government’s plan at the time to enact laws governing information in cyberspace instead of enacting the Freedom of Information Bill as announced by the Minister of Broadcasting and Communication Mr Brian Mushimba.¹⁶

Despite the current Patriotic Front party government having the ATI bill as one of its key manifesto policies before coming into power in 2011, it has promised to enact the bill on more than 6 occasions but is yet to fulfil that promise.

The content of access to information legislation differs from one jurisdiction to another but this legislation or regulations on Access to Information should have specific areas that need to be considered to ensure that these laws work for the citizens

Zambia is expected to have a RTI Law that is based on or conforms to the AU Model Law on Access to Information. The Draft Model Law for AU Member States on Access to Information includes suggested sections such as access to information of public bodies and relevant private bodies, access to information of private bodies, a specific regime for exceptions, internal review of decisions, oversight mechanisms and judicial reviews. These sections and their subsections detail all facets that a good RTI law should have.

¹⁵ “*Mr Kambwili has supported the government of Botswana for rejecting the Freedom of Information Bill to preserve the secrets and security of the nation*” (Linda Nyondo, STATE WILL BE CAUTIOUS ON FOI – KAMBWILI May 20, 2015 <https://www.daily-mail.co.zm/state-will-cautious-foi-kambwili/> (Retrieved on July 22,2017))

¹⁶ Lusaka Times Government should ensure proposed cyber-laws do not hinder access to information Lusaka Times <https://www.lusakatimes.com/2017/05/23/government-ensure-proposed-cyber-laws-not-hinder-access-information/> May 23, 2017 (Retrieved on July 22, 2017))

However, Zambia doesn't have any RTI law to conform with these standards on any other standards including the AU Model Law on RTI. The only law which touches on this is in the constitution.

Enabling environment

Since the RTI legal framework does not exist, the effects of literacy rates, gap between rural and urban, civil society situation and its involvement/participation in social and political affairs are difficult to fathom or justify. However, it goes without saying that it would be a challenge to implement the RTI legislation in Zambia with high poverty levels and low literacy levels. The vast majority of Zambia cannot reasonably make an informed judgment of the governance trends based on the poverty and literacy levels. The literacy and education rates are not satisfactory enough to ensure equal enjoyment of civil and political rights and accessibility to government information. Further, Zambian civil society space is not well organized to ensure effective mass movement towards redressing the lack of FOI laws. Moreover, Zambian media has faced challenges with government and a lot needs to be done in this area. The media is not in its best shape to freely report on FOI issues to be effective and take up its oversight/reporting role. Lastly, the corruption perception also may lead to government officers wanting to use the opportunity to provide information to earn corrupt funds. Other users may tempt government officials into corruption.

Recommendations

Zambia needs to enact a RTI Law explicitly in the operations of government units in charge of managing information flow, how requests will be handled and exceptions to the law. In short a law that meets the minimum guidelines of the AU Model Law.

Further recommendations:

1. Zambia needs to have another referendum to enact the bill of rights without subjecting it to partisan general elections. That way, fundamental human rights like RTI will be enshrined in the constitution. In the constitution bill which was not adopted in 2016, there were better provisions: The Constitution Bill 2016 had proposed this: Part III Bill of Rights. 21. (1) A person has the right to freedom of expression which includes - (a) freedom to hold an opinion; (b) freedom to receive or impart information or ideas; 22. (1) A person has the right of access to information held by the State or another person which is lawfully required for the exercise or protection of a right or freedom. (2) A person has the right to demand the correction of false or misleading information recorded or published about that person. (3) The State shall proactively publicize information that is in the public interest or affects the welfare of the Nation. However, the referendum did not pass the Bill of Rights.

2. The media needs to work on demisting the right to information. This will be done by packaging messages that will reach the majority of Zambians to make them understand what these are. This stops government from using technicalities to justify not enacting FOI laws.
3. Institutions that help with information flow need capacity building with their staff funded for further education and also others trained locally on the model law and other aspects of FOI which can help their work be better.
4. Produce a roadmap and plan of action that will show a concrete sign of commitment to avoid all pronouncements of FOI law enactments being seen as just joining the long list of vain assurances and announcements on the enactment of the ATI bill by Ministers.

Zimbabwe

Recognition in the Constitution

Section 62 of the Constitution of Zimbabwe—Amendment No. 20 Act, 2013

RTI legal framework

The Access to Information and Protection of Privacy Act [Chapter 10:27]

Procurement Act [Chapter 22:14], Sections 31 and 32

Ratification

The Universal Declaration of Human Rights

The International Covenant on Civil and Political Rights

African Charter on Human and Peoples' Rights

African Union Youth Charter

Reporting compliance

Zimbabwe is late by five reports.

16 recommendations related to RTI from UPR in 11/2016

Legal recognition of access to information in Zimbabwe

The 2013 Constitution of Zimbabwe guarantees access to information in Section 62. The provision grants Zimbabwean citizens, permanent residents, and the Zimbabwean media, the right to access to information held by the state if information is required for public accountability. Furthermore, the Constitution emphasises the importance of information dissemination by public institutions in a number of its provisions. For instance, Section 194 (h) unequivocally states that all public institutions must foster transparency by providing the public with timely, accessible, and accurate information.

Zimbabwe was one of the first countries in Africa to pass a law regulating access to information. While promulgation of such laws is key, just having an access to information act is not enough. What is critical is ensuring that the laws fully comply with regional and international standards on access to information and that they fully promote and protect this right.

From the time Zimbabwe's Access to Information and Protection of Privacy Act (AIPPA) was promulgated in 2002, its inadequacies in promoting the right of access to information are a matter of public record. The law has been condemned as an instrument of controlling the free flow of information, rather than make it more accessible. This is because, as it stands, the act fails the basic democratic test in almost all of its various key components.

On 15 March 2002, was put into effect. The intention of AIPPA was to regulate access to information held by public and statutory bodies, as well as to regulate the practice of journalism principally through the Zimbabwe Media Commission (ZMC) and the Media Council of Zimbabwe (MCZ). However, some sections of AIPPA are inconsistent with Section 62 of the Constitution of Zimbabwe, which guarantees “access to information” as a constitutional and fundamental right.

Despite these constitutional protections, a number of sections under AIPPA interfere with the rights to seek, receive, and impart information and ideas via various media platforms. Numerous sections of AIPPA are objectionable, in particular Section 5, the right to information; Section 64, the abuse of freedom of expression; Section 78, the rights of a journalist; and Section 80, the abuse of journalistic privilege.

Section 5 of AIPPA begins on a positive note, reflecting Section 62 of the Constitution in establishing the right of access to information, but it also includes unnecessary limitations. Section 5 (1) of AIPPA states that “every person shall have a right of access to any record.” On face value the section is progressive, but unnecessarily exclusionary and narrow on interpretation. Under the statute, the accessible information is qualified and limited only to a record that is in the custody or under the control of a public body.

Also, best international practices extend the right beyond information held by public bodies. Several countries already have access to information legislation that extends to both government bodies and private entities.¹ Parliament has, thus, an opportunity to expand this provision as part of re-alignment of laws with Zimbabwe's Constitution.

The list of “excluded information” under Sections 4 and 5 of AIPPA is vast, thereby eroding the right of access to information. While documents pertaining to welfare and integrity of a child under the Children's Act could justifiably be confidential, the protection of “a personal note” or of “teaching materials” under this statute constitutes irrational limitations that are neither justifiable nor reasonable in a democratic society. Excluded information even consists of “any record or information relating to any matter or issue referred to in section 31K of the Constitution, and any matter or issue relating to the exercise of the functions and powers of the President.”

¹ These include Angola, South Africa, Trinidad and Tobago, Armenia, the Czech Republic, the Dominican Republic, Estonia, Finland, and Turkey, among others.

Firstly, the Constitution of Zimbabwe does not carry a “section 31K” that relates to access to information. Secondly, to ban access to information on “any matter or issue relating to the exercise of the functions and powers of the President” is unjustifiable in a democratic state.

Regional and international norms on freedom of expression and access to information have rightly declared that “in democratic societies, the activities of public officials must be open to public scrutiny.” The protection of a public official, such as the president, under Section 5 of AIPPA is inconsistent with the democratic values and principles listed under Section 3 of the Constitution. This protection under AIPPA also violates Sections 61 and 62 of the Constitution, which guarantees freedom of expression, freedom of the media, and access to information.

Section 5 (3) (a), (b), and (c) of AIPPA also exclude a large category of persons from the enjoyment of the right. The persons excluded from the scope of the right under this section include noncitizens and nonpermanent residents, people without temporary employment or study permits, unregistered mass media services, unlicensed broadcasters, and any foreign state or foreign state agency. These limitations make the statute unnecessarily restrictive.

Unfortunately, Section 62 of the Constitution is equally exclusionary and narrow in the context of international standards and law. Article 9 of the African Charter on Human and Peoples’ Rights provides that “every individual shall have the right to receive information,” as do numerous other international instruments that Zimbabwe has ratified. The protection at the international level is not just for citizens, permanent residents, or persons with work and study permits as is the case in Zimbabwe.

Section 78 of AIPPA relates to privileges of accredited journalists, including access to Parliament and public bodies, privileged access to certain public records, access to national events, access to relevant public events, and permission to make recordings with the use of audio-video equipment and photography. These journalistic privileges exclude important entitlements that are specifically listed in the Constitution and relevant regional and international human rights instruments. Notably the statute should include protection of the confidentiality of journalists’ sources, freedom of establishment for prospective broadcasters, and editorial independence.

There should be a separate and specific access to information statute that will enable the effective and practical implementation of access to information rights. Such a statute would be permissible under Section 62 (4) of the Constitution, which requires the legislature to pass a law to give effect to this constitutional right. Such an act should draw on key principles, such as the African Platform on

Access to Information (APAI), among others, while all issues to do with regulation of the media should be contained in a separate law, in line with the provisions of Section 61 of the Constitution.

The government should also repeal Section 5(1) of AIPPA and replace it with a provision ensuring that the act provides for access to “information” and not just to “records” held by public bodies. Further, the new provision should also see the right to access information extended to nonpublic bodies in line with the African Union Model Law on Access to Information and with South Africa's Promotion of Access to Information Act, which extends the right to information held by private bodies. This would go a long way in widening the scope of information that can be accessed in terms of this law. Additional changes include:

- Provisions that ensure easy access to information for all classes of persons with disabilities in line with Section 83 of the Constitution on “Rights of Persons with Disabilities.”
- An amendment to Sections 4, Section 5, and the First Schedule, to substantially narrow down the compass of “excluded information,” and to make references to the new Constitution.
- A repeal of Sections 64 and 80 to decriminalise false news offences created in these sections. Such decriminalisation would entail the amendment of the subject sections so as to regulate the relevant areas via civil means.
- An expansion to Section 78 to include the rights enshrined in Section 61 of the Constitution, such as the right to the protection of sources, editorial independence, and all other traditionally established journalistic rights in line with the current Constitution.

Implementation of the legal framework

During the monitored period, researchers sent a total of five letters requesting information to five government institutions. Those institutions only responded to two out of the five letters, which is a 40 percent response rate. Both the institutions responded within the 30-day period stipulated under AIPPA, but they only included part of the requested information.

A case in point is that of the City of Harare. Researchers sent a letter to the municipality containing three questions, but the municipality only responded to one of the three questions. No explanation

was given as to why the city did not respond to the other two questions. Therefore, it was ranked as an incomplete answer.

The Ministry of Health and Child Welfare also only responded to one of the three questions, and the response was a referral to the ministry's directorate of pharmacy and HIV/AIDS, making this response incomplete.

The remaining three authorities did not respond to the questions leading to the ranking of "mute refusal."

Overall, the study reveals that public institutions still do not fully act upon their obligations under the country's access to information legislation and that the public institutions are not proactive in disclosing information to citizens. The research also shows that public institutions are not providing reasons for their refusals to release information as required by law and that a culture of secrecy still prevails within public institutions.

It also points to weak promotional measures within AIPPA and a weak oversight mechanism, which can be addressed through reforms in line with international standards and the Constitution of Zimbabwe.

Overall, what emerged from this monitoring exercise is that while public institutions appear to appreciate the importance of access to information there is limited appreciation that it is a right rather than a privilege. Additionally, it shows that public institutions are some of the pivotal turbines towards facilitating the enjoyment of this right.

Enabling environment

The political, economic, and social crisis gripping Zimbabwe affects all aspects of daily life. A withered economy, high unemployment, a biting liquidity crunch, government repression, and rampant human rights violations have reversed decades of development leading to a "fragile state" that is nonresponsive to the needs and wants of the people. The prevalence of HIV and AIDS infection, other chronic diseases like cancer, and extreme poverty have had a devastating impact. In this context, women, youth, and girls are particularly vulnerable.

Zimbabwe is experiencing high and widespread poverty and inequality, which is presenting major challenges to the country's economy and the well-being of its people, including the rural, urban, and

working poor. Poverty in Zimbabwe is measured using a per capita consumption approach that uses the total consumption poverty line (TCPL) and the food poverty line (FPL). Of Zimbabwe households, 62.6 percent are poor as displayed by the per capita consumption expenditures below the TCPL. Of these poor households, 76 percent live in rural areas compared to 38.2 percent in urban areas. Using the FPL, 16.2 percent of Zimbabwe households are experiencing extreme poverty (UN Zimbabwe Country Report, 2016). This pushes demand for rights such as access to information to the periphery of the populace's needs hierarchy.²

The poverty gap index among people in rural areas is 42.8 percent compared to 15.5 percent in urban areas. Among the rural poor, the degree of inequality is also widespread indicating a 25.4 percent poverty severity index as compared to 7.2 percent in urban areas. This indicates that poverty in rural areas is not only widespread but is deeper and more severe than in urban areas.³

Zimbabwe's literacy rate is one of the highest on the continent, way above 90 percent. This is further supported by a generally strong civic society movement covering a wide range of rights, including access to information. In this regard, organisations like the Media Institute of Southern Africa (MISA) Zimbabwe launched an ATI movement in 2015. The movement brought together community-based organisations (CBSs) in 2015 and advocated to put ATI on the government agenda. But as noted from the information requests, the right to access information has yet to be achieved.⁴

Recommendations

The government of Zimbabwe should ratify the African charter on statistics, the African Charter on Democracy Elections and Governance, the AU Convention on Preventing and Combating Corruption and the African Charter on Value and Principles of Public Service and Administration.

In order to achieve SDG 16 Target 10, the Government of Zimbabwe should:

1. Amend and effectively implement the access to information legislation to ensure the fundamental right of access to information by all citizens; such law on access to information has to be consistent with international and regional standards on the right to information and the AU Model Law.
2. Fully comply with reporting obligation and follow up with ATI outstanding recommendations of ACHPR and UPR

² The United Nations Country Report on Zimbabwe: <http://www.zw.one.un.org/uninzimbabwe/zimbabwe-country-profile>.

³ ZimStats Food Poverty Atlas: http://www.zimstat.co.zw/sites/default/files/img/Zimbabwe%2520Food%2520Poverty%2520Atlas2016_FINAL_A4%5B1%5D.pdf.

⁴ MISA Zimbabwe Resource Centre : <http://misa.org/resource-centre/access-to-information/>

3. Ensure the development of progressive national indicators and targets with regard to ensuring public access to information as provided under the SDG framework.

Further recommendations:

1. The government of Zimbabwe should separate the regulation of access to information from that of the media. The lumping together of these two broad issues has led to access to information playing second fiddle to media regulation. In addition, it has stymied the free flow of government-held information.
2. Repeal the current access to information law, AIPPA, and replace it with a law that is in sync with the AU Model Law on ATI. The provisions of AIPPA are inadequate to provide an effective mechanism to access to information. The new law should include the following provisions:
 - a. Shorter time frames for responses to information requests. The AU Model Law on Access to Information, for example, provides for a 21-day response period that can only be extended once by a further 14 days (Section 15 & 16);
 - b. Measures to ensure promotion of ATI across all key stakeholders;
 - c. An independent and effective oversight mechanism to monitor information dissemination practices as well as to ensure that the ATI law is adhered to by public institutions and all other relevant stakeholders;
 - d. A strong provision that mandates proactive disclosure and the maximum disclosure of public-interest information; and
 - e. An information request procedure that is not cumbersome or rigid and which includes clear administrative procedures for redress in the event of denial of information.
3. Measures should be put in place to ensure a holistic and uniform appreciation of access to information as a constitutional right across all public institutions, including increased appreciation of constitutional obligations.
4. Even under the current restrictive act, the government does not adhere to the 30-day deadline provided for under AIPPA (Section 8). While AIPPA mandates 30 days (which can be extended by 30 more days), the government can choose not to respond for periods exceeding 90 days. This requires a clear mechanism with sanction measures to curb nonadherence to information requests.

5. All public institutions need to use information and communications technology (ICT) platforms to disseminate public information as Zimbabweans are increasingly using online spaces.

Conclusions and final recommendations

The adoption of the 2030 Agenda marked a milestone for the global recognition of the right to information as a tool for development. It is important to underscore that the right of access to information is not only related to target SDG 16.10, but it is also a tool to improve the implementation and monitoring of other SDGs at national and international levels.

For most developing countries ensuring public access to information will necessitate not only legal changes. It requires reducing the digital divide and to ensure inclusive and equitable quality education for all.

Twenty-one out of 54 African Union member states have domestic legislation focused on the right to information: Angola, Burkina Faso, Côte d'Ivoire, Ethiopia, Guinea, Kenya, Liberia, Malawi, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sierra Leone, South Africa, South Sudan, Tanzania, Togo, Tunisia, Uganda, and Zimbabwe. Yet a lack of political will and a lack of capacity to implement these measures continue to undermine efforts to foster accountability, good governance, and the fight against corruption across the continent.

Cross-cutting challenges can be identified in most of the African countries, challenges that pose serious barriers to the effective guarantee of the right to information. These are:

- A lack of political will. Most African governments lack the political will to actively support the right to information legal processes, particularly in contexts where there is a legacy of undemocratic political systems or closed government.
- A lack of knowledge among citizens. Citizens are not aware of their legal right to information, or are reluctant to assert it either because of fear of a repressive regime or a prevailing culture of not questioning authority. In other cases, there are structural barriers to poor people accessing and using information. For example, access to the internet remains low in many developing countries, particularly in remote areas.
- A lack of capacity. The capacity of public bodies to provide information is weak, and officials are unaware of their obligations. In low-capacity environments, records management and statistics generation are often insufficient to support access to information.

This lack of political will is also reflected in governments' commitments to international and regional instruments that protect and promote human rights, such as the right to information. Only seven

African Union state members have complied with their reporting obligations before the ACPHR. Seventeen countries are late by one or two reports, 23 are late by three or more reports, and seven have not submitted any reports. And many African countries have not ratified key regional instruments, such as the African Charter on Democracy, Elections and Governance, and the AU Convention on Preventing and Combating Corruption.

The countries that have adopted ATI laws have had trouble with implementation. These laws fall short in terms of compliance with international standards and institutional systems, which affects their effective implementation. For example, the Ugandan Access to Information Act does not provide for an independent oversight body. In Zimbabwe, the main purpose of the law is to protect, rather than promote, access to information by citizens.

Achieving full implementation of the right to information in Africa requires broadening the awareness of the right with both the citizenry and the authorities. In this regard, the role of civil society in the development of access to information legislation has been crucial. They have created awareness about the right and developed draft bills; they have trained civil society coalitions and government agencies on access to information.

Additionally, the extent to which access to information can be used to improve accountability depends on whether actors such as the media, NGOs, researchers, and academia are willing and able to work and support each other. Civil society organisations have played a key role as the primary driver of information requests and, in many cases, legislation to support this right.

The adoption of the 2030 Agenda marked a milestone for the global recognition of the right to information as a tool for development. It is important to underscore that the right of access to information is not only related to target SDG 16.10 but is also a tool to improve the implementation and monitoring of other SDGs at national and international levels.

This report demonstrated that SDG 16.10 and its Indicator 2 and their impact are measurable.

This report has made an important step to collect and analyse baseline information and data on government efforts to publicly promote the right to information, citizens' awareness of their legal right to information, and the capacities of public bodies to provide information upon request.

The same exercise should be conducted at least every two years to assess progress towards SDG 16.10. With this objective, a set of recommendations has been developed to help international organisations, such as the African Union, and regional communities and national actors, such as

governments, media, and civil society, to advocate for the adoption of right to information legislation and implementation measures.

All recommendations should be considered in line with the principles set out in the 2030 Agenda for Sustainable Development, especially the respect for national policies and priorities, as well as the consideration of different national realities, capacities, and levels of development.

Recommendations to state parties:

1. Ratify all international and regional instruments regarding recognition and protection of the right to access to information by raising awareness amongst state parties about their duties in the implementation of rights under the African Charter and other instruments including the rights to freedom of expression and access to information.
2. Support African Union institutions to promote the respect of several descriptive documents of the right to access to information, such as resolutions, the Declaration, and the Model Law.
3. State parties must ensure that their national laws on freedom of expression and access to information comply with international and regional standards.
4. Adopt access to information legislation in line with the regional and international standards elaborated in the Model Law on Access to Information in Africa and ensure effective implementation of these laws.
5. Repeal all laws and policies that unduly restrict the right of access to information, including official secrets acts and other restrictive national laws where they still exist. Repeal criminal defamation laws or insult laws which impede freedom of speech, as stipulated in the African Charter, the Declaration, and the Resolution on Repealing Criminal Defamation Laws in Africa (ACHPR/Res. 169 (XLVIII) 10).
6. Refrain from interrupting or limiting access to telecommunication services, such as the internet, social media, and messaging services, especially during the electoral period, as noted in the Resolution on the Right to Freedom of Information and Expression on the Internet in Africa (ACHPR/Res. 362(LIX) 2016).
7. Build up the capacities of civil servants to ensure effective implementation of RTI frameworks.
8. Provide sufficient resources to equip public entities with information officers.
9. Implement independent oversight mechanisms to monitor and enforce ATI guarantees and the legal framework.
10. Ensure a modern and innovative public service by promoting ICT and record keeping in government institutions.

11. Support the creation of networks/coalitions of stakeholders to promote, advocate, and monitor implementation of the right to information at national and local levels. Build capacities on shadow reporting and participation in ACHPR mechanisms.
12. Raise citizens' awareness of their right to access public information.
13. Build capacities of independent media to make use of existing right to information frameworks.
14. Periodically report on the quality of legal frameworks and effective exercise of the RTI to UN and regional international governmental organisations.
15. Commemorate the International Day for Universal Access to Information on 28 September in light of the importance of this right.
16. Ensure efficient and timely reporting on SDGs, in particular SDG 16.

Recommendations to AU and UN institutions:

17. Continue to develop model guidelines for effective implementation of the Model Law on ATI.
18. Take into account country recommendations included in this report, particularly how they impact global policy with respect to the right to freedom of information.
19. Highlight concerns and recommendations on the effective implementation of ATI beyond the adoption of the law.
20. UNESCO, as the custodian agency for Indicator 16.10.2, should continue to report and provide specific recommendations, with regard to SDG 16, and in particular Target 16.10.2, to each country.

Recommendations to civil society and citizens:

21. Actively take advantage of public-awareness activities provided by different stakeholders in order to gain knowledge of the various national provisions for public access to information.
22. Exercise the right to access information by requesting information from public entities and government-funded private bodies.
23. Support the special rapporteur on freedom of expression and access to information to carry out country missions and build strong partnerships with state members for development, effective implementation, monitoring, and reporting on the right to information.
24. Implement advocacy campaigns for the passage of access to information laws in countries where there is no recognition or regulation of the right, ensuring it is recognised as a fundamental, constitutional right.
25. Provide shadow reports to AU and UN institutions on the effectiveness of RTI legislation.