Citizens’ Access to Information: A tool to Build Trust and Address Corruption

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Citizens’ Access to Information: A tool to Build Trust and Address Corruption

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Preface

Africa Freedom of Information Centre is a pan-African civil society organisation and resource centre that promotes the right of access to information on the continent through comparative research, coordinating regional advocacy, facilitating information-sharing and capacity building. AFIC is a membership organization with 33 civil society organisational members in 21 African countries that started operations in 2010.

AFIC’s mission is to advance access to information in Africa by engaging selectively with continental level actors, institutions and processes and sub-regional organizations through monitoring international, continental and regional treaty commitments and compliance related to access to information; coordinating and amplifying the voice of its members at a continental and regional level; aggregating the skills and experiences of its members in support of one another transnationally; and acting in solidarity with the advocacy efforts of its members.

AFIC’s publication “State of Right to Information in Africa Report 2015. Citizens’ Access to Information: A tool to Build Trust and Address Corruption” analyses the links between the right to information and corruption in 15 Africa countries. The objective of this publication is to reflect on the positive dynamics of the right to information and to propose concrete recommendations to improve implementation of existing legal and policy frameworks and raise awareness on new issues. This report is a joint effort of AFIC and its members around Africa.

AFIC is grateful to all the authors who contributed content and respective member organizations for their commitment with this unique publication and their unconditional support. AFIC would like to express special appreciation towards Adv. Faith Pansy Tlakula Special Rapporteur on Freedom of Expression and Access to Information in Africa and Commissioner at the African Commission on Human and Peoples’ Rights. We are thankful to Habiba El Mejri Scheikh, Director of Information and Communication of the African Union Commission whose experiences and insight have informed this report from perspective of the African Union.

We are convinced that this report and its recommendations will be useful in promoting the realization of citizens’ right to information as envisaged in international and African regional mechanisms.

Henry Maina
Chairperson
AFIC Governing Council

Gilbert Sendugwa
Coordinator & Head of Secretariat
AFIC Secretariat
FOREWORD

from the Special Rapporteur on Freedom of Expression and Access to Information

AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

It is an established fact that lack of transparency facilitates and acerbates corruption in all aspects of public life whether it is public contracting, legislating on high interest issues or delivering basic services to ordinary people. Indeed, in some African countries, the quality and quantity of public services have not improved despite increase of public expenditure to deliver those services. This has undermined the realisation of human rights, in particular, economic and social rights of millions of people in some parts of the continent.

The role of information in addressing corruption is vital. Article 9 of the African Union Convention on Preventing and Combating Corruption obliges State Parties to adopt and effectively implement national access to information laws as a means to fight and prevent corruption. State Parties are also called upon in Article 12(4) to give media unhindered access to information on corruption related matters¹.

Through my mandate as Special Rapporteur on Freedom of Expression and Access to Information in Africa, I have urged State Parties to ratify and domesticate various instruments of the African Union that guarantee the right of access to information such as the Convention on Preventing and Combating Corruption, the African Youth Charter and others. The ratification and domestication of these treaties coupled with adoption and implementation of access to information laws will contribute to the eradication of corruption, observance of human rights and improvement of quality of life on the Continent.

Since 2010, I prioritised and provided leadership to civil society advocates including Africa Freedom of Information Centre (AFIC) as well as public sector reformers in Governments for campaigns for adoption of access to

information laws. These efforts have resulted in the number of African countries with laws regarding the right of access to information increasing from five in 2010 to seventeen today. The Model Law on Access to Information for AU Member States has made a positive contribution in this regard.

Working with AFIC and its members across Africa, I have embarked on efforts to promote implementation of these laws through production of manuals for civil society, media and public officials. We hope to mobilise resources to train these stakeholders in order to make the right to information a reality.

In 2012, the African Commission on Human and Peoples’ Rights adopted ACHPR Resolution 222 calling upon the African Union and Member States to officially recognise September 28 as International Right to Information Day. This action is essential to create a platform at which governments, citizens and the international community can discuss ways to promote transparency and address challenges that affect the human rights and governance challenges in our continent. The release of this report on corruption and the right to information in Africa is a positive step in realising the call of the African Commission on Human and Peoples’ Rights.

I congratulate AFIC and its membership on the State of the Right to Information in Africa 2015 Report and commend it to all our stakeholders. I also appreciate the Swedish International Development Cooperation for funding the production and dissemination of this report.

Adv. Faith Pansy Tlakula
Special Rapporteur on Freedom of Expression and Access to Information in Africa
African Commission on Human and Peoples’ Rights
FOREWORD
from the Director of Information and Communication

AFRICAN UNION COMMISSION

Access to Information at the Heart of African Union and Agenda 2063 War on Corruption

Corruption is one of world’s leading problems and a contributor to the impoverishment of millions of persons. In the case of Africa, the African Union estimated in 2002 that the continent was losing US$150 billion to corruption. Ten years after, the situation does not present any tangible signs of improvement. The Economic Commission for Africa (ECA) holds that corruption alongside, kickbacks, tax evasion, criminal activities, transactions of certain contraband goods, and other illicit business activities across borders are the main causes of resource hemorrhage out of Africa.

The African Union recognises citizens’ access to information as essential to addressing corruption. Article 9 of the African Union Convention on Preventing and Combating corruption obliges state parties to adopt and effectively implement national access to information laws as a means to fight and prevent corruption. This is consistent with Article 13(b) of the United Nations Convention Against Corruption.

This same article states that each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences. State Parties are also called upon in Article 12 (4) to give media unhindered access to information on corruption related matters and create an enabling environment that will allow media to hold governments to the highest levels of transparency and accountability in the management of public affairs.

Similarly and in order to realise Africa’s vision of an integrated, prosperous and peaceful Africa driven by its citizens and representing a dynamic force, the African Union has put the realisation of citizens access to information

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2 http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf
and transparency at the heart of the continent’s Agenda 2063. The strategy identifies as priority the passage and effective implementation of laws on freedom of information, press freedom and expression essential for citizen participation and holding leaders to account.

It is as such that the Commission of the African Union appreciates the work of the African Centre of freedom The African Union Commission appreciates the work of Africa Freedom of Information Centre (AFIC) of advocating and monitoring the ratification and domestication of African treats, capacity strengthening, networks building as well as broadening and deepening knowledge base on the right to information. We also commend AFIC for its partnership and engagement with various African Union institutions, member states and citizen groups.

Habiba El Mejri Scheikh
Director of Information and Communication
African Union Commission
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<td>AFODE</td>
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<td>AGHA</td>
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<td>Access to Information</td>
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<td>ATIA</td>
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<td>AU</td>
<td>African Union</td>
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<td>AUCPCC</td>
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<td>CAJ</td>
<td>Commission on Administrative Justice</td>
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<td>CBL</td>
<td>Central Bank of Liberia</td>
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<td>CCTV</td>
<td>Closed Circuit Television</td>
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<td>CEMESP</td>
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<td>CEPO</td>
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<td>CORI</td>
<td>Coalition on the Right to Information</td>
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<td>CoST</td>
<td>Construction Sector Transparency Initiative</td>
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<td>CPI</td>
<td>Corruption Perceptions Index</td>
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<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>DCEC</td>
<td>Directorate on Corruption and Economic Crime</td>
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<td>DPP</td>
<td>Director of Public Prosecution</td>
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<td>EACC</td>
<td>Ethics and Anti-Corruption Commission</td>
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<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>EHAHRDP</td>
<td>East and Horn of Africa Human Rights Defenders Project</td>
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<td>EITI</td>
<td>Extractive Industry Transparency Initiative</td>
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<td>EPRDF</td>
<td>Ethiopian People's Revolutionary Democratic Front</td>
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<td>FEACC</td>
<td>Federal Ethics and Anti-Corruption Commission</td>
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<td>Freedom of Expression</td>
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<td>FOI</td>
<td>Freedom of Information</td>
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<td>GCCC</td>
<td>Central Office for Combating Corruption or the GCCC (Gabinete Central de Combate à Corrupção)</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GIFMIS</td>
<td>Ghana Integrated Financial Management Information System</td>
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<td>HIM</td>
<td>Hub for Investigative Media</td>
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<td>HRNJ</td>
<td>Human Rights Network for Journalists</td>
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<td>HURINET–U</td>
<td>Human Rights Network–Uganda</td>
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<td>JCTR</td>
<td>Jesuit Centre for Theological Reflection</td>
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<td>KENAO</td>
<td>Kenya National Audit Office</td>
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<td>LACC</td>
<td>Liberia Anti Corruption Commission</td>
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<td>LDPI</td>
<td>Land Deals Politics Initiative</td>
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<td>LMA</td>
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<td>LMC</td>
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<td>LOI</td>
<td>Law on Information –(Loi organique relative à l’information)</td>
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<td>LTA</td>
<td>Liberia Telecommunication Authority</td>
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<td>Full Name</td>
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<tr>
<td>MICAT</td>
<td>Ministry of Information Culture and Tourism</td>
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<td>MISA</td>
<td>Media Institute of Southern Africa</td>
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<td>MMD</td>
<td>Movement for Multi–party Democracy</td>
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<td>MRA</td>
<td>Media Rights Agenda</td>
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<td>NACAP</td>
<td>National Anti–Corruption Action Plan</td>
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<td>NAO</td>
<td>National Audit Office</td>
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<td>OCRC</td>
<td>Central Office for the Repression of Corruption (Office central de repression de la corruption)</td>
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<td>OGP</td>
<td>Open Government Partnership</td>
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<td>OSA</td>
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<td>Open Society Initiative West Africa</td>
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<td>PAIA</td>
<td>Promotion of Access to Information Act</td>
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<td>Protected Disclosures Act of 2000</td>
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<td>PFC</td>
<td>Press Freedom Committee</td>
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<td>PPOA</td>
<td>Public Procurement Oversight Authority</td>
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<td>SARS</td>
<td>South African Revenue Services</td>
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<td>SSACC</td>
<td>South Sudan Anti–Corruption Commission</td>
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<td>TI</td>
<td>Transparency International</td>
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<td>UNCAC</td>
<td>United Nations Convention against Corruption</td>
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<td>USD</td>
<td>United States Dollar</td>
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<td>WGI</td>
<td>The Worldwide Governance Indicators</td>
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<td>ZCEA</td>
<td>Zambia Civic Education Association</td>
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INTRODUCTION
INTRODUCTION

Africa Freedom of Information Centre presents the State of Right to Information in Africa 2015 Report. This year’s issue focuses on the right to information and corruption in Africa. The topic was chosen based on the recognition by both the United Nations Convention Against Corruption and the African Union Convention on Combating and Preventing Corruption the role of access to information in addressing corruption. The report covers 15 countries.

The history of the fight against corruption in Africa is littered with mixed fortunes. Africa is endowed with rich natural resources, good climate, rich soils and a young population yet it remains poor. Corruption undermines the continent’s development efforts. According to Transparency International, a leading global watchdog on corruption, of the 10 countries considered most corrupt in the world, 5 are from Africa (See Figure 1 below). The African Union in 2002 estimated that the continent was losing US$150 billion to corruption every year4.

The United Nations Office of the High Commissioner for Human Rights, has stated that observing human rights principles is essential to every successful and sustainable anti-corruption strategy. One such right is the right to information recognized by international and regional instruments such as the Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; United Nations Convention Against Corruption; African Charter on Human and Peoples’ Rights; African Charter on Democracy, Elections and Governance; African Charter on Values and Principles of Public Service and Administration; and the African Convention on Preventing and Combating Corruption.

Eighteen African countries provide constitutional guarantees for citizens’ right to information while only 17 out 54 African Union member states have domestic legislation focused on the right to information namely; South Africa, Zimbabwe, Angola, Uganda, Ethiopia, Liberia, Niger, Nigeria, Guinea, Tunisia, Rwanda, Cote d’Ivoire, Sierra Leone, South Sudan, Mozambique, Sudan and Burkina Faso. Yet lack of political will and capacity to implement these measures continue to undermine efforts to address endemic corruption and abuse of state power and its resources.

Corruption in Africa ranges from high-level political graft on the scale of millions of dollars to low-level petty bribes to police officers; these have a corrosive effect on basic institutions and undermine public trust in the government. Reversing this trend is a challenge that African policymakers have to address effectively to enhance the likelihood of achieving the African Union’s vision of a prosperous Africa.

4 Stephanie Hanson, Corruption in Sub Saharan Africa http://www.cfr.org/africa-sub-saharan/corruption-sub-saharan-africa/p19984
The Africa Freedom of Information Centre through its advocacy on the right to information has confirmed another self-evident truth; it is easier to obtain more routine information than to get answers to complex or sensitive requests especially those that revolve around corruption. Therefore the strategy for anti-corruption activists aiming to erode a culture of secrecy must be to ensure pressure is exerted on governments to adhere to the tenants of the right to information and principles of freedom of expression.

Against this background, the Africa Freedom of Information Center’s second edition of the State of Right to Information in Africa Report 2015 titled Citizens’ Access to Information: A tool to Build Trust and Address Corruption examines corruption and the right to information in Africa. Some of the key issues addressed in the report are as follows;
Lack of transparency and corruption presents real threats to Africa’s vision of an integrated, prosperous and peaceful Africa driven by its citizens and representing a dynamic force. The report therefore, provides actionable recommendations on how African countries could accelerate the recognition of the right to information and its use to fight corruption.

First, achieving complete observance of the right to information in Africa requires broadening the awareness of the right with both the citizenry and the authorities. The second message of the report is that enhancing anti-corruption mechanisms requires governments ensure that the right to information and the principles of freedom of expression are observed absolutely. This is especially so in strategic and priority sectors deemed crucial for the recognition of civil, economic and political rights. In this regard, the report underscores the need for African countries to lift the main binding constraints to fighting corruption in Africa. These include an independent media, domesticating freedom of information legislation; amending or repealing existing laws and policies that continue to hamper the right to information; and improving open data.

A third message of the report is that more public investment, particularly through civil society, is needed to catalyze strong anti-corruption sentiments in Africa. The final message of the report is that African policymakers have to adopt a more coherent approach to promoting the right to information and freedom of expression for it to play an effective role in driving the anti-corruption cause in Africa.

Ultimately this report aims to demonstrate that anti-corruption efforts are likely to be successful when they approach corruption as a universal problem. A comprehensive response to corruption includes effective institutions, appropriate laws, good governance reforms as well as the involvement of all concerned stakeholders. Thus, just the adoption of right to information and freedom of expression frameworks or anti-corruption commissions may not be effective if there is no strong and engaged civil society. Likewise, civil activism against corruption needs the assistance of a strong legal framework and an open political system to achieve its goals.
NORTH AFRICA
ALGERIA: FREEDOM OF INFORMATION LAW AND FIGHTING CORRUPTION

Domestic Laws affecting FOI and FOE and corruption in Algeria

- Article 41 Constitution of Algeria
- Media Law No. 5 of 2012
- The Algerian Corruption Law, 26th February 2006 Law No. 06–01

Treaties regarding FOI and FOE and corruption ratified by the country

- African Charter on Human and Peoples’ Rights
- African Union Convention on Preventing and Combating Corruption
- International Convention on Civil and Political Rights
- United Nations Convention Against Corruption
- Universal Declaration of Human Rights
- African Charter on the Values and Principles of Public Service and Administration
- African Union Youth Charter

Introduction

Algeria faces deep social, economic and political challenges. Ailing President Abdelaziz Bouteflika’s was re-elected to a fourth term\(^5\) in 2014 and in that year; Algeria was ranked 100\(^{th}\) out of 175 in Transparency International’s corruption perceptions index\(^6\). The government made constitutional ammendment that appeared to be democratic.\(^7\) Today, the high level of corruption is a burden to Algeria’s public sectors, especially the energy sector, which contributes the most to Algeria’s economy.\(^8\)

Respect for FOI and FOE is one way of improving transparency and fighting corruption. An analysis of corruption perception indexes reveals that countries that promote the RTI and FOE have registered improvement in governance.\(^9\)

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\(^7\) 2015 Index of Economic Freedom [http://www.heritage.org/index/country/algeria](http://www.heritage.org/index/country/algeria) (accessed 18th August 2015).


Algeria has demonstrated its determination to promote these rights by signing important international instruments that provide for FOI and FOE such as, the International Covenant on Civil and Political Rights, United Nations Convention against Corruption, the African Charter on Human and Peoples’ Rights and the African Union Convention on Preventing and Combating Corruption. However, Algeria’s failure to protect these rights could be related to the high corruption levels in government.

**Right to information and Corruption in Algeria**

Algeria does not have a specific law on FOI. However, proposals have been made for an Organic Law on Information—LOI (Loi organique relative à l’information). The Government announced in February 2015 that this law would be reviewed and presented to parliament.\(^\text{10}\) While the legal provisions in Algeria appear to promote FOI and FOE which in turn should reduce corruption, this is not the case. The Algerian constitution protects FOE,\(^\text{11}\) media laws appear to enhance media freedom\(^\text{12}\) and an anti corruption law sternly deals with corruption.\(^\text{13}\) The implication being that if these were implemented well, the corruption perception in Algeria would reduce.

Algeria’s media law authorizes the creation of privately owned television channels. However, the same law also introduces numerous restrictions on content—most notably, a ban on news coverage without prior authorisation.\(^\text{14}\) The media is generally tainted with accusations of fraud and corruption.\(^\text{15}\) The Government has targeted, Al–Atlas Television because of its critical coverage of the government, and President Bouteflika, in particular.\(^\text{16}\)

A cybercrime law also gives authorities the right to block websites “contrary to the public order or decency,” while a centralised system monitors Internet traffic.\(^\text{17}\) Journalists and bloggers face criminal defamation charges. Government officials and private entities use criminal defamation laws to harass independent bloggers and journalists. For instance, cartoonist Djamel Ghanem was charged with insulting the president after attempting to publish a political cartoon mocking Bouteflika. He was acquitted, but prosecutors appealed the ruling, Ghanem fled Algeria and sought political asylum in France.

Algerian print media is constrained by monopolistic practices. Most print media are dependent on state–controlled printing houses (such as the Société d’Impression d’Alger) and distribution networks. They arbitrarily takes decisions on publications to be printed and distributed.\(^\text{18}\)

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\(^\text{11}\) Article 41 Constitution of Algeria.


\(^\text{13}\) The Algerian Corruption Law, 26th February 2006 Law No. 06–01.


These barriers to FOI and FOE may perhaps be related to the prevalence of corruption in Algeria. International media houses have described the corruption in Algeria as ‘endemic’,\textsuperscript{19} despite the strong anti–corruption legislation.\textsuperscript{20}

The anti–corruption legislation provides mechanisms for the investigation of abuses and corruption. Algeria’s anti corruption law provides for the National Prevention and Anti–Corruption Body (Organe national de prevention et de lutte contre la corruption) which should ideally be an independent authority. The body’s autonomy is unfortunately weakened by the requirement to report to the President, which affects FTI. Further, the government does not provide the public with information on corruption related legal action against security personnel, citing security concerns.\textsuperscript{21}

A clear mechanism to fight corruption using FOI and expression exists in Algeria through the Central Office for the Repression of Corruption (Office central de repression de la corruption, OCRC). This office was created as a special investigation services centre in charge of combating corruption. It brings together several police criminal investigation services and financial experts. It is responsible for collecting evidence, investigating acts of corruption and arranging for charges to be brought before the courts. The OCRC can initiate an investigation using the information reported by the press or by other sources. Consequently, if FOE and FOI was guaranteed in Algeria then the OCRC’s undertaking to fight corruption would be improve greatly.

The National Anti–corruption Association (association nationale de lutte contre la corruption, ANLC) was established to engage civil society in the fight against corruption in Algeria with the aims of raising awareness and providing education regarding problems of corruption\textsuperscript{22}. As such, the ANLC is an information and support network for people wanting to combat corruption. Apprehensively, the ANLC has not received formal accreditation from the Algerian authorities.\textsuperscript{23} The Algerian authorities explained that the ANLC accreditation application had been refused because “the mission of the ANLC, to combat corruption, is completely and exclusively the prerogative of the government and its anti–corruption bodies”.\textsuperscript{24}

As required under Article 46 of the United Nations Convention against Corruption (UNCAC); regarding mutual legal assistance Algeria has provided for the reciprocal exchange of information relating to criminal convictions for the purpose of prosecution or sentencing. In addition, under its national laws and the conventional standards to which Algeria is a party, the Algeria has committed to transmit any information on any UNCAC offence spontaneously. Under UNCAC as a general rule, any information in the public domain may be used for other purposes, and any exculpatory evidence may be revealed to the public. This is a step in the right direction, as


\textsuperscript{20} The anti–corruption legislation, Law No. 06–01 of 21 Muharram 1427 (February 20, 2006).

\textsuperscript{21} United States Department of State, Human Right Report on Algeria http://www.state.gov/j/drl/rls/hrrpt/2014/nea/236592. htm (accessed 18\textsuperscript{th} August 2015).

\textsuperscript{22} Algeria: Recourse against corruption including its effectiveness;the National Anti Corruption Association, http://www. refworld.org/docid/54042eb94.html (accessed 18\textsuperscript{th} August 2015).


\textsuperscript{24} Algeria: Recourse against corruption including its effectiveness;the National Anti Corruption Association, http://www. refworld.org/docid/54042eb94.html (accessed 18\textsuperscript{th} August 2015).
this information may be taken into account for any investigation related to corruption cases even beyond Algeria’s borders.

**Conclusion**

Algeria is beaming with economic potential that can be realised through the creation of sustainable democracy. To achieve this, reforms need to be implemented. The most important of the reforms is the passing of a public access to information law that allows meaningful government accountability. Without accurate information, Algerians cannot adequately stop the rampant corruption debilitating the nation’s economy and political system. Nor can the media serve as an effective check and watchdog on government abuse.

**Recommendations**

- Pass a domestic FOI law
- Reform the current media law
- Ratify African Charter on Democracy, Election and Governance
- Revision of treaties that bar sharing of information

By **Peter Katonene Mwesigwa, AFIC**
WESTERN AFRICA
GHANA: LACK OF POLITICAL WILL TO PROVIDE INFORMATION AND ANTI–CORRUPTION EFFORTS

Laws affecting RTI and corruption in the country
- Right to Information Act (2013), pending before Parliament

Treaties regarding RTI ratified by the country
- Universal Declaration of Human Rights (Article 19)
- International Covenant on Civil and Political Rights (Article 19)
- African Charter on Human and Peoples’ Rights (Article 9)
- African Charter on Democracy, Elections and Good Governance (Article 19)
- African Charter on Values and Principles of Public Service and Administration (Article 6)
- African Union Charter
- ECOWAS Protocol on Democracy and Good Governance (Article 37)
- ECOWAS Conflict Prevention Framework (Article 57, 61 & 62)
- UN Convention Against Corruption
- AU Convention on Preventing and Combating Corruption

Member or not of platforms and partnerships promoting RTI
- The Coalition on the Right to Information, of which the Media Foundation for West Africa is a member, consists of eighty organizations promoting the RTI legislation in Ghana.

Introduction
FOE, including the RTI, is protected by laws in Ghana. Despite legal guarantees, corruption poses challenges to access to information and accordingly make governance–related decisions and it is also implicated in issues related to information access, transparency, and accountability. This article aims to elaborate on the status of corruption and the right to information.

Corruption in Ghana
Ghana is a state party to many treaties related to corruption at the regional Economic Community of West African States (ECOWAS) level, the AU level, and the UN level. Ghana has ratified the UN Convention Against Corruption and AU Convention on Preventing and Combating Corruption (AUCPCC), which explicitly focus on fighting corruption, as well as the African Charter on Democracy,
Elections and Good Governance; African Charter on Values and Principles of Public Service and Administration; ECOWAS Protocol on Democracy and Good Governance; and ECOWAS Conflict Prevention Framework, all of which contain certain articles implicating issues of corruption, transparency, and accountability.

In practice, however, Ghana remains plagued with corruption. Corruption has a myriad of effects in public and private spheres of life. For one, corruption hampers economic, political, and social development processes. Millions in dollars have been lost due to corrupt acts, including mismanagement of resources and bribery. The perception of prevailing corruption can also deter foreign investment and even aid. Corrupt practices also entrench social and political inequality.\(^\text{25}\)

According to the most recent Corruption Perceptions Index, Ghana scores 48/100.\(^\text{26}\) The notion that corruption persists throughout all government branches is widespread among Ghanaians. According to both the Afrobarometer and Global Corruption Barometer, a significant percentage of Ghanaians believe there is corruption among national and local government officials, including the presidency; parliament; judiciary; political parties; the police; Ghana Revenue Authority officials; and Electoral Commission officials.\(^\text{27}\) The public perception of corruption has increased significantly over the past thirteen years.\(^\text{28}\)

There are efforts to fight corruption in coalitions such as the Ghana Anti–Corruption Coalition, which comprises public, private, and civil society organizations, including the Centre for Democratic Development–Ghana, Commission on Human Rights and Administrative Justice, Economic and Organized Crime Office, Ghana Conference of Religions for Peace, Ghana Integrity Initiative, Ghana Journalists Association, Institute of Economic Affairs, and Private Enterprise Federation. The coalition also strives to engage additional stakeholders, such as the media and public and private institutions, to enhance efforts to combat corruption.

**Right to Information in Ghana**

FOE, including the RTI, is legally guaranteed under Article 21 of the Constitution of Ghana\(^\text{29}\) and under various regional and international treaties, including the Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; African Charter on Human and Peoples’ Rights; African Charter on Democracy, Elections and Good Governance; African Charter on Values and Principles of Public Service; ECOWAS Protocol on Democracy and Good Governance; and ECOWAS Conflict Prevention Framework. Additional guidance on the RTI can be found in non–binding documents such as the Declaration of Principles on Freedom of Expression in Africa and the Model Law on Access to Information for Africa.


\(^{28}\) Ibid.

\(^{29}\) The Constitution of the Republic of Ghana (1992), art. 21, § 1, cls. a, f.
Ghana has yet to pass legislation specifically focused on the right to legislation; however, Parliament began considering the Right to Information Act this summer. The Right to Information Act has been pending for several years since its drafting in 2002. Civil society members had previously called for improved protections of access to information in the bill. Therefore, the legislature considered amendments proposed by a parliamentary committee in order to narrow exemptions and expand coverage to include, for instance, private bodies serving a public function. An example of a problematic provision can be seen in the exemption from disclosure of information related to trade secrets, which serves to protect big oil and gas businesses—a major source of corruption—from public scrutiny. Fortunately, civil society stakeholders believe an appropriate level of protection has been achieved in the revised and current version, which is currently undergoing a second reading by Parliament.

Again, the practice lags behind the law, as Ghanaians are frequently denied access to information, and oftentimes public officials do not even reply to requests for information. In addition, public institutions are missing many official records and those that exist are of poor quality. Stakeholders hope the passage of the Right to Information Act will improve transparency and accountability in governance as well as public faith in government institutions and actors. Such legislation, if properly implemented, could subsequently play a pivotal role in the fight against corruption in Ghana.

The push for a strong right to information legislation has been led by the Coalition on the Right to Information, which consists of eighty organizations, including media and civil society. Some of the members of this coalition include this author’s Media Foundation for West Africa, as well as the Centre for Democratic Development–Ghana, Commission on Human Rights and Administrative Justice, Commonwealth Human Rights Initiative, Ghana Bar Association, Ghana Integrity Initiative, Ghana Journalists Association, and Ghana News Agency.

**Implementation of AUCPCC Articles**

Article 9 of the AUCPCC mandates the adoption of “legislative and other measures” regarding the RTI. As discussed in the previous section, Ghana has constitutional and treaty obligations but is still in the progress of passing the Right to Information Act. Stakeholders believe the persistent failure of three different governments to pass this legislation reflects fears about opening government processes to the public eye and thus exposing corruption.

In addition, there is the Whistleblower Act of 2006, but it has only been used ten times. Its lack of use indicates that it is not a particularly useful tool for combating corruption and unlawful conduct of public officials. More recently in 2014, Parliament unanimously adopted a ten–year National Anti–Corruption Action Plan (NACAP 2015–2024) to help combat corruption; to institutionalize
transparency and accountability in public, private, and non–profit sectors; to involve individuals, the media, civil society, and the private sector in the fight against corruption; to effectively investigate and prosecute corruption. The NACAP follows the globally accepted three–prong approach to anti–corruption efforts: prevention, education or public awareness, and enforcement. Accordingly, the Office of the President has indicated that the passage of the Right to Information Act aligns with the objectives of NACAP and would strengthen the legal framework related to corruption.35 Other steps have also been taken, such as the introduction of the Ghana Integrated Financial Management Information System (GIFMIS), to prevent leakages of state resources due to corruption, incompetence, or other factors.

Furthermore, the government has accepted proposed changes to understand “corruption” as broadly defined by the UN Convention Against Corruption and the AUCPCC. It has also rendered enforceable decisions by the Commission on Human Rights and Administrative Justice (CHRAJ), which handles complaints and provides redress for improper functioning of public institutions.

Article 10(b) of the AUCPCC provides for transparency in the funding of political parties. Certain regulations exist under domestic law, as well. Domestic legal provisions restrict the sources of political party funding and require transparency in the disclosure of the sources and amounts of revenues and assets. Article 55(14) of the Constitution and Article 21 of the Political Parties Act require political parties to publish their sources of party funding. According to Article 55(15) of the constitution of Ghana and Article 23 of the Political Parties Act, only Ghanaians and companies controlled by them can fund political parties. However, political parties have failed to disclose their funding sources or amounts, contravening the principle of transparency mandated by the AUCPCC. The failure to enforce political party funding provisions precludes the effective implementation of Article 10(b) of the AUCPCC.

Due to the privatized funding structure of political parties, wealthy individuals are able to manipulate internal decision–making by donations and the like, particularly with respect to the selection of party leadership. This hinders the furtherance of democracy and inclusive governance in Ghana.36 To help address this, the think–tank Institute of Economic Affairs recently called for public funding of political parties, since the switch to public funding would improve transparency as all funding would come from the state.37 Ghanaians have responded both positively and negatively–one negative response reflects concerns of Ghanaians who only want their taxes to support political parties they endorse instead of all parties–to such a proposal, but rigorous empirical data on this subject is unavailable.38 The debates regarding the de–privatization of funding implicate issues of accountability and have occurred in light of challenges in ensuring transparency in governance.

Article 12 provisions (2) and (4) of the AUCPCC require states to create an enabling environment and provide access to information for civil society and the media in order to help them hold the

38 Van Gyampo, “Public Funding of Political Parties in Ghana,” 7, 14.
Citizens’ Access to Information: A tool to Build Trust and Address Corruption

government accountable. However, according to a study by the Coalition on the Right to Information and DW Akademie, people, including journalists, are unable to access information from public officials. For instance, in response to requests for information, public officials have withheld official records, assembly minutes, and bank statements of official accounts, among other documents, claiming that they are not responsible or authorised for the public dissemination of information. Some difficulties met by journalists concerned one investigation about the decade-long disuse of a health facility (officials declined to comment) and another about the fight against cholera connected to a misappropriation of water, sanitation, and hygiene funds in Accra (the mayor declined to share public data).

This failure to implement the legal guarantee to access to information compromises the RTI and consequently press freedom, since the inability of journalists to receive information precludes their capacity to do investigative reporting. In turn, the lack of transparency directly impacts knowledge about governance-related issues, hinders development, and cultivates corruption. A main challenge to the implementation of the provisions of Article 12 of the AUCPCC—similar to the obstacles to Article 9—appears to be the lack of political will to provide access to information to members of the public, including the media, on corruption or non-corruption issues.

Article 7(4) of the AUCPCC concerns transparency in public service hiring procedures; however, since the government of Ghana has banned net hiring in the public sector since 2010, the implementation of Article 7(4) may be currently moot.

Conclusion

Ghana has made strides with respect to signing onto numerous treaties and protocols with provisions on the RTI and corruption, transparency, and accountability. However, the implementation of such laws and treaties, including the AUCPCC, has been weak in practice. In recent times, the government has fortunately taken greater steps—for example, its adoption of the NACAP—to combat the growing corruption in Ghana. Given the recognized role of the right to information in ensuring transparency and accountability by the African Union, a strong right to information bill may restore public trust in institutions and assist in the fight against corruption. Both state and non-state actors should work together to increase political will to facilitate information access and dissemination, which would increase transparency and accountability and, very importantly, help combat corruption.

Recommendations

- Parliament should pass the Right to Information Act.
- Stakeholders, particularly government, civil society, and the media, should educate the public on the existence and usefulness of the Whistleblower Act in combating corruption.
- Electoral Commission should increasingly audit the accounts of political parties.
- Enforcement of the Political Parties Act must be improved.

Government must sensitize officials and others performing public functions on their requirement to provide public access to all information, including information related to corruption. Such sensitisation should emphasize the critical role of the media as a watchdog in promoting good governance.

Stakeholders, particularly government, civil society, and the media, should educate the public on avenues of redress when access to information is denied.

By Anji Manivannan, MFWA
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
- The African Union Youth Charter,
- United Nations Convention Against Corruption
- Universal Declaration of Human Rights
- African Charter on the Values and Principles of Public Service and Administration
- African Charter on Democracy, Elections and Governance

Open Government Partnership status:
- Member
- Implementing 1st Action Plan

Status of ACHPR Reporting
- Compliant

Other Platforms
- Extractive Industries Transparency Initiative

**Introduction**

Liberia will be clocking five years—come September since the FOI law was enacted to mark a milestone in the access to information revolution in the sub region.

Civil Society Organizations, citizens and media coalesced around the idea of having an empowering legislation that characterized the drafting and lobby efforts leading to the legislative buy-in for the enactment of the law in 2010. Liberia’s experience of using the multi-stakeholders approaching rather than ceding it to media may have been very strategic—it allayed fear in those who would have seen it as too much of an incentive to journalists to uncover their shady dealings.
Hindsight tells us now that the political class grudgingly acquiesced to international pressure that was driving the local activism for the passage of this law.

Besides being the first in the sub region to demand and get the RTI, the wording and intent of the Liberian FOI law comes close to the Model Law of Access to Information. This development was not accidental but had foundation in such constitutional provision, precisely Article 15a.\textsuperscript{40} The foregoing is even reinforced by Article 15d.\textsuperscript{41} These are entrenched aspects of civil liberties in the country’s extant constitution that the FOI Law is to consolidate.

The country can pride in the fact that it has one of the best FOI laws in the world. Alas, what is fine on paper remains a far cry from what is happening in the implementation arena. The government keeps harping on the FOI law to fight back criticisms of failings in the good governance espousal.

Failings in the implementation of the FOI and corresponding lapses in the fight against corruption are not unique to Liberia. Teething problems fraught systems and activities that give meaning to a raft of ratified international instruments for developing countries to develop have to be dealt with. Other countries with access to information laws have been grappling with a tardy phenomenon of getting the law work.

Everybody looks forward to the ideal–RTI working for the people. What is meant by, “the law is working for the citizens?”

In the context of Liberia, this is when and where citizens would predictably ask for information and be granted access to it; or custodians of information would be proactive to put out a gamut of information on services, projects and programs that will help in the transformation process. It is also when the gatekeepers are dynamic and navigate the challenges manifested in the somewhat weak political commitment in giving practical effect to the law. This is when donors align their interventions to the overarching goal of building traction with CSOs including media to use information in the effort to tackle accountability and transparency gaps. Undeniably these gaps are breeding corruption in all its manifestation–bribery, procurement irregularity, rent seeking, extortion, ‘vouchergate’, ‘contractgate’, under–invoicing and false accounting, among other things–blighting the image of the country.

**Deepening FOI and accountability in Liberia: prospects and challenges**

A couple of questions are begging for answers: what are the high and low points of FOI implementation experience in Liberia; who is doing what, why and why not, and from where? Only when we traverse these paths are we going to be sure of getting the real picture of what the Liberia FOI Law implementation is in terms of influencing the anti–corruption drive.

These dots have to be connected for an objective analysis to prove or disprove assumptions that the Liberia FOI Law was only meant to satisfy donor requirements for the largess of goodwill. Access to information was seen as a potent tool in retroactively tracking what had been done in health, education, rural development, gender and youth empowerment–multi–sectoral programs

\textsuperscript{40} Every person shall have right to freedom of expression, being fully responsible of the abuse thereof...1986 constitution of Liberia

\textsuperscript{41} In pursuance of this right there shall be no limitation on the public right to be informed about the government and its functionaries... (Ditto)
and projects. In Liberia, these post war interventions have scarcely been life transforming since the Poverty Reduction Strategy Paper\textsuperscript{42} was introduced.

Purposive efforts to factor transparency and accountability safeguards in the post war recovery efforts could have created an atmosphere of fear in public officials to indulge in fraud and misappropriation of state resources and donor funds. No doubt such a situation could have rendered the country less corrupt as is widely bandied. The country’s democratic and by extension peace fragility would have swapped into a success story of post war renewal experimentation.

Understanding this question will require a reflection on what state and non state actors have been doing since the RTI was linked to anti–corruption efforts in post war Liberia. So we hereby put non state actors under the spotlight first.

In a lunch meeting at the Cape Hotel in Monrovia recently, a small group of Liberia Freedom of Information Coalition members was hosted by the Carter Centre Access to Information project officials. It was attended by the Centre for Media Studies and Peace building, CEMESP, the Liberia Freedom of Information Coalitions (LFIC) extant coordinator of the secretariat, Liberia Media Centre and the Press Union of Liberia. It was a soul searching meeting in terms of what has worked well or not in the FOI implementation in Liberia. In attendance were the OSIWA Country representative Massa Crayton and her programme officer Jackie Wiseman. Both Carter Centre senior operatives Laura Neumann and Cllr. Negbalee Warner were clear and lucid about the need for LFIC members to look back from where a strategic plan was developed in Kakata, Margibi, by some forty CSO and media groups to ensure that the FOI law passed could have its efficacy in grounded accountable and transparent Liberia, where lots of the people would be protected. The Kakata retreat was hosted in 2011. The donor, OSIWA, provided the critical resources to have the vision of the coalition translated into tangible deeds. This has been a fiasco in the confession of all critical stakeholders who did the stock taking. One substantial issue that came out of this said meeting was that there has been weak coordination between the LFIC secretariat and the member organization. There is less in complementarities of FOI efforts and the fragmented intervention needs to be consolidated for impact. LFIC, which represents no fewer than twenty CSOs, has not been reporting to OSIWA for the grant that set it into motion. The secretariat could not pay its rent, hence LFIC exists more in name than in form.

This is happening when other organizations in the coalition such as CEMESP, LMC and PUL have been involved in one thing or the other from training, awareness raising and monitoring of the application of the FOI law. These are issues that the coalition was to deal with in close consultation with member institutions.

What the forgoing explains is that CSOs have lost the good rapport and concerted focus to get the law binding on duty bearers. It calls for the reformulation of strategy to apply concerted effort in compelling compliance of custodians of information to be much more forthcoming in their obligation. It is this state of affairs that has begun to engender public apathy about what FOI means.

At the referenced Cape Hotel meeting in Monrovia in July, the donors OSIWA and Carter Centre Access to Information encouraged each other to compare notes so that duplicity of funding can

\textsuperscript{42} International Monetary Fund (IMF); government; World
be guarded against. In other words if Carter Centre is funding monitoring of requests, OSIWA can support awareness and USAID could fund training and incentivizing of information officers. Such convergence of efforts can wrought desired outcomes.

Now, it is a consensus to return to the drawing board and have a renewed FOI implementation plan that works. The resolve is necessitated by the failings and problems of CSOs.

Fortunately, CEMESP has just won a grant with the National Endowment for Democracy (NED) to have this sort of state and non–state actors’ session of recommitting all to play their required roles in making a difference in mainstreaming accountability. In previous projects the centre has taken awareness and capacity building of county level CSOs and journalists to new levels. This has witnessed an appreciable degree of request filing as an outcome of these engagements but disclosure is a mixed bag of compliance and denial.

Also The Liberia Media Centre, (LMC) has over the years been noted to have come out with research findings about the compliance and non compliance of FOI. More often than not it has been a dismal performance picture reflection of the compliance of ministries, departments and agencies. As at reporting time the LMC has won project from USAID through IREX to operate a budget IT tracking system by courtesy of BudgIT Nigeria.

My Society from UK has also zoomed in and held consultations with OGP steering committee members to see how technology could be employed to augment FOI usage in Liberia. In a meeting with CEMESP recently, the suggestion was floated to merge online and offline tools as an ideal customization approach to track FOI outputs. This suggestion takes cognisance of Liberia’s low literacy and ICT capacity.

Certainly, the National Investigative Journalism network is major milestone of the trainings that CEMESP has been involved with. It offers a hope for the Press Union of Liberia which makes FOI one its cardinal pillars in the getting media to support the fight against corruption. The group has established a Facebook page and convened a couple of meetings to raise funds and pursue investigative journalism work around story ideas developed during the said training.

What then is the government doing? The Ministry of Information is the mainstay of the country’s FOI Law application. This responsibility is captured in the action plan of the Open Government Partnership. OGP action plans have four thematic areas: transparency, citizen participation, accountability and integrity, and technology and innovation. Under each of the four thematic areas there were several specific goals and suggestions for 17 specific commitments.

Among other things, FOI commitments in the Liberia OGP action plan include: “appointment of Public Information Officers pursuant to the FOI Act to ensure effective implementation; provide support to the Information Commission to ensure effective oversight of the FOI Act; standardize all government websites to have them regularly updated with relevant information; increase

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43 [www.lmcliberia.org/?q=node/5](http://www.lmcliberia.org/?q=node/5)
45 [www.makingallvoicescount.org/project/enhancing-the-implementation...](http://www.makingallvoicescount.org/project/enhancing-the-implementation...)
46 Validating Liberia’s Open Government Partnership National Action Plan (Meghan Schneider, Accountability Lab Summer Design Resident...)
internal and external awareness on the FOI Act of 2010; adopt a standardized FOI implementation procedure and policy…”

Regarding transparency, a key component of the Action Plan is to appoint twenty additional Public Information Officers and popularize the Freedom of Information Act. The plan will expand the Open Budget Initiative through an SMS platform and disseminate information through a town crier. The plan also seeks to make information about proposed land reforms, commercial land use rights, and natural resources available to the general public. These commitments have not been met as at this time of reporting.

Judging what the government has done since the appointment of the Independent Information Commissioner, albeit two years following the passage of the law and the piecemeal appointment of the Information Officers with little incentive in record management and ancillary facilities, one can see the gap in what has been done by looking at the FOI commitment in the Open Government Partnership action plan. Information officers have not been fully trained and deployed.

Except for Ministry of Information Culture and Tourism that has a very efficient website most ministries including the Liberia Anti Corruption Commission are yet to deliver in the cited commitment area. The gap is what MICAT has sought to address by creating a semblance of one stop shop portal for all government ministries, departments and agencies as an exercise in promoting proactive disclosure could be crappy and not user friendly.

Internal and external awareness of the Act has been in dribs and drabs from the angle of the Independent Information Commissioner. There is hardly any record of efforts to standardize FOI policy. It is this circumstance that has seen an ineffective Independent Information Commission not matching in response to the growing traffic of complaints from members of the public and CSOs networks who have been denied information bordering on usage of Ebola and natural resources, among other things.

The Information Commissioner as a superintending hub of FOI in Liberia has been responding to the public outcry about the deficit in his work in not decentralizing to the counties. Invariably funding limitation is his alibi for the shortcomings. Whilst this could be true, there are those who say that the commission could have explored other fundraising opportunities outside of the regular government budget. This argument is buttressed with suggestions that some NGOs are ramping resources for activities that the Independent Information Commission could have applied for and legitimately won.

In the face of a couple of arbitration for FOI denials and verdict delivered in favour of requests denied, the Independence Information Commission is yet to compel institutions found wanton of holding information to disclose. One classical case in point is that involving CEMESP and the Liberia Anti Corruption Commission since 2013. CEMESP applied for asset declaration forms of ministers and deputies that were in the custody of the LACC. The LACC refused to provide the information after at first asking CEMESP to underwrite the cost of photocopy, but later out rightly denied to disclose. Since the Independent Information Commissioner ruled in favour of CEMESP,
the LACC could not budge. The LACC had based its denial to disclose the said information on Executive Order no. 38 with specific reference to part X section 10.3 that advances confidentiality of asset declaration. The section refers to such information as classified. LACC took the matter to court, appealed and abandoned the case. The Independent Information Commission whose verdict was appealed against by the LACC has failed to pursue the matter at the level of the court. In the circumstance it was the Independent Information Commissioner that should have filed a case on behalf of CEMESP so that the country could have its first case law precedent in redress seeking for denial of information. This has not been done.

Liberia FOI law: bridging Anti Corruption gaps

Liberia has the reputation of signing onto international instruments but dithers in enforcement. This is a widely held view. During the stint of the interim leader, Charles Gyude Bryant, it was reported that in one day alone one hundred international instruments were signed.

The African Union Convention in Combating and Preventing Corruption is one such instrument that has been ratified and provides inspiration for the national anti corruption strategy. On 16th September 2005 Liberia also acceded to the UN Convention against Corruption.

This followed the 2008 passage of an Act establishing the Liberia Anti Corruption Commission, LACC, to directly investigate, recommend for prosecution all acts of corruption in all sectors of government, including the private sector, and to institute measures aimed at eradicating the practice and its impact. Its functions include: investigating all acts of corruption discovered or reported to have occurred in the public, private and civil society sectors of Liberia—subsequent to this passage of the Act with the aim of identifying the persons, and the extent of the loss of or damage to any public, and/or private property as a result of the subject act of corruption; investigate the conduct of any person(s), irrespective of office or status, natural or otherwise, if the conduct of the person(s) constitutes corruption; examine and investigate any information, matter or report that indicates or raises suspicion that the conduct, action or decision of a public or private official in line of official duty and in the context of the definition of corruption as provided in the Act; cause the prosecution in conjunction with the Ministry of Justice, all cases of corruption in the manner provided in the Act; develop and/or adopt appropriate measures consistent with law to identify, trace and freeze any assets and/or proceeds of act(s) of corruption and ensure the confiscation, in courts of law, of the said asset(s) and proceeds therefrom; and whereas, in order that the Commission may effectively discharge the foregoing specific functions, it is necessary that rules of procedure or a modus operandi be clearly defined for the guidance of not only members of the commission, but also members of the public, private and civil society whose interests may be affected in the execution of the commission’s mandate; and whereas, Part VII, Section 7.1(a) of the Act vests

49 The LACC shall treat each declaration as classified information and as such only authorized personnel of the commission shall have access to the contents of the declaration. Nonetheless, authorized agencies other than LACC may have access to specific contents of the declaration provided a formal request is made to the LACC which shall then determine the justification of the request prior to giving access to the requesting agency. Republic of Liberia Executive Order No 38 Establishing an Administrative Code of Conduct for Members of the Executive Branch of Government, January 6, 2012

50 allAfrica.com: Liberia: CEMESP Wins FOI Case Against LACC allafrica.com/stories/201307241679.html Convention against Corruption Signature and Ratification Status as of 1 April 2015
in the five commissioners the power to make, approve, alter or repeal policies, procedures and systems governing or to govern the administration and operations of the Commission.\footnote{www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/Liberiajigou/201202/t20120210_802373.shtml}

The achievements of the commission have been recognised by the International Association of Anti Corruption Authorities which states:

The Liberia Anti–Corruption Commission proposed ten new due diligence measures to government to help nip corruption in the bud and restore public and international confidence in the government of Liberia. In May 2010. The LACC recommended to the Justice Ministry that the former Chairman of the Liberia Telecommunication Authority (LTA), Mr. Albert Bropleh, be formally charged and prosecuted for acts of corruption in 2009. The LACC recommended to the Justice Ministry that the Central Bank of Liberia (CBL) along with four commercial banks be formally charged and prosecuted for acts of corruption in 2010. In February, 2011 the LACC completed and submitted its investigative reports, containing findings and recommendations into alleged acts of corruption at the Liberia Marketing Association (LMA) and the awarding of a bogus contract for the installation of Closed Circuit Television (CCTV) at the Liberia Telecommunications Authority (LTA).

While it is worth citing these achievements, the general public consensus is that the Liberia Anti Corruption Commission has not impacted the lives of the people of Liberia who are bearing the cost of the malaise. So it is of essence to throw in the Human Rights Watch report of 2014 that lends credence to the public mood.

Longstanding deficiencies within the judicial system and security sector, as well as insufficient efforts to address official corruption, continue to undermine development and human rights in Liberia. Ten years after the signing of a peace accord that ended over a decade of armed conflict, Liberians and the country’s key international partners increased pressure on President Ellen Johnson Sirleaf’s government to expedite reforms. While President Sirleaf dismissed a number of high–ranking government officials accused of corruption, her government, as in past years, failed to pursue investigations into the alleged crimes, thereby undermining accountability efforts.

LACC mandates in deficit are certainly not restricted to the weaknesses in the commission. There is no silver bullet in the fight against corruption; not even a ‘free standing’ anti corruption commission with independence and prosecutorial powers. It is about coordination of efforts to address closely related problems such as weak rule of law, physical and economic insecurity and political accountability. These are lacking in Liberia.

Now, in the verified assumption that anti corruption strategies can work where there is political will, information and civic vigilance, the connection that the FOI Law offers for Liberia was promising in 2010. Five years down the line this is not the case. The Liberia reforms under President Ellen Johnson must be lauded in the establishment of supportive pillars of integrity such as the Public Procurement and Concession Commission, the utilization of the General Auditing Commission,
Liberia Extractive Industries and Transparency Initiatives, LEITI, participated and made subtle gains in the Millennium Challenge Compact among other things. But much has to be done.

Big names in government were recently fingered by the LACC for prosecution. They were connected with the Petroleum administration and Ebola resources. The LACC recommended to the Ministry of Justice prosecution for some of these big names, including the Speaker of Parliament.

On the foregoing James Thomas Queh\(^52\) writing in *Corruption and Bad Governance, Evolution and Typology Since 2006*, states:

> Among those refusing to comply are the Minister of Justice and Deputy. If that is true, then one is left to wonder how credible would the Ministry of Justice be to effectively investigate and prosecute those being accused of acquiring unexplained wealth…

Public sentiment is that there could be a tendency for the executive to be protective of some officials and give away perceived adversaries. This is notwithstanding the fact that the President in her recent state of the nation address acknowledged corruption as a vampire—sucking the blood of Liberians whether literally and literally.

Audit information ought to aid exposure of those accused of milking state resources have not been validated by the state in recent times. The case of the *Frontpage Africa* newspaper Editor—in—Chief, Rodey Sieh, is worth citing\(^53\). Sieh based his stories against a former minister of Agriculture, Chris Toe, the journalist accused of corruption in several publications. Sieh was sentenced to jail for libel for as long he was to defray millions of dollars in damages.

There have been a couple media reports about people who violated procurement regulations and nobody but the suspended Director of National Port Authority, Matilda Parker has been prosecuted.\(^54\) Could her case be an example of selective justice or the lone genuine evidence of commitment to fight corruption, while others have been shielded for which the then Justice Minister partly resigned when she said that her attempt to investigate the National Security Agency headed by the President’s son Fumbah Sirleaf was resisted in what could amount to executive arm twisting?

In Liberia, the buck rests with the executive that has exhibited more opacity than transparency. The RTI reforms is beclouded by vestiges of past proclivity to shady political manoeuvres.

James Thomas Queh captures it in a fine context that the average Liberian can understand:

> …the place from where this power is exercised in all its grandeur—the executive mansion—this real ZOE BUSH in the traditional setting—this mystical shrine that holds the secrets and life of the village… (Ditto)

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\(^52\) Perspective quoted *frontpageAfrica.com*

\(^53\) Supreme Court Ruling On The Case Dr. Chris Toe v FrontPage … monroviainquirer.com/2013/08/22/supreme—court—ruling—on—the—case…

\(^54\) Liberia: For Corruption Allegation, Matilda Parker, NPA …allafrica.com/stories/201504230936.html
The LACC has not demonstrated sincerity to working with media in the fight against corruption. For how often do we hear radio or print messages not to talk about routine press conferences from the LACC? Hardly!

FrontPage Africa newspaper recently published a leaked document from the LACC. Then there was a disclaimer from the commission’s Chairman James Verdier. He, however, could not deny the authenticity of the leaked letter about the commission’s investigation of the suspended Director of National Port Authority, Matilda Parker. Verdier wondered how the letter got in the public domain. It could have been the consequence of measures to make the commission somewhat inaccessible to members of the public—with measures such as no phones allowed within the LACC that has been instituted. This is at odds with the RTI which is discernible to many here who have been calling in talk shows to state their misgivings.

Conclusion

It has come out from the foregoing analysis that state and non state actors’ synergy will make a big difference to get the FOI Law working. This is the same for the national anti-corruption effort. Once there is sincerity of purpose, by all players along the line of vertical and horizontal accountability that each other’s influence will bring to bear positive mark or otherwise on the other, then the better it is for Liberia’s long term development and stability. FOI application and combating or preventing corruption are mutually inclusive and need to be reinforced whether it means at policy enactment or enforcement spheres. It is an aberration to have an FOI law and an Executive Order that seeks to stymie disclosure. These are issues to look at; and it means making progress on outstanding Open Government Partnership Commitments such as effectuating the whistleblower Act and the Code of Conduct for civil servants and as well as delivering on the promised setting up of the fast track court to try corruption cases. The proposed stakeholders’ conference on FOI and theme of the International Right to Information Day: FOI Law for Crisis and National Recovery is appropriate as it captures the contextual need. Liberians whether as duty and right bearers need to appreciate the essence of the access to information not as a policing tool but an aid to national development when waste and leakages are curtailed.

Recommendations

- Weak accountability and integrity systems and processes have to be reviewed and overhauled. This extends to the Open Budget Initiative that is not delivering on its mandates. The bottom line is:

- The office of the Independent Information Commissioner and the Liberia Anti Corruption Commission must employ all it takes to winning public confidence rather than consistently playing the blame game.

By Malcolm W. Joseph, CEMESP

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55 Liberia’s Anti Graft Body Disowns $800k Report (frontpage 8 May 2015)
NIGERIA:
RIGHT TO INFORMATION AND PROGRESS IN
ANTI–CORRUPTION EFFORTS

Law affecting ATI
- Different Sections of various Nigerian statutes contain provisions that allow access to certain information while others contain express exemptions to certain information
- Official Secrets Act 1963
- Freedom of Information Act, 2011

Treaties regarding RTI ratified by the country
- African Charter on Human and Peoples’ Rights
- State party to Declaration of Principles on FOE in Africa
- AU Convention on Preventing and Combating Corruption
- AU Youth Charter
- African Statistics Charter
- The International Covenant on Civil and Political Rights
- The United Nations Convention against Corruption (UNCAC)
- Nigeria has signed but not yet ratified the African Charter on Democracy, Elections and Governance and the African Charter on Values and Principles of Public Service and Administration

Nigeria is a member of the global Extractive Industries Transparency (EITI)
It is yet to join the Open Government Partnership (OGP) even though it has scored 12 points out of the maximum 16 points it needs to join the OGP.

Introduction
The Nigerian Freedom of Information (FOI) Act\textsuperscript{56} was four years old on May 28, 2015. It guarantees “the right of any person to access or request information” irrespective of anything contained in any other Act, law or regulation and in whatever form the information may be stored. The law applies to all arms of government, namely: the Executive, Legislature and Judiciary. It also applies to all agencies of government as well as companies and corporations wholly or partially owned by government or in which government has controlling shares.

It also covers private bodies carrying out performing public functions, providing public services or utilizing public funds.

\textsuperscript{56} http://foia.justice.gov.ng/pages/resources/Freedom _ Of _ Information _ Act.pdf
Though it has not achieved the expected level of implementation both in terms of the level of citizens using the law to demand for records and information and how much public officials are responding to the demands that have so far been made, it is however picking up. The bulk of requests for information are being made by civil society organisations than ordinary citizens.

**Implementation of FOI Act**

The implementation of the FOI Act has been quite poor both at the level of usage of the Law and in terms of the level of compliance by public institutions.

This situation is borne out by the latest report of the Attorney–General of the Federation, who is empowered by the Act to receive annual reports from all public institutions to which the Act applies and is required by the Law to submit a consolidated report to the National Assembly every year.

Although only a handful of public institutions comply with their reporting obligations under the Act, the Attorney General’s 2014 Annual Report on the Implementation of the Freedom of Information Act 2011 by public institutions, which was issued on March 30, 2015, shows that public institutions which submitted their reports for 2014 all received a total of just 312 requests in 2014. This is particularly disappointing, given that Nigeria has a population of about 170 million.

The Attorney General’s 2014 Annual Report also shows that only 60 out of over 800 federal government institutions submitted their compliance annual report for the year 2014. It should be noted, however, that this is an increase over the previous three years. Of the 60 public institutions that submitted their reports, only 33 of them actually submitted on or before February 1 as stipulated in the FOI Act while 27 institutions submitted after the deadline.

In his first report to the National Assembly in 2012, the Attorney–General of the Federation reported that only 16 public institutions submitted their reports for 2011. The figure increased slightly the following year to 32 and in the report issued March 30, 2014, it increased slightly again to 51 public institutions.

Public institutions more often deny requests for records and information than releasing them to the public. This attitude is due to a number of factors including the entrenched culture of secrecy in public service; the bureaucratic nature of the nation’s civil service that requires officers to act only after being expressly permitted to do so by a higher authority when it comes to divulging information; and in order to cover wrong doings.

**Corruption in Nigeria**

Corruption has eaten deep into the social, economic and political fabrics of Nigeria such that with its enormous oil wealth there is a high disparity between the rich and the poor so much so that the middle class is being wiped out. There is a wide ratio of the rich to the poor.

The latest Transparency International’s Corruption Perceptions Index (CPI) report, issued in December 2014, ranks Nigeria 136th out of the 175 countries surveyed, placing Nigeria, alongside

five other countries, as the 39\textsuperscript{th} most corrupt country in the world. It is Nigeria’s best CPI ranking in the last four years.

**Status of ratification of regional instruments**

Nigeria has acceded to most of the relevant regional and international instruments dealing with access to information. It signed the African Charter on Human and Peoples’ Rights on August 31, 1982 and ratified it on July 22, 1983. The Charter has subsequently been domesticated and now forms part of Nigerian Law. Nigeria is also a State Party to the Declaration of Principles on FOE in Africa, adopted by the African Commission on Human and Peoples’ Rights in October 2002 to elaborate on Article 9 of the African Charter on Human and Peoples’ Rights.

Nigeria has also signed the African Charter on Democracy, Elections and Governance but is yet to ratify the instrument. It similarly signed the African Charter on Values and Principles of Public Service and Administration but is yet to ratify it.


Nigerian has not formally endorsed the African Platform on Access to Information Declaration, although she participated in the process leading to its adoption in Cape Town, South Africa, in September 2011.


**Challenges to implementation of the FOI Act**

The Attorney General of the Federation in his 2014 report listed a number of challenges confronting the implementation of the law. These include the general lack of funding for FOI activities across government institutions; general apathy among the operators of the Act worsened by high level of ignorance of its provisions and the obligations there under; late response to FOI requests as against the seven–day time limit provided by the law, due to lack of necessary framework for implementation; challenge of bottlenecks in some public institutions; lack of coordinated training of concerned public officials; and poor record keeping.

Media Rights Agenda (MRA) and the Africa Freedom of Information Centre (AFIC) have also identified a number of challenges militating against the implementation of the Act in a joint shadow report submitted to the 56\textsuperscript{th} Ordinary Session of the African Commission on Human and

**MRA and AFIC identified the following challenges:**

The Federal Attorney–General has oversight responsibility of the Act but the Attorney–General is not an independent Information Commissioner. An Attorney–General in Nigeria is a political appointee; he/she combines with the office that of the Minister of Justice and so being saddled with the oversight responsibility for the implementation of the FOI Act adds a third office making his/her work, not only burdensome but susceptible to political interference.

In addition, the Nigerian FOI Act does not provide administrative redress mechanisms for requests that are denied. The law says requesters who are denied access to information may go to court to seek redress. Since it is very expensive for ordinary citizens with limited resources to pursue legal redress, the judicial review process is not an effective remedy in most cases where public institutions very often ignore requests.

The lack of proper record keeping as identified in the Attorney General’s report does not enhance quick and easy access to records and information in their custody to members of the public.

**Conclusion**

Virtually all the public institutions have failed to abide by their obligations set out in the Act including obligations to provide appropriate training for their officials on the public’s right of access to information or records held by government or public institutions; to record and keep every information about all their activities, personnel, operations, businesses, etc.; proactively publish certain types of information, even without anyone requesting them; and properly organize and maintain all information in their custody in a manner that facilitates public access to such information, among others.

The Freedom of information Act is obviously one of the tools that can be used to fight corruption if effectively implemented, as corruption and other abuses thrive in an environment of secrecy and ignorance.

**Recommendations**

The following recommendations are therefore proposed to improve the implementation of the Act:

- Nigeria should amend or repeal laws and policies that continue to hamper the access to information regime.
- The Government of Nigeria should make deliberate efforts to sensitize public institutions and officials at all levels of government about the rights of the public to access information held by public institutions. The sensitization should not be limited to FOI officials alone but should include all staff so that they are able to direct members of the public.

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public on how to locate the Freedom of Information Desks within their institutions. This will change the bureaucratic inertia and resistance to the access to information regime.

- The Nigerian Government should make specific budgetary provisions for public institutions to help in the proper discharge of their obligations under the FOI law.
- Public institutions should be made to abide by their obligation under the law to proactively publish certain types of information and make them available to the public. The proactive disclosure provisions in the Freedom of Information Act would reduce the burden on public institutions to process numerous individual requests for information from members of the public under the law.
- Public institutions should use electronic records management systems to enhance the implementation of the Freedom of Information Act. In particular, they should take advantage of the Internet, ICT and social media tools in receiving, processing and responding to requests for information as well as in fulfilling their proactive disclosure obligations, including using infographics to present and explain complex data.
- The Government on its part should put in place facilities and structures to ensure the availability and effectiveness of such tools.
- Enforcement of the Freedom of Information Act should not be confined to already over–burdened courts alone. There should be a system or mechanism for internal review and parties should have the option to appeal to an administrative body for review of decisions. Where necessary, access to courts should be simple, fast and cost–effective.
- The office of the Attorney General should be separated from that of the Minister of Justice and while the Minister of Justice should remain a political appointee, the Attorney General may continue to oversee the implementation of the FOI Act provided that the office is made independent and given the powers of an Information Commissioner.
- The oversight body should be adequately funded, staffed and equipped to ensure that it provides effective oversight in the implementation of the law and should not be subject to partisan political control.
- Staff in the office of the oversight body should be properly trained to ensure that they understand their functions and powers under the Law and to enhance their ability to perform their functions effectively.
- Civil society organizations should systematically monitor the oversight body and its operations to assess their level of independence and effective functioning and where public institutions are not in compliance, CSOs must develop and support public interest litigation to enable information requesters’ access information and justice.
- Citizens, civil society organizations and the media should systematically monitor compliance by public institutions with their proactive disclosure obligations under the FOI Act and whenever non–compliance is revealed by such monitoring, efforts should be made to apply remedies available in the law as well as lodging reports to the oversight body or mechanism and the National Assembly or relevant committees of the National Assembly given responsibility to oversee or supervise the implementation of the law.
Monitoring the implementation of the FOI Act should be regular and systematic with the aim of generating reliable data on all aspects of the implementation of the law.

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

By Ayode Longe and Edetaen Ojo, Media Rights Agenda (MRA)
EAST & CENTRAL AFRICA
ETHIOPIA:
SUPPRESSION OF FREEDOM OF EXPRESSION AND EXCLUSION OF POWERLESS FROM DEVELOPMENT

Laws affecting RTI and corruption in the country

- Article 613, 615, 618 of the Criminal Code 2004
- Article 29 of the Constitution

Treaties regarding RTI ratified by the country

- AU Convention on Preventing and Combating Corruption
- UN Convention against Corruption
- African Charter on the Values and Principles of Public Service and Administration
- Universal Declaration of Human Rights,
- International Covenant on Civil and Political Rights;
- African Union Convention on Preventing and Combating Corruption,
- African Charter on the Values and Principles of Public Service and Administration,
- The African Union Youth Charter,
- African Charter on Democracy, Elections and Governance.

Introduction: exponential growth plus corruption suggests development only for some

According to the Global Financial Integrity, Ethiopia loses an average of US$2,026m annually in illicit outflows.\(^{61}\) It is considered “highly corrupt” ranking 110 out of 175 countries by Transparency International (TI)’s 2014 Corruption Perception Index. It is also ranked 32 out of 52 countries in the Ibrahim Index of African Governance\(^{62}\) which is below the Africa average and among the bottom in East Africa. Its score is a balance of higher human development indicators and lower scores in “Participation and Human Rights”.

Whereas lower–level officials practice petty corruption, soliciting bribes in return for processing documents, grand corruption is used to harness and maintain political patronage for Ethiopia’s

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ruling party, the Ethiopian People's Revolutionary Democratic Front (EPRDF) which dominates most governance institutions. State–owned and party–owned businesses and enterprises that have close relations to top–level government officials have considerable advantages over private firms. They are reported to receive preferential access to credit, land leases, access to faster customs clearances, preferences in government tenders and marketing assistance, leading to an uneven playing field for local and foreign investors.

Ethiopia records some of the highest economic growth rates in the world, at over 10% in some years. Its Human Development Index, however, ranks 173 out of 186 countries indicating that its rapid growth and development is not evenly distributed throughout the country with regions remaining relatively neglected. It has constantly been alleged that the government deprives villages perceived as being unsupportive of the ruling party of development aid. This, coupled with the worrying trend of land grabbing and dispossession for the purposes of development, translates the cost of economic growth to the displacement and further disenfranchisement of Ethiopia’s already marginalised people.

**Corruption in governance institutions**

Ethiopia's legal framework to prevent and sanction corruption is strong. It has ratified the AU Convention on Preventing and Combating Corruption and the UN Convention against Corruption. It also has domestic laws including the Federal Ethics and Anti–Corruption Commission Establishment Proclamations No. 235/2001 and No. A33/2005 which criminalise attempted corruption and extortion. The Criminal Code 2004 also criminalises active and passive bribery and money laundering and prohibits bail for anyone charged with corruption.

The Assets and Property Registration Law requires government officials and their relatives to register their assets and properties. The law also requires government officials not to accept any gifts in connection with their duties or hospitality that may affect their decisions. The legal framework for property rights in Ethiopia is described as providing wide and undue discretion to various administrative authorities without judicial scrutiny. This lends itself to discretionary and arbitrary administrative decisions and inconsistent court rulings allowing for the potential for corruption in the area of property rights.

Nevertheless, the US Department of State 2011 records that asset registration started in December 2009 and that by September 2011 over 9,000 elected officials, political appointees and public officials have been registered.

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64 US Department of State: 2014 Investment Climate Statement (June 2014)
69 World Bank: Diagnosing Corruption in Ethiopia 2012.
servants had registered their assets. The opposition, however, has expressed its concern over the fact that it is not clear if these officials will be asked where and how they got their assets.\textsuperscript{71}

The Ministry of Justice and the Federal Ethics and Anti–Corruption Commission (FEACC) are charged with combating corruption. Between 2002 and 2010, the FEACC is reported to have investigated more than 1,300 alleged corruption crimes, which has resulted in the conviction of 380 people who have received prison sentences ranging from 1 to 19 years. Those convicted include high–profile government officials which is important for building public confidence in anti–corruption efforts.\textsuperscript{72} Shortcomings of the FEACC, however, are cited to include human capacity resource constraints and limited work with civil society organisations (CSOs).

The judicial system has also been described as ineffective in handling corruption–related cases, which often leads to inadequate punishment for those guilty of corrupt acts.\textsuperscript{73} So despite a robust legal anti–corruption framework, enforcement is wanting and the judiciary is known to be politically influenced.\textsuperscript{74} Corruption in the judicial system itself is as a result of weak and inexperienced staff, resulting in delays of trial proceedings and an uneven application of laws.\textsuperscript{75} Trials are often closed to the public and the media, contributing to the lack of transparency in Ethiopia’s courts.\textsuperscript{76} The World Bank, however, reports that an ongoing modernisation programme within the courts has significantly reduced petty corruption.\textsuperscript{77} Despite these reforms, investors involved in commercial disputes express a lack of confidence in the judiciary to objectively assess and resolve disputes and companies consider tax regulation in Ethiopia as problematic for business.\textsuperscript{78}

In relation to the security sector, almost half of the respondents in a TI study believed the police to be corrupt.\textsuperscript{79} Traffic police regularly receive bribes to ignore criminal offences and police officials practice other corrupt acts such as falsifying or altering evidence and delaying or cancelling arrests for bribes.\textsuperscript{80} Moreover, the use of excessive force and the application of the Anti–Terrorism Proclamation, 2009 are employed with great discretion by security forces, allowing the detention of suspects for up to four months without charge and effectively silencing dissent.

For corruption to be rooted out of governance institutions, their institutional systems need greater transparency and accountability mechanisms including proactive publishing of information and whistle–blower protection. In addition, oversight authorities such as the Offices of the Auditor–General, Ombudsman, FEACC and the Judiciary need to be independent of political interference and possess the necessary capacities. Article 444 of the Criminal Code and Proclamation

\begin{itemize}
\item \textsuperscript{72} High profile officials include a former prime minister, defense minister, senior bank and telecommunication company managers, land administration officials and senior judges. A Review of the Effectiveness of the Federal Ethics and Anti–corruption Commission of Ethiopia 2010.
\item \textsuperscript{73} Bertelsmann Foundation: Transformation Index–Ethiopia 2014.
\item \textsuperscript{74} US Department of State: Human Rights Report–Ethiopia 2013.
\item \textsuperscript{75} First in the World Program 2015.
\item \textsuperscript{77} such as demanding or accepting bribes in return for the performance of routine duties.
\item \textsuperscript{79} World Economic Forum: Global Competitiveness Report 2014–2015.
\item \textsuperscript{80} World Bank, 2012
\end{itemize}
No. 414/2004 provide for some legal protection for whistle-blowers, but the protection of both public and private sector whistle-blowers is inadequate.\textsuperscript{81} The Freedom of the Mass Media and Access to Information Proclamation 2012 should be used in this respect to demand for the release of government information affecting the public interest. Unfortunately, only public officers are privy to this information in practice. Mechanisms which could promote greater accountability including opposition parties, CSOs and the media are systematically constrained from playing a greater role than they could in the fight not only against corruption but also in promoting genuine democracy.

**Suppressing participation: weakening accountability**

Despite the constitutional guarantee for self-determination\textsuperscript{82} which some academics contend to be the only way to accommodate multi-ethnicity in Ethiopia,\textsuperscript{83} political pluralism does not exist in practice. Instead, the government has quashed secessionist movements in Oromia and Ogaden by military intervention. The government’s announcement of its intention to expand the city of Addis Ababa into the Oromia Regional State, for instance, provoked tensions over historical marginalisation of Oromia as the expansion is expected to displace about two million Oromo farmers, causing protests in Oromia Regional State in which hundreds were detained and at least 17 people died after the military fired on unarmed protesters.

The December 2014 rallies by a coalition of opposition parties saw nearly 100 people arrested, including the chairman of the Semayawi Party. Protesters were beaten up though nearly all those arrested were released on bail within a week. Domestic NGOs say that Ethiopia held as many as 400 political prisoners in 2012, though estimates vary significantly.\textsuperscript{84}

Ethiopia’s Constitution guarantees the freedoms of assembly (Article 30) and association (Article 31) but in practice there are barriers to entry,\textsuperscript{85} operational activity,\textsuperscript{86} resources\textsuperscript{87} and assembly.\textsuperscript{88} Since 2005 there has not been any peaceful demonstration other than by the ruling party. There are also criminal penalties for “any person who makes, utters, distributes or cries out seditious remarks or displays images or drawings of a seditious or threatening nature in any public place or meeting.”\textsuperscript{89}

CSOs have struggled to maintain operations as a result of the Charities and Societies Proclamation. The International Centre for Non-profit Law reports that 158 CSOs were closed, 133 of which were voluntary for failing project implementation due to lack of funds.\textsuperscript{90}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{81} Global Integrity: Ethiopia Country Report 2010.
\item \textsuperscript{82} Article 39(1) Constitution of the Federal Democratic Republic of Ethiopia.
\item \textsuperscript{83} http://www.academia.edu/4742490/RHETORIC__OR__REALITY__SECESSION__AS__A__HUMAN__RIGHTS__APPROACH__TO__ACCOMMODATION__IN__MULTIETHNIC__ETHIOPIA accessed on August 13 2015.
\item \textsuperscript{84} http://www.socepp.info/
\item \textsuperscript{85} Mandatory registration and excessive agency discretion in the registration process.
\item \textsuperscript{86} Article 14j of The Charities and Societies Proclamation restricts participation in activities that include the advancement of human and democratic rights, the promotion of the equality of nations and nationalities and peoples and that of gender and religion.
\item \textsuperscript{87} To be considered an Ethiopian charity or society, an organisation may not receive more than 10% funding from foreign sources. Only Ethiopian charities may engage in activities that promote human and democratic rights.
\item \textsuperscript{88} Advance notification is required for peaceful demonstrations and public political meetings and there is wide discretion to refuse permission.
\item \textsuperscript{89} Article 487 of the Criminal Code.
\item \textsuperscript{90} http://www.icnl.org/research/monitor/ethiopia.html accessed on August 11, 2015.
\end{itemize}
\end{footnotesize}
Article 42 of the Constitution guarantees the right to form labour associations, to engage in collective bargaining and to express grievances including the right to strike. It does not apply to government employees. However, all unions must be registered and the government retains the authority to cancel registration. As the detailed provisions for making a legal strike are difficult to meet, there has not been a legal strike since 1993. Two-thirds of union members belong to organizations affiliated with the Confederation of Ethiopian Trade Unions, which is under government influence. Independent unions face harassment and trade union leaders are regularly imprisoned.

Ethiopia ranks poorly in media freedoms and civil liberties, standing at 142 out of 180 countries in the World Press Freedom Index 2015. It holds at least 17 journalists behind bars, the second-highest number of jailed journalists in Africa arrested over terror-related offences after Eritrea.91 Those reporting on activities by the opposition and the Muslim community also face harassment and the threat of prosecution under the Anti-Terrorist law. On July 6, the Ethiopian Federal High Court, found Yusuf Ahmed, editor of YeMuslimoch Guday (Muslims Affairs) magazine and 18 others, including four leaders of the Ethiopian Muslim arbitration committee guilty of offences under the Anti-Terrorism Proclamation with sentences of up to 22 years in prison. They were charged in October 2012 after sustained protests by Ethiopian Muslims against interference by the government during elections of the Islamic Supreme Council.92 Khalid Mohammed and Darsema Sori working for Radio Bilal94 were arrested on February 18 2015 on terrorism charges and remain in detention without trial beyond the maximum number of days allowed under the Anti-Terrorism law.

**Conclusion**

Ethiopia underwent general elections in May 2015 in which the EPRDF incredibly won all 547 parliamentary seats including the one seat secured by the opposition in the previous election. While the anti-corruption efforts described above must be commended, the election results illustrate how despite legal guarantees for political pluralism and public participation, necessary for a functioning democracy, Ethiopia continues to disenfranchise a large majority of its population. This is done through corruption and suppression of the freedoms of expression and information. The effect of this is to exclude development from those without power, increasing tensions in Ethiopia’s regions and the possibility of an eventual violent eruption seeking justice for the grave human rights abuse.

**Recommendations**

- Promote opportunities for accountability by strengthening the media and civil society. This can be done by amending the laws which restrict media freedoms and the civic space.
- Strengthen democratic systems including the electoral process, political parties and oversight authorities.

**By Riva Jalipa, Article 19 Eastern Africa**

91 As of December, 2014.
92 For conspiracy and attempting to establish an Islamic state.
94 Radio Bilal was covering the anti-government protests staged by Ethiopian Muslims and Darsema was also a columnist for the defunct Muslim Affairs magazine.
KENYA:
SUPERFICIAL PROGRESS ON RIGHT TO INFORMATION AND FIGHT AGAINST CORRUPTION

Constitutional Provisions related to Anti–Corruption
- Article 10–National Values and Principles of governance
- Article 35–Right of citizens access to information
- Chapter 6–Leadership and Integrity
- Article 232–Values and Principles of Public Service.

Laws on Anti–Corruption in Kenya
- Official Secrets Act
- Public Procurement and Disposal Act (2005)
- Public Officers Ethics Act
- Universal Declaration of Human Rights,
- International Covenant on Civil and Political Rights;
- African Union Convention on Preventing and Combating Corruption,
- African Charter on the Values and Principles of Public Service and Administration,
- The African Union Youth Charter,
- Leadership and Integrity Act 2011
- Witness Protection Act (2006)
- Ethics and Anti–Corruption Commission Act
- Proceeds of Crime and Anti Money Laundering Act (2009)

Treaties Ratified
- United Nations Convention against Corruption (UNCAC) on 9th December 2003
- African Union Convention on Preventing and Combating Corruption

Introduction
Corruption in Kenya remains a major challenge and credible reports undertaken by local and international organizations indicate that Kenya is among the countries in the world badly affected by corruption. There is a widespread perception that corruption permeates all sectors of public life in Kenya, and little official action is taken against its perpetrators.
According to the Transparency International Corruption Perception Index 2014, published in December 2014, corruption in Kenya remains high despite concerted efforts by the government and various institutions to tackle the problem. The index ranked Kenya at position 145 out of 175 countries and territories surveyed with a score of 25 on a scale of 0 to 100. The issues of corruption and the effectiveness of various anti-corruption measures are not new to Kenya and this explains why, since the colonial era, the country is still grappling with the issue of corruption.

**Legal framework**

It was not until 2003 when serious efforts to tackle corruption in Kenya began. This was signified by Kenya becoming the first country in the world to sign and ratify the United Nations Convention against Corruption (UNCAC) on 9th December 2003 and the subsequent enactment of key legislation aimed at curbing corruption. It was the same year that witnessed the enactment of the Anti-Corruption and Economic Crimes Act (ACECA) and the Public Officers Ethics Act. This was followed by the Public Procurement and Disposal Act in 2005 and the Proceeds of Crime and Anti Money Laundering Act in 2009. The Leadership and Integrity Act were enacted in 2011 after the promulgation of the Constitution of Kenya in 2010.

The Kenyan Constitution promulgated in 2010, itself signified a key milestone in the fight against corruption and it contains both implicit and explicit anti-corruption clauses. Article 10 espouses the national values and principles that should govern public administration and they include the rule of law, integrity, transparency, accountability and citizen participation. A number of provisions in the constitution decentralizes government and allow for stronger checks and balances that are intended to curb corruption. Chapter VI of the constitution explicitly covers leadership and integrity related issues, and sets the ethical and accountability standards required from public officials.

The constitution also guarantees the freedom of the press as well as the freedom of association and assembly. It also grants citizens the right of access to information held by the state in Article 35.

At Regional and Sub regional levels, Kenya has ratified the African Union Convention on Preventing and Combating Corruption and is working with other partner states towards the development of the EAC Protocol on Preventing and Combating Corruption to promote good governance, Ethics and Integrity in EA.

**Barriers in efforts to fight corruption**

It is however ironical that in spite of the constitutional provisions, anti-corruption legislation, institutions and administrative procedures and practices in place, corruption still remains one of the biggest challenges to socio-economic development in Kenya.

In 2009, Kenya developed a Gap Analysis report and Implementation Plan pursuant to the ratification of the UNCAC. The report was intended to examine the legal, policy and institutional mechanisms that Kenya has put in place pursuant to the provisions of the UNCAC; and highlight the challenges of enforcement and implementation of existing anti-corruption laws and policies.

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95 [www.transparency.org/cpi2014/results](http://www.transparency.org/cpi2014/results)
96 Constitution of Kenya, Article 10
97 Constitution of Kenya, Chapter VI
98 Constitution of Kenya, Article 35
The report identified access to information as one of the preventive measures which can be used to fight corruption and mitigate such opportunities.

However, Kenya is a country where access to information is still subject to legislative, institutional and political barriers and it has therefore been difficult for the public to hold the government to account in this regard. Despite the existence of access to information provisions in the constitution, the country does not have legislation on Access to information, and consequently there exists no institutional and enforcement mechanisms for accessing information and no procedure for complaints where it is denied. There is, however, light at the end of the tunnel as the Access to Information Bill 2015 was recently published as a private members bill and awaits presentation in parliament.

The UNCAC Kenya Gap analysis report also elaborated the need to repeal provisions in certain laws that inhibit public servants from reporting on corruption. In terms of accountability the Official Secrets Act (OSA) is seen as a retrogressive legislation which has provided the basis for information non-disclosure in Kenya for a long time. The Act inhibits the accountability of government to the public on claims of protecting the public interest. For instance, the OSA makes it an offence for a person, a public servant–to pass on any official document issued for his use alone to anyone not authorized to receive it, whether or not the information has any reference or effect on the security of the state.

The OSA also does not recognize the defence of public interest and criminalizes the disclosure of information already in the public domain.

The Public Officers Ethics Act also has a number of clauses that raise concern. Section 40 of the Act criminalizes the “unlawful disclosure” of information by public servants and imposes severe penalties that include a fine not exceeding 5 million Kenya shilling or imprisonment for a term not exceeding five years or both. This provision makes uncertain the protection of informers under the Anti-Corruption Act who happen to be public servants. While the latter encourages disclosure of information on corruption, the penalties in the former are prohibitive and discourage public servants from whistle blowing.

There is also concern regarding the lack of sufficient protection for whistleblowers. The lack of a law to protect whistleblowers has deterred Kenyans from providing information related to corruption to anti-graft bodies and many fear to provide information due to lack of protective mechanisms and the tendency by law enforcement agencies to identify whistleblowers. For instance in 1992, David Munyakei, a Kenyan citizen who worked at the Central Bank of Kenya as an accounts clerk, exposed one of the biggest unresolved corruption scandals that have occurred in Kenya to date, the ‘Goldenberg scandal’. He was dismissed from work on charges of contravening the OSA, denied bail and imprisoned. He died a few years later without receiving justice.

In 2006, the Witness Protection Act was adopted to respond to the difficulties in investigating and prosecuting those involved in high level corruption. The Act provides for the protection of:

100 Section 40, Public Officers Ethics Act,
101 Access to Information in Kenya: The Law and Practice Since 1991; Ezra Chiloba,
Citizens’ Access to Information: A tool to Build Trust and Address Corruption

witnesses in criminal cases by concealing their identities so as to shield them from victimization. Such protection has taken such forms as: obtaining a new identity for the witness including such identity being placed in the proper registries of birth, marriage (section 13), non-disclosure of former identity of protected person, non-disclosure of the identity of participant during legal proceedings etc.

However the protection accorded in the Act only extends to witnesses who are part of legal proceeding and not whistleblowers that are not within a criminal trial framework. It is arguable therefore that the Witness Protection Act does not provide for whistleblowers unless and until they offer to testify in a judicial process\textsuperscript{102}. The protection does not also extend to cover witnesses before quasi-judicial proceeding like commissions of inquiry and parliamentary committees\textsuperscript{103}. Another limitation is that not enough funding has been given to implement most of the provisions in the Act.

Other institutional measures against corruption

The efforts to fight corruption have also envisaged the setting up of various watchdog institutions with a mandate of fighting corruption. These include the Ethics and Anti-Corruption Commission (EACC), the National Anti-Corruption Campaign Steering Committee (NACCSC) the Kenya National Audit Office (KENAO), the Public Procurement Oversight Authority (PPOA) and the Commission on Administrative Justice (CAJ). The EACC is the primary anti-corruption institution and it is mandated to deal with corruption through enforcement, asset recovery, restitution, prevention and public education. Through its National Anti-Corruption Campaign Steering Committee (NACCSC) the EACC is mandated to undertake nationwide sensitization and awareness creation campaigns. The awareness campaigns are intended to target ordinary Kenyan citizens who are on the supply side of the corruption equation, with the recognition that the war against corruption cannot be won without the active participation and support by members of the public\textsuperscript{104}.

Ideally, these sensitization campaigns should be undertaken in partnership with various stakeholders such as civil society, religious organizations, youth and women’s group and should involve multimedia anti-corruption programs through television, radio, print media, internet and social media.

Article 13 of the UNCAC mandates state parties to take appropriate measures to promote the active participation of individuals and civil society; and to raise the public awareness regarding the existence, causes and gravity of and the threat caused by corruption.

However, the UNCAC gap analysis and implementation report identified the lack of a collaboration platform between CSO’s and government on anti-corruption as one of the major implementation gaps. It recommended the need to involve civil society in policy and decision making regarding anti-corruption measures and the need to intensify community based anti-corruption programmes to effectively involve citizens.

\textsuperscript{103} Ndegwa, Alex 2007, “Kenya : Now Kibaki Assents to New Law on Witness Protection”.
\textsuperscript{104} Kenya: UNCAC Gap Analysis and Implementation Report
Recommendations

- The Kenyan government should develop a national anti-corruption policy, which would mainstream anti-corruption, ethics and integrity in the management of public affairs.
- Ratify the African Charter on Democracy, Elections and Governance and the African Statistics Charter,
- The Freedom of Information Bill should be enacted forthwith to facilitate the public access to information, including that which touches on corruption in the public service. If enacted the Bill would repeal retrogressive legislations such as the OSA.
- The legislature should undertake the repeal of legislations that inhibit provision of information on corruption.
- The Whistle Blower Protection Bill should be enacted to provide protection for citizens who provide information on corruption.
- Reforms by anti-graft bodies should also ensure utilization of ICT to reduce human interface in anti-corruption processes.

By Sandra Musoga, Article 19 Eastern Africa
RWANDA:
CHALLENGES TO GOVERNMENT ACCOUNTABILITY

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Laws affecting RTI and corruption in the country
- Anti-corruption policy
- Access to Information law
- Constitution of the Republic of Rwanda

Treaties regarding RTI ratified by the country
- African Charter on Human and Peoples’ Rights (ACHPR)
- African Union convention on Preventing and Combating Corruption
- Ratify the African Charter on Democracy, Elections and Governance and the African Statistics Charter
- African Charter on Democracy Elections and Governance
- African Union Youth Charter

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Introduction

The Right to Information (RTI) is inextricably linked to democratic, socio-cultural and, ultimately, economic development. Furthermore, it is an all permeating and fundamental right the acknowledgement and expression of which contributes to the actualization of other political and socioeconomic rights. Indeed, the RTI and its accompanying Access to Information (ATI) laws empower citizens to actively participate in the decision-making processes. RTI can be considered to be a core principle in the quest for inclusive development. ATI laws facilitate participatory development and fortify democracy. Moreover, they promote transparency and government accountability while equally being instrumental in effective service delivery.\(^{105}\)

Rwanda has ratified all but two African Union treaties promoting the Right to Information\(^ {106}\) and in 2013 promulgated a comprehensive and progressive ATI act in line with its constitution, formally acknowledging and underwriting FOI.\(^ {107}\) Since the act is rather new, citizens are yet to grasp the full extent of the ATI law and to assess its usefulness in guaranteeing FOI.

Indeed, the information requests filed have been scarce and there have been no court appeals invoking the act. The Office of the Ombudsman, however did receive grievances from media and lawyers related to the RTI. Despite the existence of mechanisms and a pro-active attitude to improve ATI, government officials tend to prioritize upward accountability and do not work sufficiently with the ‘end-users’ or beneficiaries in order to better fulfil their responsibilities vis-à-vis citizens and even non-citizens in the case of the ATI act.

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\(^{105}\) M. M Ansari, Impact of Right to Information on Development: a Perspective on India’s Recent Experiences
\(^{106}\) http://www.achpr.org/states/
\(^{107}\) Article 34 of Constitution of Republic of Rwanda
RTI and corruption in Rwanda

Rwanda is a signatory state party to the African Charter on Human and Peoples’ Rights (ACHPR). ACHPR adopted measures to strengthen the RTI including the Declaration of Principles on FOE that elaborates Article 9 of the Charter on FOE, the African Model Law on Access to Information and Resolution 222 on the expansion of Declaration of Principles of FOE in Africa.

Access to Information Act

Access to information by Rwandans will help realise the African Union’s strategic objective of ensuring transparent, democratic and accountable practices in the promotion of human rights and the rule of law. This will decrease fragility, strengthen political stability and effective governance while facilitating sustainable and inclusive development, which ultimately will spur economic growth.

Rwanda’s Vision 2020 defines good governance as ‘transparency, accountability and efficiency in deploying scarce resources’. Moreover, it envisions bolstering citizen participation in decision-making. In striving to accomplish this vision, in 2012 Rwanda adopted an Anti-Corruption Policy. In 2013, the Government passed the Access to Information Act.

Corruption in Rwanda

Rwanda is widely recognized as a solid country with high levels of transparency, zero tolerance for corruption, well functioning institutions and a performance based environment with an adequate system of checks and balances in place. This mutual accountability system extends from the lowest to the highest levels and thus ensures reduced wastage and embezzlement of funds.

According to the 2014 Transparency International’s Corruption Perceptions Index (CPI) Rwanda is ranked 55th out of 174 countries. Compared with the global averages per region Rwanda’s score—49/100—indicates it is doing well in comparison to regional averages worldwide. Except the EU & Western Europe averaging 66/100 is at this point too much of a stretch for Rwanda to attain. In all the other regions Rwanda would score higher than the average. In Sub-Saharan Africa the country ranks comfortably in the top ten, coming in 7th. Only Botswana, Cape Verde, Seychelles and Mauritius have a higher score with both Lesotho and Namibia sharing Rwanda’s. Overall, 92% of the countries in the region have a score below 50. Rwanda currently settles right under that threshold coming from 53/100 in the previous years.

Despite these seemingly favourable scores and rankings, some degree of corruption still persists in the lower administration levels and further away from Kigali. The most common forms of corruption include fraudulent procurement practices, abuse of power, nepotism and public funds embezzlement. In addition, the mindset of key leaders in financial management and lengthy

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108 Rwanda Vision 2020; https://repositories.lib.utexas.edu/bitstream/handle/2152/5071/4164.pdf?sequence=1
109 The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. It is a composite index—a combination of polls—drawing on corruption–related data collected by a variety of reputable institutions. The index reflects the views of observers from around the world, including experts living and working in the countries and territories evaluated.
111 Rwanda Anti–corruption policy 2012
administrative procedures are still a challenge, while inappropriate public financial procedures may encourage corruption.\textsuperscript{112}

In taking a closer look, however, at the World Bank’s ‘World Governance Indicators’\textsuperscript{113} one can notice three main trends. Firstly, over the past decade (2003–2013) Rwanda has ranked increasingly higher on ‘Political Stability and Absence of Violence/Terrorism’, ‘Government Effectiveness’, ‘Regulatory Quality’, ‘Rule Of Law’ and ‘Control of Corruption’. Secondly, it is obvious that the latter has seen a more pronounced and quite favourable progress over the same aforementioned period. Finally, we can derive from the World Bank’s set of WGI that there is one indicator, namely ‘Voice and Accountability’, which has made insufficient progress in Rwanda.\textsuperscript{114} Therefore, an important step could be taken in this field by implementing the ATI–law to the fullest extent to empower citizens to realise FOE.

Once more, it appears that Rwanda has taken a significant step in curtailing corruption. The same conclusion can be made from the World Economic Forum’s Global Competitiveness Report 2014–2015 results. Indeed, according to the WEF report the institutions pillar in Rwanda is noticeably more reliable than the Sub–Saharan average. Moreover, some remarkable rankings are to be found per indicator among which is institutions–the first pillar. For instance for the indicator ‘wastefulness of government spending’ Rwanda ranks 4 out of 144 countries. On ‘transparency of government policy making’ it stands at the 8th position. ‘Public trust in politicians’ seems to be quite high as well, ranking 10\textsuperscript{th}. ‘Favouritism in decisions of government officials’ and ‘diversion of public funds’ equally ensure a positive view of the country’s corruption levels in the top 20 positions.\textsuperscript{115}

**Link between the RTI and corruption**

Rwanda has ratified the Convention on Preventing and Combating Corruption. According to Article 9 of the convention “Each State party shall adopt legislative and other measures to give effect to the right of access to information that is required to assist in the fight of corruption and related offences.” In addition, Rwanda has also adopted an anti–corruption policy.

However, although the level of corruption in Rwanda is relatively low, there is no clear link between the ratification of the access to information act and the level of corruption in Rwanda. This success can hence hardly be attributed to the adoption of the ATI act because of many factors.

Firstly, Rwanda has demonstrated a strong will to move from the past and to address all the challenges that led to the 1994 Genocide against Tutsis, including corruption. The determination of the Rwandan people–alongside the efforts of the Government since 1994–has led to tremendous gains in terms of good governance and, ultimately, reduced corruption.

Secondly, the ATI act has not been widely disseminated. As a result, there are still many challenges in the country.

\textsuperscript{112} Rwanda Anti–corruption policy 2012
\textsuperscript{113} The WGI are composite governance indicators based on 32 underlying data sources. These data sources are rescaled and combined to create the six aggregate indicators using a statistical methodology known as an unobserved components model.
\textsuperscript{114} World Bank, World Governance Indicators (WGI), Rwanda 2014
The challenges to the implementation of laws and acts are twofold. On one hand, citizens lack awareness about their RTI and on how to use the law. This has resulted in low requests filed because citizens do not understand how access to information relates to their daily lives. The Government takes the lead in ensuring that cases of corruption are addressed. On the other hand, information officers in most public institutions are not trained on the procedures of disclosure and why information has to be provided. The government has created a platform to enable citizens to contact government institutions. However, the citizens have not used this platform consistently. This is probably due to the lack of awareness of such platform.

**The role of media, civil society and private sector**

**Civil Society**

Preventing and combating corruption requires a strong, committed civil society, as the key stakeholder. According to the office of the Ombudsman, CSOs assist both in elevating public awareness and divulging information on corruption. Civil society is expected to monitor public institutions as well as official individuals in the respect of domestic and international legal regimes. In the latter case, CSOs ought to strive for effective sanctions against corrupt officials and/or suggest clear-cut reforms for malfunctioning institutions.

However, the role of CSOs in policy and decision-making is still quite limited despite the creation of the platform ‘sobanukirwa’ by ODESUDI to enable citizens to make their requests. This could be explained by two factors. Firstly, many CSOs are not aware of the existence of such a platform in Rwanda. Secondly, CSOs in Rwanda have long been criticised for their lack of capacity to contribute to policy making and for the duplication of actions. Thus, information sharing and coordination of efforts across different sectors are the two main areas where CSOs need to improve. Very few organisations are working to promote ATI. Never Again Rwanda recognizes that there is a strong need to put in place a coalition to promote ATI and to build the capacity of other CSOs. This could enhance the mechanisms relating to public awareness and to the reporting of corruption.

**Media**

One of the key recommendations by stakeholders, according to the Media High Council Report is that:

> Media should reach out and engage the ordinary citizens in monitoring the use of public resources and demanding accountability through the use of the enacted Access to Information Law as a tool.

According to the report the ATI act is a tool for the media to combat corruption by actively engaging the monitoring the allocation of public resources. The act would also promote accountability:

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116 See https://irembo.gov.rw/rolportal/web/rol
118 See https://sobanukirwa.rw/body/supreme_court
Media scrutiny and publicity are essential to raising public expectations and public awareness on corruption practices and to cause political pressure to take measures against corruption. It is [therefore] imperative to disseminate through media all information on how to investigate and report cases of corruption.\textsuperscript{120}

The media has actively raised awareness on corruption practices. However, the media it does not have sufficient capacity to unveil corruption practices that have not already been exposed by the government. The media is yet to carry out its investigative role. This can be explained by the low capacity of media houses and the lack of investigative and reporting skills. This is recognized in the Media High Council report on the role of Media in Corruption and Crime Prevention.\textsuperscript{121}

\textbf{Private Sector}

Both the public and private sectors are implicated in corrupt practices. Public–private partnerships are recommended to combat corruption. The ‘white–collar crimes’ are often associated with the elite who have gone to the same schools. The private sector should fulfil its obligation to thoroughly inform members about the ethical code of conducting business and the laws that regulate business activities.

Under the law preventing and suppressing corruption both public and private institutions are required to set up mechanisms for preventing and fighting corruption.\textsuperscript{122} The Private Sector Federation has elaborated a code of business ethics and excellence. However the Business Community still needs to be sensitized to adhere to the code.\textsuperscript{123}

Although preliminary steps have been taken, the Private Sector Federation is yet to more widely disseminate the code of business ethics. The media, civil society, private sector and government institutions should be supported in the fight against corruption.

\textbf{Conclusion}

It is recognized that the operationalisation of the ATI–act in Rwanda and the full domestication of RTI provisions from international treaties is still constrained by the reluctance of the public agencies to disclose information, low awareness of citizens, lack of capacity of both civil society and public agencies, attitudes on either side, and oversight challenges.\textsuperscript{124} Although the Office of the Ombudsman is mandated by law to enforce access to information, progress is still needed in this area.\textsuperscript{125}

The effective implementation of access to information law is vital for increasing access to information and strengthening participation, which would in turn build trust and promote democracy. Despite the low levels of corruption, there are still challenges related to accountability of government officials. This is why the implementation of the ATI and awareness raising should be emphasized.

\begin{itemize}
\item \textsuperscript{120} Rwanda Anti–Corruption Policy, Ibid.
\item \textsuperscript{121} Media High Council: The Role of Media In Corruption and Crime Prevention, Ibid.
\item \textsuperscript{122} Article 3 of the law n° 23/2003 of 07/08/2003 relating to Prevention, Suppression and Punishment of corruption and related offences.
\item \textsuperscript{123} Rwanda Anti–Corruption Policy, Ibid.
\item \textsuperscript{125} Rwanda RTI oversight agency http://ombudsman.gov.rw/\end{itemize}
**Recommendations**

- The government should reduce lengthy administrative processes, especially in public procurement.
- The media, the private sector and CSOs should improve investigative and reporting strategies of corruption cases.
- The media should enhance its ability to raise public awareness on corruption practices.
- The Government should put in place effective strategies to disseminate the ATI law and Act and ensure that translated copies are summarized and distributed.
- Information officers should be trained on their role and responsibilities.
- CSOs should be trained and sensitised on their role on access to information.

By **Dr. Joseph Nkurunziza and Prisca Ntabaza, NAR**
SOUTH SUDAN: LINKING CORRUPTION TO SECESSION AND ENDLESS VIOLENCE

Introduction

Corruption is both the root and bane of South Sudan. It was corruption in the form of historical marginalisation from Khartoum which precipitated the agitation for the liberation movement resulting in secession and it is corruption now which ails South Sudan’s development process and threatens the possibility of peace.

Some blame the culture of impunity to laxity on the part of the international community to intervene or even to condemn the rampant human rights abuses during the struggle for independence and even today as warring factions commit war crimes and crimes against humanity. Commenting on the rape, burning and aggressive recruitment of children in June of this year, the UN notes that, “the scope and level of cruelty that characterised the reports suggest a depth of antipathy that exceeds political differences.” Pre-independence, rebels were not held to higher levels of accountability than those who had oppressed them. It is therefore not surprising for the rebels to have taken the culture of looting with impunity with them to government.

Laws affecting RTI and corruption in the country

- Transitional Constitution of the Republic of South Sudan
- Anti-Corruption Commission Act
- Right of Access to Information Act
- Public Broadcasting Corporation Law
- Media Authority Law

Treaties regarding RTI ratified by the country

- African Charter on Human and Peoples’ Rights
- The African Union Youth Charter,
- United Nations Convention Against Corruption,
- International Covenant on Civil and Political Rights,
- African Charter on Human and Peoples’ Rights,
- African Charter on the Values and Principles of Public Service and Administration,
- African Union Youth Charter

127 Ibid.
South Sudan’s human rights record is tainted by atrocities against civilians. Recruitment of child soldiers is a serious problem, with more than 9,000 child soldiers fighting in the civil war and a child marriage rate of 52%. The adult literacy rate stands at only 27% and 70% of children aged 6–17 years have never set foot in a classroom.

**Anti–Corruption efforts**

Following his “Zero Tolerance” declaration in 2006 at the South Sudan Legislative Assembly, President Kiir established the South Sudan Anti–Corruption Commission (SSACC) whose function is to protect public property, investigate cases of corruption and combat administrative malpractices. No government official, however, has ever been prosecuted for corruption charges since it was established. In June 2015, the SSACC declined to confirm whether it is active and functioning and whether it continues to collect asset and income declarations annually as required by law. The office of the president did report that around 5,000 former and current public officials had declared their assets to the commission.

In a June 2012 letter to the nation, President Salva Kiir revealed that more than $4bn had been stolen by 75 former and current public officials when he asked them to return money, guaranteeing amnesty and even setting up a bank account in Kenya to which they could return the money. He warned that the next time funds were taken inappropriately, laws would be in place to punish them. “Many of our friends died to achieve freedom, justice and equality,” he reasoned in his letter, “yet once we get in power we forgot what we fought for and began to enrich ourselves at the expense of our people.” Corruption is all the more shameful in a humanitarian situation where more than 90% of the population live on less than $1 a day.

An estimated $60m is said to have been returned since letters were sent out in June 2012 but this figure is contested precisely because there was no naming of the officers who had stolen and returned public funds, thereby diminishing the credibility of these anti–corruption efforts.

In other initiatives, President Kiir signed the Right of Access to Information Act, the Public Broadcasting Corporation Law and the Media Authority Law, all of which were passed in 2013 but only became public in September 2014. The Media Authority and Broadcasting Authority bodies have since been appointed and await vetting. These laws contribute to a framework of transparency and accountability of government though their weak provisions affect for instance, the independence of the Media Authority and the South Sudan Broadcasting Corporation. Some contend that they were only signed to raise South Sudan’s corruption rankings noting that South Sudan ranked 173 of 175 in Transparency International’s (TI) Index and 173 out of 177 in the

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128 Navi Pillay, UN High Commissioner for Human Rights Statement, April 2014.
Sudd Institute’s 2014 Index on corruption. In the same TI corruption study, about 66% of South Sudanese interviewed told TI that they had given bribes to public officials in the police, education, judiciary, medical services, land services, tax revenue, customs and registry sectors, demonstrating the pervasiveness of corruption at the petty as well as grand level.

South Sudan loses a lot in investment as a result of its poor business environment. This is not a result of corruption. However, the lack of legal mechanisms to resolve land disputes leads businesses to resolve disputes through informal means, tax incentives are unclear and there are no laws governing customs, nor public procurement. While there are several laws which promote anti-corruption other than the SSACC Act, such as the Petroleum Act, 2012, the South Sudan Penal Code Act 2008, the Public Financial Management and Accountability Act 2011 and the Public Grievances Act 2011, these are reportedly not enforced.

South Sudan’s economy relies almost entirely on its oil revenues which accounted for about 98% of the government budget immediately following independence to about 70% today as a result of disputes with Khartoum and the ongoing fighting. Worryingly, the government and opposition forces are using it both to finance the war and stop supplies as to influence peace negotiations. The indebtedness is worsened by the debt South Sudan incurred in 2012 due to the rapidly accumulating arrears and increased military spending, as the government mortgages the country’s oil future to meet short-term spending and security goals, risking efforts to achieve long-term peace and stability. In December 2014, the IMF reported that South Sudan had already borrowed $328 million through a $1 billion line of credit from foreign oil companies operating in South Sudan and, at least, $59 million of this was allocated for the purchase of weapons in the first half of 2014.

Citizen ability to curb corruption

The states of emergency imposed on Unity and Jonglei states in January 2014 still persist and the Information Minister said on World Press Freedom Day in May 2015, that a state of emergency would be imposed should peace talks fail. Though the National Security Bill, 2014 was passed by parliament this year and is yet to be signed, The Citizen, Al Rai, and Free Voice radio station were ordered to cease operations by the National Security Service on August 3. Although no reasons were given, Nhial Bol, Editor-in-Chief of The Citizen attributes this crackdown to articles published on July 28 and August 1 about the compromise peace deal brokered by the Inter-governmental Authority on Development (IGAD) between the government and rebels and opinions by opposition political parties respectively. Government supporters are reported to protest against the power given to former Vice President Riek Machar’s rebel group as part of the deal.

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136 US Department of State: Investment Climate Statements 2014.
137 Ibid.
Transparency on the financing of the war and conflict reporting, including human rights abuses, is necessary for any meaningful transitional justice for South Sudan given the mounting record of war crimes and crimes against humanity. Civil society actors play a role in this regard but must be able to operate without fear of reprisal.

The Community Empowerment for Progress Organisation (CEPO), for instance, undertakes training for state institutions on transparency and accountability, supports public budget tracking, promotes good governance particularly in the extractives industry and supports education and public participation. The Association for Media Development (AMDISS) also seeks to protects and promote media freedoms and the RTI.

**Conclusion**

With poor systems for transparency and accountability in governance institutions and crackdowns on media freedoms, South Sudan’s elites will continue to build on their kleptocratic regime controlling all sectors of the economy and squandering any hope for development, let alone any hope for peace. Failure to address corruption is itself a potential source of conflict which threatens sustainable peace in a country already engulfed by rebellions as politico–economic stakeholders use violence and South Sudan’s resources to continue to maintain their share of wealth and power.

**Recommendations**

- Institutions to combat corruption including the SSACC and the Judiciary should be strengthened. The SSACC should have prosecutorial functions and institutional and technical safeguards should be put in place in governance institutions to reduce corruption beyond just naming and shaming those who get caught. The Anti–Corruption Commission should be completely independent of the Executive and it should report directly to the Judiciary and the Assembly; the Judiciary should adjudicate corruption cases in a free, fair, and open manner. The legislature, especially the public accounts committee, must step up the oversight role and exert pressure on the executive to strengthen financial management systems and report regularly to the Assembly in order to curtail corrupt practices.
- Ratify African Charter on Democracy, Elections and Governance.
- All public officers, individuals and private companies that have assisted, facilitated, or participated in corruption should be (re)investigated, tried, and sentenced if convicted with the public regularly informed. Investigation committees should be reconstituted to include respectable international institutions.
- Press freedoms should be guaranteed and all investigation committees should be open to the media and any trials should be open to the media and broadcast on national television.
- Education should be prioritized to ensure that South Sudan’s future leaders discontinue exploitative governance.

By **Riva Jalipa, Article 19 Eastern Africa**
TANZANIA: 
THE RIGHT OF ACCESS TO INFORMATION AND UNFULFILLED PROMISES

Laws affecting RTI and corruption in Tanzania

Treaties ratified by Tanzania:
- UN Convention Against Corruption,
- AU Convention on Prevention and Combating Corruption,
- African Charter on the Values and Principles of Public Service and Administration.
- The African Union Youth Charter,
- African Charter on Human and Peoples’ Rights,
- International Covenant on Economic, social and Cultural Rights and Freedom of Information,
- International Covenant on Civil and Political Rights

Other Platforms
- Extractive Industries Transparency Initiative; Open Government Partnership; African Peer Review Mechanism and Universal Periodic Review

Introduction
Western circles are increasingly reckoning Tanzania as a good sibling of the Democracy family in Africa. The country is signatory and party to a number of regional and international instruments promoting access to information, transparency and accountability, including the twin treaties against Corruption namely—United Nations Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption. But this is not without challenges. There is a two-fold disconnect between international commitments and local realities as well as between promises and practices as clearly evidenced in the case of the well sung promises by President Jakaya Mrisho Kikwete that his government would legislate for a more democratic RTI (information access) regime in the fastest growing economy in East Africa during the course of 2005 to 2015 to, among other things, help curb corruption which remains very rampant in the country today as ever.

Soon, the 10 year term in office of President Jakaya Mrisho Kikwete ends. This follows the dissolution of the 10th Parliament of the United Republic of Tanzania in July to pave way for the 25th October 2015 elections without passing the promised laws to govern citizen access and RTI. This has just added an item to the already long list of incidences demonstrating a situation of divorced reality between theory and practice in as far as democratization in Africa, and Tanzania
in particular is concerned. After so many promises and attempts, Tanzania concludes the current decade without FOI\textsuperscript{144} and RTI laws. The Prevention and Combating of Corruption Act that establishes the Bureau is nearly toothless and largely lacks enforcement. Although Corruption is designated as an economic offence and provisions exist for prison offences, there are unfortunately no financial penalties for economic crimes except for the recovery of stolen assets. A recent court verdict against former Ministers of Finance and Energy gave three years imprisonment coupled with a five Million Tanzanian shillings fine for acts that cost the nation more than 11 billion shillings equivalent in tax holidays. There is no concordance between the weight of offences and punitive measures against them.

**Legal and constitutional provisions on corruption**

The Constitution of the United Republic of Tanzania, 1977 (R.E) obliges the state to ensure free access of information to every person in the country (Art. 18). Everyone has the right to participate in the affairs of his country, including protecting national resources (Article 21). The constitution extends the right of access to information beyond the borders of Tanzania and states under article 18 (b) that every person shall have the right of access to publicly held information regardless of national frontiers\textsuperscript{145}. Additionally, there is a requirement that domestic legislation and practice must not depart from international law. Article 9 (f) requires all state authorities to consider, whenever making laws and policies and executing them, that human rights are respected in accordance with the Universal Declaration of Human Rights, 1948 as the main source.

One of the main commitments that President Kikwete made at his swearing in as President of Tanzania in November 2005 was the bold target, to democratize governance in the already free economy. This was expected to practically mean that during the fourth phase government would endeavour to govern more democratically and transparently with the rule of law as the overriding principle. Government accountability and participatory policy and law making were expected to be upheld. In particular, the president specifically promised to enact legislation that would free the media industry and promote citizen access to publicly held information\textsuperscript{146}.

**Commitments divorced from practice: a critical overview of the situation of RTI and corruption**

RTI is meant to oblige the Tanzanian government to provide any information requested by citizens and non-citizens alike, with the exception of information relating to national security and a limited of situations. The new practice was to position Tanzania among good performers in Africa having come after Ghana, Ethiopia and Uganda with access to Information laws since 2005. By so doing, Tanzania would be in the close chase of India, whose Freedom of Information Act, 2005 is being lauded across the globe as the best practice in the case of its text and implementation\textsuperscript{147}. In line with such efforts in promoting the access to information regimes, there have been good programmes on paper but very dispersed practice in reality. This was the case in relation to programmes and strategies such as the National Anti–corruption strategy and Action Plan (NACSAP) phase one.

\textsuperscript{144} Freedom of Information, which often is used almost synonymously with Right to Information and access to information in this discourse.

\textsuperscript{145} Based on Tanzania’s 14th Constitutional amendment through (Act No. 1 of 2005), URT, 1977.

\textsuperscript{146} Presidential address at the Swearing in Ceremony and Parliamentary Opening speech in Dodoma, November 2005.

\textsuperscript{147} Act No. 22 of 2005, Ministry of Law and Justice (Legislative Department), New Delhi, June.
of 1999 which was renewed by President Kikwete in December 2006 with the launching of NACSAP. However, recent corruption reporting suggests that about a quarter of national budget is lost annually to corruption.\textsuperscript{148}

With the good Constitutional footing initiated by Kikwete, it would have been easier to fulfil promises. Beyond articles 18 (b) and 9 (f), article 21 of the constitution requires that the state ensures broad public participation in the course of making laws and policies in Tanzania. The publication in October 2006 of a Bill for the Freedom of Information Act, 2006 should have kicked off the road to a new access to information regime. But inclusion deficits led to a heated debate and disagreement between governmental and stakeholder circles. Like most experts, I found it to be highly ironical that bills for the FOI course were being pushed and debated in such secrecy and friction. I was also appalled by the lack of consensus and agreement ensuing from the nature of the process itself. The divergence of opinion led to the abandonment of the bill process until some attempt for resuscitation in 2009 following new pressure on the government for outlawing bad laws as part of the fight against corruption.\textsuperscript{149} Once again, the government made an additional set of commitments to legislating for freedom of association, access to information and transparency promotion.

The lack of significant progress notwithstanding, President Kikwete’s government has kept the promises piling up in new global and domestic initiatives. In 2011, with the global come up to the Open Government Partnership (OGP), Tanzania was yet in another package of promises on the same area of promoting the right of access to information. At this point, Tanzania very specifically included the making of FOI Laws as one of the expected deliverables for OGP in the country. Consequently, the first generation action plan had the legislating of RTI on priority list. Come 2012, president Kikwete joined the OGP family congregating in Brazil to commit for an independent press and free access to information. In particular, Kikwete impressed the world when he outlined his government’s roadmap to a Tanzania with progressive information laws in one year. This was only reiterated at the OGP summit in London in October 2013 when he confidently set the deadline for his promise:

“by April next year[2014], the parliament of Tanzania would have enacted the Freedom of Information bill, giving the common citizen the right to have information from government and public offices.” On the fight against corruption, the President made a historic speech at his first inauguration of the Parliament of Tanzania after his election in November, 2005.\textsuperscript{150}

The President emphasized:

If people want information on how medicines are distributed, if people want information on budgets for their primary school, they should have the right to that information. If

\textsuperscript{148} According to Controller and Auditor General Reports from 2005 continuously for about 10 years alarming even the President himself.

\textsuperscript{149} This was part of the drive to Universal Periodic Review reporting that Tanzania was preparing to undertake in 2010/11 at the United Nations.

\textsuperscript{150} His brilliant speeches aside, President Kikwete’s era has been faced with the irony of sweet words and no action including the increasing scandals from EPA(2007); Richmond (2008); TICTS and the more recent Tegeta Escrow which has led to the most recent Cabinet reshuffle in Kikwete’s 10 year rule.
people want information on when they will get water supply, they should have that right. When people ask for this information, they should not be seen as trying to venture into areas which are not theirs.

Unfortunately, this was not the first or second time President Kikwete made such brilliant remarks on promoting openness, transparency and accountability at an international forum. A year before, the President had impressed the OGP Summit in April 2012 in Brazil by promising:

We will do our best to live up to the expectations of this partnership to promote transparency and accountability of our government to the people of Tanzania. I wish to reaffirm that our political will to achieve the OGP goals will not falter because open government is at the heart of the contract between state and citizens.

Tanzania has not lived up to these bold commitments and promises. They were not realised by 2014 and the RTI commitment was deferred to 2015, the year when the new laws were passed. These laws included: Right to Information Act, 2015 and Media Services Act, 2015. But the process was even more annoying. The Government of Tanzania’s attempt to by-pass the stakeholders and pass the bills of the laws secretly under a presidential certificate of urgency cannot be left without condemnation. Although the Whistleblower and Statistics Acts have been in the calling, none of the stakeholders supports their secretive passing earlier in the year. Like the Access to Information and Media Services Bills, they went against the international principles of transparency and accountability. No wonder there were moves to block them from the Coalition on the Right to Information (CORI) twice in April and June, 2015 due to a belief that a bad law on the RTI can be worse than no law and that there was need to keep the focus on the grassroots by building a popular movement around the cause, to make sure the law is designed to work for the poorest, not the other way round. That was all being missed out by the government bills and their processes.

Hence, an opportunity has been missed once again. Tanzania’s bills for the Media services Act (2015) taken to Parliament in April 2015 and Access to Information Bill whose tabling was attempted in April and June but unsuccessfully are a proof that we still have a long way to go on the road to a more democratic access to information regime. How dare we pass information laws in great secrecy like the case has been in Tanzania in the first half year? What happened to the sweet promises by President Kikwete? How soon shall we have a better process for the enactment of the direly needed laws? Will the lacuna have an implication in the forthcoming election in October 2015? Given this state of affairs, what needs to be the key considerations for the period beyond President Kikwete’s presidency?

151 Remarks by Dr Jakaya Mrisho Kikwete of the United Republic of Tanzania at the Open Government Partnership Summit, Brasilia, Brazil [2012]

152 Coalition on the Right to Information in Tanzania (CORI), coordinated by the Media Council of Tanzania and comprised of Tanzania Citizens’ Information Bureau, Legal and Human Rights Centre, Media Owners Association of Tanzania, Tanganyika Law Society, Media Institute of Southern Africa, SIKIKA, Tanzania Media Women’s Association, Tanzania Editor’s Forum, National Organization for Legal Assistance as well as Article 19 and Commonwealth Human Rights Initiative.

Unfortunately the Story of Tanzania is one of bold commitments but disappointing reality. There seems to have been the irony of divorced reality between commitments and practice on promoting Right of access to Information in Tanzania during the course of the fourth phase government of Tanzania under President, Dr. Jakaya Mrisho Kikwete. I look forward to improvements from the government of Tanzania with inputs provided by stakeholders to come in after the October elections. The PCCB Act requires major reform, starting with the law and proceeding with the Bureau. This will strengthen the institution to the state of taking it above the desperation\(^{154}\) that it is today.

**Conclusion**

Tanzania seems not to be making significant progress in promoting transparency and curbing corruption. Both grand and petty corruption practices are serious problems in Tanzania despite the existing laws against the vice. There are weak internal controls besides low or non–compliance with regulations in different government agencies. Foreign companies are divided between those that complain about the rampant corruption in the various sectors as a hindrance in doing business while others take advantage of the loopholes in evading tax, among other corrupt practices.

**Recommendations**

- There must be put controls on public procurement, taxation and customs services which are currently very prone to corruption.
- Ratify African Charter on Democracy, Elections and Governance.
- International and multidimensional efforts should be put in place to fight corruption just like the war against terrorism and crimes.

By Deus M Kibamba, TCIB

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\(^{154}\) The Director General of PCCB was reported as having remarked that the war against corruption was far from realization due to interference from top circles of government. This is according to a recent year’s release by Wikileaks.
UGANDA:
LACK OF POLITICAL WILL TO ENSURE CITIZEN’S RIGHT TO INFORMATION

Laws affecting RTI and corruption in Uganda
- Constitution of the Republic of Uganda, 1995
- The Access to Information Act, 2005
- Electronic Media Act Cap 104
- Press and Journalists Act Chapter 105
- Uganda Communications Act 2013
- Anti–Terrorism Act, 2002
- Penal Code Act, Cap 120
- Public Order Management Act, 2013
- Public Procurement and Disposal of Public Assets Act, 2003
- Anti–Corruption Act, 2009
- Political Parties and Organisations Act, 2005
- Whistleblowers Protection Act, 2010
- Leadership Code Act, 2002
- The Inspectorate of Government Act, 2002
- The National Audit Act, 2008
- Official Secrets Act Cap 302
- The Evidence Act Cap 6
- The Oaths Act Cap 19
- Parliament (Powers and Privileges) Act Cap 258

Treaties on the RTI ratified by Uganda
- The Universal Declaration on Human Rights
- The International Covenant on Civil and Political Rights
- African Union Convention on Preventing and Combating Corruption
- Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights (16/02/2001)
- United Nations Convention against Corruption (9th Sep 2004)
- African Charter on Democracy, Elections and Governance,
- African Charter on the Values and Principles of Public Service and Administration,
Introduction

The RTI in Uganda is founded on article 41 of the Constitution of the Republic of Uganda and the Access to Information Act, 2005 (ATIA) as well as the Access to Information Regulation, 2011 which guide the implementation process of the ATIA. The Uganda constitution and the ATIA are premised on an efficient, effective, transparent and accountable government. Nevertheless, the ATIA has its own challenges and limitations in as far as its scope of application is concerned and thereby creating room for impunity.

The State of RTI and corruption

The RTI is a means through which accountability and transparency can be achieved. Despite the citizens’ power to demand for accountability and transparency, frustrations have characterized every attempt. As a result, economic, social, cultural, civil and political rights of the citizens have been violated. Most of the information related to corruption is hardly released to the general public with only minimal disclosures made. The recent discovery of oil and gas resources in Uganda as shown by the denial of the request for production–sharing agreements between the Uganda government and multi–national companies and the immediate denial of accountability and transparency through public ATI shows that that the government is yet to appreciate and embrace the importance of public access to information in the fight against corruption.

Generally, ATI has not been fully embraced in Uganda as an important tool for fighting corruption. Nevertheless, certain efforts show recognition of ATI as an important tool for fighting corruption. These include: issuance of three corruption reports which widely highlight the value of information in fighting corruption, development of a government communication strategy, 2011, the Uganda Budget information by the Ministry of Finance Planning and Economic Development and the Ask Your Gov Tool through which the public can make information requests to public agencies and receive responses.

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158 See http://www.budget.go.ug/
159 Ask Your GOV UGANDA http://askyourgov.ug/
Uganda has also issued three corruption reports on Uganda of 2010, 2011 and 2012 respectively. The Ask Your Gov Tool has a total of 76 agencies and has so far received 139 requests from the public, 29 of which have been responded to. The question of relevance, application and efficacy still arises in that respect in as far as the question as to whether transparency is guaranteed can be debated and answers sourced.

**Response to international state obligations**

On the positive side, Uganda has shown international commitment by ratifying the United Nations Convention against Corruption on prevention, criminalization and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange for purposes of preventing and combating corruption. Uganda has also ratified the African Union Convention on Preventing and Combating Corruption (AUCPCC) which is premised on similar goals as the UN Convention Against Corruption. In specific responses, Uganda has enacted the ATIA and the regulations there under in line with article 9 of the AUCPCC. Further, Uganda in line with article 12 (4) on media access to information on corruption and other related offences has, though with limitations enacted the Press and Journalists Act Chapter 105 of the laws of Uganda whose purpose is to promote freedom of the press and establish a council to regulate the mass media. The laws are so weak that politicians have even misused them against media freedoms. For instance in 2013, the speaker of parliament decided to dismiss two journalists from parliament for publishing a story in the *Weekly Observer* that showed that the speaker and deputy Speaker had fought over a petition. Nevertheless, the High Court ruled on July 04, 2015 that the dismissal was a nullity.

In light of article 7(4) of the AUCPCC on transparency, equity and efficiency in the management of tendering and hiring procedures in public service, Uganda has the Ministry of Public Services which is mandated to develop, manage and administer human resource polices, management systems, procedures and structure for the Public Service and is built on efficiency and accountability. In place are also the Equal Opportunities Commission, Public Service Commission, Uganda Public Service Standing orders of 2010 and the Code of Conduct and Ethics for Uganda Public Service which are aimed at promoting accountability and transparency in public service. Nevertheless, the current trend is characterised by corruption where opportunities are granted on the basis of nepotism, corruption and bribery. It is commonly regarded as “technical know who”.

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161 See http://askyourgov.ug/list/successful (last accessed July 15, 2015)


165 http://publicservice.go.ug/

The AUCPCC under article 10 (b) requires State Parties to incorporate the principle of transparency into funding of political parties. Uganda has partly dealt with this particular issue by putting in place the Political Parties and Organisations Act, 2005 which among others regulates the financing and functioning of political parties and organisations and which therefore does not fully handle cases of corruption in political party financing.\textsuperscript{167} In as far as creating an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs under article 12 (2) is concerned, Uganda has put in place a number of legislative measures to facilitate this aspect.

### Enabling environment

There has been a better environment for Civil Society Organisations (CSOs) and media over the years compared with the past regimes and the early and late 1990s. However, recent years show a regress from an open to a threatening CSO and media operational environment. The government has become hostile rhetoric and repeatedly obstructed non-governmental organizations activities.\textsuperscript{168} Legislation affecting CSO operational environment such as the Public Order Management Act, 2013, the Prohibition of Promotion of Unnatural Sexual Practices Bill, 2014 have been enacted. There have also been rampant break-ins into CSOs and NGOs. Police has thereby failed to protect NGOs and CSOs from the upsurge of insecurity. For instance, Anti-corruption Coalition Uganda (ACCU), Foundation for Human Rights Initiative (FHRI), East and Horn of Africa Human Rights Defenders Project (EHAHRDP), Action Group for Health Human Rights and HIV/AIDS (AGHA), Human Rights Network for Journalists (HRNJ), Alliance For Development–Uganda (AFODE), Human Rights Network–Uganda (HURINET–U) and The African Centre for Media Excellence (ACME) have fallen victim of broken into NGOs and CSOs.\textsuperscript{169,170} In most of the attacks, it has been observed that the primary target is to carry away all the information and cripple the organisations’ work.\textsuperscript{171}

### Challenges to transparency

The main challenges to transparency in Uganda include poverty, poor criminal investigation and prosecution mechanisms, bureaucracy and intimidation in public offices, weak legal and regulatory framework on corruption. Legislation like the Anti-Corruption Act, 2009, laws relating to witness protection and the Political Parties and Organisations Act, 2005 do not offer good enforcement mechanisms. Additionally, the lack of political will by the government has resulted in regression of accountability and transparency.


\textsuperscript{171} Supra note 168, HRNJ.
Consequences of corruption

Corruption in Uganda has led to imbalance in resource allocation and high incidences of poverty. While some parts of the country are better developed, others are less developed as individuals swindle billions of shillings intended for development.\textsuperscript{172} Deprivation of the public of resources has also been an immediate consequent of corruption. The West Ankole CSO Forum vs Bushenyi District Local Government Council Misc Cause No. 0062 of 2011 is an immediate result of depriving the public a sports stadium. There is equally no doubt that lower investment and reduced economic growth of Uganda are a result of corruption. As a result of corruption, there has been reduced financial aid and thereby a reduction in efficiency of the functioning of public programmes and projects as well as the functioning of public offices.\textsuperscript{173} Uganda is currently facing a currency crisis and this is partly attributed to the high levels of corruption.\textsuperscript{174} There is also no transparent exercise of democratic rights such as voting.\textsuperscript{175} Corruptions, bribery of voters and voter intimidation have threatened democratic rights, hence a total breakdown of democracy is the immediate consequence of corruption.\textsuperscript{176}

Role of civil society and private sector in promoting RTI

Civil society and the private sector have an important role to play in as far as promoting the RTI is concerned. It is for instance on record that Uganda’s law on ATI was actually a primary idea of CSOs in Uganda dating back to 2003 including; ACCU, HURINET–U and the Uganda National Coalition on Freedom of Information (COFI) with a membership of over 100 NGOs hosted by HURINET–U.\textsuperscript{177} Uganda’s CSOs amidst intimidation and narrowing space of operation continue to proactively advocate for the promotion of the RTI. Some of those at the forefront include; Transparency International, HURINET–U, the Hub for Investigative Media (HIM), HRNJ, ACCU, Action Aid International and the COFI Coalition. The Private sector has nevertheless played a more passive role as it is exempted from releasing information to the public.

Role of civil society and private sector in combating corruption

The Private sector and CSOs expose those who are involved in corruption and advocate for change in regimes from secrecy to transparency. Alongside the advocacy for legislation on ATI fighting corruption, CSO have been upfront in efforts to expose corruption. For instance, as shown above

\textsuperscript{172} See Actionaid International, Black Monday Newsletters. Available at http://www.actionaid.org/uganda/black–monday–newsletters


\textsuperscript{175} Ibid,

the HIM has filed over 26 information requests all of which mainly pertain to the expenditure of public revenues, funds and resources. HURINET–U has also been financially supporting CSOs and NGOs to pursue cases involving corruption before the judiciary, where information on expenditure of funds was requested and denied. ACCU is built on the primary role of fighting corruption and frequently exposes corruption scandals to the public. Equally, there is a partnership between CSOs, private companies under the Global Compact and the Ministry for Information and National Guidance to promote the RTI as one of the key tools in fighting corruption. This has for instance featured during the Right to Know day celebrations which are usually celebrated in a pool of CSOs, private sector and government ministries. The Inter Religious Council of Uganda has outrightly condemned corruption and exposed its evils. Private companies, as stated above, offer telecommunication services for reporting corruption. Hence CSOs and the private sector have made milestones in promoting the prevention and combating of corruption. The general public has also mainly got informed of corruption and their roles as citizens in combating corruption by CSO efforts through the media, dialogues, and grassroots trainings.

**Conclusion**

The RTI and the prevention and combating of corruption are interrelated. Accordingly, Uganda has taken domestic and international measures aimed at promoting the RTI as well as combating corruption. However, the practical realities show that Uganda still lacks the political will to fully ensure that her citizens enjoy the RTI. It is also in doubt as to whether Uganda is fully committed to ending corruption as most of the corruption scandals have been dominated by top political figures. The CSOs and the private sector have a crucial role to play in promoting the RTI and preventing and combating corruption. The RTI and combating corruption requires a joint role of the government, citizens, CSOs and the private sector.

**Recommendations**

- The government should fully respect the RTI and remove broad limitations and exemptions to the right. This should go hand in hand with the parliament’s role of legislation. As such, the parliament should embark on the reviewing of all contradictory laws on the RTI and have them amended for a better ATI regime in Uganda. Additionally, all legislation that hinders investigation into corruption scandals should be repealed or amended to pave way for fast investigations and quick justice for the citizens.

- All legislative and institutional mechanisms on the prevention of corruption including the RTI, political financing, media and journalists’ rights as well as the freedom of speech, press and expression should be strengthened. This will bring to an end, the problems suffered as a result of weak legislative and institutional mechanisms as revealed in the annual corruption reports of 2010, 2011 and 2012.

- Uganda should renew commitment to its international State obligations and respect, protect and fulfil all the rights associated with information as well as preventing corruption. It should therefore ratify instruments such as the African Charter on  

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178 Edward Ronald Sekyewa, supra note 156.  
Democracy, Elections and Governance if electoral democracies are to be corruption free. They may not be free but some level of transparency will be guaranteed.

- CSOs and NGOs should be given a free and open operational environment. They mean no harm to anyone but work for the benefit of all the citizens. Hence all draconian legislation that affects CSOs operational environment should be repealed. As such, the government should aim at ensuring a maximally, friendly, conventional and convenient operational environment for all NGOs, CSOs and the private sector for better results that are best suited national interests.

- There is an urgent need for renewed state compliance with the laws in place. It is usually the government that is on the offending side of legislation that seemingly appears to work against it in favour of the general public or citizens. The government thus needs to appreciate that all laws hinged on accountability and transparency are meant for public benefit and not government criticism.

- The government also needs to embark on mass sensitisation on the role of government in as far as service delivery is concerned. The citizens also need to be reminded of their role in as far as accountability and transparency are concerned.

By Edrine Wanyama and Patrick Tumwine HURINET–U
Citizens' Access to Information: A tool to Build Trust and Address Corruption
BOTSWANA:
STILL LACKS STRONG LEGAL COMMITMENTS WITH RTI AND ANTI–CORRUPTION

Laws affecting RTI and corruption in the country
- The Constitution of Botswana guarantees the RTI in section 12 (1) as an aspect of FOE
- National Security Act, 1986
- Public Service Act, 2008

Treaties regarding RTI ratified by the country
- African Charter on Human and Peoples' Rights (the Charter has not been incorporated into the domestic law of Botswana)
- Universal Declaration of Human Rights,
- International Covenant on Civil and Political Rights;

Introduction
Over the years, the Transparency International Corruption Index has ranked Botswana as the least corrupt country in Africa. In 2014, the country was ranked 31 in the world with a score of 63; in 2013 it was at 30 with a score of 64 and in 2012 it was at number 30 with 65.\(^{180}\) The country’s desire to contain corruption and remain least corrupt appears to be derived from two principles contained in Vision 2016—A long Term Vision for Botswana; namely, the yearning to build a safe and secure nation (Vision Pillar 4). Through this principle it is desired that Botswana would “eliminate white collar crime” and that there should be “earlier detection of corruption”.\(^{181}\) Against this background, the country also covets to build an open, democratic and accountable nation by ensuring that “Leaders must behave in a moral fashion, to respond to the needs of those they represent, and not to yield to the temptations of corruption (Vision Pillar 5). They must exhibit qualities of trustworthiness”.\(^{182}\) The Government has set up anti–corruption units in its ministries to curb corrupt practices within the public service. These units have thus developed anti–corruption policies.\(^{183}\)

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182 Ibid
183 An example of such a policy is available at http://www.moh.gov.bw/Publications/policies/corrupt%20booklet.pdf
While Botswana has received accolades of being the least corrupt country in Africa or being moderately corrupt by being ranked 30 and 31 in the world between 2012 and 2014 or by virtue of articulating commitments to curbing corruption as aspects of its national vision, there are signs that corruption is slowly finding its footing. The 1990s in Botswana were characterised by reported cases of corruption which at times a result of presidential commissions of enquiries. In a bid to curb the emerging trends in corruption, the Directorate on Corruption and Economic Crime (DCEC) was established in 1994. Notwithstanding its formation cases of corruption continue to be prosecuted and the media has played a pivotal role in reporting on cases of alleged corruption in Botswana.

Media and reporting on corruption

The media in Botswana plays a key role in reporting on corruption. The private media in particular has widely exposed cases of corruption.\(^{184}\) It is reported that:

> hardly a week passes by without the private media exposing scandals implicating senior government officials, including some cabinet ministers. Activists believe that increased use of the media can expand the range of considerations citizens bring to bear in making political judgments.\(^{185}\)

In the period 2014 to 2015 just like in the previous years, the private media has reported on corrupt practices at Statistics Botswana leading to Parliament endorsing a motion to investigate the allegations. The private media has reported allegations of corruption against the Director–General of the Directorate of Intelligence and Security. It worthy to note that exposure of corruption by the private media has provided fodder for question and answer sessions in Parliament. In fact during the 2013 World Press Freedom Day, Justice Gaopalelwe Ketlogetswe commended the media for reporting on matters of corruption.\(^{186}\) While the media in Botswana makes all attempts at exposing corruption, unfettered access to information is one of the main impediments.

Right to information in Botswana

The Constitution of Botswana guarantees the RTI in section 12 (1) as an aspect of FOE. The provision protects the ‘right to receive ideas and information without interference.’ The protection of the right is modelled on Article 10 of the European Convention on Human Rights (ECHR). When interpreting the ambit of the right to information guaranteed under the ECHR, the European Court of Human Rights has concluded that the right to receive information basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to them.\(^{187}\) The ECHR thus only guarantees a passive RTI and does not impose positive obligations on a state to gather and disseminate information. It is contended that the Botswana Constitution, like the ECHR, also protects a weak passive RTI. Botswana has ratified the African Charter on Human and Peoples’ Rights which guarantees the RTI under Article 9(1).

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\(^{187}\) Case of Tarsasag A Szabadsogjogokert v Hungary, Application no. 37374/05 (judgment of 14 April 2009).
Commission on Human and Peoples’ Rights has pronounced that this provision guarantees an active RTI.\textsuperscript{188} However, the Charter has not been incorporated into the domestic law of Botswana and has no direct application in the country.

The weak constitutional guarantee accorded to the RTI in Botswana is worsened by an absence of a RTI law. The situation is further compounded by laws that make access to official information very difficult. These laws include the National Security Act, 1986 and the Public Service Act, 2008. Section 4 (1) of the former makes it unlawful for any person who had obtained official information (in whatever form) as a result of his/her present or former position as a civil servant to reveal that information without authorisation. The prohibition is enforced by the possibility of up to thirty years imprisonment, applied indiscriminately to all government information, regardless of subject or triviality. The ambit of the section is very wide, and it renders all government information not subject to disclosure to the public. In addition, section 27 (3) of the Public Service Act, 2008 makes it a matter of serious misconduct, which could lead to a summary dismissal, for a public officer to disclose official information without authorisation. The provisions in the two laws, coupled with the absence of an access to information law, have fostered a culture of secrecy in government making it difficult for citizens and the media to access official information. In an interview, Kuris Tymon Katlholo, the former Director of the DCEC observed that “secrecy promotes impunity. Once there is impunity, corruption will creep in.” He added that “corruption takes place or thrives under the cloak of secrecy.”\textsuperscript{189}

In his address to mark the official opening of the Conference on Corruption and Human Rights in 2011, the then Vice President of Botswana Dr. Ponatshego Kedikilwe informed the gathering that the Botswana Cabinet had “decided to accede to the UN Convention Against Corruption (UNCAC)”\textsuperscript{190}. At the same conference Professor Lumumba, Director of the Kenya Anti–Corruption Commission, noted that access to information was one of the key modes which empower citizens to actively participate in governance and they are thus better placed to scrutinise the affairs of government and ensure that corrupt practices are identified and acted upon. In his presentation, still at the same conference Mr. Tousy Namiseb of the Law Reform Commission of Namibia opined that access to information legislation was a necessity in corruption management.

Article 9 of the AU Convention on Preventing and Combating Corruption (AUCPCC) obliges State parties to adopt legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption.

While the access to information law is no doubt an absolute necessity in the fight against corruption, there also other laws that compliment and support it in the fight against corruption. One such law relates to the protection of journalists’ confidential sources of information. When reporting on corruption, the media usually rely on sources that will not be willing to disclose information without a guarantee that their identity will not be disclosed. There is currently no law in Botswana that gives protection to journalists’ sources of information. Some media houses that had reported on alleged incidents of


corruption in the public sector have in the recent past, been raided by state security agents and had their media workers arrested and computers and other documents confiscated. Observers believe this move was aimed at assisting the state to access information that could help it to identify the media’s sources of information. The Sunday Standard newspaper’s offices were raided and its editor arrested by state security agents in March 2015. The Gazette newspaper suffered the same fate in May 2015. The absence of a law that protects journalists from being compelled to disclose their confidential sources of information impedes the media’s role in effectively reporting on corruption in the country.

Corruption is pervasive in many African States. It was partly due to this that the AU adopted the Convention on Preventing and Combating Corruption. Botswana, however, has been judged by a number of organisations such as Transparency International and the Mo Ibrahim Foundation as the least corrupt State in Africa. This does not mean that there are no incidents of corruption in the country and a lot can still be done to eradicate corruption in the country.

**Conclusion**

Botswana remains one of the few AU Member States that have neither signed nor acceded to the Convention on Preventing and Combating Corruption. The status of international treaties in the domestic law of Botswana is governed by the dualistic theory. In terms of this theory, international treaties have no automatic operation in the domestic law unless incorporated by an act of the legislature. This means the AU Convention on Preventing and Combating Corruption has no direct application in the domestic law of Botswana. It can, however, be argued that some of the provisions of the convention on access to information and transparency are indirectly enforced under the Corruption and Economic Crime Act, 1994. This law establishes a Directorate on Corruption and Economic Crime whose functions include, among others, receiving and investigating any complaints alleging corruption in any public body. One of the powers of the directorate in the performance of its mandate that promote access to information and transparency in the public sector, is the ability to examine practices and procedures of a public body in order to facilitate discovery of corrupt practices and to secure revision of methods of work or procedures which may be conducive to corruption.

**Recommendations**

The fight against corruption requires the adoption of legislative and other measures that can aid in the fight against this social evil. The State of Botswana should, as a matter of urgency:
- Ratify and domesticate the AU Convention on Preventing and Combating Corruption;
- Enact an access to information law; and
- Enact a law that protects journalists’ confidential sources of information.

Ratify:
- African Union Convention on Preventing and Combating Corruption,
- African Charter on Democracy, Elections and Governance.
- African Charter on the Values and Principles of Public Service and Administration,
- The African Union Youth Charter,

By Dr. Peter M. Sebina and Dr. Tachilisa B. Balule, University of Botswana

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Introduction

Malawi has a very progressive constitution that makes human rights a pillar in governance and exercise of power by the State. The constitution puts emphasis on the fact that constitutional provisions are what “the people of Malawi” have agreed to pursue and believe in.

Section 5 of the Constitution states that “any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to [the] extent of such inconsistency, be invalid.”

This article is specifically meant to provide a brief discussion of the right of access to information in Malawi. More specifically, the article will address the application of the RTI provisions in the African Union (AU) Convention on Preventing and Combating Corruption in Africa at national and local level.

Malawi’s commitments to the right to information

Malawi enacted the democratic constitution which was published in the government gazette on 16th May 1994. The constitution has a specific provision on access to information in section 37, which provides that:
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.

Despite this express protection of the RTI, there is no act of Parliament to give it effect. The campaign for an Access to Information Law in Malawi started in 2003, but stalled in 2009 when the government indicated that there was a need for a policy on access to information before the bill could be taken to parliament for debate.

In early 2014, the Malawian Cabinet finally adopted an access to information policy, but the legal framework for its application is still incomplete. The Minister of Information, Kondwani Nankhumwa, was recently quoted in the local media as saying that the bill would be tabled in the next sitting of Parliament slated for October 2015. Over the last decade, Malawians have become accustomed to such announcements by government officials. It remains to be seen whether indeed the bill would be tabled this time.

On a positive note, in 2012, the government of Malawi fulfilled its reporting obligations by submitting its initial and combined State Report (1995–2013) to the African Commission on Human and Peoples’ Rights (ACHPR). Such efforts need to be continued. However, the continued delay to enact the Access to Information Bill remains a drawback, especially to the fight against corruption. Apart from rendering the processes of government more open and making those in power more accountable to the people, the Access to Information law can be a critical tool in combating corruption, a fight Malawi has yet to win. Currently Malawi is said to be losing billions of dollars each year through corruption, payments to ghost workers in government ministries, rentals for ghost houses and funding for ghost projects. Assurances by the current leadership that government has adopted a zero–tolerance approach to corruption have not altered the view of Malawian citizens, donors, and international monitoring bodies that corruption is worsening in the country. In 2014, Malawi was ranked among the most corrupt countries in the world largely due to the appalling corruption scandal, dubbed “cashgate” by the local media, in which billions of taxpayer’s money was looted from public coffers by unscrupulous top public servants. Malawi scored 33 points out of 100 on the 2014 Corruption Perception Index reported by Transparency International (TI).

**Anti–corruption efforts in Malawi**

For the past decade, anti–corruption has been at the top of the political agenda in Malawi. Malawi ratified both the United Nations Convention against Corruption and the African Union (AU) Convention on Preventing and Combating Corruption in Africa in late 2007.

Article 9 of the AU Convention provides that “Each State party shall adopt legislative and other measures to give effect to the right of access to information that is required to assist in the fight of corruption and related offences”. In compliance with the Convention’s provisions, Malawi has adopted a comprehensive anti–corruption legal framework. The Corrupt Practices Act 1995 (amended in 2004) became effective in 1996 and established the Anti–Corruption Bureau (ACB).

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Citizens’ Access to Information: A tool to Build Trust and Address Corruption

State parties to the Convention agree to ensure that public officials declare their assets at the time of assumption of office, during and after their term of office. In this respect, the government of Malawi adopted the Public Officers (Declaration of Assets, Liabilities and Business Interest) Act of 2013, which has seen public officers, including the President and Members of Parliament declaring their assets as required by the law.

The launch of the National Anti–Corruption Strategy in 2008 is thought to have brought many improvements to the anti–corruption framework of Malawi. The country is seen to have strong anti–corruption laws, and institutions and initiatives. Recently, the government of Malawi adopted the Extractive Industry Transparency (EITI) as a tool to enhance its revenue collection, tracking and governance in the country.

Malawi is also part of the Construction Sector Transparency Initiative (CoST) pilot programme, which aims at enhancing transparency and accountability in the construction sector, focusing specifically on public disclosure of information. The country has also joined the Open Government Partnership (OGP), reflecting her commitment to promote greater transparency and accountability in providing public services to its citizens. The OPC has created a Public Affairs Unit, to increase citizen engagement with the Government.

Additionally, in June 2013, the Malawi Government launched the Malawi Public Service Charter and the Code of Conduct and Ethics. All Government Ministries, Departments and Agencies were directed to formulate and popularise their Service Charters by July 2014. The Service Charters provide for a framework whereby the Government and the Citizenry enter into an agreement on the quality of services expected from Government, and offering the citizenry the power to take Government institutions to task if they do not deliver according to what is stipulated in the Service Charters. The public will now be empowered to question and take the Government to task, thereby ensuring that high quality public services are provided to the people.

Key challenges to implementation of the AU Convention

Despite the progress made in implementing the provisions of the AU Convention, Malawi’s fight against corruption is being hampered by several factors, including poverty, weak institutions and inadequate laws.

One aspect where Malawi’s legal framework is inadequate is that it has no laws regulating political financing. There are no limits on individual political contributions nor are there limits on corporate donations or party expenditures. Furthermore, there is no requirement for disclosure of donations or audits of political parties and candidates.

The other challenge is weak institutions. Relevant constitutional bodies such as the Judiciary, the Office of the Ombudsman, the National Audit Office (NAO) and the Anti–Corruption Bureau (ACB) are still seen as effective in investigating and prosecuting lower level corruption cases but weak in their handling of high profile cases. Political–legal interference, coupled with lack of adequate funding and human resources, adds to the erosion of these accountability mechanisms.

193 Article 7(1)
The judiciary is a key institution, since it adjudicates on cases of corruption and thus serves as an important deterrent to corruption. Section 9 of the Constitution of Malawi vests the judicial authority in the courts. Sadly, the performance of the judicial system in general is severely hampered by a number of problems, including poor infrastructure, inadequate funding, delays in the delivery of judgments, non-user friendly procedures, inhabitable courts, and interference by the executive. At local level, the magistrate's courts are further constrained by lack of resources and infrastructure. As a result, service delivery in the remote areas is severely limited. Owing to the huge backlog of cases and the slow process of the justice delivery system, the judiciary is unable to deal with cases effectively.

The National Audit Office (NAO) is another important institution in the fight against corruption. The NAO is a public office which is required to report on the public accounts and resource utilization of public authorities and bodies. The office is required to reveal the strengths and weaknesses of the financial and management operations of government institutions. It also has to bring the performance of public officials and the administration and management to the attention of the public and stakeholders. Therefore, in principle the NAO is a viable mechanism for the enhancement of accountability and transparency and a powerful deterrent of unaccountable behaviour, including corruption. However, its promotion of political accountability in government institutions faces a number of challenges. The office is unable to audit all institutions timely owing to human resource constraints and delays by the accounting officers in completing the financial records. Failure to audit financial accounts in time seriously hampers financial accountability and the effective prevention of malpractices. Another problem is the lack of political will to deal decisively with issues of accountability. The problem of misuse of public funds has been raised several times over the years in audit reports, but no action has been taken against the perpetrators. In many instances, audit reports are not given sufficient attention.

Another key institution is the Anti-Corruption Bureau (ACB). Following the amendment of the Corrupt Practices Act in 2004, the ACB has increased its capacity and efficiency, and undertaken investigations of and conducted a number of trials against both politicians and businesspersons involved in corrupt activities. However, the ACB still faces serious financial, human resource and political constraints.

One of the biggest challenges is that the ACB is dependent upon the Director of Public Prosecution (DPP) for prosecutions. The DPP is directly nominated by the President. As a result, the ACB has often run into problems in relation to obtaining the necessary consent from the DPP to prosecute high profile cases, especially those linked to the government or the ruling party. This has created the impression among the public that the ACB is used by government for political witch-hunting and undermining the opposition. In this respect, the ACB has a lot of work to do to improve its public image.

Furthermore, the ACB has a lot of work to do to encourage many citizens to report corrupt practices. The AU convention obligates government or their agents to adopt measures to protect informants and witnesses in corruption, including protection of their identities, so that citizens can report instances of corruption without fear of reprisals.194
A key challenge is that the law does not adequately cover whistle–blowers, and as a result, people do not readily reveal corrupt acts in their organisations. This means that corrupt practices are not reported. The World Bank Governance and Corruption Baseline Survey of 2006\(^1\) indicated that the vast majority of both public officials as well as ordinary citizens who observed corrupt practices did not report them and that 57 percent of citizens felt that the reporting process offered little protection to whistleblowers. Another problem is that few people know how to report corruption. According to the 2009 US State Department, only 15 percent of surveyed citizens knew how to report corruption.

The media have played a significant role, monitoring the conduct of government officials and politicians and exposing corrupt practices. For example, the media were the first to expose the massive corruption scandal, dubbed the “cash gate scandal” in which billions of taxpayers’ money was lost through looting by civil servants and politicians through dubious contracts.

However, there are a number of factors that need to be addressed to enhance the media’s role in fighting corruption. Government’s excessive control and manipulation of the public media, especially the Malawi Broadcasting Corporation, reduces that vital branch of the media to a cheap propaganda tool for the government. Compounding the situation is government’s harassment of and bid to suppress outspoken sectors of the independent private media, because of their frequent and fearless exposures of flaws in government policy and conduct. The situation is further compounded by the lack of enabling legislation for access to information, which presents a problem to the media, especially the independent private media, in accessing sensitive information at high levels.

It is important to note that the ATI law will not solve the problem of provisions in other laws that are very restrictive on allowing access to information of public interest. Experts cite 22 Acts of Parliament which have 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), and Preservation of Public Security Act (1960), Presidential and Parliamentary Elections Act (1993).

**Conclusion**

The importance of access to information law in Malawi cannot be overemphasized. Apart from rendering the processes of government more open and making those in power more accountable to their people, the law could be a critical tool in combating corruption, which is endemic at all levels in the country.

The law will also ensure that people participate more effectively in national development activities. For instance, at the local level, the law could be used to ensure that people know what development projects are planned for their area, can review plans and proposals and check contracts to find out specifically the scope and cost of the work. People will also be able to assess whether work is done incorrectly or worse, never completed, and take action accordingly.

It needs to be acknowledged that corrupt practices and tendencies exist and thrive in an environment where the RTI is not readily exercised. As such, advocacy initiatives to encourage government to

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table the Access to Information Bill in Parliament should be continued. Where the RTI is effectively promoted and where information is readily available and accessible to the public and in the hands of citizens, they are in position to expose corrupt practices and to demand proper accountability from public officers.

**Recommendations**

- Malawi should pass the Access to Information bill. Malawi should not only do this because of its international commitments, but also because of its inherent value and importance.
- Malawians must be encouraged to remain vigilant to ensure proper implementation of the law once the ATI bill is enacted.
- The Anti–Corruption Bureau should intensify public awareness and encourage reporting of corrupt practices.
- The government should repeal all laws that act as barriers to access to information.
- Reporting to the African Commission on Human and People’s Rights should be continued. The Government should pay attention to the follow–up and implementation of ACHPR’s concluding observations and recommendations.

By Michael Kaiyatsa, CHRR
MOZAMBIQUE: GOOD GOVERNANCE AND TRANSPARENCY TO ENSURE JUSTICE

Laws affecting RTI and corruption in the country:
- Access to Information Act, 2014
- 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
- Universal Declaration of Human Rights,
- International Covenant on Civil and Political Rights;
- United Nations Convention Against Corruption
- African Charter on Democracy, Elections and Governance.
- The African Union Youth Charter,
- AU Convention on Preventing and Combating Corruption
- AU Youth Charter
- African Statistics Charter
- African Charter on the Values and Principles of Public Service Administration

Open Government Partnership status:
- 5 Points to meet eligibility

Status of ACHPR Reporting
- Fully compliant

Other Platforms
- Extractive Industries Transparency Initiative

Introduction

With the swearing into office of a new president, Filipe Jacinto Nyusi (56) and government in January 2015 after the general elections held in October 2014, Mozambique began an important era after independence from Portugal 40 years ago. Unlike the previous heads of state, the new president is not a veteran of the liberation war and has implemented what he calls “measures

196 He was born from veterans, grew and studied in the then liberated zones of Mozambique during the guerrilla war against the Portuguese colonial regime.
to ensure good governance and transparency to bring justice to the people and to fight corruption from top to bottom”197.

For Nyusi, “corruption, division, discrimination and exclusion are things which cause intolerance, impatience and discontent”. Speaking at public rallies and press conferences, the new president mentions quite often that “people have to know what is being done, because it is being done for everybody and not just for a handful of individuals”.

Following an initial tussle with Armando Guebuza, his predecessor, Nyusi managed to take over as the chairperson of the ruling Frelimo party which gave him more powers and confidence to rule, especially a clear mandate in the dialogue with the political opposition parties, particularly with Renamo the former rebel movement which still keeps armed opposition in the country.

This apparent political maturing comes at a time when the prospect of significant economic transition is gaining ground.198

A Right to Information Bill199 was passed on 31st December 2014. It is a piece of legislation that can contribute immensely to the fight against corruption in Mozambique although it still needs to be regulated.

**General status of the right to information and corruption in Mozambique**

Corruption manifests itself in many forms in Mozambique, from petty and bureaucratic corruption to political and grand corruption with a negative impact on the country’s social and economic development.

The Government adopted the first ever corruption specific legislation in 2004—The Anti–Corruption Law (Law n. 6/2004). Two definitions of corruption were established (i.e. passive corruption and active corruption)200, but practices such as embezzlement of public funds, traffic of influence, money laundering and illicit enrichment, although frequent in Mozambican public administration, were left out probably to protect the system.

In July 2011, the Council of Ministers adopted the “Anti–Corruption Package”201, which was formally submitted in full to Parliament in November that year. It was partially approved almost a year later. The approved parts of the package included the Law Nr. 16/2012, the Public Probity Law, originally conceived as a code of ethics for public servants. It establishes legal grounds regarding public morality and respect for the public good. The law includes provisions that define conflicts of interest for public officials and establishes an independent Ethics Commission.

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197 New president speaking at the sworn in ceremony in Maputo on January 15, 2015
199 www.portaldogoverno.gov.mz
200 Active corruption refers to the offence committed by the person who promises or gives the bribe; as contrasted to ‘passive corruption’, which is the offence committed by the official who receives the bribe. See more at: http://www.u4.no/glossary/active-and-passive-bribery/#sthash.kZfzU7wK.dpuf
201 Under this package a Central Office for Combating Corruption or the GCCC (“Gabinete Central de Combate à Corrupção”) was established.

**Legal framework on corruption**

Mozambique ratified the SADC Protocol against Corruption in 2007, the African Union Convention on Preventing and Combating Corruption in 2006, and the UN Convention against Corruption in 2008. At the national level, fighting corruption has been prioritised by previous governments in Mozambique.

A new Penal Code is now in place. It revokes the colonial one and criminalizes both passive and active bribery of and by public officials and members of the judiciary.

Other legal instruments include the Law Nr. 14/2013, the Law on Prevention and Fight against Money Laundering and Terrorism Financing criminalizes the laundering of the proceeds of crime. We can Also mention the Law Nr. 15/2012, the Law for the protection of the rights and interests of victims, whistleblowers, witnesses, declarants and experts in criminal proceedings, which also established the Central Office for the Protection of the Victim.

**Consequences of corruption in Mozambique**

One of the immediate consequences of corruption is the lack of confidence in the public institutions, eroding government legitimacy and undermining social stability.

Although Mozambique is said to have good policies and strategies to fight corruption, indicators from the past decade demonstrate that it has not made significant advances in the area of governance and control of corruption.

Studies done by some international anti–corruption bodies on Mozambique indicate that weak public administration standards, a weak judiciary and a lukewarm political commitment to fight corruption have created serious governance problems. This is because the country is becoming one of the fastest growing economies in the sub-Saharan region after the discovery of huge natural gas reserves in the Northern Cabo Delgado Province, bordering with Tanzania.

Transparency International has ranked Mozambique 123rd out of 174 most corrupt countries. In 2011, a survey of public opinion on corruption from Transparency International in Southern Africa indicated that Mozambicans reported the highest incidence of bribery in the region. Sixty–eight per cent of the people surveyed paid a bribe in the previous year; 48% had bribed the police and 35% had paid a bribe for education services.

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202 The 2015/2019 governmental plan puts more emphasis on the issue bringing as some of the priorities to improve human capital and increasing salaries of the public servants. Teachers, policemen and medical personnel who were the less paid have already benefited from salary increase in 2015.

203 Become effective at beginning of July 2015.

204 The previous penal code was approved in 1886 by the then Portuguese colonial regime.

205 Transparency International 2013b

206 Transparency International 2011
The World Bank’s Control of Corruption indicators which is part of a large dataset of governance indicators, showed a slight positive trend for Mozambique between 2006 and 2010, even though control of corruption appeared to have deteriorated in 2011.

The Worldwide Governance Indicators (WGI)\(^{207}\), which include an indicator for the control of corruption, and ranges from 0 (lowest control of corruption) to 100 (highest control of corruption), gave Mozambique a value of 29.67 per cent in 2013, which is slightly below the sub-Saharan Africa average. Since 2002, Mozambique’s value for control of corruption has fluctuated between the 30 percentile rank and the 40 percentile rank. In 2010, the country achieved its highest indicator value of 41\(^{208}\).

The 2013 Ibrahim Index of African Governance gives Mozambique a score of 38.3 out of 100, below the African average of 41. This index also shows the deterioration of Mozambique’s score since 2007, when it reached its peak score of 47.5\(^{209}\).

Other indexes concur with the poor state of corruption control in Mozambique. Transparency International’s Corruption Perceptions Index (CPI) shows that in 2013, Mozambique received a score of 30 on a scale that ranges from 0 (most corrupt) to 100 (least corrupt).

With regard to citizens’ perceptions of corruption, 45 per cent of citizens in Mozambique surveyed within the framework of Transparency International’s Global Corruption Barometer considered that corruption is a serious problem in the country, and 32 per cent believe that the levels of corruption have increased in the country in the two years preceding the survey\(^{210}\).

Corruption is also considered a great problem by the private sector. Approximately 16 per cent of the business community believes that corruption is the most problematic factor for doing business in the country. In fact, corruption is considered as the second major constraint to their operations\(^{211}\).

The fact that the Mozambican executive which is responsible for the appointment of public officials in different government agencies and bodies wields too much power, makes the reliance on personal and partisan relationships more prominent\(^{212}\).

The Bertelsmann Transformation Index of 2014 indicates that elites enjoy a favourable position when bidding for government contracts\(^{213}\). This is corroborated by the 2013/2014 Global Competitiveness Report which gives Mozambique a favouritism rating of 2.7 out of 7 (7 being no government favouritism, 1 being significant government favouritism)\(^{214}\).

The tendency to favouritism and patronage is also demonstrated in the Afrobarometer results (2013). For instance, 30 per cent of respondents agree that, once in office, elected leaders are obliged to help their community or group first. The question here is, the consequences of corruption in the country. It would be difficult to get a straight answer.

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\(^{207}\) Worldwide Governance Indicators 2013
\(^{208}\) World Bank Institute 2013
\(^{209}\) Mo Ibrahim Foundation 2013.
\(^{210}\) Transparency International 2013b
\(^{211}\) World Economic Forum 2014
\(^{212}\) Oxford Policy Management 2012.
\(^{213}\) Bertelsmann Foundation 2014.
\(^{214}\) World Economic Forum 2014.
On a daily basis, citizens experience petty administrative corruption in different spheres of life like at police checkpoints, health institutions, schools as well as government offices and the new authorities are well aware of this. As a sign of this awareness, during the second half of July 2015 the new Prime Minister Carlos Agostinho do Rosário launched a drive to update the lists of state employees, and eliminate any “ghost workers” starting what is known as the “proof of life”. Under this scheme, all state employees must present themselves in person at one of the registration offices to prove that they exist.

Also during the same period do Rosário launched the government’s campaign to draw up a complete inventory of state property as part of a drive to improve the management of public finances. The government has vowed to undertake a complete inventory every five years. The current campaign seeks to identify all state assets, in order to update the existing records of state property hoping that it would lead to rationalization, better priorities for public expenditure, and an improvement in accountability.

Under this drive, throughout Mozambique government teams are checking on the physical existence of everyone claiming to be an army veteran, and thus entitled to a military pension which is entitled to all the 169,034 registered veterans, 156,000 of whom have had their pensions fixed.

At the beginning of July, staff of the Mozambican customs service, in the central province of Sofala, were charged with the theft of five million meticais (about 131,000 US dollars), through the falsification of tax receipts.

According to Bernardo Duce, the spokesperson of the Central Office for the Fight against Corruption (GCCC), “what they did was to receive certain amounts from taxpayers, and then falsify the documents proving receipt of those sums, writing down smaller values and pocketing the rest”. The case has now been sent to court for trial.

Other cases under investigation include the case of the head of the social welfare department, in the Maputo Provincial Directorate of Veterans Affairs, who is accused of setting up a bank account in 2010 where she deposited large sums of money resulting from falsification of documents for the payment of veterans’ pensions and of six officials of a public institution in the central Mozambique’s province of Manica charged with defrauding the state of about USD 37,000.

Also worth mentioning is the case of Mrs. Lucia Salimo the administrator of Ngauma district in the northern Mozambican province of Niassa, who was found guilty of embezzlement by the provincial court. The judge proved that Salimo had ordered the transfer of 1,203,150 meticais (about 31,660 US dollars) belonging to the Ngauma district government to her personal bank account.

The role of the media, civil society and private sector

So far the media has played a crucial role in denouncing corruption cases in Mozambique. In fact because of confidence in the media most citizens prefer to use it to expose corruption cases. Many cases that ended in court, investigated by the anti corruption office or discussed in the country’s parliament were first reported in the Mozambican press.
The main corruption cases facing Mozambique are in its primary sector industries; namely, its gas, petroleum and mineral extraction sector as well as the forestry sector where there is a lot of government mismanagement.

Despite recent developments aimed at improving transparency, such as Mozambique’s status as an Extractive Industries Transparency Initiative certified state, reports in the media still surface about the mismanagement of resource extraction revenues, conflicts of interest in the allocation of licenses or subsidies, and the involvement of public officials in illegal or semi-legal extraction and export of these materials.

However, so far the media has taken little advantage of the RTI legislation and there are few dissemination activities in the country. Another constraint is that the effective implementation of the law depends on the scrapping of previous legislation like the state secrets act, revision of the press law and approval by the parliament of the broadcasting law.

**Challenges to the implementation of transparency provisions**

Recent studies concluded that corruption thrives in Mozambique because government is not sufficiently accountable to the citizens or to the law. This system is facilitated by a lack of oversight from the national assembly, a judicial system that puts politics above the law, and a lack of transparency. While some laws and regulations that exist on paper provide a framework for good governance, few control mechanisms are in place to ensure that these frameworks function transparently and in accordance with the public good.

Prompted by such weaknesses in the legal system, Mozambique’s Attorney–General, Beatriz Buchili, at beginning of July 2015 threatened criminal proceedings against staff in the country’s legal service that deliberately hold up cases. In a recent tour of Maputo she was repeatedly faced with complaints of delays of cases coming to trial and of appeals being heard. She found that the time limits for preventive detention were not respected—under Mozambican legislation the police cannot hold suspects for more than 48 hours before taking them to a magistrate to validate the detention.

While there are some initiatives that can be taken to counter corruption that will have impact in the short term, the sustainable solutions are long term and will require bold steps—tangible political commitments from high–level government officials, significant changes in “business–as–usual,” and a clear and unified message from international donors on the government’s need to address corruption. Passing new laws and establishing new institutions, by themselves, will not be sufficient. Sincere commitment and perseverance in the implementation of laws and building institutions that enhance transparency, increase accountability, and combat corruption by both high and low level officials and donors is required.

This translates into a long–term obligation to provide sufficient resources, build capacity and professionalism among Mozambican officials and increase public awareness within a coordinated and comprehensive anti–corruption programme.

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Reviewer(s): Marie Chêne, Tapiwa Uchizi Nyasulu Transparency International
Date: 30 September 2014.


**Recommendations**

- Combating corruption will require a comprehensive approach that prioritises transparency and citizen oversight of government. Provisions of the RTI Bill provide strong clauses, which can be used towards that objective.

- Mozambique needs to popularize the anti-corruption legislation and build confidence within the citizens so as not to fear reprisals when denouncing corruption cases. This can be facilitated by building the capacity of civil society to sensitise citizens, advocate for reform, monitor government to encourage responsive and accountable use of public resources and discourage corruption.

- It is also necessary that lower-level public servants are encouraged more to participate in the anti-corruption fighting giving them assurances of non-reprisals. Some positions in the government system must be awarded by merit a measure that can serve to discourage corruption.

- Urgent steps must be taken to regulate the RTI Bill as well as to do a survey on laws which can block implementation of the bill like the secrecy act and the press law.

- The present political will to fight corruption in Mozambique must be captured and maximized by the civil society in Mozambique by ensuring that the country joins OGP.

- Civil society must research on the stage of implementation of the treaties signed by Mozambique as well as the appealing systems for information requests in place.

- Civil society must also advocate for the establishment of strong institutions of governance that exercise effective checks and balances, systems that ensure transparency and accountability, and clear sanctions for those who engage in corruption.

By Alfredo Libombo, ACREDITAR
SOUTH AFRICA:
LEGISLATIVE AND IMPLEMENTATION GAPS TO PROMOTE RIGHT TO INFORMATION AND FIGHT CORRUPTION

Laws affecting RTI and corruption in the country
- Protected Disclosures Act 2000
- Promotion of Access to Information Act 2000
- Protection of Personal Information Act 2013
- Promotion of Administrative Justice Act 2000
- Prevention and Combating of Corrupt Activities Act 2004
- Public Administration Management Act 2014
- Public Finance Management Act 1999
- Local Government Municipal Systems Act 2000
- Members Ethics Act 1998

Treaties regarding RTI ratified by the country
- African Charter on Human and Peoples’ Rights
- Universal Declaration of Human Rights
- United Nations Convention Against Corruption
- International Covenant on Civil and Political Rights
- African Charter on Democracy, Elections and Governance
- African Union Convention on Preventing and Combating Corruption
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- OECD Anti-Bribery Convention
- SADC Protocol Against Corruption

Member or not of platforms and partnerships promoting RTI
- Open Government Partnership (founding member)

Introduction
South Africa has a number of international and treaty obligations targeted at preventing corruption. In spite of this, implementation of such measures has not always been effective, resulting in retrogressive steps. This article reflects on the salient areas in the fight against corruption and the right of access to information in South Africa in 2015.
Corruption in South Africa

Corruption, or the perception of the existence of corruption, is on the increase in South Africa\(^{216}\). In the 2014, Transparency International’s Perceptions of Corruption South Africa was ranked 67 out of 175 countries worldwide. Corruption and fraud in South Africa is estimated to cost citizens in excess of R100 billion a year\(^{217}\). High profile corruption cases mar the top echelons of South African politics—from the allegations of the President’s complicit involvement in the illegal expenditure of public funds in the redevelopment of his family estate in Nkandla, to revelations that the South African government paid bribes to FIFA officials to ensure South Africa was awarded the 2010 Soccer World Cup\(^{218}\).

This severely impacts the South African environment. For one, legitimacy in the state is eroded by high perceptions of corruption\(^{219}\). While the Open Government Index ranked South Africa as the 27\(^{th}\) most “open government” out of the 102 countries evaluated, it noted that South Africa performed worst at the level of sanctioning officials for misconduct than in other areas\(^{220}\). The failure to hold corrupt actors to account threatens the trust between state and citizen.

The huge impact of both illegal expenditure and corruption constrains the capacity to provide adequate service delivery, particularly at local government level. This is all the more worrying given that South Africa has a gini coefficient estimated to be the highest in the world.

Socio–political factors

In September 2011 the South African government became a founding member of the Open Government Partnership (OGP), a global effort for improving governance. South Africa has already submitted two action plans; the first was tabled at the Heads of State summit that took place on the sidelines of the UN General Assembly on 20 September 2011. It was also at this summit that the heads of state from the eight OGP countries adopted a declaration on Open Government. The OGP’s significance in terms of access to information and corruption–fighting opportunities is only set to grow. In October 2014 South Africa took the role of Support Chair on the Open Government Partnership Steering Committee. South Africa will take the position of Lead Chair in October 2015. As South Africa attains such a prominent role within the OGP structure, there is a renewed urgency for civil society to be more actively engaged in the process, both through collaboration with government—and collaboration within the civil society. This initiative directly involves South African civil society not only in the process of developing commitments made, but also in monitoring and evaluation. An interesting anomaly is that, in spite of appearing progressive


\(^{220}\) Ibid
on a number of international platforms, South Africa is not a signatory to the Extractive Industries Transparency Initiative\textsuperscript{221}.

Another area of opportunity is the growing interest in the proactive disclosure of information, and not merely the responsive forms of access to information as obliged by a specific law. This allows civil society and media access to information without the need for an access to information request. Open data initiatives from government are on the rise: the City of Cape Town launched an Open Data Policy in 2015 and KwaZulu–Natal is in the process of drafting its own, as well as the City of Johannesburg. An open environmental data portal is being initiated by the Department of Environmental Affairs, an OGP Commitment. The Department of Government Communications and Information Systems is also exploring the feasibility of a broader open government data portal.

The National Treasury—after publishing a forward–thinking policy paper under the newly developed Chief Procurement Office—has created an e–Tender portal, which is a single platform from where all tenders will be centrally published. It is hoped that not only will this advance competitiveness, but also eliminate the opportunities for corruption inherent in an ipso facto closed tender system.

An important issue in the political sphere relates to interference in the prosecutorial and auditing entities in South Africa—which directly impacts accountability in relation to corruption prosecutions. The National Prosecuting Authority has for several years now been ripped apart by political interferences and crises. The Director of Public Prosecution Mxolisi Nxasana was given a golden handshake to leave his position after it was discovered he had had an undisclosed murder charge, this has followed a long series of either dismissals or withdrawals in the leadership of the Prosecuting Authority all attributable to political interference, such as that of Vusi Pikoli, Mokotedi Mpshe, Menzi Simelane and Nomgcobo Jiba.

The “Hawks” are the South African Directorate for Priority Crime Investigation under the South African Police Services. They controversially replaced the disbanded “Scorpions” (the National Prosecuting Authority’s Priority Crimes Unit) due to political forces in 2009—and continue to exist even after the Constitutional Court held that the legislation that brought them into being did not ensure enough independence. The independence of the directorate is still under question. The head, Anwa Dramat, quit his position after being suspended for his involvement in the rendition of a group of Zimbabwean citizens, but also under a cloud of controversial additional political motivations.

Even the South African Revenue Services (SARS) has in most recent years begun to feel such pressures of interference. In 2015 the SARS Commissioner Ivan Pillay also quit under political pressure, ostensibly because of the secret spy unit that had been formed within the Service.

While there are a variety of agencies that have a corruption–fighting mandate, the National Anti–Corruption Forum was established as a way of coordinating the activities undertaken by departments such as the Public Service Commission and Department of Public Services and Administration with private sector and civil society actors. Yet is has been criticised for being

Besides, the current internal controversies that have disabled the Congress of South African Trade Unions have also had a ripple effect on the efficiency of the forum as the current Chair. The weakness of the Forum was directly acknowledged by government when it tabled as one of its first National Action Plan OGP Commitments the need to “[e]nhance national integrity through capacity–building of the National Anti–Corruption Forum and Anti–Corruption Hotline”.

**Legislative interventions**

There are a number of legislative interventions designed to combat corruption (a fuller list is provided in the information box above), though we will briefly discuss the areas of greatest impact for the South African context.

**National**

Access to information is ensured in South Africa through the Promotion of Access to Information Act 2 of 2000 (PAIA), which extends the right of access to information held by private bodies for the exercise or protection of any other right. This law is a vital tool for combating corruption, which beyond the obvious connections between information and accountability, is also confirmed by empirical research. According to reports based on data gathered in the United States , the introduction of stronger access to information laws results in a direct increase in the number of corruption convictions.

This assists us in two respects: firstly, it confirms that there is a direct link between access to information law and corruption fighting. Secondly, it also tells us that the existence of the law does not make the corruption battle a fait accompli. Instead, reform continues to be a necessary concern for anti–corruption advocates. This is especially important when we consider the poor implementation of PAIA in the South African context. In a broad study of PAIA applications at local government level for simple budgetary information in 2015, 86% of the requests were simply ignored. The problem is not just a lack of responses. Public awareness of the law is low, and there is a variety of additional factors that deter its use , such as delays in response and not knowing what to request.

The need for a form of ombudsman, such as an information Commission, has been considered as a priority for the realisation of the right of access to information in South Africa. The Protection of Personal Information Act of 2014, acknowledging this need, has created an Information Commission that will have oversight both over that law and PAIA. The establishment of this institution will have a profound effect on the information environment in South Africa in the near future.

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Another relevant law is the Prevention and Combating of Corrupt Activities Act 2004. This Act sought to bring South African law in line with the United Nations (UN) Convention Against Corruption and the African Union (AU) Convention on Preventing and Combating Corruption. Possibly, the most significant objective of the Act was to create the crime of corruption. It then also creates penalties and offences for those engaging in corrupt activities. It has an interesting structural approach to dealing with corruption by, for instance, requiring the creation of a register to prevent people who use corruption from getting government contracts or tenders, as well as requiring people in positions of authority to report corruption over R100 000. This positive obligation to report corruption is worth noting, and is contained in section 34 of this law. However, as addressed above, if prosecutions are not pursued, the creation of offences means little.

In December 2014 the Department of Public Services and Administration also passed the Public Administration Management Act of 2014 that prohibits all public servants from conducting business with the state, as a means of tackling corruption. It also creates further obligations in terms of financial disclosures of assets of officials, some of which already exist in terms of the other laws identified in the summary information box.

Another particular legislative area of import is the Protected Disclosures Act of 2000 (PDA), which is the law designed to protect whistleblowers that raise disclosures in relation to corruption and illegal expenditure. Employees are often in the best position to detect criminal activities and irregular conduct at work. The PDA, recognising this, seeks to protect employees seeking to disclose in an employment relationship. This Act remains the key South African law dedicated to whistleblower protection. However, the law has several noteworthy inadequacies that could be improved by:

- Extending protection to independent contractors and former employees,
- Extending the number of agencies to whom a protected disclosure can be made as far as reasonably possible,
- Allowing for confidential disclosures,
- Putting in place positive obligations to establish whistle blowing policies,
- Creating positive obligations for annual reporting on policies and actions taken in terms of policies, and
- Lifting the cap on compensation

Further, the implementation of the law is poor, with employers consistently seeking to escape its application through frivolous litigation activities.

**International**

The OGP creates obligations (as seen above), but there are other international obligations as well. South Africa has ratified the AU Convention on Preventing and Combating Corruption and embedded it locally through the Prevention and Combating of Corrupt Activities Act 2004. However, throughout this case study we have seen how the reality of the South African context contradicts many of its undertakings under the convention.

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228 Razzano 2015b.Ibid..
Although it is not a member, South Africa has been identified as a key strategic partner in the Organisation for Economic Co-operation and Development. As a result of this, South Africa has ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and participating in the associated peer review mechanism. However, a report from Transparency International sadly noted that there had been no enforcement of the Convention in South Africa.

**Conclusion**

South Africa has legislative gaps in relation to the combating of corruption. It also has a poor implementation of the laws in place to fight corruption and promote access to information. The political interference in agencies that have an enforcement role in holding officials to account for corruption in recent years is particularly worrying. There also seems to be a lack of political will to ensure this direct form of accountability. Nevertheless, there are opportunities in relation to the advancement of access to information in South Africa, such as the Open Government Partnership and the broader advancement of proactive disclosure of information through open data. Given how active civil society and the media are in pursuing access to information and exposing corruption, these opportunities must be fully utilised for the advancement of the right of access for all citizens.

**Recommendations**

- In furtherance of Article 9 of the AU Convention, the Information Commission should be established independently and adequately funded post–haste to give full expression to the South African Promotion of Access to Information Act.
- In furtherance of Article 5(3) the independence of corruption fighting must be strengthened, and the current consistent pattern of political interference halted with immediate effect.
- In furtherance of Article 9, 5(3) and others, South Africa should fully implement the transparency commitments it has made in terms of both National Action Plans it has tabled before the Open Government Partnership.
- In furtherance of Article 7(4) of the AU Declaration, the Chief Procurement Office should fully implement their e–Tender portal and capacitate SME’s for its full utilisation to be ensured.

By Gabriella Razzano, ODAC

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Treaties regarding RTI ratified by the country
- African Charter on Human and People’s Rights
- African Charter on Democracy Elections and Governance
- Universal Declaration of Human Rights,
- United Nations Convention Against Corruption
- International Covenant on Civil and Political Rights;
- African Charter on the Values and Principles of Public Service and Administration,
- The African Union
- AU Conv on Preventing and Combating Corruption
- African Union Youth Charter

Legal framework for access to information
- Despite Zambia’s signing of the African Charter on Human and People’s Rights (ACHPR) on 17th January 1983; the country has no ATI law.

Introduction
Zambia, being a party to the the African Charter on Human and People’s Rights, is required to recognize the rights, freedoms and duties enshrined in the charter and is obliged to undertake the necessary steps, in accordance with its constitutional processes and with the provisions of the present charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of the charter.

For instance, Article 9 of the Charter has two provisions:
- Every individual shall have the right to receive information.
- Every individual shall have the right to express and disseminate his opinions within the law.

The right to information is recognised as part of the right of freedom of expression under Article 20 of the Constitution. There is a proposal to provide specific guarantees to the right to information under Article 37.

Promises of politicians on ATI
Zambian politicians are synonymous with pronouncements of offering to give the Zambian people an ATI law only during election campaign periods but, without shame, they go to sleep or take up a defensive position immediately after assuming office.
It all started during the early 1980s when the Zambian media practitioners mobilised a public outcry for the enactment of Freedom of Information (FOI) law, now ATI law. This is a period when the country rose against first Republican president Dr Kenneth Kaunda’s one party state and agitated for the multiparty system. The proponents of multi-partism mainly led by the Movement for Multi-party Democracy (MMD) took to the streets and podiums, assuring the unsuspecting Zambians of access to information law as soon as the country returned to a multiparty system of government.

An opportunity availed itself and the MMD went into government after the 1991 general election. But alas, there was a loud silence over the access to information campaign promise. Whenever reminded of their promise, the MMD government through its ministry of information kept on issuing ministerial statements in support and assuring Zambians that an access to information bill would be presented in the National Assembly for enactment. The blame game continued until 2002 when the original ATI bill process started under the new MMD leadership of the late president Levy Mwanawasa. At the time, the bill went to parliament as a private member’s bill. It was formulated and supported by then opposition United Party for National Development members of parliament Sakwiba Sikota and Given Lubinda on part, and Dipak Patel from the Forum for Democracy and Development. The bill received overwhelming support from members of parliament, including those from the ruling party. But, for fear of being embarrassed, the government took over sponsorship of the bill and promised to reintroduce it in the same sitting of parliament as a government–sponsored bill. Unfortunately, president Mwanawasa died in 2008 without accomplishing his promise on ATI. His successor Rupiah Banda offered more promises than action, prompting his opponents, mainly the Patriotic Front (PF) to cease an opportunity to use it against him prior to and during the 2011 election campaign period. However, that was never fulfilled until the MMD lost elections nine years later. The PF administration under Michael Sata gave hope to many that it would enact this law. Disappointingly, Sata never lived up to his populist stance but died without enacting the ATI law.

It is public record that the PF government promised immediate enactment of the ATI legislation as one of its flagship activities for further liberalisation of the governance systems and media environment once elected into office. This was widely received as a move that would transform Zambia into a truly participatory governance system that enables its citizens to make informed decisions. However, the highly anticipated presentation of the ATI bill has stalled since then. The first permanent secretary at the ministry of Information and Broadcasting Services Amos Malupenga, a journalist by profession, offered some hope by constituting a task force comprising members of civil society and government officials to redraft the ATI bill. Malupenga, who was the chairperson and spokes person of the task force, kept on updating the public on the ATI bill drafting process.

Membership of this task force included; Transparency International Zambia (TIZ), Economics Association of Zambia (EAZ), MISA Zambia and Jesuit Centre for Theological Reflection, among other civil society organisations. The task force redrafted the ATI bill with provisions that allowed the establishment of an independent Access to Information Commission and gave effect to the right to access information.
Following the redrafting process, government announced that the bill would be launched in June 2012. However, the public was informed that the re-drafted bill could not be launched before the Attorney General’s office reviewed it. While the public waited for the Attorney General to make its comments on the redrafted bill, Malupenga was transferred from the ministry of information and was replaced by another journalist, Emmanuel Mwamba. Mwamba restarted the process by engaging a lawyer to harmonise the redrafted bill with other existing laws. He argued that some provisions in the redrafted bill were in conflict with some existing laws and assured that the process would take a month to conclude. Before long, Mwamba was also removed from the ministry and replaced by a non media practitioner, Bert Mushala who showed little or no interest in the ATI law.

Since its ascension into power, the PF led government under the leadership of Sata had made at least four pronouncements on enacting the bill, but without much progress. The famous one was made by its former vice president Guy Scott, at Press Freedom Committee of the Post organised Lucy Sichone and Bright Mwape Award presentation dinner on 24th August, 2012 where he said the draft bill would be tabled before parliament in February 2013.

The ATI campaign took a centre stage during the presidential by-election held on January 20, 2015. On February 12, 2015, the newly appointed minister of information and broadcasting services Chishimba Kabwili informed the nation that he would ensure the ATI bill was tabled in parliament when the house resumed sitting on February 24th. However, that session adjourned sine die on March 27th without the bill being presented to parliament. At a press briefing on March 2nd, Kabwili further announced that the ATI bill was submitted to the Attorney General’s office for final refining, pending presentation to parliament.

The puzzle many Zambians are grappling with is whether these are honest indications of concrete promises that would actually see the ATI bill enacted into law in Zambia. This is so because history has taught them that the same excuses and inconsistencies had been used to delay the presentation of the bill. It is worth noting that in a ministerial statement to parliament on March 27th this year, the minister of information did not indicate any plans to present the bill, neither did he update the house on the process leading to the presentation of the bill. As time is fast running out, with very few parliamentary sittings before the 2016 general elections, the risk of another missed opportunity as experienced in the past four years of the Patriotic Front’s rule is again imminent.

The importance of ATI law cannot be over emphasised as it provides for the citizens’ RTI. Its absence results in speculation by the media and the general citizenry. Citizens are unable to access balanced and objective information including detailed developmental budgets from relevant authorities. This law is thus important as it empowers the citizenry who are able to make informed choices and decisions as well as provide checks and balances to their government.

**Civil society Advocacy for the RTI**

Meanwhile, realising the need for ATI and quickening the process of its enactment, the stakeholders formed a Civil Society Coalition on Access to Information in 2011 comprising the Media Institute of Southern Africa (MISA) Zambia Chapter, the Zambia Civic Education Association (ZCEA), the
Jesuit Centre for Theological Reflection (JCTR) and the Press Freedom Committee of the Post Newspapers (PFC). The inclusion of non–media bodies was aimed to remove a media face to the campaign process. This was meant to remove the perception that the law once enacted would only benefit journalists. The Coalition, chaired by JCTR, has gone round the country advocating for the enactment of the ATI law. The coalition has met traditional leaders and their subjects in selected chiefdoms across the country, members of parliament, religious leaders and government officials.

The purpose has been to make these stakeholders understand that the law, if enacted, would have more advantages than disadvantages. The coalition has advanced the following reasons, among others, for the ATI campaign:

- It is a fundamental part of the FOE. Where citizens are ill informed and unable to access information, it is impossible for them to exercise their right to FOE.
- Information is a requirement in all spheres of human existence.
- It strengthens democracy by ensuring an informed society.
- It supports participatory development by ensuring that citizens are able to contribute to development through holding their leaders accountable.
- It is an important tool for fighting corruption.
- It promotes openness which engenders greater public trust in their representatives.
- It enables citizens to make informed decisions.
- It breaks the culture of secrecy in public offices.

In order to consummate the minister’s pronouncement on the ATI bill, the civil society coalition on ATI has submitted the following demands to government to ensure it enacts the ATI bill before the 2016 general elections, at the earliest possible time:

- Government should indicate, through a roadmap, a timeline of the processes leading up to the presentation of the bill with an estimated timeframe for public accountability.
- Government should circulate the revised version of the draft ATI bill to allow for review and participation by members of the public, pressure groups and other stakeholders. This is important because the bill is for the people, the citizens of this country who should be involved throughout the process.
- Citizens must begin to demand immediate enactment of the ATI bill. There must be creation of understanding on the essence of the ATI bill.
- Government should not politicise the ATI bill; there should be concrete assurance from the officers concerned to ensure that there is no chance of u–turning at any stage. A social contract should possibly be signed.

It is the conviction of the coalition that the ATI law has been proven to be not only a fundamental right but also a means of power because once individuals have the right information, they will be in a position to respond and make appropriate decisions concerning the way they are governed. They will also be in a position to meaningfully participate in the decision making process of their country. With this conviction, the coalition is set for another uphill battle until the people’s will prevails.
Conclusion: Government response to demands for the RTI

Meanwhile, President Edgar Kungu and his information minister Kambwili vowed never to enact the ATI law because, according to them, some media houses had become irresponsible. The two public officers were incensed after an independent newspaper, The Post, published an expose of the government’s concealment of a $192 million loan that it contracted from a Chinese company for improvement of state security. Both President Lungu and Kambwili expressed reluctance to enact the ATI law for fear of “the same law being used to kick the PF administration out of power by the newspaper in next year’s election.”

As a result, Zambian political leaders are promoting an enabling environment for corruption to thrive. According to the Zambia Bribe Payer’s Index (ABPI) for the year 2014, corruption is on the increase with the Zambia has police being the most corrupt institution in the country. The ZBPI, which is a joint report by the Anti-Corruption Commission (ACC) and Transparency International Zambia (TIZ), indicated that corruption at the Zambia Police increased from 48.3 percent in 2012 to 78.3 percent in 2014. The ZBPI report further indicated that the local authorities also showed an increase in corruption from 7.45 percent in 2012 to 17.50 in 2014 followed by the Road Traffic and Safety Agency from 14.40 in 2012 to 14.72 in 2014 prompting deputy secretary to the Cabinet Ambassador Peter Kasanda to direct the ACC to issue a memo at Cabinet Office highlighting the corruption captured in the report.

Recommendations

- Zambia Government should urgently adopt and effectively implement right to information law.
- The local civil society should consider mass mobilisation to raise the voice on the need for the RTI. Probably picketing the National Assembly so that a motion can be moved in the House to debate the matter and compel government to enact legislations.
- There is need for stronger partnerships amongst stakeholders in the fight against corruption.
- There should be increased awareness among the general public, and participation of all citizens in the fight against corruption
- Since the country is preparing for its next presidential and general elections, there is need to turn the RTI and corruption into advocacy issues to ensure all the political players subscribe to them through, for example, signing of social contracts.

By Brighton Phiri
### Laws affecting RTI and Corruption in Zimbabwe
- Access to Information and Protection of Privacy Act
- Official Secrets Act
- Criminal Law (Codification and Reform) Act
- Censorship and Entertainments Controls Act
- Interception of Communications Act
- Prevention of Corruption Act

### Treaties Regarding RTI ratified or signed by the country
- African Charter on Human and Peoples’ Rights
- SADC Protocol on Culture, Information, and Sport
- International Covenant on Civil and Political Rights
- Universal Declaration of Human Rights,
- United Nations Convention Against Corruption
- African Union Convention on Preventing and Combating Corruption,
- The African Union Youth Charter,

### Country Membership of RTI platforms
- None

### Introduction
More than two years ago, Zimbabwe adopted a new constitution that has relatively democratic provisions compared to the old supreme law which it adopted soon after independence. Besides an expansive Bill of Rights and clear separation of powers, the constitution also establishes commissions including the Anti–Corruption Commission which seeks to investigate cases of corruption. Despite this constitutional provision, Zimbabwe remains one of the countries regarded as highly corrupt. For example, in 2014, the Global Corruption Perception Index ranked Zimbabwe 156 out of 175 highly corrupt countries. In 2013, Zimbabwe scored 21 out of 100, a slight improvement from the 2012 figures where it ranked 20 out of 100. This state of affairs appears to feed on the failure by public bodies to proactively provide information to members of the public on their administrative and operational matters, leaving them less accountable to the very citizens they are supposed to serve.

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While the country’s constitution explicitly guarantees citizens the right of access to information, which right is also enunciated in the Access to Information of Protection of Privacy Act (AIPPA), access to information in the country remains practically impossible. The law itself imposes bureaucratic and cumbersome processes that citizens have to contend with before they can access information held by public bodies, defeating the standard purpose of having such a law, which is to make the government more open and accountable. Besides, there are other laws that broadly classify information held by state bodies, thereby prohibiting their publication. With such Acts and evident lack of political will to promote free flow of information, Zimbabwe’s ratification of the AU Convention on Preventing and Combating Corruption and its enactment of domestic laws on anti-corruption will remain a symbolic gesture that is simply meant to cast the country as belonging to a league of nations anchored on the rule of law, transparent and accountable governance.

Political, socio-economic terrain

For many years Zimbabwe has been characterised by political instability underscored by electoral disputes; political violence; human rights violations and the entrenchment of a hegemonic one-party rule. What propelled the country into this state of affairs is the formation of and growing support for a labour-based opposition party that offered a serious challenge to the ruling party since 1999. While the incumbent ruling elite has managed to ensure it remains in office, its political policies have resulted in economic chaos marked by shrinking economic contraction; declining industrial capacity utilisation base; record unemployment; collapse in public service delivery; infrastructural decay, among a host of other symptoms. In an effort to stem the economic tailspin, in 2009 the Zimbabwean government adopted a multi-currency regime and cash budgeting. This saw the real GDP growth average 8.5% for the period 2009–13, which contrasted sharply with a cumulative decline of at least 51% for the period 1998–2008. But subsequent to the promising 2009 growth, economic rebound is steadily slowing down from 11.4% (2010), 11.9 (2011), 10.6 (2012), approximately 3.4% (2013) and 3.1% (2014). The economic decline has seen the growth of the informal economy, which has risen from less than 10% of the labour force in 1980 to above 80% by 2011.

As numerous studies have shown, there is a correlation between economic growth and levels of corruption. Where there is economic decline and the majority of people resort to all manner of survival strategies, corruption festers. Zimbabwe is a typical example.

According to Afrobarometer Survey on Zimbabwe for 2014, 68% of adult Zimbabweans believe levels of corruption have increased in the country. The majority of those interviewed perceived politicians, government officials and agencies as well as the police as the most corrupt. Eighty

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232 Transparency International Report—Using the Right to Information as Anti-Corruption Tool, 2006
235 Ibid 4 above.
236 Afrobarometer is an African-led non-partisan survey conducted in at least 35 African countries to measure citizen attitudes on democracy and governance, the economy, civil society and other pertinent subjects. The goal of the survey is to give the public a voice in policy making by providing quality public opinion data to policy makers, policy advocates, civil society organisations, academics, investors, donors and ordinary Africans.
per cent saw government as less spirited and unwilling to combat corruption. Many pointed this out as well as fear of reprisals to those that report corruption as the reasons behind ordinary citizens’ disinterest in reporting cases of corruption.

Such perceptions are grounded on the evident failure by relevant authorities to decisively act on reported cases of corruption and impose deterrent sentences on those involved as spelt out in the law. Many cases that have been reported, especially those involving politically connected figures, have largely not been publicly attended to by relevant bodies. In cases where government has initiated investigations into reported matters, there have been little information on the progress of such probes for the benefit of the public.

Consequently, rather than prevent and combat corruption, government’s indecisive approach coupled with the country’s economic malaise appear to have engendered sleaze across all sectors of Zimbabwe as the majority try to find strategies to survive the obtaining economic hardships.

The legal framework

Like in many jurisdictions in Africa, corruption constitutes a criminal offence under Zimbabwean law. Besides being a state party to the African Union Convention of Preventing and Combating Corruption, which Zimbabwe signed in 2003, ratified in 2006 and deposited in 2007, the country has other instruments that it can use to stem and rid itself of corruption. In fact, the instruments mirror the spirit, letter and legal intent of the convention. Key among these pieces of legislation is the Prevention of Corruption Act, which Zimbabwe enacted in 1986 and lastly amended in 2005. The law seeks to “provide for the prevention of corruption and the investigation of claims arising from dishonesty or corruption; and to provide for matters connected therewith or incidental thereto”.

The law covers both public and private bodies as well as state and non–actors; outlines what constitutes corruption and imposes sentences for those found guilty of sleaze. The sentences range from forfeiture by the state of “any gift or consideration unlawfully obtained” by a convicted person, monetary compensation of those prejudiced by corrupt practices, to fines and prison terms of a maximum 20 years.

Among other positive attributes, the Act also provides for the prevention of victimisation of those that provide information exposing corruption.

To further protect individuals that provide information, Section 18 (2) (c) of the Act obligates the Ministry of Justice to draw up regulations that will better protect from victimization or other prejudice of persons who give information, whether in terms of the Act or otherwise, concerning any corrupt practice or other dishonest or unlawful conduct.

Apartment from the Prevention of Corruption Act, corrupt practices are also punished under Parts 3, 4 and 9 of the Criminal Law (Codification and Reform) Act, which respectively criminalise extortion, fraud and forgery; and bribery and corruption.

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237 See note 6 above
238 Prevention of Corruption Act Chapter 9:16 as amended July 2005
Added to this, there is a specific commission tasked to investigate and expose cases of corruption in the public and private sectors and make recommendations to government and other persons on how to enhance integrity and accountability in the public and private sectors, among other functions. This is established under Article 254 of the constitution.

**The law in practice**

While the legal framework can easily pass Zimbabwe as a country that is line with regional protocols in combating corruption, there is a legislative disjuncture that militates against free flowing information that could make exposing corrupt practices a lot easier. This legal discord is either caused by enactment of laws that negate the force of the other or the fragmentation of the administration of the Acts with similar provisions by different ministries and regulatory bodies.

For example, the country still has in its statutes the colonial Official Secrets Act (OSA) which bars publication or distribution of government information deemed to be confidential. Although classification of sensitive information held by public bodies is standard practice, the grounds upon which information is embargoed are so broad, making them susceptible to abuse. Any person accused of breaching this act is liable to a fine or maximum of 20 years in jail or both fine and jail term. The act makes it difficult for those working for state and government agencies to provide critical information that may be useful in stemming corruption in government or public bodies.

The Act is not only used on those that work for government but its former employees too. Its effect in curtailing the sharing of information on some of government conduct was laid bare in the recent past. That was when the state media, which reflects and echoes official government position warned those that were fired from the ruling ZANU PF and government against sharing certain information relating to the corruption of the electoral process in the country. The state media categorically stated that those that dared share such information would be charged under the OSA.

And while Zimbabweans can resort to AIPPA to demand provision of certain information held by public bodies that they can use to demand accountability, they are precluded from doing so on matters deemed to be covered under OSA.

Even demanding information that is not remotely linked to ‘sensitive’ government secrets is not as easy. AIPPA, for instance, imposes a laborious process that in practice hinders accessibility of information held by public bodies. In accordance with AIPPA, a person requesting information from a public body has to wait for 30 days before they could get a response. The public body may decide to further extend the waiting period by another 30 day–period or even longer once they get the approval of the Zimbabwe Media Commission. Further, the law prohibits access to information relating to cabinet operations such as that which deals with advice, policy recommendations, draft legislation or regulation prepared for submission or submitted to cabinet. Such information can be sought only after 25 years. This makes it difficult for citizens and the media to effectively watch over the exploitation of their resources by those in office.

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In putting the law to test, MISA–Zimbabwe has annually sought information from selected public bodies on their operations under its Golden Padlock and Key research\textsuperscript{240}. In all the successive years, the research has exposed the institutions’ unwillingness to provide information on their operations, however innocuous the information requested may be. For example, out of 12 public bodies that MISA–Zimbabwe selected and sent information requests in 2013, only four responded\textsuperscript{241}. The rest either ignored the requests completely or simply acknowledged receipt. The trend was similar in 2014\textsuperscript{242}.

**The role of the media**

The media have demonstrated some levels of professional tenacity in exposing malfeasance and mismanagement of public funds. However, such reports are isolated, politically motivated, selective and as such do not give a comprehensive picture of the scale of corruption in the country. Whereas the private media for instance expose corruption and frame their stories within the context of government kleptocracy, the state media either ignores such stories or reports on those issues that only expose public officials that would have fallen out of favour with the ruling party. Such stories are divorced from the macro political and socio-economic ills that have nurtured corruption and are simply presented as one–off cases by a few individuals driven by unmitigated greed. It is in this context that the majority of reports carried by the state media on corruption parrot government officials’ undertakings to rid Zimbabwe of corruption without measuring the rhetoric against action.

The effectiveness of a diligent and alert media in uncovering cases of corruption has been demonstrated over the years in post–colonial Zimbabwe with stories such as the Willowvale Vehicle scandal involving government officials in the 1980s; the War Victims Compensation Fund scandal in the 1990s; as well as the grain scandal in the 2000s, among others, having prompted government to set up commissions of inquiry to investigate the issues. However, save for the Willowvale Scandal where action was publicly taken against those involved, other matters were simply investigated, findings submitted to relevant government offices, and the reports presumably shelved as there was no follow up action taken.

It is because of such approaches to corruption that even as the private media have recently triggered parliamentary investigation into suspected abuse of community shares in mining companies that operate in communities\textsuperscript{243}, there is little hope that tangible action will be taken against those found guilty.

\textsuperscript{240} The Golden Padlock and Key Research is conducted by MISA Chapters in Southern African countries to assess the accessibility of information held by public bodies. The Chapters select some public institutions and send information requests seeking certain information and examine their responsiveness. The research also involves assessing the state and accessibility of the institutions websites in order to evaluate the degree to which public institutions pro–actively provides information relating to their administrative and operational matters.

\textsuperscript{241} MISA Golden Padlock and Key report, 2013.

\textsuperscript{242} MISA Golden Padlock and Key report 2014.

\textsuperscript{243} In 2011 the Zimbabwean government established Community Share Ownership Trusts in close to 59 communities in line with Section 14 of the Indigenization and Economic Empowerment Act. The Trusts are supposed to hold shares in qualifying businesses on behalf of their respective communities. According to the arrangement, companies were to cede 10% stake in all business that exploit natural resources to local communities. To date there has been no clarity on the total amount that companies ceded to the communities, the administration of the shares and how the benefits have trickled down to intended beneficiaries. In trying to unravel this, the private media carried a series of stories indicating improper transactions in the implementation of the programme that bordered on corrupt abuse of the scheme by officials involved. This resulted in Parliament initiating in July 2015 public hearings on the status of the Trusts.
However, while the private media demonstrate some investigative journalism on some of the corruption cases, it would appear the subject is underreported when viewed in the context of yearly reports produced by the government’s Auditor General. The reports reveal the depth of the rot, mismanagement and abuse of public funds by government departments and public institutions, which the media would have missed.

**Recommendations**

Although anti–corruption advocates such as Shaazka Beyerle\(^\text{244}\) argue that simply having a legal framework that recognises the right to access to information is not an automatic panacea in combating corruption, what is indisputable is that information is central in empowering citizens to demand accountability. In this light, the following recommendations are relevant:

- **Access to information as a fundamental right.** Because corruption flourishes in information darkness, it is critical that Zimbabwe extensively amends or repeals its access to information law so that it is in line with the constitution and modelled along international standards on promoting the right to know.

- **Convergence of legislative instruments.** It is critical that the country converges the law in accordance with local and international instruments on combating corruption. Such legislative convergence should set clear parameters and a state obligation in ensuring that information critical in combating corruption is not embargoed on self–serving specious grounds.

- **Put the law to the test and strategic litigation.** Although it is agreed that the country’s RTI law falls woefully short of democratically acceptable standards, it can still be used to try and access information that is essential in fighting corruption. It is only through putting the law to the test that its pitfalls can be exposed and used as an advocacy tool for requisite legislative reforms. Zimbabweans can also mount constitutional challenges to ensure judicial intervention in the promotion of their right to know.

- **Inculcate a culture of information sharing.** As the Transparency International argues, a successful access to information law is that which works both on paper and in practice\(^\text{245}\). It is therefore important that both state actors and non–state actors should build a culture of the right to information whereby public bodies pro–actively provide information and civil society/ citizens actively seek information held by public bodies.

- **Efficient Information Management.** The right to know advocates have often interpreted failure by state/public institutions to provide information as deliberately designed to keep citizens uninformed. Some evidence shows that this is not always the case as such failure may be due incompetence and lack of capacity. It is thus important that public bodies are engaged in both their legal obligations in providing information and also in terms of building their capacities in information management and dissemination. This would promote pro–active information provision by public bodies.

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\(^{245}\) See note 2 above
Create the political will. While the involvement of the country’s governors in corruption cases poses serious challenges in engendering the political will necessary for stemming sleaze, it is important that civil society finds other strategies to build that will. Beyerle proposes building people power as a solution. She argues (2014:16): “In reality, people power has the capacity to create political will where it did not exist, apply pressure on recalcitrant institutions and governments to take action, and support those within the state or other institutions who are attempting to fight the corrupt system but have been blocked or threatened”\(^{246}\).

By Nhlanhla Ngwenya

\(^{246}\) See note 15 above
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Prisca Ntabaza joined Never Again Rwanda in June 2014 where she serves as the programme officer for the Governance and Rights Programme. She is a researcher on peace and human rights in the Great Lakes region and has been advising and assisting the African Special Rapporteur on Women’s Rights. Prisca holds a master’s degree in human rights and democratisation in Africa from the University of Pretoria.

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Dr. Joseph Nkurunziza is a medical doctor. For the past eight years, he has worked as both a physician and a public health expert. He also works as an HIV clinician. Dr. Joseph is the founder and president of the board of Never Again Rwanda. He is co-founder and board director of the Health Development Initiative, a Rwandan non-profit organization which aims at improving both the quality and accessibility of health care for all Rwandans through advocacy, education and training. At the same time, Joseph also serves on the board of directors for the Centre for Public Health & Development, a regional non-profit organization dedicated to improving health systems through innovative medical solutions in the Eastern and Southern Africa region. In 2010, Dr. Joseph was honoured by Junior Chambers International as one of the ten outstanding young persons of the world (TOYP 2010) in Osaka, Japan.

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**Ayode Longe** is a Programme Manager at Media Rights Agenda (MRA). He has been engaged in human rights advocacy for most of his professional life, working for the promotion of the rights to freedom of expression, the press and access to information, programme areas where he has worked for more than 10 years with MRA. He has conducted training on access to information for journalists and representatives of civil society organizations all over Nigeria. Mr. Longe is a Fellow of the United States Agency for International Development (USAID) international exchange programme on transparency and accountability. He has also traveled widely, both locally and internationally participating in programmes focused on freedom of expression, media freedom and access to information.

**Edetaen Ojo** is Executive Director of Media Rights Agenda in Nigeria. He is also Chair of the Board of Directors of the Media Foundation for West Africa, based in Ghana and is a member of the Board of the International Media Support in Copenhagen, Denmark. Mr. Ojo has worked on Freedom of Information, media freedom and freedom of expression, media development, Internet freedom, human rights and democracy issues in Nigeria, regionally and internationally for over 18 years and is a member of the Working Group on the African Platform on Access to Information (APAI). He was named an Internet Freedom Fellow in 2013 by the U.S. State Department.

**Brighton Phiri** is a journalist by profession. Currently working as an information and research officer for the Press Freedom Committee of the Post Newspapers (PFC). PFC of The Post is an advocacy wing of the Post newspaper, which was formed in 2000 with a view of promoting and protecting Press Freedom, Right to Information and Freedom of Expression.
THE ORGANIZATIONS

The Tanzania Citizens’ Information Bureau (TCIB) is a Tanzanian registered information think tank. It is a non-governmental, not-for-profit organization established to advance the inquiry into, education on and participation of Citizens in the promotion, protection and consolidation of democratic constitutionalism through the right of access appropriate and independently researched information about political, economic and social policies and issues in Tanzania. It follows is a Rights Based Approach to solving local and international development problems and challenges. [http://www.tcib.or.tz/](http://www.tcib.or.tz/).

Open Democracy Advice Centre (ODAC) are the leading experts in relation to access to information and FOE in South Africa, and on the continent. They have driven strategic litigation on the Promotion of Access to Information Act and Protected Disclosures Act, and remain at the forefront at parliamentary advocacy on laws relating to transparency and good governance. They extend their scope to providing support to ensure the effective implementation of key legislation, by assisting public and private institutions to develop policies, procedures and systems. They provide public information and training on using the legislation through public awareness campaigns, and workshops. They also perform various forms of monitoring and research through applied and comparative research, which forms the evidence-base for our other activities. Read more at [www.opendemocracy.org.za](http://www.opendemocracy.org.za).

ACREDITAR is a membership driven association set up in 2011 by a group of Mozambican citizens interested in promoting efforts to consolidate democracy, accountability, social justice and socio-economic development of Mozambique. Amongst other activities ACREDITAR is promoting RTI as basic human right, use and access to ITC’s, training of its members, communities and other institutions including government in issues of human rights.

The Media Foundation for West Africa (MFWA) is a regional NGO based in Accra. Since its establishment in 1997, the MFWA has promoted FOE, media freedom, and media development throughout the sixteen countries in West Africa. Through the FOE Program, the MFWA has monitored and reported on free expression issues, advocated for law and policy reform, and campaigned against impunity in the region. [http://www.mfwa.org/](http://www.mfwa.org/)

The Center for Media Studies and Peacebuilding (CEMESP) is one of Liberia’s leading media development organizations. It was legally established on October 24th 2003 in response to the challenges confronting professional media practice and free speech as a result of years of conflict in Liberia. The attrition of war in human and material terms necessitated a post war media action to help in building state and non-actors synergy in charting a new direction based on democratic renewal that consolidates peace. Its primary objectives at inception were to strengthen the work of media professionals and human rights organizations and thereby enhance peace building efforts through the development of the capacities of these two key sectors to understand, anticipate and forecast conflicts as well as develop and plan holistic solutions to such conflicts. In line with its five years strategic plan, CEMESP is in transition from Peacebuilding to peace consolidation.
This in effect means that the organization has gone beyond its traditional role of training and defending journalists but rather adopting the multistakeholders approach in dealing with state and non–state actors to contribute to the national recovery efforts of a country in transition. http://www.cemespliberia.org/

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. The identity of HURINET–U lies with its diverse membership of 53 NGOs drawn from organizations that are committed to a wide range of human rights issues which are complementary in terms of areas of focus including; civil and political rights, economic social and political rights, child rights, gender and women’s issues, peace building and transitional justice. Members range from Ugandan NGOs to international organizations. www.hurinet.co.ug

Never Again Rwanda (NAR) is a human rights and peacebuilding organisation, guided by a vision of a nation where citizens are agents of positive change and work together towards sustainable peace and development; we empower citizens with opportunities to become active citizens. By working with decision–makers to make existing spaces for participation more effective, and by transforming citizens into actors who provide constructive feedback on programmes and policies as well as empowering them to effectively utilize existing and new mechanisms for participation, we seeks to enable citizens to channel their priorities, express their needs and hold leaders accountable in a peaceful and responsible manner. http://neveragainrwanda.org/

Article 19 East Africa is a regional human rights organisation that is active in 14 Eastern Africa countries in promoting and defending FOE and RTI 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 FOI laws. https://www.article19.org/

The Centre for Human Rights and Rehabilitation (CHRR) is one of the leading human rights and governance non–governmental organisations in Malawi. CHRR has been involved in 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. CHRR is member of AFIC since December 2013 and collaborates on campaigns for adoption of national access to information law, open government, social accountability and construction transparency initiatives. http://www.chrrmw.org/.

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/](http://www.ub.bw/)

**Media Rights Agenda (MRA)** is an independent, non-partisan, not-for-profit, non-governmental organization registered in Nigeria. It works to promote and defend the right to freedom of expression and press freedom as well as the right of access to information. Media Rights Agenda works on the following issues: Freedom of Expression, Freedom of Information, Media Freedom, Media Development, Media and Elections, Anti-Corruption, Digital Rights and Freedoms, as well as Internet Governance. 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](http://www.mediarightsagenda.net)
Citizens' Access to Information: A tool to Build Trust and Address Corruption
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