



STATE OF RIGHT TO INFORMATION IN AFRICA

Africa Freedom of Information Centre

REPORT 2014



September 2014



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Acknowledgements

The State of Right to Information in Africa 2014 is the first issue of an annual reflection on the progresses on the fundamental human right. The goal of this report is to provide African governments, civil society, researchers and other stakeholders with a tool that will guide and support the development and advancement of the right to information in Africa.

Africa Freedom of Information Centre would like to express appreciation towards all members whose experiences and insight have informed this report for the unconditional support. Specially, AFIC expresses its appreciation to its members in the Democratic Republic of Congo, Kenya, Liberia, Malawi, Mozambique, Namibia, Nigeria, Rwanda, Tanzania, Uganda, Zambia and Zimbabwe who have contributed to this report with enlightening articles.

AFIC is also deeply grateful to Hon. Faith Pansy Tlakula, Special Rapporteur, Freedom of Expression and Access to Information in Africa and Mrs. Habiba Meji-Cheikh, Director of Information and Communication, African Union Commission as well as who have been AFIC's key partners in access to information campaigns and for providing important perspectives of the African Union, its frameworks and mechanisms to the final document.

We also laud the pioneer AFIC membership, governing council and funding partners for setting a solid foundation. AFIC's work has demonstrated the key role of Civil Society in promoting governance and transparency in Africa and we hope the present work will be useful and contribute towards advocacy for the deepening and broadening freedom of information in Africa.

We are convinced that this report and its recommendations provide an important step towards the realization of citizens' right to information as envisaged in international and African regional mechanisms. This is especially important at this time when the African Union is charting Vision 2063 strategic framework that seeks to provide direction for the continent's inclusive development and respond to growing global attention and interest to the continent.

Henry Maina
Chairperson,
AFIC Governing Council

Gilbert Sendugwa
AFIC Coordinator & Head of Secretariat

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Introduction

Africa Freedom of Information Centre (AFIC) not only deems it an honour and an opportunity to produce this important publication. We see it as our duty. AFIC is a pan–African network and resource centre of 35 civil society organizations promoting access to information in Africa. It leads regional efforts in the promotion of the right to information in Africa and provides support to members and country groups to effectively advocate for freedom of information at country and regional level. The launch of the State of Right to Information Africa Report is a remarkable development in the life of AFIC as an institution and in the campaign for transparency, human rights, good governance and democracy in Africa.

The right of access to information is a fundamental right recognized by the Universal Declaration of Human Rights since 1946.

The right to information is a 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, influencing service delivery and decision–making and for promoting and protecting their human rights.

- ⇒ *No one shall be subjected to any sanction for releasing in good faith information on wrong doing, or that which would disclose a serious threat to health, safety or the environment, save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society*
- ⇒ *Secrecy laws shall be amended as necessary to comply with freedom of information principles*
- ⇒ *Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law*
- ⇒ *ACHPR Declaration of Principles on Freedom of Expression in Africa, 2002*

Freedom of information is established in international law and human rights standards. Six African Union treaties recognize the right to access to information and oblige state parties to these treaties to observe and promote this right¹. Over the past four years, Africa has witnessed progress in terms of promotion and protection of the right to information, challenges with adoption and implementation notwithstanding. The Regional Conference on Access to Information held in Accra, Ghana in 2010 under the auspices of the Carter Centre identified key findings among which were the importance of access to information in advancing human rights, good governance and democracy and the limited legislation and application of regional and international standards that was slowing down development and observation of key civil and political rights in Africa². By 2010, there were only five countries with national access to information laws³, these were: South Africa, Zimbabwe, Angola, Uganda and Ethiopia.

The launch of the Open Government Partnership⁴ (OGP) in September 2011 provided a rallying point for Governments and civil society to engage on various transparency and accountability issues including the right to information. OGP is an important multilateral voluntary platform for governments to work in collaboration with citizens to advance transparency and accountability. To be eligible to become a member, a country must be assessed to meet minimum points on key areas including citizens' access to information, fiscal transparency, and asset disclosure and citizen participation. A country should have at least a score of 12 points to be eligible.

Upon joining of membership, the Government is required to work with citizen groups to elaborate a country action plan to advance transparency and accountability. Government and civil society thereafter focus on implementation and monitoring⁵. The Independent Reporting Mechanism of OGP has proved innovative through providing feedback and incentives for reforms⁶. Analysis of year one results reveals that 43 countries fully implemented 270 commitments, including access to information⁷.

Other key milestones for the advancement of transparency in Africa have been the adoption of the African Platform on Access to Information (APAI) Declaration by the Pan African Conference on Access

1. <http://www.africafoicentre.org/index.php/resources/resources/135-au-status-of-ati-treaties-law-const-jan-2014>

2. <http://www.cartercenter.org/peace/ati/conferences/2010/findings-plan-of-action.html>

3. <http://www.africafoicentre.org/index.php/resources/foi-laws>

4. <http://www.opengovpartnership.org/>

5. <http://www.opengovpartnership.org/how-it-works/requirements>

6. <http://www.opengovpartnership.org/independent-reporting-mechanism>

7. <http://www.opengovpartnership.org/blog/linda-frey/2014/09/15/faces-open-government>

to Information and the subsequent adoption of the African Model on Access to Information by the African Commission on Human and Peoples' Rights. These new tools provide AFIC, its members and partners additional spaces and resources to engage key actors on the advancement of the right to information in Africa.

AFIC working with its membership, partners, national governments and the organs and institutions of the African Union, has seen a number of regional treaties with provisions on access to information ratified and progressively implemented. Only 12 countries worldwide had access to information legislation in 1990; this has changed rapidly as 100 countries have such laws today. However, African experience has seen only 13 of 54 countries adopting national access to information laws over the same period: South Africa, Angola, Zimbabwe, Uganda, Ethiopia, Liberia, Nigeria, Sierra Leone, Guinea, Niger and Rwanda. Mozambique recently joined the ranks when it adopted its Freedom of Information law in July 2014. Even so, this handful of African pioneers is still challenged with implementation due to an absence of political will, human and financial resources and technical expertise.

The State of Right to Information in Africa Report 2014 provides accounts of the performance of AFIC members on the observation of the right of access to information and the implementation of laws and initiatives, to enable assessment and reflection.



In particular, it highlights existing African Union treaties that recognize the right to information and the state of ratification by member states. The treaties are: article 9 of the African Charter on Human and Peoples Rights, article 19 of the African Charter on Democracy, Elections and Governance, article 9 and 12 (4) of the African Union Convention Against Corruption, article 10 (3d) and 11 (2i) of the African Union Youth Charter, article 6 of the African Charter on Values and Principles of Public Service and Administration and article 3 of the African Statistics Charter. We also highlight efforts by the African Union to promote and enforce the right to information through its organs. The report further highlights the state of adoption and implementation of national access to information laws, as well as key transparency initiatives through which the right to information is promoted nationally and regionally.

This publication seeks to complement other efforts for the advancement of the right to information in Africa by supporting advocacy for adoption and implementation of access to information provisions as well as contributing to building a base of knowledge. AFIC and its members are committed to providing annual reflections on the development of the right to information in Africa through annual publication of the State of Right to Information in Africa.

We believe that this report will be a useful advocacy tool to stakeholders promoting access to information in the African continent as it provides a picture of where we are in observing fundamental civil and political rights and reflects on the compliance of the regional international treaties that compel governments to promote and protect rights and freedoms. With this report we want to avail a tool to civil society organizations to address the challenges, share knowledge among the African countries and provide an annual reflection on advancements in protecting and promoting accountability and transparency and eventually democracy and prosperity for the African continent.

REGIONAL PERSPECTIVES

African Commission on Human and Peoples' Rights: The Right to Information in Africa is growing

The African Commission on Human and Peoples' Rights (Commission) is mandated by the African Charter on Human and Peoples' Rights (Charter) to "co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights"⁸.

The Right of Access to Information is one of the rights protected by the Charter under article 9 (i), which holds that, "*Every individual shall have the right to receive information*" and forms a central focus of the mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa.

- a. The Commission has over the years promoted the right to information through various ways including but not limited to the following:
- b. Establishment of a Special Mandate covering the right to freedom of expression and access to information
- c. Elaboration of Principles of Freedom of Expression including provisions on the right to information in 2002
- d. Regular consideration of State Reports and providing Member States with Concluding Observations and Recommendations including specific ones on the right to information
- e. Special Resolutions on measures and recommendations
- f. Adoption of Model Law on Access to Information for African Union Member States
- g. Promotional visits to State Parties
- h. Promotional events and capacity building workshops and engagements for State Parties and other stakeholders

These efforts, tools and mechanisms have enabled the Commission to guide State Parties, NGOs and other stakeholders to contribute to the advancement of the right to information in Africa. It is notable

8. *Article 45 (1) of the Charter*

that the number of countries with national access to information laws has increased from five in 2010 to thirteen in 2014. It is also important to note that increasingly, governments have gone beyond adoption of laws to seriously working on implementation and reporting to the African Commission through state reports.

Africa Freedom of Information Centre (AFIC) has been a partner of the Commission and supporter of my mandate through different promotional activities like the Pan African Conference on Access to Information, the African Platform on Access to Information Declaration (APAI), Consultations on the then draft Model Law on Access to Information, Principles on National Security and Access to Information as well as regular monitoring of the right to information in Africa.

The initiative of the Annual State of Right to Information in Africa Report is a welcome development which will provide stakeholders with a reference point for identifying gaps and contributing to the development of the right to information in Africa. This is an essential part of realizing AFIC's new strategic plan to which I was privileged to contribute to during the organization's General Assembly in January 2014.

I congratulate Africa Freedom of Information Centre and its members on this important publication and invite stakeholders to use the report to campaign for the further advancement of the right to information in Africa.

Adv. Faith Pansy Tlakula
Special Rapporteur
Freedom of Expression and Access to Information Africa
African Commission on Human and Peoples' Rights

African Union Commission: Access to Information important for a People–Centred African Union

The right of access to information is essential for the promotion of human rights, democracy, transparency and accountability, all of which are at the heart of the shared values of the African Union and form the building blocks of the African Governance Architecture.

The African Union envisions being a “*people-centred*” Union whose citizens are informed and actively engage in all levels of decision–making on the continent’s social, economic and political development. In order for this engagement to take place, people need information on the continent’s past, present and future. Past experience on the continent has shown that lack of information and participation has caused costly tensions and conflicts on the continent.

The first half of this decade is proving that Africa is a continent of opportunities and progress. It has a young and educated population, a strong natural resource base and a big market for good and services. Citizens’ access to information on these opportunities will fast track the continent’s development and poverty reduction through combating problems such as unemployment.

Access to information is recognized by six treaties of the African Union including article 9 of the African Charter on Human and Peoples Rights, article 19 of the African Charter on Democracy, Elections and Governance, article 9 and 12 (4) of the African Union Convention Against Corruption, article 10 (3d) and 11 (2i) of the African Union Youth Charter, article 6 of the African Charter on Values and Principles of Public Service and Administration and article 3 of the African Statistics Charter.

Four of the above mentioned treaties are now in force following the attainment of the necessary minimum ratification and depositions. The African Union is carrying out promotional and outreach activities to ensure that all its treaties, including those on access to information, are ratified and fully implemented.

The African Union is pleased that 13 of its member states have taken a step forward on implementing its treaties by enacting and implementing national access to information laws. These are South Africa, Angola, Zimbabwe, Uganda, Ethiopia, Liberia, Nigeria, Niger, Guinea, Tunisia, Rwanda, Sierra Leone and Cote d'Ivoire. We are hopeful that Botswana, Mozambique, South Sudan, Kenya and Tanzania, which are in the process of considering national access to information laws, will soon join the list.

The State of Right to Information in Africa Report highlights how our member states are promoting the right to information based on African Union treaties, and identifies areas for further action. The African Union Commission calls upon AU member states and all stakeholders to promote the right to information in Africa.

Mrs. Habiba Mejri-Cheikh
Director of Information and Communication
African Union Commission

COUNTRY REPORTS

DRC civil society mobilising to demand powerful access to information law

Apart from the African Charter on Human and Peoples' Rights, the Democratic Republic of Congo has not ratified key Africa Union treaties that recognise and promote the right to information. These include the African Convention on Preventing and Combating Corruption, the African Charter on Democracy, Elections and Governance, the African Charter on Values and Principles of Public Service Administration, the African Union Youth Charter and the African Statistics Charter¹. This is despite the country's history of conflict, electoral concerns as well as huge problems arising from lack of transparency and accountability.

With the country being overdue by three reports to the African Commission on Human and Peoples' Rights, DR Congo is an active violator of article 62 of the African Charter on Human and Peoples' Rights².

The Democratic Republic of Congo falls short of meeting eligibility of OGP by 5 points. Adoption of progressive laws on access to information law and asset declaration for leaders would enable DRC meet eligibility for membership.

Democratic Republic of Congo

Access to Information law:

Draft law waiting for Parliament debate.

Constitutional provision:

Article 24 of Constitution of DRC

Treaties ratified by Democratic Republic of the Congo that recognise the right of Access to Information:

⇒ *African Charter on Human and Peoples' Rights*

Status of ACHPR Reporting

⇒ *Overdue by 3 Reports*

Open Government Eligibility Status:

⇒ *Not member; has 7 points and needs 5 points to meet OGP eligibility*

Other platforms:

⇒ *Extractive Industry Transparency Initiative*

1. <http://www.au.int/en/treaties>

2. <http://www.achpr.org/states/reports-and-concluding-observations/>

The Constitution of Democratic Republic of the Congo in Article 24 states that “all citizens have the right to get information”. This right to information concerns the right to express opinions, and to collect, receive and publish the information by means of the press. The regulation of the article 24 disposes a passive citizen and focuses the responsibility of providing information on medias and state, but concrete means of access are not recognized in the constitution that disposes that the right shall be developed by an organic law. It is in the article 13 of the law N° 96/002 of 22 June 1996, which lays down the conditions to exercise the right of freedom of press: “the state has an obligation to assure and to facilitate the citizen to access to information. The public service has the obligation to give the information that a citizen wants”³.

The right of access to information is still challenged by different factors in DRC making it almost impossible to get information from public administrations and exercise civil and political rights such as freedom of press and expression.

The draft of the Access to Information Law has not yet been tabled in Parliament. However a FOI law won't solve the problem of provisions in other laws that are very restrictive on allowing access to information of public interest, such as in the Public Finance Law and the Penal Code, among others. In practice, a very small minority of the DRC population is able to access public information (such as lawyers or businessmen). The exclusion of the vast majority of the population from means of access to information and participation in decision-making processes are the main reason and source of corruption, bad governance, misappropriation of public resources and violation of human rights.

Moving forward

The leadership of DRC has always shown predisposition to the promotion of government transparency. The Strategic Document for Development and Poverty Reduction includes transparency and good governance as its main pillars.

With United Nations Development Programme's (UNDP) support, DRC set up the thematic groups (groupes thématiques) as a manifestation of openness and involvement of all stakeholders including civil society in the management of key sectors of national life.

3 Article 19 – DEMOCRATIC REPUBLIC OF CONGO *Developing a new strategy for freedom of expression*<http://www.article19.org/data/files/pdfs/publications/drc-developing-a-new-strategy.pdf>

The DRC is currently in compliance with the Extractive Industries Transparency Initiative (EITI). EITI is an important mechanism for the transparent management of natural resources for the benefit of the national community. However, the DRC has not yet applied for membership in OGP. Collectif 24, a civil society platform advocating for an access to information law in DRC, is advocating to bring the DRC to join OGP, an important platform to introduce good governance practices and open data initiatives. Collectif 24 is also in contact with the DRC government in drafting a code of conduct for public officials. Civil society is leading the campaign “*Publish What You Pay*” but the campaign is limited and facing serious challenges because of the lack of an effective data mining system. The state itself does not have access to reliable information to make informed decisions and ensure traceability and sustainability in the mining sector.

The right of access to information is recognized in the Law N° 96/002 of 22 June 1996, which lays down the conditions for the exercise of press freedom in its articles 8 and 13 that establish: (i) “Everyone has the right to freedom of opinion and expression. For freedom of opinion and expression, it means the right to inform, be informed of, have opinions, feelings and communicate without hindrance, regardless of the medium used, subject to respect for the law, public order, the rights of others and public morals” and (ii) “The State has an obligation to provide and ensure the right to information.”

Civil society, under the aegis of Collectif 24, has identified the following challenges that obstruct access to information in DRC:

- a. Ruling culture of secrecy in public services
- b. Legal provisions for press criminalization, professional secrets and national security secrets
- c. Lack of capacities (human resources, techniques and infrastructure) to provide public information
- d. An entrenched practice of seeking permission from hierarchical superior to release information
- e. The government controls the public and private life of citizens
- f. Absence of a cross cutting FOI law

Collectif 24 leads advocacy campaigns for the passing of an Access to Information law in DRC. This law affects all fields related to public information, expecting the restrictions to protect citizen’ privacy and national security.

Advocating for a FOI law

The campaign for an ATI law in DRC started in 2009 driven by AMICUS and Comité des Droits de l'Homme et Développement (CODHOD). In June 2009, with financial support from the American Embassy, PNUD and the European Union (EU), experts from Mali and South Africa visited DRC and shared experiences with the authors of the proposed ATI law in DRC⁴.

In May 2010, Senator Jacques Ndjoli, former president of the Independent National Electoral Commission (INEC), endorsed the first draft of the ATI law. The electoral context of 2011 retarded the voting and it was delayed until 2013, when the document was endorsed again by Senator Moïse Nyarugabo with the support of Open Society Initiative of Southern Africa (OSISA), United Nations Development Program (UNDP), INTERNEWS and Open Democracy Advice Centre (ODAC).

In November 2013 the document was submitted to the Senate that gave the approval and sent it to government. Currently the government is considering the text.

In March this year, the text was distributed to all senators although a date has yet to be set for the debate and voting. There are many political issues that can postpone the process such as the territorial system, budget issues, elections and constitutional reform.

Recommendations

- a. The Government of the Democratic Republic of Congo should urgently ratify, domesticate and fully implement regional treaties that recognise and promote the right to information.
- b. The long overdue draft Freedom of Information Bill should be urgently considered and adopted by Parliament.
- c. The Government should urgently adopt and implement laws that require senior political leaders and officials to declare assets. This should include specific provisions on such information being public.

By Longendja Isa Mboyo Henri Christin, Executive Director of CODHOD, Executive Director of COLLECTIF 24

⁴ <http://www.alter-eu.org/fr/documents/2012/06/civil-society-letter-access-to-documents>

Ethiopia criminalizes journalism and free flow of information

Ethiopia

Access to Information law:

Proclamation to provide for freedom of the mass media and access to information

The Freedom of the Mass Media and Access to Information Proclamation was passed into law in December 2008

Constitutional provision:

⇒ *Article 29 of the Constitution of the Federal Democratic Republic of Ethiopia, 1995*

Treaties ratified by Ethiopia that recognise the right of Access to information:

- ⇒ *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 Statistics Charter*

Status of Reporting to ACHPR

⇒ *Fully compliant*

OGP status:

⇒ *2 points to meet membership eligibility (required to improve in budget transparency)*

Other platforms:

- ⇒ *Extractive Industries Transparency Initiative - Candidate country*
- ⇒ *Construction Sector Transparency Initiative (CoST).*

Ethiopia's commitment and respect for African institutions and mechanisms is not in doubt. It is the home to the African Union Commission and apart from the African Charter on the Values and Principles of Public Service Administration in Africa, Ethiopia has ratified all treaties that recognise and promote the right to information in Africa.

The African Commission on Human and Peoples' Rights lists Ethiopia as being up to date with reporting obligations under the Charter. However, there have been

1 <http://www.au.int/en/treaties>

concerns that domestic application of transparency, democracy and human rights instruments by the Government deviates from the principles of those treaties²

In its concluding Observations and Recommendations, the African Commission on Human and Peoples Rights expressed deep concern with state of freedom of expression and right to information. ACHPR adopted Resolution No. 218 of May 2012³ calling upon Ethiopia to take measures to improve the situation of the right to information by:

Amend the Charities and Civil Societies Proclamation in accordance with the UN Declaration on Human Rights Defenders;

- a. Remove restrictions on freedom of expression imposed on the Mass Media by the Access to Information Proclamation (2008) and the Anti-terrorism Proclamation (2009) that do not conform to rights of freedom of expression provided in international human rights law.

Joining the Open Government Partnership would directly contribute to addressing concerns of ACHPR highlighted above by promoting civic engagement.

Ethiopia asserts a constitutional guarantee of the right to information in the public interest at Article 29 of the constitution and a Freedom of the Mass Media and Access to Information Proclamation 2012. The reality of RTI, however, is a different story. Ministerial guidelines to actualise the Access to Information law are yet to be published and the enforcement of national laws that contradict this provision claw back on this guarantee. These include broad definitions for “terrorist acts”, ambiguous offences such as “moral support and encouraging of” “terrorist acts” (Articles 5 and 6), that grant the State broad discretion to criminalise dissent where there is no direct call for engagement in terrorism and where there is no likelihood of such acts occurring.

There are also provisions for warrantless search (Article 16) and seizure (Article 26) and warrantless arrests and detention (Article 19).

Article 613 of the Criminal code recognises four variations of defamation and calumny as “crimes against honour”, as well as the offence of “insult” (Article 615), with severe penalties available for each.

2 <http://www.pennstatelawreview.org/print-issues/comments/a-test-of-democracy-ethiopia-s-mass-media-and-freedom-of-information-proclamation/>

3 <http://www.achpr.org/sessions/51st/resolutions/218/>

Defences provide very limited protection for truthful statements, or statements that are in the public interest. Article 618 allows for aggravated sentences where these offences are committed against public servants. Article 244 criminalises “attacks against the State and National and other Emblems” and includes abusing, insulting, defaming or slandering the State in public. Article 640 prohibits “obscene or indecent publications”.

National security provisions in Articles 248–250 criminalise treason, high treason, and economic treason by making it an offence to disclose official government documents that compromise “the national interest”. Articles 396, 397 and 399 concern similar crimes of “breaches of military secrecy”, “breaches of official secrecy”, and “breaches of professional secrecy”, while Article 486 criminalises “inciting the public through false rumours”.

These laws expose journalists to harassment and intimidation, and undermine the right of journalists to protect the anonymity of their sources. They have been used to prosecute individuals for making false assertions of fact against government authorities, or for other acts of legitimate criticism of or protest against government policy. This threatening environment has forced many journalists and citizens to flee the country.

Extensive government control over the broadcast media⁴ has brought about the lack of media independence and plurality. This control is reinforced by a state monopoly over printing presses through the state-owned Berhanena Selam Printing Enterprise (BSPE) and standardised printing contracts with restrictive terms. Of the 91 newspapers and 160 magazines given licences since 2009 by the Ethiopian Broadcasting Authority, only 17 newspapers and 27 magazines are in circulation.

The expense of printing, costs of distribution outside of Addis Ababa and low literacy rates discourage private investment in independent media. Investors are also disinclined to associate with media that may be viewed as critical of the government, which further limits the media’s plurality and independence and worsens the general state of RTI.

4 Under the Broadcasting Service Proclamation of 2007, the Freedom of the Mass Media and Access to Information Proclamation of 2009 establishes a licensing system for the printed press, where all written publications must be registered (Article 9) and the executive is given broad powers to impound periodicals and books (Article 42). Restrictions on media ownership (Article 7) also discourage growth and investment in the sector.

Despite Ethiopia having one of the lowest rates of internet penetration in Africa, the government has continuously filtered content and engaged in blocking, often attempting to limit access to criticism voiced by the Ethiopian diaspora. In June 2012, Ethio Telecom took steps to block the use of the secure browser, Tor, which allows users to bypass blocked websites and browse anonymously. The Ethiopian government has also blocked numerous websites and blogs from being accessed in the country, especially those carrying politically critical content. International news sites such as Al Jazeera and CNN are among websites that are frequently blocked.

Ethiopia was ranked 143 out of 180 countries in the World Press Freedom Index, 2014. Since 2011, international human rights organisation ARTICLE 19 has documented 12 journalists prosecuted under the Anti-Terrorist Proclamation (652/2009) and at least 33 cases of journalists fleeing the country in fear of prosecution under the same law.

Journalism in Ethiopia makes you pay the price. It is similar to being a soldier. But when you want to be a soldier, you know the risks, plus you will shoot your enemy. In our situation you are not sure what will happen to you. You don't know when the government will arrest you. But in your mind, you will feel that you might be the next one.—**Nebiyu Hailu, Journalist**

In my personal opinion, unless journalists in Ethiopia wrote things that favour the current EPRDF ruling party, I can say their fate is nearly at the door of death or just like being at the door of prison.—**Dawit Solomon, Journalist**

These people are imprisoned not for any crime they committed but for speaking the truth.—**Eskedare Alemu, sister of imprisoned journalist, Reeyot Alemu**

ARTICLE 19 has advocated for the improvement of the situation of RTI in Ethiopia, including at the UN Human Rights Council and the African Commission for Human and People's Rights. Several states endorsed its recommendations at the 19th session of the Universal Periodic Review, including Ethiopia. These recommendations include reviewing its legislation to ensure that any limitations on the right to freedom of expression, both online and offline, are in full compliance with Article 19 of the ICCPR. In particular, providing for a defence of truth to all defamation cases, ensuring that journalists and workers in the media can pursue their profession in a free environment which guarantees the rights of freedom of opinion and expression for all persons and taking concrete measures to ensure that efforts to counter

terrorism are carried out in full compliance with the Constitution and international human rights obligations, including respect for fair trial guarantees, freedom of expression and freedom of the press⁵.

Recommendations

- a. The Federal Government of Ethiopia should ratify and domesticate the African Charter on Values and Principles of Public Administration in Africa. The Government should pay special attention to implementation of article 6 on the right of access to information and transformation of public service from secretive to openness.
- b. The Government should create a conducive environment for the promotion and enjoyment of the right to information including repealing laws that limit civic space in the country.

By Riva Jalipa, Legal Officer for ARTICLE 19–Eastern Africa

⁵ For a fuller legal treatise of the state of freedom of expression and information on Ethiopia, view ARTICLE 19's submission to the Universal Periodic Review, 19th Session.

Kenyan development makes clear the need to respect the right of access to information

The violence that followed the 2007 general elections triggered wide-ranging debates and changes that form the basis of Kenya's reform agenda today. Following decades of one party rule, Kenya's democracy is consolidating under the new constitution and the freedoms it guarantees. All arms of government have been reorganised and service delivery devolved to local governments, which has increased the need for access to information in order for ordinary Kenyans to engage in this new arrangement.

Kenya has ratified four of the six African treaties on recognising the right to information¹, namely: The African Charter on Human and Peoples' Rights, African Union Convention on Preventing and Combating Corruption, African Charter on the Values and Principles of Public Service and Administration and the African Union Youth Charter. It is worth noting that the new Government has put the youth agenda at the centre and initiated a number of programmes to realise the goals of the African Youth Charter.

Kenya

Access to Information law:

No Access to Information Law

Constitutional provision:

Article 35 of the Constitution of Kenya, 2010

Treaties ratified by Kenya that recognise the right of Access to information:

- ⇒ *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 Youth Charter*

Status of ACHPR Reporting

- ⇒ *Overdue by 4 State Reports*

OGP status:

- ⇒ *Member*

Other platforms:

- ⇒ *Kenya Open Data Initiative*

¹ <http://www.au.int/en/treaties>

Despite a history of tense and violent elections the Government is yet to ratify and implement the African Charter on Democracy, Elections and Governance, which lays out important provisions on electoral transparency and good elections management. Kenya is also yet to ratify and domesticate the African Statistics Charter despite Government's numerous calls for regional trade, planning and integration.

Despite Kenya's strong advocacy for African solutions to African problems the Government has been selectively respecting key African mechanisms. While it is commendable that Kenya ratified the African Charter on Human and Peoples' Rights (ACHPR), it is a worrying that the Government of Kenya has consistently violated article 62 of the Charter by not reporting to the ACHPR as required. It is now overdue by four reports².

The Government of Kenya joined the Open Government Partnership and elaborated an action plan to advance transparency and accountability. In particular Government prioritised citizen feedback, open data, open budgets, elaboration and dissemination of citizen budgets and participatory budgeting³. Consultations between Government and civil society on the second action plan are underway.

Whereas the previous constitution only alluded to the right to information, Article 35 of the Constitution of Kenya, 2010 significantly advanced RTI in the Kenya legal framework by explicitly stating that:

- a. *Every citizen has the right of access to—*
 - i. *Information held by the State; and*
 - ii. *Information held by another person and required for the exercise or protection of any right or fundamental freedom.*
- b. *Every person has the right to the correction or deletion of untrue or misleading information that affects the person.*
- c. *The State shall publish and publicise any important information affecting the nation.*

The entrenchment of RTI in the Constitution means that unless justified under the grounds for limiting freedoms⁴, all legislation that restricts access to official information is unconstitutional. This constitutional

2 <http://www.achpr.org/states/>

3 <http://www.opengovpartnership.org/country/kenya>

4 See Article 24 of the Constitution of Kenya.

guarantee is especially important for the review of laws that continue to remain incompatible with Article 35⁵. It has been acknowledged that an enabling law would be important to facilitate full operationalization of Article 35 and a Freedom of Information Bill was developed in 2007 even before the promulgation of the Constitution, but has yet to be introduced to Parliament.

A history of legal and institutionalised secrecy of government operations⁶ has created an environment in which the right to information (RTI) has historically been devalued, allowing corruption and other state excesses to thrive. The Anglo Leasing scandal of the early 2000s demonstrated the importance of RTI in preventing corruption as it involved diminished oversight for the procurement of police equipment because it had been classified as for “security” purposes. National security purposes have also been used to justify other state excesses, such as to curtail civil liberties and media freedoms as witnessed in the police summoning of two journalists over their coverage of the Westgate terror attack in September, 2013⁷.

Despite this history there have been progressive measures in the promotion of RTI in Kenya. Beyond the Constitution, many laws or bills which are either sector-specific or relating to public service delivery in general acknowledge the role of RTI as a facilitative right for the realisation of economic, socio-cultural and political rights and for improving good governance. These include the Health Bill, Water Bill, Public Procurement and Asset Disposal Bill and Public Service (Values and Principles) Bill, all of 2014, that include provisions to promote transparency and accountability premised on the principle of RTI.

At the decentralised level, the County Management Act provides for public communication and access to information in the management of county affairs. Section 87 of the Act recognises that timely access to information, data, documents and other information relevant or related to policy formulation and implementation is important for promoting citizen participation in the running of county governments.

5 Sections 17 and 18 of the National Assembly (Privileges and Immunities) Act allow for the withholding of information.

6 The Official Secrets Act and Section 5 of the Service Commission's Act require all public servants and all members of the Public Service Commission to swear an oath of secrecy respectively. Section 3(7) of the Act provides a complete cloak of secrecy over all official documents and severely punishes disclosure. The National Assembly (Privileges and Immunities) Act restricts access to information. The Service Commissions Act prohibits and criminalizes disclosure of any information unless with the written consent of the president.

7 <http://www.standardmedia.co.ke/mobile/ktn/watch/2000071199/gagging-the-media-over-westgate-coverage> accessed on August 24, 2014.

Actors in Kenya's development and democracy agendas have acknowledged the necessity of RTI in advancing these processes. Initiatives aimed at enhancing open government have used RTI principles to promote transparency and accountability in government. These include the Kenya Open Data Initiative (KODI) and the Open Governance Partnership (OGP), which make key government data freely available to the public through a single online portal and comprise a country action plan to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

The judiciary has recognised the import of RTI but has also not been expansive with its interpretations of RTI. In *Peter M. Kariuki vs. AG*⁸ the court acknowledged the importance of RTI in determining appropriate damages for the petitioner. However, in *Famy Care Limited vs. Public Procurement Administrative Review Board & Another*, the court ruled that Article 35 only applies to Kenyan citizens and not to foreigners and further that the right of access to information can only be enforced by natural citizens and not legal persons. In *Kenya Society for the Mentally Handicapped (KSMH) vs. the AG*, the court held that "coercive orders of the court should only be used to enforce Article 35 where a request has been made to the state or its agency and such request denied". These interpretations are contrary to the internationally established principle of maximum disclosure, which establishes the obligation of public bodies to disclose information and the corresponding right of every member of the public to receive this information. This principle further stipulates that everyone present in the territory of a country should benefit from this right.

In conclusion, the protection and promotion of RTI in Kenya has taken varying approaches driven by different impetuses and responding to changing circumstances including legislative developments, judicial interpretations and the incorporation of RTI in open government mechanisms. Advocacy initiatives should continue to utilise this diversity of opportunities to advance RTI. Other than passing the Freedom of Information Bill, RTI advocates could also seek to address more operational challenges such as improving data and record management in government and could involve other stakeholders such as the Commission on Administrative Justice (Ombudsman) in its oversight role to address maladministration. The media and the public at large should also exercise their rights to know and by so doing, create a demand to which government must answer.

8 *Petition 403 of 2006.*

Recommendations

- a. The effectiveness of African mechanisms is dependent on the commitment of Governments to ratify, domesticate and effectively implement regional treaties. Kenya should urgently ratify and domesticate pending African Union treaties including the African Charter on Democracy, Elections and Governance as well as the African Statistics Charter.
- b. It is of urgent necessity that the Kenya national and county governments operationalize article 35 of the Constitution through the enactment and effective implementation of freedom of information laws.
- c. As a champion of African solutions to African problems and active promoter of African integration, President Uhuru Kenyatta should take personal interest in ensuring that Kenya complies with reporting requirements to ACHPR in line with article 62 of the Charter.

Efforts of government to promote citizen engagement through initiatives like the open data portal and open government partnership are commendable and should be strengthened.

By Riva Jalipa, Legal Officer, ARTICLE 19–Eastern Africa

Liberia: Law implementation and exclusion of access

Liberia

Access to Information law:

Freedom of Information Act, 2010

Constitutional provision:

Article 15 of the Constitution of the Republic of Liberia

Treaties ratified by Liberia that recognise the right of Access to information:

- ⇒ *African Charter on Human and Peoples' Rights*
- ⇒ *African Union Convention on Preventing and Combating Corruption*

Open Government Partnership status:

- ⇒ *Member*
- ⇒ *Implementing 1st Action Plan*

Status of ACHPR Reporting

- ⇒ *Compliant*

Other platforms:

- ⇒ *Extractive Industries Transparency Initiative – Compliant Country*

Liberia is struggling to rebuild after 15 years of civil war in the 90s and 2000s. In the last 10 years, the country held two back-to-back elections for president and lawmakers. The administration is pushing through wide ranging reforms to try to revert the marginalization of ordinary people from decision-making and lack of accountability—two main factors that led to the civil conflict, according to the Government of Liberia Poverty Reduction Strategy¹.

Legal Environment for ATI

Liberia is an active player of the African Union and global community. Since the end of armed conflict in 2003 the country has held successful presidential and national elections and is progressively building peace and democracy. These efforts have seen the Government establish efforts to build the trust between government and citizens as well as accountability mechanisms. For example, Liberia is one of the few African countries that adopted the national freedom of information law, joined membership to the Open Government Partnership and has complied with reporting obligations under article 62 of the African Charter on Human and Peoples' Rights. Whereas this is commendable, limited attention has been paid to implementing

1 <http://www.imf.org/external/pubs/ft/scr/2012/cr1245.pdf>

measures to build and sustain democracy, good governance, transparency and accountability in the framework of the African Union. For example, out of the 6 African Union treaties that recognize the right to information, the Liberian government has only ratified the African Charter on Human and Peoples' Rights and the African Union Convention on Combating and Preventing Corruption. It is yet to ratify the African Charter on Democracy, Elections and Governance², the African Charter on the Values and Principles of Public Service and Administration³, African Union Youth Charter⁴ and the African Statistics Charter⁵.

In 2012, the Government took a commendable step by submitting the Initial and Combined State Reports 1982–2012 in compliance with article 62 of the African Charter on Human and Peoples Rights⁶.

Liberia joined the Open Government Partnership in 2012 and worked collaboratively to establish a permanent joint steering committee comprised of senior government and civil society leaders. The Steering Committee led the process of action planning that prioritises 12 commitments on transparency and accountability⁷. Implementation of the country action plan is ongoing.

Liberia's Constitution is arguably a model of explicit provisions for guaranteeing access to information and the protection of freedom of speech and the press. In general, the Constitution explicitly establishes in article 15⁷ the followings: (1) freedom of and right to information; (2) Right to knowledge; (3) Freedom of expression; and (4) the obligations of government and officials of government to disclose and disseminate information about the government and its operations, including the obligation to give a public account of public revenues, and the obligation to be transparent and open. And Article 15c states, "There shall be no limitation on the public right to be informed about the government and its functionaries."

In addition to its provisions relating to the functions of the legislature, the constitution calls for open deliberations and hearings. The courts are principally there to protect the rights of individuals and no doubt, the constitution provides openness in their trial processes. The constitution imposes on the

2 http://www.ipu.org/idd-E/afr_charter.pdf

3 <http://www.au.int/en/content/african-charter-values-and-principles-public-service-and-administration>

4 http://www.au.int/en/sites/default/files/AFRICAN_YOUTH_CHARTER.pdf

5 http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_STATISTICS.pdf

6 <http://www.achpr.org/states/liberia/reports/1-1984-2012/>

7 <http://www.opengovpartnership.org/country/liberia/action-plan>

8 http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126725.pdf

president a duty of public disclosure of the legislative program and to report to the legislature the state of the Republic on the fourth working Monday of each year. It requires that during the reporting time, the president is also under obligation to present the economic condition covering expenditure and income. In Article 7, it called for the maximum feasible participation of Liberian citizens in the management of the national economy under condition of equality as to advance the general welfare of the Liberian people.

However, there are statutes, mainly of security nature, that provide for confidentiality and thereby inhibit freedom of information. The National Security Agency (NSA) Act, which created the National Security Agency, for example, outlawed the public disclosure of how its finances are expended. And even though the FOI law adopted in 2010⁹ itself makes an exemption to national defence and security information, it defeats all genuine efforts if the argument is that accountability of all NSA funding is precluded from disclosure. The question that is pertinent is the existence of laws that clearly contravene the constitution, both in its spirit and intent. Like the constitution, the freedom of information Law holds primacy over these statutes.

Implementation

Since the passing of the law in September 2010, public awareness and capacity building by government and civil society organisations has been continuing. Although the impact of these awareness raising campaigns is not wide spread, it has positively impacted the demand, with some community members making information requests on important issues that affect their lives. It should be noted, however, that public awareness of their right to information and ways in which they can exercise this right is excluded or have not reached the ordinary citizen, as such very few ordinary Liberian have applied the law through filing of information requests despite the huge need for information.

The Government of Liberia, which is the prime implementer of the law, has made some strides. For instance, Liberia has appointed an Information Commissioner and provided him with some resources to carry out his work, particularly setting up office and raising public awareness. In addition, the government has appointed 17 information officers to help with implementation of the Act. Despite these efforts Liberia still has a lot to do. In addition to continued public awareness, the appointment of the remaining 75 information officers should be done. The government should also prioritise training of information officers and equipping their offices to effectively promote and implement the FOIA.

⁹ <http://www.liberianembassyus.org/uploads/documents/Liberia%20Freedom%20of%20Information%20Act%202010x.pdf>

It is encouraging that information officers receive and respond to information requests. For instance, the Information officer of the Ministry of Internal Affairs received 16 requests for information and responded to all. The Information Officer of the Ministry of Information received 6 requests. He responded to 5 and transferred 1 request to the National Investment Commission. The Public Works Information Officer received 7 requests and responded to 6, turning down one. There are many more requests for information being denied, including the request by the Centre for Media Studies and Peace Building, CEMESP for the asset declaration forms of government officials. The Liberia Media Centre, following the monitoring of 20 ministries and agencies implementing the Government 150–days Action Plan, reported that only 4 ministries stood out. The rest “exhibited poor client relations”. The monitoring was done by placing FOI requests for information to be analysed relative to progress made in delivering on the government’s 84 promises. Aside from the limited number of requests and responses, many of the people who filed the few requests have been unable to follow through the remedial measure for redress as provided for by the FOI law. The Independent Information Commission, for example, has not received more than 15 complaints almost two years into its job. As of last count in June 2014, the commissioner received 7 complaints to review denials. He decided 4.

Case study of the practice

The picture is not damning given that FOIA law has only been in existence for four years. There have been success stories of the use of the law that has impacted community and really transformed lives. In the South Eastern region of Grand Gedeh, it took a Freedom of Information request for three poor communities to be included in the allocation of the county development funds. Gender Peace Network, a community based organization working with community leaders and the Grand Gedeh FOI Network requested the Special County Development Resolution that contains all development projects and budgetary allocation for 2011/2012. When the authorities provided the documents, Gender Peace Network observed that Blue Camp, Camp Tuma and Crab Hole Community in Kudah Bye Pass, all in Zwedru, the provincial capital, had been left out in previous allocations. During the county sitting in August 2013, Gender Peace used the information to convince decision makers on the county and social development funds to make allocations for the three communities. Blue Camp community got its roads fixed. Crab Hole community got an elementary school and Camp Tuma community built wells for safe drinking water. The three projects cost US\$66,000.

Challenges and Recommendations

Over the years of work to advance FOI, campaigners confronted a number of challenges: low capacity, lack of resources and fluctuating political commitment from the Government of Liberia served to hamper even further advancement.

It is commendable that the government adopted the national Freedom of Information law and through the Open Government Partnership is strengthening engagement with its citizens. We recommend that:

- a. Implementation of the National Access to Information Act should remain a top priority of the government. In particular, Liberia should expedite the appointment of information officers for all agencies covered by the law, offer training to officials and systematically set up implementation arrangements in all agencies. Public agencies and the Information Commissioner should treat reporting on FOIA implementation with utmost importance. Further, the government should prioritise creation of citizens' awareness of their right to information and how they can exercise this right.
- b. Africa's integration course has gained momentum and so is its influence at national level. In addition, the African Union is taking its place in global and continental matters. As Africa seeks to take leadership on its affairs it is of urgency that member states ratify its treaties and respect its mechanisms. In this regard, Liberia should urgently ratify and domesticate the African Charter on Democracy, Elections and Governance, the African Charter on the Values and Principles of Public Service and Administration, the African Union Youth Charter and the African Statistics Charter.
- c. It is commendable that Liberia is a member of OGP and has prioritized in its country action plan implementation of FOIA. Implementation of this action plan should be strengthened, operationalization of the national OGP steering committee strengthened and engagement with civil society on country priorities continued.
- d. Reporting to the African Commission on Human and Peoples' Rights, which Liberia embraced in 2012, should be continued. The government should pay attention to follow-up and implementation of ACHPR's concluding observations and recommendations.

By Malcolm Joseph, Executive Director, Center for Media Studies and Peace Building

Malawi Political delays vs civil society initiatives

Malawi

Access to Information law:

Approved policy on Access to Information

Constitutional provision:

Section 37 of the Constitution of the Republic of Malawi

Treaties ratified by Malawi that recognise the right of Access to information:

- ↳ *African Charter on Human and Peoples' Rights*
- ↳ *African Union Convention on Preventing and Combating Corruption*
- ↳ *African Charter on Democracy, Elections and Governance*
- ↳ *African Charter on Values and Principles of Public Service and Administration*
- ↳ *African Union Youth Charter*
- ↳ *African Statistics Charter*

Status of ACHPR Reporting

- ↳ *Compliant*

OGP status:

- ↳ *Member*
- ↳ *Drafting action plan*
- ↳ *Setting up coordinating Steering Committee*

Malawi has demonstrated exceptional leadership in terms of ratification of African Union treaties that recognize the right to information, including the African Charter on Human and Peoples' Rights, African Charter on Democracy Elections and Governance, African Union Convention on Preventing and Combating Corruption, African Charter on Values and Principles of Public Service and Administration, African Union Youth Charter and the African Statistics Charter¹.

In 2013 the Government of Malawi submitted the initial and combined state report in line with article 62 of the African Charter on Human and Peoples' Rights. It is commendable that during the last two years the country took major steps to ratify major transparency and accountability treaties of the African Union and started complying with reporting under ACHPR. So far there is no pending report to ACHPR².

1 <http://www.au.int/en/treaties>

2 <http://www.achpr.org/states/malawi/>

Malawi still has no specific law on Access to Information (ATI). However, following a decade of advocacy for an ATI law by MISA Malawi and other Civil society organizations, there has been good progress by the Malawi Government in ensuring that the Access to Information as provided for in the Constitution is concretized through an enabling policy and law.

The Constitution of Malawi has a specific provision on access to information, which reads:

“Subject to any Act of parliament, 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.”³

Unlike in other jurisdictions⁴ the Malawi Constitution does not provide for a time frame within which the enabling Act would be passed. The absence of such timeframe has created laxity amongst government officials and MPs on the need to legislate Access to Information. In 2003, the Media Institute of Southern Africa in conjunction with other civil society organizations drafted an Access to Information Bill to operationalize the constitutional provision on access to information⁵.

The Bill puts an obligation on all public authorities to make available to the general public or, on request, to any person information that is under its control. Every public authority is obliged to make available to the general public or, on request to any person access to its meetings and places where information may be obtained. The Bill further strengthens the right by providing that a person need not give a reason or justification for that person’s interest in the information being requested for.

The Bill also gives an obligation to public authorities to keep and maintain complete records and documents under its control for a minimum period of ten years from the date on which the document or record came under its control and after such period the public authority is required to transfer the record or documents in their entirety to the National Archives⁶.

The delay in enacting the bill has been due to a number of factors, mostly political in nature. Political will has always been uncertain or ambiguous. The delay has also been rooted in the perceived fear

3 Section 37 of the Constitution of Malawi

4 For example, the Constitution of the Republic of South Africa put a specific time frame when the Act of Parliament would be passed.

5 http://www.publiclaw.uct.ac.za/research/ANCL_info/country_survey/malawi/ accessed 11/08/2014

6 Section 14 (1), (2) & (3) of the bill

that the media would use the laws as a gun to force the government to disclose classified information. Information is power and there is always a fear that once the media has full access to public information, the government may lose its clout and political muscle.

Some experts have also pointed to the existence of a wide range of statutory laws that act as barriers to access to information. In his study, Kanyongolo (2012) cites twenty-two Acts of Parliament containing provisions that act as barriers to access to information. Such statutes include; Official Secrets Act (1913), Corrupt Practices Act (1995), Defence Force Act (2004), Criminal Procedure and Evidence Code (1967), Preservation of Public Security Act (1960) and the Presidential and Parliamentary Elections Act (1993).

In January 2014, Malawi's cabinet adopted a national access to information policy⁷. The adoption of the policy was hailed by activists as a major step towards the enactment of the ATI bill. The lack of policy was cited by the government as the main reason why the bill was not tabled in previous Parliaments. The government argued that the bill had to be backed by some regulatory policy framework.

The drafting of the policy itself took two years largely due to financial and commitment challenges. At cabinet level, the policy nearly got thrown out by some cabinet members who were of the view that the bill should be sent back to the Media and Communications Committee of Parliament for further scrutiny. The suggestion was counter-argued by some cabinet members, leading to the passing of the policy in January 2014.

The current administration has shown commitment to pass the ATI bill into law. Presenting a ministerial statement on the status of the Access to Information bill in parliament on 27 June 2014, Malawian Information Minister, Kondwani Nankhumwa said the government would table the bill in the next sitting of Parliament due to start in September 2014⁸. However, latest information indicates that government has postponed tabling of the bill to the next sitting of Parliament. The *Daily Times* newspaper reported that the deferment has been made to allow government to conduct further consultations on the bill. "After going back to the drawing board, we realised that there were still some consultations to be done. During the last two months we had to consult Principal Secretaries among other groups because this whole thing is touching on government releasing sensitive and confidential

7 <http://mwnation.com/malawi-adopts-access-information-policy/> accessed 9/08/2014

8 <http://www.nyasatimes.com/2014/06/28/malawi-information-bill-this-september-minister/> accessed 9/08/2014

information,” Information Minister Hon. Nankhumwa was quoted as saying⁹. The paper also reported that the parliamentary committees on Media and Communication and Legal Affairs and the Ministry of Justice are other stakeholders that need to be consulted. The committees were re-constituted after the May 2014 elections. Reacting to the development, Media Institute for Southern Africa (Misa-Malawi) Chairperson Antony Kasunda said the delay is understandable considering that the Ministry of Justice was handed the draft bill some three weeks ago.

The importance of ATI law in Malawi cannot be over emphasized. Apart from rendering the processes of government more open and making those in power more accountable to their people, the ATI law will be a critical tool in combating corruption, which is endemic in Malawi. The law will, for instance, enable Malawians to know how the government, banks and some selfish individuals mercilessly plundered taxpayers’ money in the infamous corruption scandal christened “Cashgate”¹⁰. For many Malawians, reading the Cashgate Forensic Audit Report was an infuriating and frustrating experience; frustrating because the report failed to name names and identify the individuals and corporations that had been allegedly involved in this historic raid on the public treasury¹¹.

The names of those involved in the scandal were withheld allegedly to safeguard the rights of the individuals concerned to privacy and fair trial. If enacted, the Bill would enable Malawians to demand full disclosure of these names.

All in all, the fact that the ATI bill and policy were drafted and are awaiting consideration by the cabinet is a major step towards the enactment of ATI legislation in Malawi. A huge amount of work has been done already but critical stages still remain. Without a strong political commitment to the passing of legislation and its implementation, backed by adequate resources and strategies to break down longstanding cultures of secrecy, the efforts may be in vain. The need for strong coalitions at different levels, therefore, cannot be overemphasized. However, even with the law in place, there might still be

9 <http://timesmediamw.com/malawi-govt-shifts-tabling-of-information-bill/> accessed 17/09/2014

10 http://www.transparency.org/news/feature/malawi_time_for_action_on_cashgate_corruption_scandal accessed 9/08/2014

11 <http://www.voanews.com/content/auditors-under-pressure-to-release-names-of-malawi-cashgate-suspects/1865395.html> accessed 22/08/2014

The forensic audit report is available on: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285877/20140221_National_Audit_Office_Malawi_-_Forensic_Audit_Report_-_FINAL_ISSUED.pdf accessed 26/08/2014

some resistance on the part of public officers to disclose information. On the other hand, the public may not be fully aware about their rights to access public information. This calls for massive public awareness programmes, focusing on both the supply and demand sides of the access to information equation, which can be championed through sectoral coalitions.

Recommendations

- a. The Government of Malawi is commended for ratifying key African Union treaties on transparency and accountability as well as prioritising citizen engagement through membership to key platforms like the Open Government Partnership¹², Extractives Industry Transparency Initiative¹³ and Construction Sector Transparency Initiative¹⁴. The government is urged to consolidate these initiatives by urgently adopting a national freedom of information law.
- b. Whereas Malawi is commended for joining the Open Government Partnership, the process of setting up a national coordination mechanism and drafting a country action plan has been delayed. The government should revive these processes by setting up an OGP Steering Committee with civil society representation and prioritising the passing of the freedom of information law, among other transparency initiatives in the action plan.
- c. For a long time, the failure to comply with the provisions of the ACHPR was a major concern. Malawi should keep the process of reporting and implementing recommendations of ACHPR as required.

By Michael Kaiyatsa, Training and Research Coordinator, Centre for Human Rights and Rehabilitation.

¹² <http://www.opengovpartnership.org/>

¹³ <http://eiti.org/files/processess-and-work-done-in-the-EITI-debate-in-malawi.pdf>

¹⁴ <http://www.constructiontransparency.org/malawi>

Mozambique Parliament makes an important step on the right to access to information

Mozambique

Access to Information law:

Access to Information Act, 2014

Constitutional provision:

Article 48 of the Constitution of the Republic of Mozambique

Treaties ratified by Mozambique that recognise the right of Access to information:

- ⇒ *African Charter on Human and Peoples' Rights*
- ⇒ *AU Convention on Preventing and Combating Corruption*
- ⇒ *AU Youth Charter*
- ⇒ *African Statistics Charter*
- ⇒ *African Charter on the Values and Principles of Public Service Administration*

Status of ACHPR Reporting

- ⇒ *Fully compliant*

OGP status:

- ⇒ *5 points to meet member eligibility*
- ⇒ *Other platforms:*
- ⇒ *Extractive Industries Transparency Initiative Compliant Country*

The Republic of Mozambique has demonstrated political commitment to accountability on the basis of African treaties. The government has ratified five of the six African Union treaties that recognise the right to access to information. These are: African Charter on Human and Peoples' Rights, African Union Convention on Preventing and Combating Corruption, African Union Youth Charter, African Statistics Charter and the African Charter on the Values and Principles of Public Service Administration. The Government is yet to ratify and domesticate the African Charter on Democracy, Elections and Governance¹.

¹ <http://www.au.int/en/content/african-charter-democracy-elections-and-governance>

Mozambique is one of 13 countries that have no pending reports to the African Commission on Human and Peoples' Rights. Concerning the Open Government Partnership, Mozambique has been assessed to have 11 points, one less to meet full eligibility.

Mozambique practices a good level of budget transparency by making budget information public and accessible by the population. It also enjoys a good level of citizen engagement but is yet to adopt a law that obliges leaders to disclose assets, a key requirement for promotion of good governance. This, together with absence of an access to information law, has affected the country's ability to meet eligibility for membership to the Open Government Partnership.

Almost eight years after it was submitted by civil society organizations, the three political parties represented in the Mozambican parliament (the ruling Frelimo Party, the opposition parties Renamo, and the Mozambique Democratic Movement) on August 22 passed a bill on the right to information, which will oblige public bodies, and those private bodies which undertake activities of general interest, to release information to any citizen requesting it.

The bill was passed unanimously at first reading and now must go to its second and final reading. It is not known when this will take place, as a new parliament will be chosen after the Mozambique general elections on October 15. However, one thing is certain: this parliament will have an extraordinary session to debate issues which cannot be left for the next parliament. The Speaker of the Mozambican parliament, Verónica Macamo, was clear on this when she said during the debate that since the bill was approved with the support of all three parliamentary groups, the second reading and final approval cannot be left to the next parliament.

Presenting the bill, the chairperson of the working commission dealing with the drafting, Alfredo Gamito, said they need some time to incorporate recommendations from various national and continental organizations and take into considerations some aspects of the African Model on Right to Information and as such suggested that the second reading be postponed for an extraordinary session of the parliament likely to be held likely in early October.

According to the bill, bodies covered, public and private, "have the duty to make available information of public interest in their power, publishing it through the legally permitted channels, which can make it increasingly accessible to citizens". Among the material which must be made available are annual activity plans and budgets; audit, inquiry and inspection reports; environmental impact reports; and

contracts, including the revenue and expenditure involved in them. The people requesting access do not need to state what they intend to do with the information.

The bill now specifically forbids restrictions on access to information of public interest, and orders public powers to keep their archives open, stating that all information must be kept *“in duly catalogued and indexed records so as to facilitate the right to information”*. It adds that *“public bodies, and private bodies invested with public powers, by law or by contract, exercise their activities in the interest of society and so those activities must be made known to citizens”*.

The bill clearly specifies that *“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”*. Furthermore, public documents and archives must be open to anyone wishing to consult them. The petitioner may request the information verbally or in writing, and needs do nothing more than identify him or herself. The documents requested must be made available within 21 days, and consulting them is free of charge (apart from the costs of photocopying, if the petitioner wishes to take them away).

There are exceptions. Freedom of information does not apply to state secrets. But state secrets must be defined as such by law and officials cannot just decide on their own what constitutes a classified document. Documents that are involved in ongoing court cases and are therefore subjudice are also exempt from the freedom of information rules. Also in this category are sensitive information on banks and their clients, which 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.

The bill 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 whistle blowers should be made public.

What next?

According to Alfredo Gamito, the bill on Right to Information will change the legal framework in Mozambique. Some laws will have to be revoked such as the one on state secrets and the one governing civil servants.

Civil society is optimistic about the approval of the bill but cautions about its implementation and conscious that while it is not a perfect piece of legislation, it is worth having it approved, rather nothing at all.

During the debates MPs made it clear that the RTI is essential to strengthen democracy in Mozambique, but it is necessary to educate people how to use it and avoid possible abuses.

Some background

When it became independent 39 years ago from Portugal, Mozambique was one of the world's poorest countries. Up to 2012 the country registered an average growth annual rate of 6%–8% in the decade, and is considered one of Africa's strongest performances mainly due to recent discoveries of natural resources in the North. Revenues from these vast resources, including natural gas, coal, titanium and hydroelectric capacity, could overtake donor assistance within five years².

In 1987, the government embarked on a series of macroeconomic reforms designed to stabilize the economy and after a brutal civil war from 1977 to 1992, a peace agreement was signed in Rome between the government and Renamo which led to the first multiparty elections in 1994, won by Frelimo³.

Mozambique's Constitution, adopted in 1990 and amended in 2004, guarantees the right to information as well as the press freedom⁴. The press law defines in its 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. Its article 29 refers that journalists, in the exercise of their work, will be given access to official sources of information.

2 *In Cidadania e Governação em Moçambique, 2007, Comunicações apresentadas na conferência inaugural do Instituto de Estudos Sociais e Económicos, Maputo*

3 *In Mozambique, Economic growth and human development: Progress, obstacles and challenges, 1999, National Human Development Report, Maputo*

4 *In Constituição da República, 2004, Imprensa Nacional de Moçambique, Maputo*

Challenges

One of the major challenges is the need to equip civil society to do an in depth analysis of the bill approved at first reading by the parliament and compare it with the African model law. One of the enterprises to be taken now is to prepare civil society organizations in Mozambique to use what is positive in the bill and to advocate possible changes of negative aspects. Also there is need to continue with advocacy to have the bill on right to information in Mozambique approved on the second reading and learn good practices from other countries in implementing right to information acts.

Associação ACREDITAR is a relatively new civil organization and in partnership with other CSOs is now drafting actions to be taken once the bill is adopted at the second reading. The actions include training civil servants on how to use the bill (setting up appropriate offices) to access requests. The bill will be disseminated so that citizens will also be educated on how to request information of their interest.

Recommendations

- a. The Government of Mozambique should ratify, domesticate and effectively implement the African Charter on Democracy, Elections and Governance.
- b. The Freedom of Information Bill recently presented to Parliament should be expeditiously passed and implemented to enable the people of Mozambique enjoy their constitutional right to information.

By Alfredo Libombo, Executive Director, ACREDITAR, Mozambique.

Namibia imprisoned in a secrecy officialised system

Namibia

Access to Information law:

No access to information law

Constitutional provision:

No constitutional provision

Treaties ratified by Namibia that recognise the right of Access to information:

- ↪ *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 Youth Charter*

OGP status:

- ↪ *6 points to meet membership eligibility (required to improve in access to information legal framework)*

The Government of Namibia is a State Party to the African Charter on Human and Peoples' Rights and has also ratified the African Union Convention on Preventing and Combating Corruption, African Charter on Values and Principles of Public Service and Administration and the African Youth Charter. Namibia is yet to ratify and domesticate the African Charter on Democracy Elections and Governance and the African Statistics Charter.

Namibia is in violation of its reporting obligations to the African Commission on Human and Peoples' Rights under Article 62 of the Charter and is late by two reports¹.

Adoption of access to information measures alongside other transparency measures will enable the country meet eligibility for the membership of the Open Government Partnership².

Though freedom of expression and human rights are guaranteed in a democratic Namibia, secrecy prevails, as there is no access to information law that requires the availability of information in the public domain, nor a communication policy that guides public service information officers on how and when to communicate with the public.

1 <http://www.achpr.org/states/namibia/reports/3rd-2002-2009/>

2 <http://www.opengovpartnership.org/about>

Furthermore, Namibia's legal framework encourages secrecy and confidentiality, as a number of laws deter the release of State-held information. These include the Protection of Information Act (1982), the Defence Act (2002), the National Security Act (1997) and the Public Service Act (1997), which makes the disclosure of information without the permission of the permanent secretary a disciplinary offence.

Namibia also does not have legislation protecting whistleblowers, and the Anti-Corruption Commission (ACC) has on several occasions called for such a law. Article 33 of Chapter III of the United Nations Convention on Corruption (UNCAC), to which Namibia is a party, calls for appropriate measures to ensure protection from unjustified treatment for people who report corruption to the authorities. The 2011 Anti Corruption Commission (ACC) Urban Perceptions Survey indicated that one of the main reasons that Namibians don't report corruption is a fear of victimisation.

A disturbing development in 2013 was the insertion of additional regulations to the Research, Science and Technology Act of 2004, which require government permission for all research. The Act defines research as "the systematic investigation or analysis into, and study of, materials, sources and the physical universe in order to establish facts and knowledge and reach conclusions." It also obligates organisations or individuals conducting any activity that could be termed as research to apply to the government-appointed National Commission of Research, Science and Technology for permission. The proposed regulations state that every research project requires its own separate permission. Failure to gain permission can result in a 1,800 US Dollars (about N\$20,000) fine or five years in jail, and an indefinite ban on conducting research in Namibia.

These regulations stifle freedom of expression, access to information and academic freedom. If the broad definition is to be strictly applied, countless professions and academic studies would have to be phased out.

A focus group discussion with representatives from the business sector and relevant civil society organisations post MISA's *Towards Greater Transparency Conference on Access to Information*, highlighted that the State does make a lot of information pertaining to the Budget available, but that it could be clearer. They further noted that the public procurement, or tender process, is not transparent and thus open to corruption and political interference. They were of the view that businesses will find it easier to be more innovative with accurate economic data and a more enabling environment.

It is, however, not only the government that infringes on the public's right to information; the business sector is also resistant to providing information that should be available publicly for the citizens and media to access.

As with government, the media have to rely on contacts within various departments in companies to access information. Namibian media are increasingly accused of unethical behaviour because of the use of leaked information and anonymous sourcing, but this is brought about by the lack of information that should be made public in the interest of the public. If public and private institutions were proactive in releasing information there would be less misinterpretation as well.

The most recent example of a gross violation of the public's right to access to information and participation was the legislation of the Third Constitutional Amendment Bill, which was shrouded in secrecy, right up to its tabling on 31 July. More than 40 proposed amendments to the bill were not put to the public for their input, thus denying citizens their democratic right to express themselves on far-reaching changes to the foundational framework of the Namibian State.

The launch of the My Constitution My Decision Campaign by a coalition of civil society organisations, including Media Institute of Southern Africa–Namibia (MISA Namibia), resulted in verbal attacks by members of the executive on various platforms. On his Facebook page Prime Minister Hage Geingob challenged civil society, questioning our mandate, and labelling us “failed politicians”. He accused newspapers of transforming from “watchdogs to lapdogs”. On 3 September, the National Council, the House of Review in the legislative process, passed the Bill with no amendments, paving the way for the Bill's enactment as a law.

Whilst it is widely recognised that access to information is a fundamental human right and is central to maintaining a democracy, when it comes to drafting national legislation, it appears that the Law Reform and Development Commission places emphasis on the protection of information. The Ministry of Information and Communication Technology is in the process of developing an access to information policy, which should precede the drafting of a Bill on access to information. Two new laws that will further impact the public's access to information are the Data Protection Bill, and the so-called Cyber Law, which, it seems, is mainly an excuse to stifle freedom of expression online, especially on social media pages. At the time this report was compiled, it was unclear when these Bills would be tabled.

Namibia is standing at a significant crossroad since its journey began at independence 24 years ago. August 2014 undoubtedly was the darkest month for our democracy and media, and our already limited access to information will most definitely be a casualty in the attack on the country's democracy.

The African Platform on Access to Information's (APAI) preamble states:

"Emphasising that access to information is an integral part of the fundamental human right of freedom of expression, essential for the recognition and achievement of every person's civil, political and socio-economic rights, and as a mechanism to promote democratic accountability and good governance".

MISA Namibia, in collaboration with partners from all sectors, will continue to advocate for conditions that allow for media freedom and freedom of expression, for which access to information is essential.

Recommendations

- a. We recommend that the Government of Namibia to urgently ratify and domesticate African Union treaties on transparency including the African Charter on Democracy Elections and Governance and the African Statistics Charter.
- b. We further recommend that the Government of Namibia should take immediate steps to meet its obligations under the African Charter on Human and Peoples Rights including the reporting
- c. We also recommend that in line with Article 9 of the African Charter on Human and Peoples' Rights Namibia should adopt an Access to Information law.

By Natasha H. Tibinyane, National Director, MISA Namibia and Linda R.M. Baumann, National Governing Council Chairperson, MISA Namibia

Nigeria: a case of progressive implementation

Nigeria

Access to Information law:

Freedom of Information Act, 2011

Constitutional provision:

Section 39 of the 1999 Constitution of the Federal Republic of Nigeria

Treaties ratified by Nigeria that recognise the right of Access to information:

- ↪ *African Charter on Human and Peoples' Rights*
- ↪ *AU Convention on Preventing and Combating Corruption*
- ↪ *AU Youth Charter*
- ↪ *African Statistics Charter*

ACHPR Reporting Status

- ↪ *Compliant*

OGP status:

- ↪ *1 point to meet membership eligibility*
- ↪ *Other platforms:*
- ↪ *Extractive Industries Transparency Initiative – Compliant country*

Apart from the African Charter on Values and Principles of Public Service Administration and the African Statistics Charter, Nigeria has ratified all existing African Union treaties that recognise the right of access to information¹.

Significantly, Nigeria actively engages African Union mechanisms, including the African Commission on Human and Peoples' Rights, where the country is up-to-date with reporting obligations in terms of article 62 of the African Charter on Human and Peoples' Rights².

Nigeria's Freedom of information Act was assented to by President Goodluck Jonathan on May 28th 2011, having been passed into Law a few weeks earlier by Nigeria's bi-camera Legislature. The Law is now just over three years old. Nigeria's FOIA was a product of collaboration between citizens, organized civic actors and the government. The advocacy for the passage of the Act took eighteen years of struggle dating as far back as 1993 during the regime of General Sani

1 <http://www.au.int/en/treaties>

2 <http://www.achpr.org/states/reports-and-concluding-observations/>

Abacha. It was a bill before parliament for twelve years. This makes the Nigerian FOI advocacy the oldest in Africa, ahead of the South African PAIA, Africa's first FOI Law, enacted in 2000. The FOIA is not the only legislation that mandates access to information in Nigeria³. However, the Act consolidates the right to information⁴ and transforms the general arena of governance from one that was predicated on a foundation of secrecy, established by the Official Secrets Act and other laws and practices, to one where openness and access to information is the prescribed norm.

Nigeria's centennial history before the passing of the FOIA was of colonial rule, military authoritarianism and civilian rule, none of which was accountable to the Nigerian public. The FOIA marked a breakthrough and was heralded as a transformational tool in eliminating corruption, consolidating a culture of transparency, open and participatory government in Nigeria and holding promise for an empirical basis for policy development, implementation and evaluation that would promote efficiency in governance.

The passing of the FOIA simply marked a starting point for the achievement of these noble, but lofty, aspirations. However, as a blueprint setting forth these processes, its power lies in the effectiveness of the implementation of the Act, which would require commitment from various stakeholders, including government, civil society, and the public, to ensure its success.

Implementation Committee on Freedom of Information

Several implementation initiatives established by the executive arm of government include the inauguration of an Inter-ministerial Implementation Committee on Freedom of information in 2011 by the Head of the Federal Civil Service of the Federation, which committee developed a broad roadmap and action plan for FOI implementation. Many FOIA Implementation Committees in the government ministries, departments and agencies were set up in keeping with the January 31, 2012 memo of the OHCSF. The Attorney General of the Federation (AGF), fulfilling his mandate under the Act has also launched a website—www.foia.justice.gov.ng—for accessing compliance information submitted by public institutions.

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- 3 *Some other legislations that contain provisions that facilitate access to information include the Environmental Impact Assessment Act, the Fiscal Responsibility Act, the Public Procurement Act, and the Nigeria Extractive Industries Transparency Act, to mention but a few. See www.r2knigeria.org/legislation*
- 4 *The right to information is constitutionally guaranteed by 1999 Constitution of the Federal Republic of Nigeria, encapsulated under Section 39; and protected under Article 9 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap 09, LFN, 2004.*

The National Assembly, also in keeping with the Act, established the House of Representatives' Committee on Reform of Government Institutions, also known as the FOI Committee, charged with the responsibility of overseeing FOI compliance by institutions of government in line with the Act. This committee holds regular interactive sessions and undertakes periodic visits to the various government ministries, departments and agencies (MDA) to ascertain compliance level and to further encourage the establishment of systems and structures for effective implementation of the law. These initiatives have impacted the progress of compliance.

Civil Society leads dissemination processes

Civil society has also contributed immensely to the efforts to ensure the implementation of the FOIA in Nigeria. With interventions geared at sensitization, and capacity building of both the supply and demand ends of the FOI chain, organizations like the Right to Know⁵ and Media Rights Agenda⁶ over the past three years have engaged in advocacy with stakeholders, provided training and sensitization for public bodies, civil society, the media, community based organizations and the general public.

These organizations have produced copies of the FOIA to combat the proliferation of erroneous copies that largely misinform and mislead an unsuspecting and thus vulnerable public. Other initiatives include translation of the Act into several indigenous languages towards wide-reaching sensitization; provision of technical support to various public institutions in the FOI implementation process and an ongoing project with the federal public training institutes to develop a FOI training curriculum for Ministries, Departments and Agencies (MDAs) of government.

Civil society organizations and a few individuals have also been at the forefront of making information requests, as well as contesting the denial of requests through litigation. It should be noted that while most of these cases have been centred on requests for information, every provision of the Act is actionable.

5 www.r2knigeria.org

6 www.mediarightsagenda.net

Enforcement and role of the Judiciary

A sampling of the FOI requests however reveals that a major focus of the demands has been on the fiscal behavior of government, public officers and public institutions generally. There have been varied reactions by public institutions to requests for information that range from outright refusals with no reason given to delays in granting requests. These unsubstantiated refusals have led to the institution of legal proceedings to compel such public institutions to grant requests for access to information. Mechanisms for redress include the courts, the National Human Rights Commission, and the Public Complaints Commission. However, to a large extent, recourse has been to the courts. While judicial and institutional record with respect to defending the right of access to information has been mixed at best, progressively, and especially following recent sensitization of the bench, more cases are being ruled in favor of disclosure of information.

Notable victories include orders compelling disclosure details of the emoluments and allowances of members of the National Assembly⁷, and of senior personnel of the Central Bank of Nigeria⁸ and information concerning certain procurements and contracts by the Power Holding Company of Nigeria (PHCN)⁹, a public utilities monopoly, to mention but a few. Conversely, there have also been judicial orders denying access.

Proactive Openness initiatives

Proactive disclosure is to be prompt and periodical, as well as widely disseminated through diverse media, including electronically, in print, hard copy and online. Using online disclosure as an indicator for measuring the level of compliance, proactive disclosure falls far below the statutorily required standard. Many public institutions have very interactive websites, but these sites do not contain information beyond the most basic classes, mostly confined to the institutional organogram and mandate. They exclude more 'sensitive' disclosures.

7 *Suit no. FHC/ABJ/CS/805/2011; Legal Defence & Assistance Project (Gte Ltd) v Clerk of the National Assembly (Ruling)*. http://r2knigeria.org/index.php?option=com_docman&task=doc_download&gid=79&Itemid=341

8 *Suit no. FHC/ABJ/CS/1016/2011; Uzoegwu F. O. C. Esq. v Central Bank of Nigeria and HAGF (Judgement)*. See judgment at http://r2knigeria.org/index.php?option=com_docman&task=doc_download&gid=106&Itemid=341

9 *Suit no. FHC/ABJ/CS/582/2012; Public and Private Development Centre Ltd/Gt v Power Holding Company of Nigeria (PHCN) PLC and HAGF*. See judgment at http://r2knigeria.org/index.php?option=com_docman&task=doc_download&gid=108&Itemid=341

While, there has been a progressive increase over the years in the compliance with the annual reporting obligation by public institutions to the AGF, the increase is more quantitative than qualitative, and compliance is chequered, at best, as it remains more in form than substance.

Eagerness about the FOIA at the state level under Nigeria's Federal system of government has been mixed and the practice at that level has been less than uniform. However, the argument of applicability of the FOI Act at state level has been settled. Applying the doctrine of covering the field, as well as citing also the powers of the National Assembly to legislate on the subject matter, various State High Courts have all ruled that the FOI Act is a statute of general application, and binding at all levels of government, and is meant to enthrone transparency and accountability in governance across Nigeria. A few states have also passed state-level FOI legislation of varying quality. Soon after the passage of the Federal FOI Act in May 2011, the Ekiti State Freedom of Information Law (ESFOIL) was signed into law on 4 July, 2011. The first of 36 states in Nigeria to adopt a state FOI Legislature. Subsequently, the ESFOIL has gone through a process of amendment in 2013 to improve it, aligning conflict and inconsistent areas with the Federal Legislature. Imo state followed suit and enacted its FOI law in June 2012, while the Kogi state bill is in the process of legislative action.

Conclusion

While strides are being made towards implementation, several challenges remain including, a subsisting opaque security classification system for records, and non-revision of the civil service rules to align them with the FOI Act, as opposed to the now redundant provisions of the Official Secrets Act as they relate to access to information. A pervasive culture of secrecy still persists, with a low level of understanding of FOI among civil servants, and the public. In addition, record-keeping, maintenance and retrieval systems often do not meet with the standards required for an effective FOI regime.

Implementation process has, so far, yielded a mixed bag of results. Though pushed anecdotally by enthusiasts as a window into government to ensure citizens participation in governance, and by the Nigerian government as proof of their commitment to transparency and accountability. The demonstration of commitment to matching the rhetoric with action varied, and thus, how FOI works in practice can often be quite remote from the projected ideal.

Recommendations

- a. Considering that the Federal Republic of Nigeria adopted the National Freedom of Information law, it is urgent that it makes efforts to improve the operating environment by changing the character of public services. In this regard we recommend that Nigeria ratifies, domesticates and effectively implements the African Charter on the Values and Principles of Public Service Administration which among others seeks to open governments as opposed to the traditional secretive regimes. In addition, the Government should ratify the African Statistics Charter and actively implement it by making information more available to Nigerians.
- b. Citizens access to budget and audit information is paramount for strengthening democracy and accountability. In this regard, Nigeria should expedite the process of making Government financial information more accessible through proactive disclosures.
- c. cWhereas existing efforts are commendable, it is recommended that Government puts in place and strengthens mechanisms and platforms for civic engagement. In this regard, meeting eligibility and joining the Open Government Partnership should be strongly considered.

*By Edetaen Ojo, Executive Director, Media Rights Agenda And
Ann Iyonu, Program Officer, The Right to Information Initiative (R2K), Nigeria*

Rwanda's commitment to transparency, a key to development

Rwanda

Access to Information law:

Access to Information Law, 2013

Constitutional provision:

Article 9, 13, 18, 22, 34, 41, 45, 126 of the Constitution of Rwanda, 2003 (as amended up to December 2005)

Treaties ratified by Rwanda that recognise the right of Access to information:

- ⇒ *African Charter on Human and Peoples Rights*
- ⇒ *AU Convention on Preventing and Combating Corruption*
- ⇒ *AU Youth Charter*

OGP status:

- ⇒ *8 points to meet member eligibility*
- ⇒ *Rwanda has expressed interest in attaining the necessary qualifications for inclusion as members*

Rwanda has ratified all African Union treaties that promote the right to information, except the African Charter on the Values and Principles of Public Administration and the African Charter on Statistics. Despite the fact that the current Vice-Chairperson of the African Commission on Human and Peoples' Rights is Rwandan, the country last reported to the African Commission in 2009 and is late by two reports¹. The country's leadership has on many occasions publicly stated that transparency is key to full recovery from the political, social and economic effects of the 1994 genocide.

Rwanda has claimed one of the fastest growing African economies and this is as a result of a continuous period of economic growth, driven largely by private sector activity in the services sector. In 2012 Rwanda's economy had grown by 8%². Rwanda's trend-setting in East Africa is not only seen in its economic growth, but also in the fact that it is the third country to pass a RTI law after Uganda and Ethiopia.

The passing of a right to information law is strategic for Rwanda even as it aims for more economic growth. This is because of the significant role that access to information laws play in the development process; and this is enabling citizens to

¹ <http://www.achpr.org/states/>

² *Rwanda Economic update May 2013, World Bank*

participate in the development process. In addition, this is significant as the free flow of information determines the pace of development and the wellbeing of the people. Right to information laws enable development that is participatory, strengthens democracy, aids in achieving transparency and accountability by government and also contributes to the effective delivery of services by government³.

According to the African Platform for Access to Information Declaration (APAIID)⁴, the key principles on the right to access to information are: fundamental access to everyone, maximum disclosure, the right established in law, application to public bodies and private bodies, clear and unambiguous process, obligation to publish information, accessibility and availability in the language of the person seeking it, limited exemptions to the right, oversight bodies, right to personal data, whistleblower protection, the right to appeal, duty to collect and manage information and the duty to ensure the law is fully implemented⁵.

The Constitution of Rwanda recognises and guarantees the freedom of information. This right is guaranteed so long as it does not prejudice public order and good morals, the right to every citizen to honour, good reputation and the privacy of personal and family life. It is also guaranteed so long as it does not prejudice the protection of youth and minors⁶.

Rwanda's access to information law guarantees the right to everyone and does not require justification for seeking information. It states that every person has the right of access to information in possession of a public organ and some private bodies⁷. This right includes the right to assess the activities, documents or records, taking notes, documents, extracts or copies of official documents or records, taking documents or extracts of notified copies and obtaining information stored in any electronic form or through print out copies of information stored in a computer or any device.

3 M.M Ansari, *Impact of Right to Information on Development: A Perspective on India's Recent Experiences*

4 Adopted in Cape Town, South Africa on 19th September 2011 is the first declaration on access to information on the African continent available at <http://www.africanplatform.org/campaign/apai-declaration/>

5 APAI declaration available at <http://www.africanplatform.org/campaign/apai-declaration/>

6 Article 34 of The Constitution of Rwanda

7 Article 3 law relating to access to information in Rwanda

The law takes into account the principle of maximum disclosure as it provides that all information held by public bodies can be accessed by the public and sets out limited situations where access may be denied. The law provides that a public organ or a private body to which the law applies shall disclose information where the public interest in disclosure outweighs the interest of not disclosing such information. In considering what constitutes the public interest, the law lays emphasis on the following; to promote in public and private organs to which the law applies the culture of informing the public about their activities, to ensure that the expenditure of public funds is subject to effective management and oversight, to promote founded public debate, to keep the public regularly and adequately informed about the existence of any danger to public health or safety or to the environment and to ensure that any public authority with regulatory mission properly discharges its functions⁸.

The exceptions to the disclosure of information by public and private organs are if the information may destabilize national security, impede the enforcement of law or justice, involve interference in the privacy of an individual when it is not of public interest, violate the legitimate protection of trade secrets or other intellectual property rights protected by the law or obstruct actual or contemplated legal proceedings against the management of a public organ. The obligation to provide information to the public and journalists applies to all public bodies and some private bodies whose activities are in connection with the public interest, human rights and freedoms⁹. The ministerial order determining private organs to which the law applies provides that any interested person may request a competent court to order that a private organ to which the law does not apply provides some information required in the interest of preserving the life or liberty of persons¹⁰.

The law incorporates the principle of proactive disclosure, stating that every public and private organ shall proactively disclose vital information to the public and according to the ministerial order determining the information to be disclosed. This includes information on the budget allocated to each department of the agency, indicating the particulars of all plans and reports on disbursements made¹¹.

8 Article 6 law relating to access to information

9 Article 13 law relating to access to information

10 Ministerial order No 009/07.01.13 of 19/12/2013 determining private organs to which the law relating to access to information applies

11 Article 7 law relating to access to information

In addition, it sets out a procedure for requesting and obtaining information. It provides for the appointment of information officers who would provide requested information. The law stipulates that the provision of information is an obligation without a fee¹².

Requesters of information can do so in any language provided in the Constitution of Rwanda, which is Kinyarwanda, French or English¹³ and the request can be done in writing, by telephone, the Internet or any other means of communication. One has the right to determine the means in which he or she wants to obtain the information and if the chosen means requires money the applicant is then required to bear the cost¹⁴. The ministerial order provides a deadline for disclosure of requests. It states that an information officer shall make a decision on an application as soon as possible, but in any event, within three working days of the receipt of the application¹⁵. The information officer is allowed to request the extension of this period if the request is complex or relates to a large volume of information. However if the information sought concerns the liberty of the person the information shall be provided within 24 hours of the receipt of the request, and where information is sought by a journalist for the purposes of news gathering, the information shall be provided within two days of receipt of the request. In case of a rejection, the public information officer is mandated to send the applicant a written order detailing the reasons for the rejection of the request including the relevant provisions for which the rejection is based¹⁶.

The protection of persons who have made a disclosure of information in the instance that an information officer has failed to do so within the time limits stipulated in the law¹⁷ and the prescription of penalties in form of fines or imprisonment for delay in giving information without good cause, giving incorrect, incomplete or misleading information or refusal to give information are also plausible components of the law¹⁸.

12 Article 10 law relating to access to information

13 Article 5 of The Constitution of Rwanda

14 Article 9 law relating to access to information

15 Article 3 of ministerial order No 007/07.01/13 of 27/12/2013 determining the time limit for the provision of information or the explanations for not providing it.

16 Articles 6 ministerial order No 007/07.01/13 of 27/12/2013 determining the time limit for the provision of information or the explanations for not providing it.

17 Article 16 law relating to access to information

18 Chapter v miscellaneous and final provisions , law number 01/2012/OL of 02/05/2012 institution the penal code provides sanctions for refusal or delay to disclose or provide information (article 590 and 591)

The full implementation of this law is vital to the attainment by Rwanda of its growth vision. This way, Rwandan citizens will be able to receive information on matters that affect them; they will be able to take part in public debate and will be aware of economic options available for their wellbeing. Citizens will also have the information necessary to scrutinize public policy and expenditure and be in a position to suggest solutions to the shortcomings in public decision making geared toward achieving their vision for development.

Implementation

Being relatively new, citizens are yet to widely understand and use the Freedom of Information Act. Largely there are few information requests that have been filed. In addition, there hasn't been appeals to court. However, the Office of the Ombudsman has received complaints from Media and lawyers related to the right to information. The Government has appointed Information Officers to promote and support implementation of the law.

The Open Democracy and Sustainable Development Initiative (ODESUDI) a non governmental organisation is keenly promoting the implementation of the Access to information law in Rwanda. In particular ODESUDI monitors implementation, trains and is setting up a Web-based system to facilitate monitoring of compliance. It has held meetings with Ombudsman to explore ways to help the institution on realizing its mandate

Recommendations

- a. Reporting is a key component of accountability. The Government of Rwanda should with utmost urgency meet its reporting obligations, particularly on measures it has implemented to promote the right to information.
- b. It is also recommended that Rwanda urgently ratify and implement the African Charter on the values and principles of public administration. This is essential to reform public service from secrecy to openness, a key asset to curbing a culture of impunity.
- c. Rwanda should adopt measures to require leaders to declare assets and for citizens to access this information as essential for public accountability. The government should consider laws to facilitate this important reform.

By Wakesho Kililo, ARTICLE 19–Eastern Africa

South Sudan and the restrictive environment of the civil war

South Sudan

Access to Information law:

Access to Information Bill waiting for presidential approval

Constitutional provision:

Article 32 of the Transitional Constitution of the Republic of South Sudan

Treaties ratified by South Sudan that recognise the right of Access to information:

⇒ *The Republic of South Sudan is yet to ratify and domesticate any of the African Union treaties that recognise the right to information*

Being a new country presents the Republic of South Sudan an important opportunity to build a strong foundation for transparent and accountable government. Following years of conflict and challenges of establishing a new state, the Republic of South Sudan is yet to ratify and domesticate any of the African Union treaties that recognise the right to information for its citizens. However, the lack of application of these frameworks has triggered new internal conflict that threatens the gains of the new country. It should be noted that despite the fact that the Republic of South Sudan welcomed the military intervention of Uganda, both countries have not ratified the African Charter on Democracy, Elections and Governance.

The State of South Sudan was created on the 9th July 2011 and its Transitional Constitution of 2011 guarantees the right of access to information in Article 32 as well as the freedom of expression and media in Article 24. The Broadcasting Corporation Bill, Media Authority Bill and Right of Access to Information Bill were developed in 2011 to operationalize these guarantees and were passed by parliament in July 2013 but have still not received presidential assent.

ARTICLE 19 reviewed these bills¹⁹ and noted with support that though they seek to promote the freedom of expression and information, amendments are recommended to improve the regulation of RTI

¹⁹ <http://www.article19.org/resources.php?tagid=493&lang=en> accessed on August 27, 2014.

and the independence of the bodies established by the Acts such as with the provisions relating to the appointment and removal of board members to both the Media Authority and the South Sudan Broadcasting Corporation.

The Right of Access to Information Bill also promotes RTI by providing for a duty to disclose information for bodies with public functions, the right to seek information from private bodies, a clear and simple procedure for accessing information, a comprehensive proactive disclosure regime, public accountability for information officers, the protection of whistle-blowers and the creation of criminal offences to reinforce RTI.

The need to establish a progressive RTI framework to facilitate development in a nascent democracy cannot be overemphasised. However, the on-going conflict in South Sudan also points to the importance of RTI and the free flow of information to facilitate the cessation of hostilities and the promotion of dialogue to achieve lasting peace. Media associations such as the Association for Media Development in South Sudan (AMDISS) are helping to build the professional capacity of journalists and to protect their rights to freedom of expression and information in an environment where journalists are arbitrarily arrested and detained but not charged.

To compound the vacuum of media laws and excesses of state powers, President Salva Kiir also declared states of emergency in Jonglei, Unity and Upper Nile States in January 2014, allowing for the suspension of rights²⁰ and negatively affecting the freedom of expression and information. A proposed National Security Bill, 2014 may further limit press freedoms and therefore the right to information by granting broad criminal immunity to the National Security Service (NSS)²¹, powers of surveillance without judicial review and the mandate to search and seize property without judicial permission or a warrant, bringing about even more self-censorship and biased coverage of the conflict and the road to peace.

The state of RTI in South Sudan is characteristic of its state of development and insecurity. With a literacy rate of only 37%²² and poor communications infrastructure (including limited web access), radio is the most popular medium²³. The on-going conflict has also meant the damage and destruction

20 Except the right to life, prohibition of torture and right to a fair trial as limited by the Transitional Constitution.

21 Except where explicitly waived as per Art. 52.

22 Based on responses to a 2013 South Sudan National Audience Survey by Internews cited in the Amnesty International report August, 2014.

23 <http://www.bbc.com/news/world-africa-14019206> accessed on August 25, 2014.

of media infrastructure and the flight of journalists and human rights defenders and has exacerbated limited professional capacities with the inability to report due to the intimidation and harassment of those journalists who have remained.

The NSS in particular has clamped down on journalists, unlawfully arresting and detaining them without charge for reasons unfounded in law including for fabricating information, slandering the NSS, inciting the public against the government, discussing federalism and even for failing to report on a speech by President Kiir²⁴. Though the Ministry of Information and Broadcasting has issued statements supporting the freedom of expression²⁵, including permitting debates on federalism²⁶, it has also issued statements prohibiting journalists from broadcasting interviews with opposition forces²⁷.

The Committee to Protect Journalists (CPJ) has described the RTI situation in South Sudan as an information vacuum²⁸, with the most popular form of media, radio, being either shut down in towns, used as mouthpieces for the rebels or heavily self-censored in fear of reprisals. CPJ also reports on the persecution of journalists along ethnic lines²⁹ and the confiscation of their equipment. Press freedoms are also threatened with the seizure of newspapers or disruption of their distribution and the closure of media houses, which has created a dangerous environment for reporting and heavy self-censorship³⁰.

Human rights reports³¹ cite continuous rights violations by both government and opposition forces, including massacres and widespread ethnic and political persecution of civilians which constitute war crimes and crimes against humanity. The ability of the media to report freely on these abuses is critical for developing a holistic and accurate narrative of the conflict and its root causes in order to promote trust, to ease tensions, to hold both parties to account and to promote dialogue and cooperation necessary for South Sudan's peace and recovery process.

24 *"The Price of Silence" Freedom of Expression Under Attack in South Sudan*, Amnesty International, August, 2014.

25 June 2014 Statement.

26 Amnesty International, August 2014, p.7

27 <https://cpj.org/blog/2014/03/south-sudan-government-warning-dont-interview-rebe.php#more> accessed on August 26, 2014.

28 <https://cpj.org/blog/2014/01/south-sudanese-towns-suffer-information-vacuum.php#more> accessed on August 27, 2014.

29 <http://cpj.org/blog/2013/12/reporting-on-south-sudan-crisis-difficult-dangerou.php> accessed on August 27, 2014.

30 <http://sudantribune.com/spip.php?article49102> accessed on August 27, 2014.

31 *South Sudan: Stop Harassing, Detaining Journalists*, Human Rights Watch, May, 2013.

While media practitioners are hopeful that once enacted, the media laws will protect media freedoms and promote the right to information, RTI is gravely compromised by the restrictive media environment that threatens the achievement of sustainable peace and stability itself.

Recommendations

- a. The Republic of South Sudan should urgently build the foundation of peace, human rights and democracy by ratifying and effectively implementing African Union treaties, particularly those that recognise the right of access to information. Doing so will help to build trust and minimise risk of reoccurrence of conflict. This urgent agenda should be at the heart of the government of national unity.
- b. President Salva Kiir should sign and champion the effective implementation of the Access to Information Bill that was passed by Parliament before the current conflict broke out.
- c. Being a resource-rich but conflict-prone country, South Sudan should prioritise transparency around the use of natural resources and strengthen civic engagement and participation in the governance of natural resources.

By Riva Jalipa, Legal Officer for ARTICLE 19–Eastern Africa

Tanzania in yet another “lost century”

Tanzania

Access to Information law:

Bill for the Freedom of Information Act, 2006 waiting to be enacted by Parliament together with another Bill that emerged out of stakeholder inputs namely the Media Services Bill, 2008

Constitutional provision:

Article 18 of the Constitution of United Republic of Tanzania, 1977

Two new very expansive provisions are hailed for their attempt to separate between Press Freedom and the Right of Access to Information more generally

Treaties ratified by Tanzania that recognise the right of Access to information:

- ↪ African Charter on Human and Peoples Rights
- ↪ AU Convention on Preventing and Combating Corruption

ACHPR Reporting Status

Open Government Status :

- ↪ Member

Other platforms:

- ↪ CoST
- ↪ Extractive Industries Transparency Initiative – Compliant Country

Despite a strong history of pan-Africanism and being one of the first countries to embrace open competitive elections, the United Republic of Tanzania has approached African Union treaties and mechanisms on transparency and accountability with caution. The country has ratified half of the six treaties on the access to information and is yet to adopt a national freedom of information law despite promises¹.

Tanzania is a state party to the African Charter on Human and Peoples' Rights but has since 1984 consistently violated its obligation in respect of article 9 regarding peoples' right to information and article 62 on reporting to the African Commission on Human and Peoples' Rights on measures the state takes to promote and implement the Charter². These

1 <http://www.au.int/en/treaties>

2 <http://www.achpr.org/states/tanzania/reports/2to10-1992-2008/>

violations undermine mutual accountability to the African system and governments and should be urgently addressed.

In 2008 the African Commission on Human and Peoples' Rights expressed serious concerns with Tanzania's limited steps on promoting the rights protected by the Charter and made recommendations for improvement³. It is very unfortunate that the Government has not reported to the Commission since then and is overdue by three reports.

The joining of the Open Government Partnership by the Government of Tanzania is a positive development. The country is implementing the first OGP action plan whose main emphasis is promotion of e-Government, Open data and sub national governance⁴. Civil society organisations noted recently that they were happy with Government commitment to open government and constructive engagement with citizens. To consolidate this process President Jakaya Kikwete has promised that his government will adopt an access to information law within 2014⁵.

Historically Tanzania, like most of Africa, has come a long way in terms of the right of citizen access to publicly held information. In the past, individual Tanzanians were barred from owning a television set. There are reports that some TV importation attempts by some wealthy Tanzanians in the 1970s met snags after the containers were confiscated on arrival at the dock in Dar es Salaam. Till very recently, citizen information requests to government offices have received very cold responses, if any. It is still common to receive mail with a wall calendar from a Ministry in Dar es Salaam packed in two envelopes with a "confidential" stamp on both, and an additional stamp on the New Year greetings letter inside the envelopes.

Calls for a new legal dispensation to replace some of the very draconian laws governing information and media regimes have been ignored by the government of Tanzania. Even state initiatives towards legislating have targeted Media control. Such was the case in 2006 when the Ministry of Information released a Bill for the Freedom of Information Act, 2006 for stakeholder views. Ironically, massive response from stakeholders towards contributing views into the bill saw the government lose interest

3 http://www.achpr.org/files/sessions/43rd/conc-obs/2to10-1992-2008/achpr43_conc_staterep2to10_tanzania_2008_eng.pdf

4 <http://www.opengovpartnership.org/country/tanzania>

5 <http://www.opengovpartnership.org/summary-london-summit-commitments>

in the entire process. As of September 2014, the Government of Tanzania was yet to regain new vigour for taking the agenda for legislating for access to information forward. Despite repeated promises by key government officials in Parliament and international conferences that there would be a Bill to be tabled in Parliament any time soon, the soon has tended to be very prolonged. It remains to be seen when exactly the government will be ready to enact a law for the regulation of the citizen right to access information.

When the Constitution of the United Republic of Tanzania was amended in its article 18 in 2005 to broaden the right to information, there was a lot of optimism that the new language of the Constitution would have a positive spill-over effect on the existing legal framework, such as the Newspapers Act, 1976 and the National Security Act, 1975, which have very restrictive provisions on information rights. Unfortunately, this positive spill-over not been forthcoming and despite well-crafted campaigns for the repeal of repressive laws relating to freedom of opinion, expression and the right to know, Tanzania seems to have opted to implement human rights selectively.

For instance, it remains puzzling why the same government would come forward to sign and become party to international and pan-African transparency promotion initiatives such as the Open Government Partnership (OGP), Universal Periodic Review (UPR) or even the African Peer Review Mechanism (APRM) while maintaining a crackdown on their press in two ways: First, by keeping laws that curtail press freedoms and suppressing and intimidating the media through regular suspension and disbandment of newspapers and radio stations. It does seem as if the government of Tanzania is opening itself up to such initiatives only as a public relations strategy to the international community. This is why most promises, including one that H.E President, Dr Jakaya Mrisho Kikwete made at the Global OGP Summit at the close of last year in London, have fallen in the same trap. In the last promise, the President had committed the government to tabling a Right to Information Bill by April 2014. Instead, a ministerial budget speech made in parliament in May has returned with the same language for the past eight has made good progress⁶.

A more serious trend has emerged in the country, whereby state coercive forces have been implicated in the killings of journalists at work on three occasions, including the brutal assassination of Mr Daudi

6 *Budget Speech by Tanzania's Minister for Information, Culture, Sports and Broadcasting, Dr Fenella Mukangara, URT*

Mwangosi at a Political rally organized by the main opposition Chama Cha Demokrasia na Maendeleo (CHADEMA) in Nyololo, Iringa on September 2, 2013⁷.

So far, the main arguments justifying the call for enacting two pieces of legislation to regulate access to information have been: First, that current jurisprudence governing both general access to information as well as Press freedom is very outdated, draconian and retrogressive. A presidential commission of inquiry identified the Newspapers Act, 1976 and the National Security Act, 1975 as laws that are too bad to continue existing and being used. There were 38 other laws in this list but only a handful have since been repealed or amended⁸. The Newspapers and National Security acts remain unchanged, except for an attempted amendment which rejected by parliament and Media Stakeholders in 2013 for having included provisions that increased fines and other penalties for violating the principal bad laws.

As speak, the state of the right to information is far from being progressive. In rural areas where Tanzania Citizens' Information Bureau (TCIB) runs Rural Information Centres (RICs), residents are greatly concerned with both the lack of proactivity in local government offices providing information to the general public and the lack of response to requests officially made by circles of informed citizenry. In (Kitonga), Iringa and Micheweni (Pemba), TCIB learnt that two men had sought information from the office of the Village Executive Officer relating to food rations but had not received a reply for between five (5) and seven (7) years, respectively. The absence of a specific Law akin to the RTI Act in India, Uganda, Ethiopia or Nigeria on the basis of which citizens would initiate court action against the denial of information meant that there was very little to be done on the side of citizens but go silent.

This has led to citizen apathy in most of rural Tanzania. During the last general elections, Tanzania's voter turn out reduced to as low as 42%. Lack of access to information and associated rights was impacting very negatively on Tanzania's efforts towards poverty reduction and the course of achieving the Millennium Development Goals by 2015, which is imminent. As a conclusion, I wish to submit that unless information becomes a fully guaranteed right, Tanzania may have another 'lost century' even as we speak of realizing development in the manner envisaged in her Vision 2025 and the many development plans and programmes in existence⁹.

7 *Union of Tanzania Press Clubs condemnation – One year after the Killing of Daudi Mwangosi, UTPC, September 2013.*

8 *Presidential or Nyalali Commission Report, 17th February 1992, para 597*

9 *Big Results Now (BRN), National Strategy for Growth and Reduction of Poverty (NSGRP), Business Formalisation Programme for Tanzania (MKURABITA), Tanzania National Five Year Development Plan (2013 – 2018) and many others.*

Recommendations

- a. Tanzania needs to move on and pass the Right to Information Bill, 2007 and the Media Services Bill, 2008 two outstanding bills into laws soon rather than later. These were finalized by Information and Media Stakeholders as their contribution to the Bill earlier released by the Tanzania government for public inputs.
- b. Tanzania provided the Organisation of African Unity (now African Union) an outstanding Secretary General in the person of Dr. Salim Ahmed Salim. It is also the home of the African Court of Human and Peoples' Rights and the East African Community Secretariat as well as the East African Legislative Assembly (EALA). This commitment to the African Union, its values and principles should be extended to ratification and effective implementation of the Union's treaties that promote the right to information in Africa including the African Charter on Democracy, Elections and Governance, African Charter on Values and Principles of Public Service Administration and the African Statistics Charter.
- c. It is of urgency that Tanzania makes an urgent statement of explanation to the next Heads of State Summit in January 2015 on its status with the African Charter on Human and Peoples' Rights. The Government should also prepare and start meeting its obligations under the Charter.
- d. Tanzania has in its draft Open Government Partnership country action plan prioritised transparency, citizen engagement and public integrity. It is recommended that the government fully implements these commitments that have been agreed in consultation with citizens.
- e. The ongoing constitution making process is a great opportunity for expanding Tanzania's right to information regime and Tanzanians should make optimum use of it. The government must agree to the drawing of a new roadmap for the successful completion of the constitutional project even as it becomes necessary that the process must go on recess to allow for the forthcoming presidential, parliamentary, and local government elections in late October 2015.

By Deus Kibamba, Executive Director, Tanzania Citizens' Information Bureau

Uganda facing challenges inspite of the legal progress

Uganda

Access to Information law:

Access to Information Act, 2005

Regulations, 2011

Constitutional provision:

Article 41 of the Constitution of Uganda,

Treaties ratified by Uganda that recognise the right of Access to information:

- ↪ *African Charter on Human and Peoples Rights*
- ↪ *AU Youth Charter*
- ↪ *AU Convention on Preventing and Combating Corruption*

Open Government Partnership status:

- ↪ *Meets eligibility points but has not joined*

Other platforms:

- ↪ *CoST*
- ↪ *UCMC and COFI*

The Republic of Uganda has been active at continental level in matters of peace keeping, negotiations with other continents and sponsoring candidates for international engagements, among others. It has also ratified half of the continent's treaties that promote the right to information and is up-to-date with reporting obligations under the African Charter on Human and Peoples' Rights¹.

In 2013, Uganda sent troops to South Sudan² to defend the African Charter on Democracy, Elections and Governance, which outlaws unconstitutional change of governments in Africa. However, Uganda is yet to commit itself to this key instrument as it is one of the three key transparency treaties of the African Union that Uganda is yet to ratify³. Others are the African Statistics Charter and the African Charter on the Values and Principles of Public Service Administration.

Despite Uganda being one of the first countries to meet eligibility for membership to the Open

1 <http://www.achpr.org/states/uganda/reports/5-2010-2012/>

2 <http://www.dw.de/uganda-sends-troops-into-south-sudan/a-17355394>

3 <http://www.au.int/en/sites/default/files/Charter%20on%20Democracy%20and%20Governance.pdf>

Government Partnership, it has up to now not formally joined this important platform. President Yoweri Museveni recently launched Vision 2040 and has been consistent in drumming up support for infrastructure development to achieve development goals. Previous initiatives and policies have suffered serious lack of citizen ownership and massive leakage of resources to make them a reality. The Open Government Partnership provides an important platform for government to work with citizens to overcome huddles to the realisation of Vision 2040.

The journey of the right to access to information started with the promulgation of the Constitution of the Republic of Uganda, 1995 in which article 41 provides that every citizen has a right of access to information in the possession of the State or any other organ or agency of the State, as well mandating parliament the obligation to make laws that give effect to the constitutional provisions. Consequently, though, in absence of a specific law on ATI, article 41 was put to test in the case of Greenwatch (U) Ltd. –vs.–A.G & Uganda Electricity Transmission Company Ltd⁴. In the case three issues arose regarding a registered company, whether it qualifies for citizenship and what constitutes a public document. Court held among others that;

The mere fact that a company is a limited liability company is not sufficient to disqualify the company from the possibility of being a government agency for purposes of Article 41 of the Constitution. A limited liability company with Ugandans as its shareholders is a citizen for purposes of Article 41 of the constitution⁵.

Court further held that an implementation agreement signed by a member of the executive organ of government is a public document⁶. Civil Society was at the forefront of this fundamental change. In 2003, Human Rights Network–Uganda (HURINET–U) spearheaded the formation of a national coalition on freedom of information and a small working group comprising of Advocates Coalition for Environment and Development (ACODE), Anti–corruption Coalition of Uganda (ACCU), Transparency International Uganda chapter (TIU), and Uganda Women’s Network (UWONET). Together with other Civil Society Organizations in Uganda they joined hands to work with a member of parliament to draft a private members Bill with the aim of putting a law on ATI in place. The move was successful and in 2005, the parliament of Uganda passed the Access to Information Act, 2005 (ATIA) to promote an

⁴ HCCT-00-CV-MC-0139 of 2001 in 2001

⁵ *Id.*

⁶ *Id.*

efficient, effective, transparent and accountable government and thereby give effect to article 41 of the Constitution and enable citizens take part in decision making. The civil society role has also seen the adoption of the ATI Regulations, which provide for the procedural aspects of accessing public information.

Experiences

The Coalition on Freedom of Information (COFI) has made major steps in facilitating the cause for ATI. The result-oriented areas have been transparency, accountability, democracy, rule of law and good governance. In aiming at the aforementioned goals, research, conferences, workshops, trainings, peaceful processions and demonstrations and national and regional campaigns have been held/conducted in the past decade.

The driving cause for the above activities was the need to promote wide citizen participation in all government activities, influence decision making, catalyze the implementation of the RTI and the ATI laws and strengthen organizations' capacity to demand for information from their leaders.

Away from the general public awareness oriented activities, HURINET-U together with other COFI members and corporate firms took a more radical step of putting the ATI law to test before the courts of law by embarking on Public Interest Litigation (PIL). Some examples include: Charles Mwanguhya Mpagi and Izama Angelo v. Attorney General Miscellaneous Cause No.751 of 2009, which was ruled in favour of the government and has led to the consequent appeal in the High Court

Civil Appeal No. 13 of 2010, West Ankole CSO Forum (then Bushenyi District CSO Forum) v Bushenyi District Local Government Council Misc Cause No. 0062 of 2011 pertaining the release of documents containing information of a stadium that was not actually constructed

Isaac Kimaze Ssemakadde v Mandela National Stadium & Anor Miscellaneous Cause No. 720 of 2011 concerning information on the total numbers of people that were in the stadium during the match between the Uganda Cranes and Guinea Bissau which was said to have been beyond the required limit.

Lessons

The citizens are always willing to learn about their rights, but they are sometimes limited by CSOs based on the available resources. However, it reveals that there is need to embark on extensive planning and resource mobilization so that all persons can benefit from sensitization drives. People do not know the value of information and need to be taught more about the power that lies within information.

While there have been some joint efforts between CSOs and the government to work together in the area of ATI, there is generally no political will on the part of the government to promote the right to access to information. It therefore calls for more concrete joint efforts.

Challenges

The government and all its agencies and departments are still in the habit of concealing public information. The law on secrecy still exists on the statutes and has proved a big hindrance to public ATI. Furthermore, bureaucratic tendencies coupled with the superior authority tendencies as to who can decide the release of information continue to curtail the full implementation of the ATIA. CSOs are the main players on implementation of the ATIA. However, they have been branded as being aligned to the opposition against government. Their area of operation is now reduced and they can no longer effectively implement their roles. In the national drive to raise awareness about RTAI and catalyze the implementation of the ATIA, it is observed that the citizens, especially those in the rural areas, are ignorant about their rights implying that the government has not carried out its mandate and neither has CSO been able to play an effective role due to limited resources. Poverty has made focus on their economic problems rather than governance systems and democratic processes. This has reduced citizen participation in democratic processes.

Prospects

With the growing awareness of the citizens of their right to ATI, and their role as citizens, it is not only projected or anticipated but ultimately expected that the RATI will fundamentally and increasingly impact on good governance, lead to accountability and culminate in the rule of law and transparency in all affairs.

By Patrick Tumwine, Advocacy, Research & Information Officer HURINET–Uganda

Access to Information as a tool for the sustainable development of roads in Uganda

Information exchange is vital in setting the development agenda of a country. Governments that are liberal in sharing information with citizens are more likely to develop faster than those that withhold or give piecemeal information. The United Kingdom has, for instance, made access to information an important foundation of delivering public goods and services to its citizens. According to the guide to freedom of information produced by Information Commissioner's Office (ICO) in the UK, the country's information openness is fundamental to the political health of a modern state. Public authorities spend money collected from taxpayers and make decisions that can significantly affect many people's lives. Access to information helps the public make public authorities accountable for their actions and allows public debate to be better informed and more productive. Unnecessary secrecy in government leads to arrogance in governance and defective decision-making. Access to official information can also improve public confidence and trust if government and public sector bodies are seen as being open¹.

The culture of information exchange in Sub Saharan Africa to a large extent is still quite limited although there are clear signs for faster adaptation. Governments are recognizing the importance of sharing the information with citizens because the same information is only held in trust and on behalf of citizens. According to the Carter Centre² access to information is one of the keys to democracy. Allowing people to seek and receive public documents serves as a critical tool for fighting corruption, enabling citizens to more fully participate in public life, making governments more efficient, encouraging investment, and helping persons exercise their fundamental human rights.

The Government of Uganda has since 2008 prioritized road development and maintenance by committing a substantial part of her budget towards the same. From a mere 300 billion the sector

1 www.ico.org.uk

2 www.cartercenter.org

was receiving in 2006/7, roads received a much-needed boost during financial year 2008/9 to 1 trillion shillings (380 million US Dollars). Since then, the percentage of budget allocation has been progressively increasing, with the subsector set to receive the highest allocation of 19% of the national budget during the financial year 2014/15. The construction industry contributes over 12 percent of Uganda's gross domestic product (GDP) and has witnessed a steady growth for the last 20 years.

Budget literacy in Uganda is still very low. The masses are not aware about budget proposals let alone sector allocations. Civil society has been critical in addressing this challenge by providing simplified versions of budget estimates to the citizens as a way of awakening their interest, but also of empowering the people to demand for accountability from the government and its representatives. Bearing this in mind, therefore, the large sums of money allocated to roads have not had strict citizen scrutiny to ensure appropriate spending, transparency and accountability. Uganda Road Sector Support Initiative (URSSI)³ working under the auspices of Uganda Contracts Monitoring Coalition (UCMC)⁴ has been spearheading efforts geared at unmasking the roads subsector and accessing information from government agencies responsible for road development and maintenance.

Initial efforts by civil society geared at seeking for a partnership with the government were slow and non-yielding. It took civil society more than two years to get access to contracts from Uganda National Roads Authority (UNRA). The memorandum of understanding (MoU) between UCMC and UNRA is yet to be signed, two years after the draft was forwarded to the road agency. UCMC and URSSI in particular are seeking to demystify contracts in roads, agriculture, health and extractives. UCMC has already developed a road-monitoring tool that is simplified and easy to use by the citizens. Initial tests have been carried out on specific ongoing and completed projects. In the coming months, road monitors will be trained on how to use this tool before they are sent out to different areas to monitor roads and provide feedback.

Uganda has been known for projects that are never completed on time. Before the creation of UNRA no single road project had ever been completed on schedule. The famous 21Km Kampala Northern Bypass whose construction started in 2003 was completed almost six years after the expected date of

1 www.ico.org.uk

2 www.cartercenter.org

3 www.ugandaroadsector.org

4 www.ucmc.ug

completion. Even then it was opened due to public pressure; lights had not been fixed, the drainage was not done etc. Yet it remains one of the most expensive roads in the country to date. Why was this project messed up? Because the public did not have any information about it! The expansion of this road to make it dual carriage is meant to commence in September 2014. Civil society will be vigilant to ensure that the mistakes under the first phase are not repeated.

Civil society is yet to be fully accepted by the government as a strategic partner in project performance and delivery. It is, for instance, important that civil society is represented on contract committees of various agencies. Civil society is currently not involved in pre-contract actions or activities. There is need therefore for CSOs to be part of contracts committees so as to be part of the contracting process from the onset. There is need for capacity building for CSOs and multi-stakeholder coalitions to create an effective lobbying and influencing platform that can lead to greater transparency and accountability for public contracts.

Uganda was recently admitted into CoST (Construction Sector Transparency Initiative)⁵ and is thus expected to greatly improve its information sharing and accountability mechanisms and practices. CoST is a targeted initiative that seeks to improve the value for money spent on public infrastructure, including road construction, by increasing transparency in the delivery of construction projects. CoST works with governments, industry and civil society to disclose information on public investment in infrastructure and promotes disclosure of project information with the aim of reducing mismanagement, inefficiency and corruption and improving value for money.

An empowered citizenry with basic information will go a long way to demand for services the population is yearning for. Citizens need to be granted an opportunity to get all the information about a project although they may not necessarily go into technical details. This helps them to own the outcome of the project. The role of civil society in contract monitoring cannot be over emphasized. If contracts are for the welfare of the people, then civil society, which is supposed to be part of the people, must take a leading role in ensuring that contracts are delivered according to agreed terms.

⁵ <http://www.constructiontransparency.org/>

Recommendations

Uganda's Minister of Foreign Affairs and sitting President of the United Nations General Assembly, Mr. Sam Kutesa, in his maiden address to the United Nations General Assembly promised to fast track MDGs and post-2015 discussions. The September 2011 MDG Summit identified lack of transparency and failed commitments as the main constraints to the attainment of MDG targets. In this regard Uganda should lead by example by ratifying and fully implementing African Union treaties, particularly the one on Democracy, Elections and Governance.

Information without the right to freedom of expression defeats the purpose of access to information, yet over the recent past numerous observers have expressed concern over shrinking civic space in Uganda. This has taken the form of draft bills to restrict activities of civil society, control of the media, militarising civil spaces and denying sections of the population the right to express themselves on important social, economic and political matters. It is recommended that Government recommits to citizen freedoms by expanding civic space to realise the true goals of freedom of information.

By Sam Mutabazi, Executive Director of Uganda Road Sector Support Initiative (URSSI)

Zambia Promises but no Action: 12 years waiting and still counting

Zambia

Access to Information law:

Draft Access to Information Bill waiting to be enacted for 12 years

Constitutional provision:

Article 35 of the Constitution of Zambia, 1973

Treaties ratified by Zambia that recognise the right of Access to information:

- ⇒ *African Charter on Human and Peoples Rights*
- ⇒ *African Charter on Democracy Elections and Governance*
- ⇒ *Africa Charter on Statistics*
- ⇒ *AU Convention on Preventing and Combating Corruption*
- ⇒ *African Youth Charter*

Status of ACHPR Reporting

- ⇒ *In violation: Late by 4 Reports*

OGP status:

- ⇒ *Zambia does not meet membership eligibility*

Other platforms:

- ⇒ *CoST: Construction Sector Transparency Initiative EITI Country ITI Compliant Country*

Zambia's Access to Information Bill is currently in limbo, three years after the ruling Patriotic Front (PF) government promised to enact it once they were elected into office. When the party won a landslide election victory in October 2011, the draft law had been on ice for 12 years, albeit in another form—as the Freedom of Information (FOI) Bill. It was a Bill that was commissioned by the local media community after a decade-long process driven by the Media Reform Committee and drafted and tabled before parliament by the Movement for Multi-Party Democracy (MMD) government, which ruled Zambia from 1991 to 2011.

In spite of the differences in name, the object of the two draft laws was the same—to remove the cloak of secrecy from government information in accordance with the democratic principles of accountability and transparency and to make it more accessible to the public.

Enacting the law was an election promise the PF insisted it intended to keep, unlike its predecessor, whom it accused of lacking the political goodwill to enact it. Vice President Dr. Guy Scott announced

that government would pass the FOI Bill within 90 days. He was speaking to journalists at the State House on 8 October 2011 shortly after the Republican President, Michael Sata, swore in Lieutenant-General Paul Mihova as Army Commander. 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.

Government’s timeline for enacting the FOI Bill was shifted a month after the Vice President’s pronouncement from 90 days to six months by the then Information Minister, Given Lubinda. He said as a sign of good faith, his ministry would hold weekly meetings with journalists from the public and private media to show government’s commitment to creating an enabling environment for media freedom in the country.

Against this backdrop, the Ministry of Information and Broadcasting Services announced that the Freedom of Information Bill would be “launched” on June 26, 2012. The announcement was well received by the media fraternity and by a number of civil society organisations. The Transparency International Executive Director said the enactment of the law would make the fight against official corruption easier.

However, when June 26 came, Information Permanent Secretary Amos Mapulenga said the Bill would not be “launched” as promised because the Attorney-General, Mumba Malila, had not signed it as he was out of the country. He said a new date would be announced once the draft Bill was signed.

No new date was announced thereafter, but in an interesting turn of events, Lubinda was replaced as Information Minister. When Kennedy Sakeni, a former career intelligence officer in the Zambia Security Intelligence Service, was appointed as Information Minister one of the first things the new minister did was announce that the FOI Bill would be presented to Parliament in the first quarter of 2013. He asked the public to be patient, saying the delay in tabling the Bill had been caused by “the lengthy consolidation process”.

By this time, the name of the Bill had changed from “Freedom of Information” to the “Access to Information Bill”. The change was effected by the government-appointed task force on ATI to address government’s concern that freedom of information already existed in Zambia, and as such there was need to harmonise the name of the draft law with its stated objectives.

Interestingly, 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.

The deadline for reviewing the conflicting laws passed a year ago, and to this date there is no official government position about whether the Access to Information Bill will re-appear in parliament and exactly when it will be enacted into law. The current Information Minister, the fourth Zambia has had in three years of PF rule, is yet to commit to a timeline for submission and enactment of the draft law.

The uncertainty surrounding the future of the ATI Bill has displeased sections of Zambian society. Cornelius Mweetwa, an Opposition MP for the United Party for National Development (UPND) has accused the government of running out of excuses about why the draft law has taken this long to enact. Mweetwa, who is also the UPND's deputy spokesman, said an Access to Information Act would give life to other anti-corruption-related laws such as the Public Interest Protection Whistleblowers Act of 2010.

Isaac Mwanza, Governance Advisor for the Young African Leaders Initiative (YALI) in Zambia, said the government had wasted taxpayers' money to hire a legal consultant and bog down the law-making process when it had no intention of enacting the ATI law. "If cabinet and government had realised the bill would be in conflict with existing legislation in the country, why did cabinet proceed to approve it?" he asks.

By Edem Djokotoe, Ghanaian journalist and media consultant..

Zimbabwe: Time for Constructive Engagement on Implementation and Reforms

Zimbabwe is currently led by an elected government that came into power after the July 31, 2013 elections following the unity government that had been in power since the disputed 2008 general elections. The country is enjoying relative peace under the new government despite reported factional fights in the ruling party the ZANU–PF.

Aside from having a new government, the country also ushered in a new Constitution following the March 2013 constitutional referendum. Since this Constitution came into force, the government is reportedly in the process of re-aligning the existing laws with the new Constitution from as far back as May 2013. Aside from this process of re-aligning laws, the Ministry of Information, Media and Broadcasting Services in December 2013 set up a panel to inquire into the status and needs of the information and media industry.¹ Among other things the panel is assessing the country's laws that impact on the media and on access to information with a view to coming up with recommendations for reform.

¹ *The Information and Media Panel of Inquiry–IMPI*

Zimbabwe

Access to Information law:

The Access to Information and Protection of Privacy Act (2002)

Constitutional provision:

Section 62 of the Constitution of Zimbabwe Amendment No. 20 of 2013

Treaties ratified by Zimbabwe that recognise the right of Access to information:

- ⇒ *African Charter on Human and Peoples Rights*
- ⇒ *AU Convention on Preventing and Combating Corruption*
- ⇒ *SADC protocol against corruption (and Zimbabwe has also signed the SADC protocol on culture, information and sport)*

OGP status:

- ⇒ *Not Eligible, needs 6 points meet eligibility*

Constitutional Provision

Section 62 of the Constitution of Zimbabwe Amendment No. 20 of 2013 provides for the right of access to information. Access to information is provided for as a stand-alone right, unlike the previous constitution in which aspects of access to information were found within the provision on freedom of expression. Section 20 (1) of the former Constitution provided as follows:

Except with his own consent or by way of parental discipline, 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.

On the other hand, Section 62 of the new constitution is a stand-alone provision on access to information, separate from that of freedom of expression (section 61) but even more importantly it clearly outlines the parameters within which this right can be exercised. Among other aspects the provision in Section 62 states:

Every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability.

Every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right. And that legislation must be enacted to give effect to this right²

While the constitutional provision are a marked improvement compared to the former situation, a worrisome aspect is the existence of Section 86 of the same constitution, which imposes further grounds for limitations to rights outlined in the Bill of Rights, which can possibly detract from the celebrated gains noted above.

² Further, other provisions in the Constitution also lay a strong basis for the advancement of access to information in Zimbabwe. For example, Section 3(1) (h) states that one of the founding values of Zimbabwe as a country is good governance, and it goes on to state that the State is bound by principles of good governance which include, transparency, justice and accountability (s 3(2)(g)). Also, section 6 increases the number of official languages from three to 16, including sign language, as well as mandating that the State take measures to encourage the use and development of forms of communication that suit persons with all forms of disabilities (s (6) (4) and s 22).

Despite the existence of the largely progressive new constitution, which is now over a year old, Zimbabwe remains saddled with laws that limit the enjoyment of access to information in particular. The very law that is meant to facilitate the enjoyment of this right, **Access to Information and Protection of Privacy Act (AIPPA)**, contains a number of provisions and aspects that detract the very right it is meant to protect. For example:

- a. It has widely formulated exemptions to information that can be disclosed, contrary to a narrower limitations clause provided for in section 62 of the new Constitution.
- b. It has lengthy and uncapped timeframes within which a body can respond to information, i.e. a body has up to 30 days to respond to a request, and the period can be extended by 30 days, which can be further extended depending on the circumstances.
- c. It is limited in its application in that it only applies to information held by public bodies and does not extend to information held by non-State entities, yet the new Constitution extends the right to information to such as well (s 62(2)).

Aside from AIPPA, access to information is also limited by provisions in other legislation such as the Official Secrets Act of 1970 whose sections 4 and 8 contain widely couched offences such that it is not clear what exactly constitutes an offence. Also the existing laws that criminalise freedom of expression and of the media such as false news, insult and criminal defamation laws as found in laws such as sections 31, 33, 95 and 96 of the Criminal Law (Codification and Reform) Act (chapter 9:23) also negatively affect the extent to which the media is free to disseminate some information for fear of criminal repercussions.

Over the years MISA-Zimbabwe has undertaken a multi-pronged approach to lobbying for greater protection and guaranteeing of access to information as a right. This has included lobbying for reforms to this law at various levels, including at government, political party and even at the level of the African Commission on Human and Peoples' Rights, to increase pressure on the government of Zimbabwe, for example in the IJAZ³ case, in which sections of AIPPA were being challenged. Over the years the organisation has also conducted publicity campaigns on the fact that ATI is a right which also facilitates the enjoyment of other rights; for example, the organisation's programming theme for the year is "*The right to know, key to life*" which it has embedded on a number of its publications including on billboards across the capital city.

³ *Communication No. 297/2009*

Also as a way of facilitating ATI, the organisation has partnered with local authorities and community based organisations to erect “information kiosks” across the country in which it provides information to local communities including newspapers and various information materials. Over the years, the organisation has also, under the banner of its regional office, conducted an annual survey that tests the openness and level of information dissemination in public institutions titled “*Government Secrecy in an Information Age*” whose report is launched publicly in the presence of government officials and the institutions involved in the survey.

Recommendations

1. While it is commendable that Zimbabwe took the initiative to become one of the first countries on the continent to put in place an ATI law, the fact that 12 years later the right is still barely accessed by the populace only points to the need for a review of this law to ensure that it effectively guarantees this right. Part of the work has already been done with the inclusion of a progressive provision on access to information in the Constitution, and Zimbabwe should therefore move to repeal the existing law and replace it with a law that specifically provides for access to information only, unlike the current situation where the law also deals with regulation of the media. The new law should, among other things:
2. include provisions to ensure wide promotion of the right as well as the Act and the measures contained therein as well as create an independent oversight mechanism to oversee implementation of the Act and promotion of the right which is lacking under the current context.
3. To complement the new ATI law, the government should further put in place measures to promote openness and a culture of disclosure of information in government institutions as well as undertake other measures to ensure information dissemination to areas that are further from the major cities that, for instance, lack television and radio reception. This could be in the form of resuscitation and resourcing of information centres, which MISA–Zimbabwe has found are very popular and well used by people in such areas.
4. Zimbabwe should take advantage of the ongoing process of re–alignment of laws and move to repeal all provisions that criminalise expression such as insult, false news and criminal defamation laws, as the continued existence of these laws is hampering the media’s ability to source and disseminate public interest information

By Jacqueline Chikakano, Legal officer, MISA–Zimbabwe

AFIC MEMBERS

1. International Federation of Journalists, Senegal

International Federation of Journalists (Africa Office) is a founder member of AFIC. The IFJ Africa Office was established in January 2002 and has been strengthening national unions and associations on the continent. The IFJ Africa Office has in its fold more than 30 member organizations on the continent and focuses on the development of independent and quality journalism in support of democratic, social and economic development. Its main activities include: trade union development, safety of journalists, relationship with public authorities and professional challenges. The right to information enables journalists to report accurately in a secure environment as such AFIC has worked with the various members of IFJ national associations in the advancement of RTI at national and regional level. Both organizations together with other sister organizations are members of the Windhoekplus20 campaign. Most recently AFIC supports IFJ on training IFJ's members (journalists) in using access to information as tool for investigative reporting. <http://africa.ifj.org/en>.

2. International Commission of Jurists, Kenya

The Kenyan Section of the International Commission (ICJ–Kenya) was part of the September 2006 Lagos Declaration that established AFIC. AFIC has worked closely with ICJ–Kenya in promoting the right to information in the country. In August 2011 the two organizations together with the Human Rights Centre of the University of Pretoria and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information in Africa organized a regional dialogue on the ratification of the African Charter on Democracy, Elections and Governance as well as the promotion of Access to Information in eastern Africa. AFIC reviewed and provided comments on Kenya's draft FOI bill, participated in training ICJ members on FOI litigation and actively collaborates with ICJ on open government initiatives www.icj-kenya.org

3. African Network of Constitutional Lawyers (ANCL)

ANCL is an association of judges, lawyers, academics, activists, NGOs, research or academic institutes and bar associations that are interested in constitutional law and the development of constitutionalism in African countries. It is an affiliate of the International Association of Constitutional Law (IACL).

ANCL believes transparency is a driver of constitutional accountability and has therefore been active in several access to information initiatives on the continent. AFIC and ANCL jointly organised a conference of FOI researchers and practitioners from October 23–24, 2010 in Kampala. In addition, AFIC and ANCL have partnered in conducting FOI studies in Mali and Senegal <http://www.ancl-radc.org.za/>

4. HURINET Uganda

The Human Rights Network Uganda (HURINET–U) joined AFIC as a founding member. HURINET played a key role in helping AFIC register and get established in Uganda. HURINET plays a key role in advocating for the effective implementation of the Uganda Access to Information Act, 2005 and is the secretariat of the Coalition of Freedom of Information (COFI). COFI brings together over thirty–five civil society and media organizations promoting access to information in Uganda. AFIC has worked with HURINET and supported COFI's various advocacy campaigns including Right to Know Day activities, training of journalists, information, political parties, information request campaigns and training of trainers workshops www.hurinet.or.ug

5. About COFI

The Human Rights Network Uganda (HURINET–U) is a national umbrella civil society organization which was established in 1993 by a group of eight human rights organizations and formally registered as an independent, non–partisan and not for profit organization in 1994. In 2003 HURINET–U spearheaded the formation of the national Coalition on Freedom of Information (COFI). The coalition and its membership have campaigned for the enactment and implementation of the FOI law. The membership to date stands at over 300, both individuals and NGOs across the country. The current working group members include; Anti–corruption Coalition Uganda, FIDA Uganda, Uganda Women's Network, Uganda Media Development Foundation, PANOS East Africa, Human rights network for journalists and the African Freedom of Information Centre (AFIC) as well as HURINET–U as a host organization.

6. Media Foundation for West Africa, Ghana

A leader in promoting and defending freedom of expression in West Africa, Media Foundation of West Africa (MFWA) was part of the Lagos Declaration that established AFIC. Its Programme Officer for Media Law Reform and Legal Defence Mrs Ugonna Ukaigwe joined AFIC Board in January 2011 and has brought wealth of experience and expertise to the organization. Together with AFIC and other actors in the region MFWA has implemented campaigns targeting national governments, African Commission on Human and peoples' Rights as well as other African Union organs www.mediafound.org

7. Open Democracy Advice Centre, South Africa

The Open Democracy Advice Centre (ODAC) is a founder member of AFIC. Established in the year 2000, ODAC is a section 21 non–profit company based in Cape Town with a mission of promoting

open and transparent democracy; fostering a culture of corporate and government accountability; and assisting people in South Africa to be able to realize their human rights. ODAC provides practical services to individuals and organisations with a social justice agenda to help citizens access their rights in respect of three key pieces of legislation: The Protected Disclosures Act 2000 (PDA); The Promotion of Access to Information Act 2000 (PAIA) and the Promotion of Administrative Justice Act 2000 (PAJA).

ODAC staff has also actively supported access to information work across the continent through implementing research in DRC and Angola as well as reviewing and supporting legislative processes in a number of African countries. As a member of AFIC, ODAC has provided the necessary support and guidance for the new organization. Together with AFIC the organization organized a panel of experts meeting in the SADC sub region at which strategies to advance the right of access to information in the sub region was discussed. Both organizations are members of the Windhoekplus20 campaign promoting the African Platform on Access to Information. www.opendemocracy.org.za

8. Citizens Governance Initiative, Cameroon

Citizens Governance Initiative (CGI) works to address the absence of opportunities for citizens' participation in governance in Cameroon and in Central Africa. Its coordinator, Ms Agnès Ebo'o was a member of AFIC's Steering Committee from August 2006–January 2014. www.citizens-governance.org

9. Commonwealth Human Rights Initiative, Ghana

Located in Accra, Ghana the Africa Office of Commonwealth Human Rights has evolved into a strong NGO and an important part of the struggle for human rights in Ghana and commonwealth West Africa hosts the secretariat of the Ghana's Right to Information Coalition. CHRI's Regional Coordinators served on AFIC's Steering Committee from September 2006 to January 2014. Together with AFIC and the national coalition, CHRI is campaigned for the fast tracking of the consideration of Ghana's Freedom of Information Bill and collaborate strongly on open government partnership in Ghana and the region. www.humanrightsinitiative.org

10. Media Institute of Southern Africa, Namibia

Based in Windhoek, Namibia, the Media Institute of Southern Africa (MISA) was admitted to the membership of AFIC in May 2011. MISA has chapters and membership in the eleven Southern Africa Development Community (SADC) countries. Its work focuses primarily on the promotion of free, independent and pluralistic media, as envisaged in the 1991 Windhoek Declaration. Currently MISA is the secretariat to the campaign for an African Platform on Access to Information (APAI) in which

AFIC and its other members: ODAC, IFJ, MFWA and MRA participate as members of the continental Working Group. The Working Group works to advance the right of access to information in all its dimensions, regionally and internationally. www.misa.org

11. Media Rights Agenda, Nigeria

Media Rights Agenda (MRA) was established in 1993 as an independent, non-governmental, not-for-profit organization for the purpose of, among other things, promoting and protecting media freedom and freedom of expression in Nigeria. As part of its campaign MRA together with Right to Know Nigeria and other activists coordinated campaigns for the adoption of the Nigeria Freedom of Information law. Media Rights Agenda played a key role in the organizing of a regional conference that gave birth to both the Lagos Declaration and Africa Freedom of Information Centre and together with AFIC and other organizations are part of the Windhoekplus20 campaign that is advocating for the adoption of a continental access to information instrument. In March 2013 Media Rights Agenda organised a successful regional conference on the implementation of freedom of information laws where AFIC was a resource person. MRA collaborates with AFIC on promotion of open government in Nigeria. www.mediarightsagenda.net

12. Right to Know Nigeria

Right to Know (R2K) Nigeria is a dynamic organisation championing the right to access officially held information at all levels of government public institutions in Nigeria. The organization was part of the campaign that successfully advocated for the adoption of the Nigerian Freedom of Information law. Right to Know Nigeria joined AFIC at the beginning of 2010 www.r2knigeria.org

13. Centre for Media Studies and Peace Building, Liberia

The Centre for Media Studies and Peace Building (CEMESP) was founded in March 2000 with a primary goal is to consolidate peace, freedom of expression, democracy and development and increase the space for participatory governance of the media in holistic peace building and development at all levels of society. CEMESP was instrumental in campaigning for the adoption of a freedom of Information law in Liberia. Liberia was the first country in West Africa to adopt a Freedom of Information law and its success has inspired countries such as Nigeria, Niger and Guinea to follow suit. CEMESP joined AFIC in May 2011 and collaborates with AFIC on implementation of freedom of information law as well as open government initiative in Liberia. www.cemesp-liberia.org

14. Centre for Democratic Initiatives, Sierra Leone

Society for Democratic Initiatives (SDI) works to promote accountability and transparency in governance as well as the promotion and protection of people's right with emphasis on women and children's right. SDI was the leader of the campaign that successfully advocated for the adoption of the Sierra Leone Freedom of Information law passed in 2013. SDI joined AFIC in May 2010 and collaborates with AFIC on open government initiatives in Sierra Leone as well as experiences on implementation of FOI law. www.sfdi-sl.org

15. Comité des Droits de l'Homme et Développement, DR Congo

CODHOD, an association of NGOs combating poverty and injustice in the Democratic Republic of Congo (DRC), joined AFIC in May 2011. CODHOD is at the fore of advocacy activities for the promotion of the right to information in the Congo. They are currently undertaking an FOI study with ODAC in the country, developed a draft Access to Information Bill which they are lobbying to have parliament consider as a private member's Bill. CODHOD has conducted several FOI workshops aimed at improving transparency in local government structures in the country. www.codhod.blogspot.com

16. MISA Zimbabwe

A chapter of the Media Institute of Southern Africa MISA Zimbabwe joined AFIC in May 2011. Its main areas of focus are promotion of media freedom, independent and ethical journalism; skills training for media workers and advocating for a conducive policy environment for media professionals to work. www.misazim.com

17. South Africa History Archives, South Africa

The South African History Archive (SAHA) is an independent human rights archive dedicated to documenting and providing access to archival holdings that relate to past and contemporary struggles for justice in South Africa. SAHA joined AFIC membership network in May 2011. Its main access to information activities include provision of advice and guidance to researchers, other individuals and organisations wishing to make information requests to either a public or private body; assistance with submission of information requests, including requests to access apartheid-era security files; assistance with submission of internal appeals upon refusal of access and assessment of possible litigation and availability of legal services where internal appeals are rejected by a body and access to information is refused. SAHA's access to information toolkit has been adopted for use in a variety of environments on the continent. www.saha.org.za

18. Centre for Human Rights, South Africa

Based at the University of Pretoria, Centre for Human Rights promotes human rights education in Africa, creates greater awareness of human rights, disseminates widely human rights publications and promotes the improvement of the rights of women, people living with HIV, indigenous peoples, sexual minorities and other disadvantaged or marginalised persons or groups across the continent.

Centre for Human Rights joined AFIC in May 2011 and together with AFIC in collaboration with the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information in Africa organized regional dialogue on ratification of the African Charter on Democracy, Elections and Governance as well as the promotion of access to information in Eastern Africa www.chr.up.ac.za

19. Article 19 East Africa, Kenya

Article 19–Eastern Africa is a regional human rights organisation that works in 14 Eastern Africa countries in promoting and defending freedom of expression and right to access information as individual rights but also as instrumental rights in the realisation and fulfilment of other civil, political, economic, social and cultural rights. Article 19 East Africa joined AFIC in November 2011 and has collaborated with AFIC on a number of initiatives including training of civil society and public officials in various countries on application of freedom of information laws. <http://www.article19.org/>

20. Article 19 West Africa, Senegal

ARTICLE 19 is an regional human rights organization which defends and promotes freedom of expression and freedom of information in West Africa.

ARTICLE 19 is working to protect journalists and human rights defenders and ensure an end to impunity and corruption. Article 19 West Africa joined AFIC in November 2011 and collaborates with AFIC on a number of initiatives including strengthening of freedom of information in various platforms including the African Peer Review Mechanism and promotion of Open Government in francophone Africa. <http://www.article19.org/>

21. Uganda Road Sector Support Initiative, Uganda

Uganda Road Sector Support Initiative (URSSI) works to improve governance in the Ugandan Transport Sector, with a special focus on Road transport. Established in 2010, the pioneering NGO in transport sector has distinguished itself as an active institution introducing structured advocacy interpositions

that have positively shaped government intervention in the transport sector. From spearheading efforts in championing and crusading the process of amendment of the erstwhile outdated old Road laws, to being the draughtsman of citizens monitoring of road projects, to providing alternative policy positions to parliament on budget processes for Works & Transport Sector, URSSI continues to create impact in a hitherto no-go area of transport not only in Uganda but in Sub-Saharan Africa. URSSI joined AFIC membership network in November 2011 and collaborates with AFIC on various access to information initiatives including promotion of open contracting in Uganda. <http://ugandaroadsector.org/>

22. CMF Mena, Morocco

The Centre for Media Freedom in the Middle East and North Africa (CMF MENA) is an independent regional non-governmental organisation dedicated to the defence of journalists and the promotion of media freedom in the Middle East and North Africa. CMF MENA is striving to become the first regional network of media freedom defenders. Working partnerships have been, and are being, formed with independent groups and organisations across the region involved in defending media freedom. CMF MENA joined AFIC membership network in November 2011.

23. Association of Media Development in South Sudan

Association of Media Development in Sudan (AMDISS) was founded in 2003 to help strengthen the media and provide a framework in South Sudan to ensure freedom of speech, the right to information and other human rights. AMDISS joined AFIC in November 2011. AMDISS collaborates with local and international partners, runs a media centre in South Sudan and undertakes active information work. AMDISS is an advocacy and a Media Development Institute in South Sudan founded in 2003 to address the news and information void in the Country and to improve the capacity of local Journalists to respond to the crucial issues of human rights, good governance, freedom of expression and democracy in this emerging nation.

24. Tanzania Citizens Information Bureau

The Tanzania Citizens' Information Bureau (TCIB) is a non-profit organization established to advance the education and participation of citizens in the promotion, protection and consolidation of democratic principles through access to appropriate and independently researched information about political, economic and social policies and issues. They joined AFIC membership network in November 2011 and collaborates with AFIC on various issues including campaigns for adoption of freedom of information law by Tanzania, Open Government Partnership and open contracting. <http://www.tcib.or.tz/>

25. ACREDITAR, Mozambique

ACREDITAR is a Portuguese word meaning to believe. It is an association set up in 2002 by a group of Mozambican human rights activists who believe can contribute to strengthen and promote democracy, transparency, social justice and socioeconomic development of Mozambique. They joined AFIC membership network in December 2012 and collaborates with AFIC on the campaign for adoption of freedom of information law in Tanzania.

26. University of Botswana

University of Botswana joined AFIC membership network in November 2011. The Dr. Peter M. Sebina, focal point for University of Botswana and lecturer in archives and records management at the University of Botswana, has provided an exhaustive and professional work to reports and projects supported and developed by AFIC including access to information training manual for civil society as well as desk study of open government in South Africa, Kenya and Tanzania. <http://www.ub.bw/>

27. Public and Private Development Centre, Nigeria

Public and Private Development Centre (PPDC) is a non-governmental organisation created to increase citizen's participation in governance processes in a way that improves the integrity of public and private sector processes. PPDC joined AFIC in December 2013 and through its Executive Director, Sember Nyager, PPDC has helped horn AFIC's open contracting strategy.. AFIC collaborates with PPDC on national experiences as well as regional and international campaigns on advancing open contracting. <http://www.procurementmonitor.org/>

28. Open Society Justice Initiative, Nigeria

The Open Society Justice Initiative (OSJI) uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. AFIC has received support from OSJI and collaborates with the Initiative in a number of access to information research and advocacy projects on the continent. www.soros.org/initiatives/justice

29. Centre for Human Rights Rehabilitation, Malawi

The Centre for Human Rights and Rehabilitation (CHRR) is one of the leading human rights and governance non-governmental organisations (NGOs) in Malawi. CHRR has been involved in the ATI campaign in Malawi right from its infancy. CHRR has a proven good track record in coordinating advocacy initiatives at the local and national levels on various human rights issues, including ATI and

anti-corruption. The organisation is widely recognised as one of the few civil society organisations that initiated the Extractive Industry Transparency Initiative (EITI) campaign in Malawi to promote revenue tracking in the extractive sector. CHRR is currently an active member of various networks and institutions, including the Natural Resource Justice Network (NRJN) –a network of local NGOs that are promoting the role of the Extractive Industry Transparency Initiative (EITI), one of the tools to promote revenue tracking in the extractive sector, as well as supporting governance in Malawi that is inclusive, accountable and responsive to citizens. CHRR is also a member of the African Freedom of Information Centre since December 2013 and collaborates with AFIC on campaigns for adoption of national access to information law, open government, social accountability and construction sector transparency initiative.

30. Association for Freedom of Thought and Expression, Egypt

Association for Freedom of Thought and Expression (AFTE) is an independent association established in 2006, interested in issues related the protection of freedom of thought and expression. AFTE believes that Egyptian society should enjoy all forms of freedom of expression it sees fit while being guaranteed the receiving and transfer of information without the intervention of a censor. In the same time stress the importance of respect and tolerance among different people.

AFTE has launched the first website specialized in Right to Know in Egypt. AFTE became AFIC member in July 2014 and we are convinced that the future partnership will signify a new bridge between the sub-Saharan African and North Africa. <http://www.en.afteegypt.org/>

31. AIDSPAN, Kenya

AIDSPAN is an international non-governmental organisation based in Kenya whose mission is to reinforce the effectiveness of the Global Fund to Fight AIDS, Tuberculosis and Malaria. AIDSPAN does so by serving as an independent watchdog of the Global Fund and of the implementers of its grants. AIDSPAN joined AFIC in July 2014.

AIDSPAN's vision is that the Global Fund will raise and disburse adequate money to fight AIDS, TB and malaria worldwide, with the Fund and the implementers of its grants being fully transparent, fully accountable, and achieving the greatest possible impact. <http://www.aidspan.org/>

32. Human Rights Network for Journalists, Uganda

HRNJ–Uganda was established in 2005 by a group of human rights–minded journalists who developed a sense of activism amidst a deteriorating context due to glaring abuses targeting the media. The network gained formal registration as an independent non–profit and non–partisan media organisation in 2006. The identity of HRNJ–Uganda lies with its diverse membership across the board including the print and electronic media, freelance investigative journalists and individuals from other professions. HRNJ–Uganda became AFIC member in July 2014. <http://www.hrnjuganda.org/>

33. CADES, Guinea

CADES/Guinee (Centre d'appui pour e Developpeent Economqieu et Social) is Guinean NGO for development funded in 2007 with the objectives of working for local good governance, to contribute to rural development, and promote the socioeconomic improvement of women and youth. CADES/ Guinée joined AFIC network in July 2014 <http://www.cades-guinee.org/inte>

34. Forum International des Femmes de l'Espace Francophone, Democratic Republic of Congo

The Forum International des Femmes de l'Espace Francophone (FIFEF) is a non governmental organization Congolese with siege a Kinshasa. They promote governance and women's civil and political rights. FIFEF joined AFIC membership network in July 2014 and is the first organization specialised in genre issues that joins AFIC.

35. Collectif 24, Democratic Republic of Congo

Collectif 24 is an advocacy platform for the right of access to information in DRC. Its main objective is the passage of a FOI law and the promotion of the right to know in DRC. This platform wants to work as a network to coordinate and mobilize efforts to promote access to public information in DRC. Collectif 24 became AFIC's member in July 2014. <http://www.collectif24.org/>

36. Transparency International, Uganda

Transparency International Uganda (TIU) is the national chapter of Transparency International–the global coalition against corruption. The organization works to create change towards a Uganda free of corruption and its effects. It has national jurisdiction and promotes good governance (transparency, integrity and accountability) with specific emphasis on health, education, water, private sector, extractive industry, and political corruption.

As a member of the global movement anticorruption movement, TIU is an active contributor to the TI strategic goals namely, promotion of national anti–corruption reform through concrete research and action, increasing the understanding of the link between corruption and poverty, empowering communities to demand accountable governance and promoting continual institutional development. TI Uganda was founded in 1993 as a pressure group to bring together peoples voluntary initiatives to enhance accountability transparency and integrity among all Ugandans. The organisation has since grown from a mere pressure group whose membership largely was largely composed of lawyers and eminent Ugandans to an autonomous Nongovernmental organisation registered with the Uganda NGO board. TI–U became AFIC member in July 2014 although both organizations have a long history of collaboration in Uganda, both are members of Uganda Contracts Monitoring Coalition and jointly implement a 4 years project in Uganda financed by the GSPA platform/The WB. <http://www.tiuganda.org/>

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