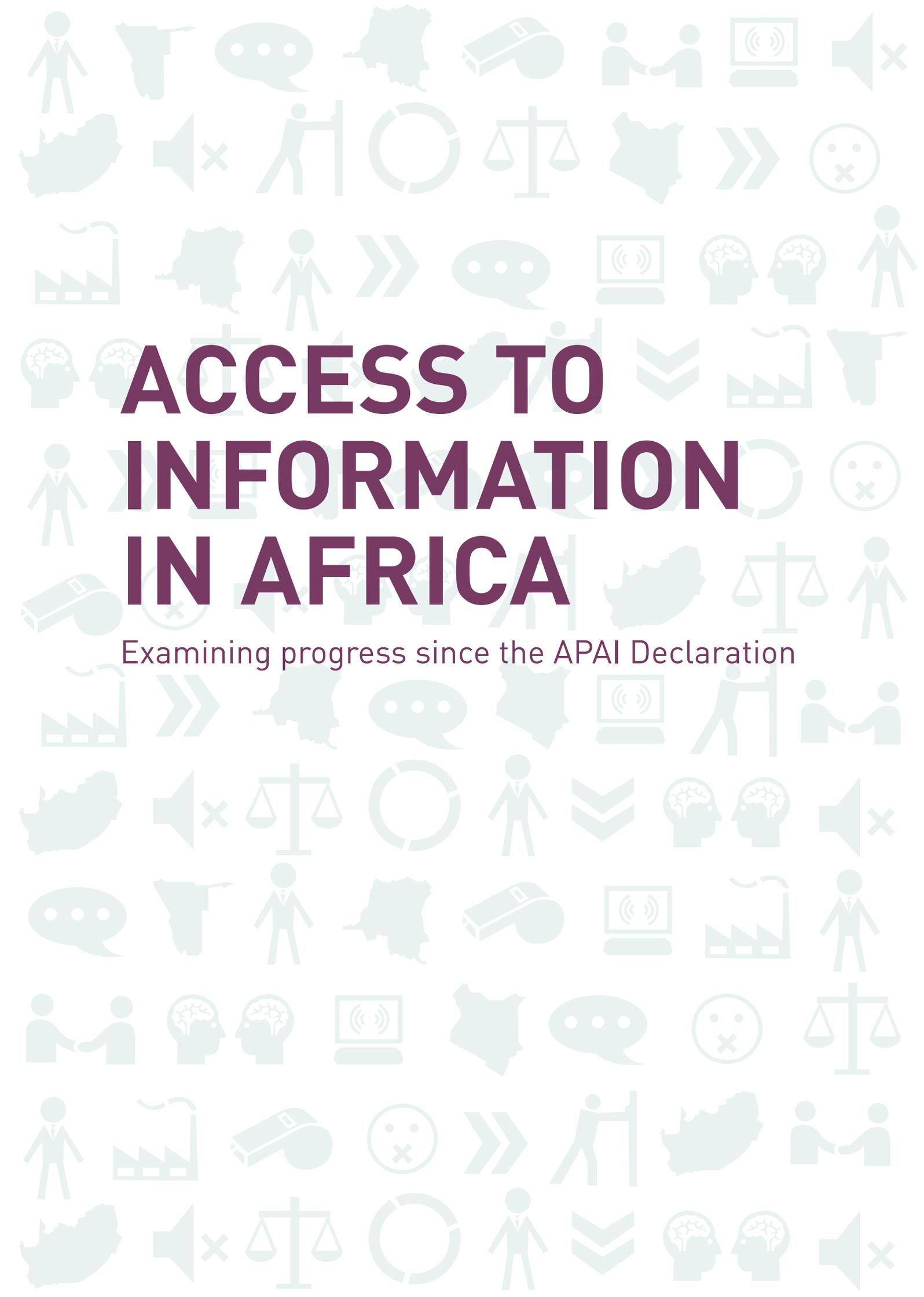

ACCESS TO INFORMATION IN AFRICA

Examining progress since the APAI Declaration

Campaign for
**AN AFRICAN
PLATFORM ON
ACCESS TO
INFORMATION**





ACCESS TO INFORMATION IN AFRICA

Examining progress since the APAI Declaration

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ALL COUNTRY SUMMARY

African Platform on Access to Information

The African Platform on Access to Information (APAI) working group was formed in 2009 in order to initiate a campaign to promote Access to Information in Africa around the 20th anniversary of the Windhoek Declaration on Press Freedom. As a fundamental campaign objective, the group seeks to promote the celebration of Right to Information Day on 28 September each year.

Introduction to the research

In order to further the ambitions of the APAI working group, in 2013 we undertook research – based upon the expertise and experience of our working group on access to information (ATI) issues in the region – which set out to provide a basic assessment on the state of access to information on the continent as a general reflection on the environment since the passage of the APAI Declaration on 19 September 2011. In order to do this, we created a survey based upon the APAI Declaration as a form of standard for assessing progress in the different countries. The APAI Declaration provides us with an informal standard for assessing the state of play in terms of different aspects of access to information, regardless of whether a specific access to information law exists in the country or not. However, not all the principles are applicable in every case.

This review covered fourteen countries, namely:

1. BOTSWANA
2. DEMOCRATIC
REPUBLIC OF
CONGO
3. GAMBIA
4. KENYA

5. MALAWI
6. NAMIBIA
7. NIGERIA
8. SENEGAL
9. SOUTH AFRICA
10. SWAZILAND

11. TANZANIA
12. UGANDA
13. ZAMBIA
14. ZIMBABWE

LEGAL STATUS

When reviewing the state of access to information in our African countries generally, countries were only given an average of 5 out of 10 – a not quite pass mark. The African countries reviewed are thus only halfway towards where they should be in terms of access to information.

Out of the twelve countries surveyed, only four have specific access to information laws.

These countries are:

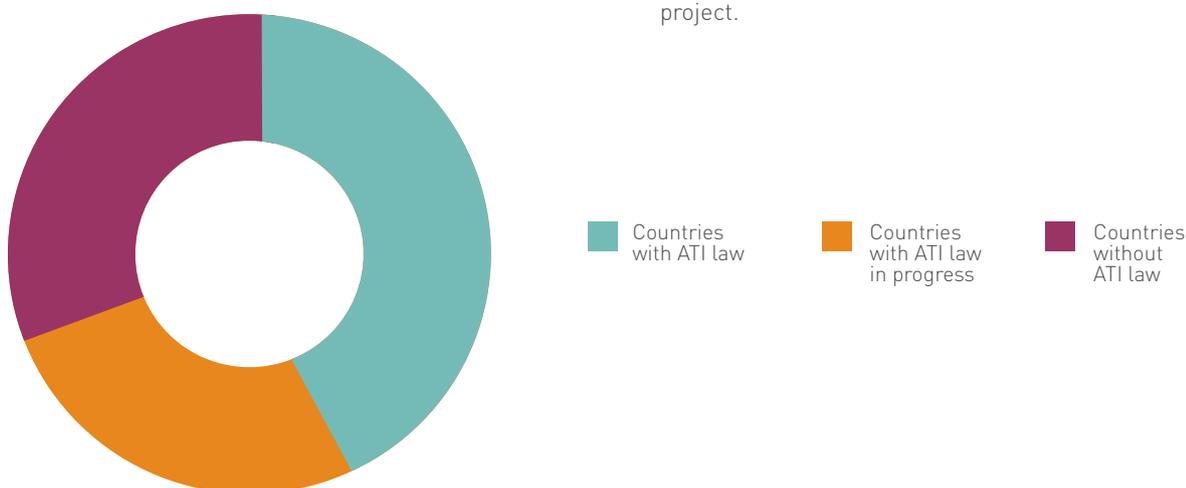
1. Nigeria
2. South Africa
3. Uganda
4. Zimbabwe

However, a significant indication of the shifting tide on the continent is that six of the countries surveyed have some form of specific access to information in a Bill or parliamentary process.

These countries are:

1. Democratic Republic of Congo
2. Kenya
3. Malawi
4. Senegal
5. Tanzania
6. Zambia

There are also progressive laws now in place in African countries like Liberia and Rwanda, however these countries were not surveyed as part of the research project.



RATINGS

Respondents were asked to rate the state of access to information in their countries of study on a scale of 1 to 10. The results were as follows:

Malawi	8
Kenya	7
Nigeria	7
South Africa	7
Uganda	7
Tanzania	6
Zimbabwe	6
Senegal	4
Zambia	3
Botswana	3
Democratic Republic of Congo	1
Gambia	1
Namibia	1
Swaziland	1

It is worth noting that three of the countries ranked within the top five are countries which have specific access to information law, with the top two ranked countries both having laws in process.

OTHER LAWS

Sectoral laws, which contribute to the access to information environment on the continent, also exist in some countries. According to the research, **65%** of the countries surveyed have sectoral laws, which can be utilised as an alternative mechanism. Importantly, of those countries, which do have sectoral laws, **five** (Senegal, Tanzania, Zambia, Democratic Republic of Congo and Kenya) do not have ATI-specific law. This means that these countries have an avenue for accessing information which could be explored as an alternative to a specific law and which could utilise the APAI Declaration as a principled standard for understanding their utility and implementation.

There are also other laws, which may not provide access mechanisms, but nevertheless contribute to the access to information environment. In this research, the two key forms examined were in relation to whistleblower protection and rights to access or correct personal data. However, in spite of their close association, only in Zimbabwe is it clear that there is a specific right and law allowing access to one's personal data. Perhaps more worrying is that 30% of the respondents were not sure whether or not the right exists, which reflects poorly on the generalised information environment.

Constitutional provisions may also have application. In Kenya, for example, the constitutional provision has been used in the place of an ATI-specific law with some success.

ACCESSING INFORMATION

When we considered the practice of accessing information, there was a divergence of experience. However, in our sample, the interviewees felt that on average you could **sometimes** access information if you requested it. This is therefore almost a middle-ground response and is probably indicative of not only divergence amongst countries, but also strong divergence within countries themselves. There is a strong sense in the research of the inconsistency of practice across departments, which makes the job of the

ordinary requester – who may not be well-versed in the peculiarities of different entities – all the more difficult.

It does appear clear, though, that a lack of formal mechanisms that may arise from an ATI-specific law can impact significantly on access to information practices. All four of the lowest ranked countries, which received the lowest possible rate by their country experts (Swaziland, DRC, Namibia and Gambia), lack such a law. However, Swaziland also provides an interesting exception – in spite of being so low ranked in general, if someone seeks information, it can be accessed **all of the time**. This reinforces the more general finding of the research: access to information law is only a contributory part of the access to information environment, which is way principled assessments need to be made to properly examine different contexts.

The potential for access to information is steadily growing on the continent – with multiple new avenues for advancing the right, as well as the practice, in order to make it a practical reality for African people. New laws suggest that we are learning from the best practice and mistakes of other jurisdictions internationally that have passed laws before us. However, the struggle for making access to information a reality on the continent has only just begun.

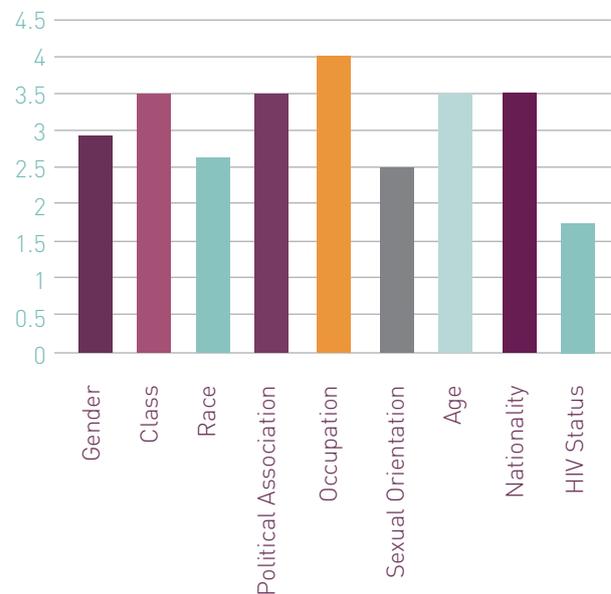
EQUALITY

One of the most pertinent areas for comparison is whether or not there exists a fundamental right of access to information, which is accessible to everyone. How requesters are treated is an excellent determinant of the reality of the access to information environment.

What influences how you are responded to?

Gambia and **Namibia** are the countries seemingly least affected by the characteristics of the requesters, whereas Swaziland is the most affected. This is interesting as both Gambia and Namibia lack ATI-specific law, and are also ranked as lowest in terms of their general performances. The discrepancy in

the overall ranking may be a result of two factors. The first is that equal treatment alone does not necessarily heavily influence all experiences in relation to access to information. Secondly, as the questions seek merely to determine the level to which characteristics affect access to information, it is quite possible that most citizens experience access to information *equally poorly*. So, how do the different characteristics affect requests on average?



[Note that 1 = Not at all influential; 2 = Slightly influential; 3 = Somewhat influential; 4 = Very influential; 5 = Extremely influential]

This means that in Africa it appears that your **class**, **political association** and **occupation** are the factors most likely to affect how you access information. In terms of occupation, narrative from results in Senegal demonstrated that media and journalist professions are the reason for this discrepancy – it appears that there exists in some African countries an entrenched mistrust in the public sector of journalists and, more broadly the media, which could potentially affect any request for information. It is also an important point for

access to information activists – a suspicion of the media generally means that intrinsically linking media causes and freedom of expression with access to information advocacy may negatively impact on political will.

PROACTIVE DISCLOSURE

Only in **Tanzania** do institutions often proactively disclose information; on average, however, institutions in the region only **sometimes** proactively disclose.

Swaziland was the weakest performer in this regard, with information never being proactively disclosed.

This is unfortunate, as proactive disclosure is a means of receiving information for citizens, which avoids the pitfalls of poorly implemented information requesting processes.

Interestingly, electoral commission bodies recur frequently as best practice examples of institutions, which proactively disclose strongly.

TECHNOLOGY

The world of access to information is changing as a response to external factors, such as the increasing influence of technological advances. Information and Communication Technologies (ICT), in particular, could profoundly influence how Africans access information. The research sought to try and establish how effectively institutions were using these advancements for both requests for access to information and proactive disclosures.

Zambia performed the most positively in this regard – getting a 70% effectiveness rating for the use of ICT's in relation to both requesting information processes and in terms of proactive disclosure. However, the average ranking across countries for the requesting process is at a low **40%**, with the rating in terms of proactive disclosure only marginally better at **50%**. This marginal increase is probably due to the fact most institutions find putting information on their websites as the easiest mechanism for broadcasting “non-controversial”

pieces of information, but proactive disclosure through mass provision of open data would be a significant achievement for access to information through alternative avenues.

That technology will have an important role to play in broadening the meaning of ‘access’ has been demonstrated well in the Namibian example. The ITU Report of 2013 has demonstrated that rural youth in Namibia strongly rely on mobile phones both to engage in social debate, and to access information. This means that the youth:

... no longer need to travel long distances to gain access to newspapers and other resources and facilities, and to engage with and access information from their rural communities.

Without the existence of an access to information law in Namibia, technology has powerful potential for making information a reality for citizens.

ADVOCACY

As seen when considering equality of treatment in relation to requesters, the research may suggest a need for advocacy campaigns to consider political attitudes toward the media.

Another consideration is that the Southern African Development Community (SADC) seems to perform similarly on average, with South Africa and Malawi however standing as slightly better performers (at least in terms of their overall ranking). Both countries may have a role to play in promoting lessons of best practice in the region.

CONCLUSION

Because the APAI declaration provides a statement of broad principles, its application can be expanded significantly to the varied access to information regimes we see spread across the African continent. The main task of access to information activists, as indicated by the research, becomes answering a central question in each country context: **where's the gap?** Can access be sought through private bodies, either in the law or in practice? Is it perhaps better to rely on state bodies, either in law or in practice? What of sectoral laws? Or, instead, is it perhaps better to be promoting proactive disclosure in law or in practice? This research provides the first stepping stone for trying to answer these questions.



2013

Botswana

Information held by private bodies or parastatals can be accessed easily. State hold information is hardly accessible, government institutions are secretive and information requests are not dealt with in a timely manner.

The State of Access to Information



Constitutional guarantee present



There is a weak legal framework



Botswana got a rating of 3 out of 10 for the general state of information.



occupation, nationality and political association

These are the characteristics which may affect how you get responded to.

You can rarely access information from the state in Botswana

There is a legal duty to publish, proactively, specified categories of information, but this rarely done. The best public entity for this?



The Electoral Commission

Shifts to openness



In 2012 Parliament for the first time - held the hearings of the all-important Public Accounts Committee in public. Parliament has also given itself powers to start openly investigating any allegations into any suspected misappropriation. Investigations are held in public.

Records management by public bodies is perceived as effective:



So...where's the gap?

In spite of there being poor legal frameworks, and no specific access to information law, **private bodies** seem responsive to request for information.



BOTSWANA

Introduction

Botswana was given a low **3** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. Botswana **does not have a specific access to information law**, nor is there a Bill in process. While there is a constitutional guarantee, which supports access, there are no sectoral laws, which could be utilised as a proxy process for accessing information.

The state of access to information in Botswana

Information held by private bodies or parastatals can be accessed easily. State held information is hardly accessible, government institutions are secretive and information requests are not dealt with in a timely manner.

PRINCIPLE 1

Fundamental right accessible to everyone

Certainly a contribution of the poor legislative protections is that, in practice, a person requesting information will **rarely** be able to access information in Botswana. And, when information is released, it will always be done so with restrictions or conditions on the use or publication of the information. You are also always asked to justify why you are asking for the information you seek.

There also seem to be other characteristics of the requester, which might influence how a request is responded to. In practice it is believed:

Gender is **slightly influential**.

Class is **slightly influential**.

Race is **slightly influential**.

Political association is **very influential**.

Sexual orientation is **somewhat influential**.

Occupation is **very influential**.

Nationality is **very influential**.

HIV status is **slightly influential**.

So the characteristics that most affect how a requester will be responded to in Botswana are the person's **political association, occupation and nationality**.

“[In Botswana] members of the ruling political party can access information much easier than [those] with [other] political associations.”

PRINCIPLE 2

Maximum disclosure

In the practice of accessing information, it has been demonstrated that there is **no presumption** that information held by the state should be subject to disclosure.

PRINCIPLE 4

Application of the law

In Botswana, as discussed previously, there is no applicable law.

PRINCIPLE 5

Clear and unambiguous process

Institutions only use information and communication technologies at around **40%** effectiveness in Botswana.

PRINCIPLE 6

Obligation to publish information

There is **an express obligation** within Botswana to publish information and, usefully, guidance is provided in relation to which categories or types of information should be so disclosed. In spite of this, in practice institutions **rarely** proactively disclose information. However, if information is so released, it is **often** up to date. Information technologies are seen to be used at a 70% effectiveness in terms of assisting in proactive disclosure and, other than these technologies, methods of disseminating this type of information are **often** able to communicate information to rural and disadvantaged communities.

The **Independent Electoral Commission** stands as a best practice example in relation to proactive disclosure of information.

PRINCIPLE 7

Language and accessibility

When information is provided, it will only **sometimes** be in a language that the average requester can understand. Further, if requested, the information is only **rarely** translated into a language the requester is better able to understand. Information does tend to be provided from **accessible** locations.

PRINCIPLE 8

Limited exemptions

There are no express exemptions in relation to access to information in Botswana, due to the lack of a specific access to information law.

PRINCIPLE 9

Oversight bodies

There is no **specific body** charged with oversight and monitoring of the access to information law, as there is no law.

PRINCIPLE 10

Right to personal data

There is **no right** to access your own personal data in Botswana.

PRINCIPLE 11

Whistleblower protection

Incredibly problematically, there are **no legal protections for whistleblowers** in Botswana.

PRINCIPLE 12

Right of appeal

The lack of specific (or even sectoral) legal protections to support access to information, also mean that there are **no forms** of right to appeal a decision either administratively, judicially or internally. Thus forms of recourse in access to information cases are simply **not at all** cost effective or timely.

PRINCIPLE 13

Duty to collect and manage information

There is a **no legal duty** to collect and manage information, though there is an existing **national archiving law policy or standard**.

When it comes to private bodies in Botswana, they tend to manage records relatively well – with a rating of **7** out of 10. The public sector however can attribute their issues in relation to efficacy of records management largely to **poor financial resources**, as well as a lack of political or administrative guidance. It has been demonstrated in other jurisdictions that direct financial investment into records management has a direct, positive benefit for the implementation of access to information.

PRINCIPLE 14

Duty to implement

Though there is no information law per se, in practice the implementation of mechanisms to advance access to information mean that there are often designated persons in place who can handle access to information requests in both private and public bodies.

Assessment

Botswana seems to still have a long way to go in terms of access to information, in a manner not dissimilar to other Southern African Development Community countries.

Nevertheless, in 2012 Parliament took a drastic step – for the first time – by holding the hearings of the all-important Public Accounts Committee in public. Since then there has been immense growth of public interest in how public finances are allocated and used. The resultant public pressure has led the government to take action to save public institutions, such as the Botswana Meat Commission, which had previously been on the brink of collapse on account of corruption that has since been unearthed by both the media and parliamentary investigations. Parliament has also given itself powers to start openly investigating any allegations into any suspected misappropriation. Such investigations are held in public with senior public officers required by law to appear before parliamentary select committees. This has led to significant improvements in transparency.

Interviewee

The Media Institute of Southern Africa contributed to this section of the report. MISA is a non-governmental organisation with members in 11 of the SADC countries. The organisation focuses on the need to promote free, independent and pluralistic media as envisaged in the 1991 Windhoek Declaration.



Democratic Republic of Congo

"There is a vast information deficit between those that hold information and the public that may need access to the information. The access to information infrastructure is quite weak. The constitutional guarantee, in terms of section 24 of the constitution, has not been relied on to advance openness and transparency in the DRC."

The State of Access to Information

What possible legal provisions on ATI are available?



No ATI law!

Constitutional guarantee present

Sectoral laws present

1

DRC got a rating of 1 out of 10 for the general state of information.

Enabling environment?

There is no whistleblower protection or right to access personal data.



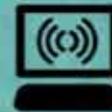
class and political association

These are the characteristics which may affect how you get responded to.

Proactive disclosure isn't an avenue for ATI -

There is a legal duty to publish, proactively, specified categories of information, but:

- a) ICT's are not used to forward information.
- b) Information is also rarely proactively disclosed.



So...where's the gap?

The access to information environment is generally quite weak, with public awareness on the issue low. However - there is room to explore both **constitutional challenges** and **sectoral law.**



DEMOCRATIC REPUBLIC OF CONGO

Introduction

The Democratic Republic of Congo (DRC) was given an exceptionally weak **1** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. DRC **does not have a specific access to information law**, though there is a Bill in process. There is **also a constitutional guarantee**, which supports access, and some sectoral laws that could be utilised as a proxy process for accessing information. Specifically, the Mining Code has potential application.

The state of access to information in the DRC

There is a vast information deficit between those that hold information and the public that may need access to the information. The access to information infrastructure is quite weak. The constitutional guarantee, in terms of section 24 of the constitution, has not been relied on to advance openness and transparency in the DRC.

PRINCIPLE 1

Fundamental right accessible to everyone

In the DRC, you can **rarely** access the information you need and, even if it is released, the information is then **always** released with restrictions or conditions on its use or publication. Further, a requester will **always then** be asked to justify the reason for which they are making the request. There are also certain characteristics of the requester, which might influence how a request is responded to. In practice it is believed:

Class is **extremely influential**.

Political association is **extremely influential**.

Occupation is **very influential**.

Sexual orientation is **somewhat influential**.

Age is **very influential**.

Nationality is **very influential**.

However, it is unclear in the DRC context as to how gender, race, sexual orientation and HIV status might affect a request.

PRINCIPLE 2

Maximum disclosure

Unfortunately, in practice in the DRC there is a **no presumption** that information held by the state is generally public and should be disclosed.

PRINCIPLE 6

Obligation to publish information

There **is an express obligation** within DRC law to publish information, which also provides guidance as to the **types or categories** of information, which should be made available. However, public bodies only **rarely** proactively disclose information and this information is then also rarely up to date. On a scale of **1** to **10**, the DRC institutions only get a rating of **1** in terms of their effectiveness in using information and communication technologies to advance proactive release of information. Further, outside of technologies, institutions **rarely** provide access in a form, which would directly assist disadvantaged or rural requesters.

PRINCIPLE 7

Language and accessibility

When information is provided, it is **sometimes** in a simple enough language for ease of interpreting by the average requester, but this is made even more problematic by the fact that information will **never** be translated into the language of the requester, even when asked to do so. The location from where information is typically provided also tends to be **inaccessible**.

PRINCIPLE 8

Limited exemptions

The law in the DRC will have some exemptions, but how these will limit access to information is **not clear**.

PRINCIPLE 9

Oversight bodies

There is **no specific body** charged with oversight and monitoring of the access to information law.

PRINCIPLE 10

Right to personal data

There is **no specific** right to access your own personal data in this context.

PRINCIPLE 11

Whistleblower protection

There are **no specific legal protections for whistleblowers** in the DRC.

PRINCIPLE 12

Right of appeal

The full extent of the right to appeal within the provisions of the new law that will be passed is **not yet clear**.

PRINCIPLE 13

Duty to collect and manage information

It is **unclear** if there is a legal duty to collect and manage information, but there is an existing **national archiving law policy or standard**. In the DRC private bodies rank as managing their records at an effectiveness of around 3 out of 10, which is a weak rating. In the public sector, it is believed that the most significant problem in relation to records management is due to **a lack of political will**, followed by a

lack of political or administrative guidance. Thus, political contexts are largely at fault for restricting the effectiveness of records management in the country.

PRINCIPLE 14

Duty to implement

Obviously, implementation of a law is not yet an issue. But in practice, currently there are **rarely** designated persons in public bodies who can assist in access to information requests. In slight contrast, there are **sometimes** designated persons in place in private bodies that can assist in requests – this provides a potential avenue for accessing information within the private sphere. Access to information issues are obviously informed by the fact that there is no specific access to information law. However, a further contribution is that the constitutional guarantee is not publicly or popularly known about. The public service is completely without the capacity to deal with access to information requests. The courts are neither independent, nor capable of adjudicating these matters satisfactorily.

Assessment

The access to information environment in the DRC is generally weak, with low levels of public awareness on available mechanisms. For instance, the constitutional avenue has not been explored as a possible means for access. There are also sectoral laws, which may prove to be of use. These are therefore strategic areas for potential exploitation. A thematic area that is likely to be impacted significantly by assertion of the right of access to information in the DRC is the area of artisanal mining. Over the years artisanal mining communities have been gradually pushed off their land by big international mining companies, which obtain mining concessions and licenses through means that are not completely transparent. In order to defend their economic interests, these mining companies are being supported in their efforts to seek information on how decisions are made to allocate licenses and to also demand information regarding mining company revenues, a portion of which these communities are entitled to. This is mostly the case in areas where a mining license had been granted to a large mining company, which is then granted a concession in an area already inhabited by small-scale mining communities. The recent regulations by the Minister of Mines will force companies to disclose their revenues.

Interviewee

Mukelani Dimba is the Executive Director of the Open Democracy Advice Centre (ODAC), a South African law centre, which specialises in freedom of information and whistleblower protection laws.

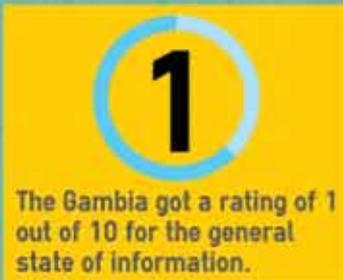
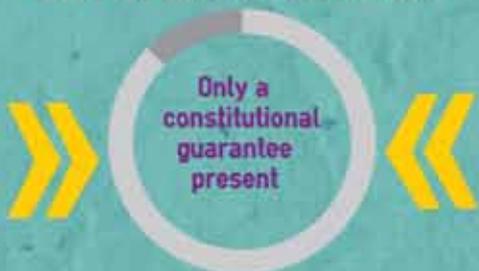


The Gambia 2013

The State of Access to Information

Access to Government information is elusive to the private press. Government is known to favour the state-owned media (and not government media as wrongly believed in certain quarters). The private media is left unattended in its right to seek for information. Over half of the population live in rural areas, where income levels and standards of living are low and, as such, access to information is unthinkable.

What possible legal provisions on ATI are available?



And, if you do request information – you are always asked to justify why you are requesting the information!



Information is rarely translated into a language easier to understand

political association and sexual orientation
These are the characteristics which may affect how you get responded to.

The population is largely rural, but ICTs are not well used to try and circumvent this – and information is only sometimes proactively disclosed.



Implementation?

Nevertheless, you may sometimes find a designated person to whom you can make a request in both public and private bodies.

So...where's the gap?

There is a weak legal framework in the Gambia which could support access to information. **Proactive disclosure** should be prioritised and the exploitation of communication and information technologies should be explored to assist with access.



GAMBIA

Introduction

Gambia was given an exceptionally weak **1** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. Gambia **does not have a specific access to information law**, nor is there a Bill in process. There is however a **constitutional guarantee** which supports access, though there are no sectoral laws which could be utilised as a proxy process for accessing information.

The state of access to information in Gambia

Access to government information is elusive to the private press. Government is known to favour the state-owned media (and not government media as wrongly believed in certain quarters). The private media is left unattended in its right to seek for information. Over half of the population live in rural areas, where income levels and standards of living are low and as such, access to information is unthinkable.

PRINCIPLE 1

Fundamental right accessible to everyone

In Gambia, you can **rarely** access the information you need, although if it is released, the information is only **rarely** released with restrictions or conditions on its use or publication. Further, a requester will **always** then be asked to justify the reason for which they are requesting. There are also certain characteristics of the requester which might influence how a request is responded to. In practice it is believed:

Gender is **very influential**.

Class is **somewhat influential**.

Political association is **extremely influential**.

Sexual orientation is **extremely influential**.

However, it is **unclear** in the Gambian context as to how race, occupation, age, nationality and HIV status might affect a request.

PRINCIPLE 2

Maximum disclosure

In practice in Gambia there is a **presumption** that information held by the state is generally public and should be disclosed.

PRINCIPLE 5

Clear and unambiguous process

Institutions only use information and communication technologies at around **30%** effectiveness in Gambia.

PRINCIPLE 6

Obligation to publish information

There is **an express obligation** in Gambia to publish information, which also provides guidance as to the **types or categories** of information, which should be made so available. Public bodies only **sometimes** proactively disclose information in practice however, and this information is then also rarely up to date. On a scale of 1 to 10, Gambian institutions only get a rating of **4** in terms of their effectiveness in using information and communication technologies to advance proactive release of information. And, outside of technologies, institutions only sometimes provide access in a form which would directly assist disadvantaged or rural requesters.

PRINCIPLE 7

Language and accessibility

When information is provided, it is **often** in a simple enough language for ease of interpreting by the average requester, but this information will **only rarely** be translated into the language of the requester when asked. The location from where information is typically provided also tends to be neither **inaccessible nor accessible**.

PRINCIPLE 10

Right to personal data

It is **unclear** whether there is a right to access your own personal data in this context.

PRINCIPLE 11

Whistleblower protection

It is **unclear** as to whether **legal protections for whistleblowers** exist in Gambia.

PRINCIPLE 13

Duty to collect and manage information

There is a legal **duty to collect and manage information** in Gambia, and there is also an existing **national archiving law policy or standard**.

Private bodies rank as managing their records at an effectiveness of around **4** out of 10, which is a weak rating. In the public sector, it is believed that the most significant problem in relation to records management is due to a **lack of political will**, followed by a lack of political or administrative guidance. Thus, political contexts are largely at fault for restricting the effectiveness of records management in the country (a pattern seen in several other countries, such as the DRC).

PRINCIPLE 14

Duty to implement

Obviously, implementation of a law is not yet an issue. But in practice, there are currently **sometimes** nevertheless designated persons in both private and public bodies who can assist with access to information requests.

Assessment

There is thus significant room for improvement in terms of the Gambian access to information environment. The rural location of the majority of the population leaves room for significant improvements in terms of exploiting technological advances to facilitate access to information in far flung areas.

Interviewee

Khadidiatou Diaw is the Senior Program Assistant for Article 19. She holds a Master's degree in Diplomacy and Strategic Negotiations from the University Paris XI.



2013 Kenya

Access to information was guaranteed for the first time in Kenya's constitution in the year 2010. Since then, a number of citizens have used the provision to access information from the public/ state institutions, but the provisions have not been utilised to the desirable levels. Average Kenyans shy away from requesting for information. Further, the government has not been willing to pass an access to information law that gives guidance on the actualisation of the constitutional provision.

The State of Access to Information

What possible legal provisions on ATI are available?



Specific ATI Bill in progress!

Constitutional guarantee present

Sectoral laws present

7

Kenya got a rating of 7 out of 10 for the general state of information.

Proactive disclosure of information is rare.



Nevertheless, the Constitution Implementation Commission and the Kenya Law Reform Commission demonstrate best practice in relation to proactive disclosure in Kenya.



class and occupation

These are the characteristics which may affect how you get responded to.

An information requester was turned away in Mombasa for asking some questions which the area MP termed as 'incitement from political rivals' and thus would not release some information meant for the public.

3

The top 3 barriers to implementation will be:
1. The culture of secrecy;
2. Corruption; and
3. Fear of exposure.

4 March 2013

The first elections under the new constitutional dispensation were held. Access to information principles were used to release disputed data from the Independent Electoral and Boundary Commission.

So...where's the gap?

There is a Bill in process that will be specific to access to information. Steps should be taken now to preempt issues that may impede implementation. The **constitutional provision** should be used as a direct tool for gaining access.

KENYA

Introduction

Kenya was given a **7** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. Kenya **does not have a specific access to information law**, but there is currently a Bill in process. There is also a **constitutional guarantee** which supports access, and there are **several sectoral laws** which could be utilised as a proxy process for accessing information such as the National Assembly Standing Orders and County Government Act of 2012.

The state of access to information in Kenya

Access to information was guaranteed for the first time in Kenya's constitution in the year 2010. Since then, a number of citizens have used the provision to access information from the public/state institutions but the provisions have not been utilised to the desirable levels. Average Kenyans shy away from requesting for information. Further, the government has not been willing to pass an access to information law that gives guidance on the actualisation of the constitutional provision.

PRINCIPLE 1

Fundamental right accessible to everyone

In Kenya, in practice, persons requesting information will sometimes be able to access information, which will sometimes be subject to restrictions or conditions on its use or publication. Persons are also often then asked to justify why they are asking for the information they seek.

There are characteristics of the requester which might influence how a request is responded to. In practice it is believed that:

Gender is **slightly influential**.

Class is **very influential**.

Race is **somewhat influential**.

Political association is **somewhat influential**.

Sexual orientation is **somewhat influential**.

Occupation is **very influential**.

Nationality is **somewhat influential**.

Age is **somewhat influential**.

HIV status is **not at all influential**.

So the characteristics that most affect how a requester will be responded to in Kenya are the person's **class and occupation**.

“An information requester was turned away in Mombasa for asking some questions which the area MP termed as ‘incitement from political rivals’ [and] hence [would] not release some information meant for the public.”

PRINCIPLE 2

Maximum disclosure

In the practice of accessing information, it has been demonstrated that there is **no presumption** that information held by the state should be subject to disclosure.

PRINCIPLE 5

Clear and unambiguous process

Institutions only use information and communication technologies at around **40%** effectiveness in Kenya.

PRINCIPLE 6

Obligation to publish information

There is **no express obligation** within Kenya to publish information. Consequently, in practice institutions **rarely** proactively disclose information. However, if information is so released, it is **sometimes** up to date. Information technologies are seen to be used at a 40% effectiveness in terms of assisting in proactive disclosure and, other than these technologies, methods of disseminating this type of information **only rarely** are able to communicate information to rural and disadvantaged communities.

The **Constitution Implementation Commission and the Kenya Law Reform Commission** stand as the best practice examples in relation to proactive disclosure of information.

PRINCIPLE 7

Language and accessibility

When information is provided, it will only **sometimes** be in a language which the average requester can understand. Further, even if requested, the information will **never** be translated into a language the requester is better able to understand. Information tends to be provided for from neither **inaccessible nor accessible** locations.

PRINCIPLE 8

Limited exemptions

There are some **related exemptions** in relation to access to information in Kenya, but these are only **somewhat clear** to users. There is, however, **no public interest override**.

PRINCIPLE 10

Right to personal data

There is **no right** to access your own personal data in Kenya.

PRINCIPLE 11

Whistleblower protection

Problematically, there are **no legal protections for whistleblowers**.

PRINCIPLE 12

Right of appeal

The lack of specific (or even sectoral) legal protections to support access to information, also mean that there are **no forms** of right to appeal a decision either administratively, judicially or internally. Thus forms of recourse in access to information cases are simply **not at all** cost effective or timely.

PRINCIPLE 13

Duty to collect and manage information

There is a **no legal duty** to collect and manage information, nor is there an existing national archiving law policy or standard.

When it comes to private bodies in Kenya, they tend to manage records relatively well – with a rating of 7 out of 10. The public sector however can attribute their issues in relation to efficacy of records management largely to a **lack of political or administrative guidance**, followed by a lack of political will.

PRINCIPLE 14

Duty to implement

Though there is no information law *per se*, in practice the implementation of mechanisms to advance the constitutional right of access to information is rated as **7** out of 10, though there are not detailed implementation policies and procedures specifically yet in place. In spite of this, there are only **sometimes** designated persons in place who can handle access to information requests in public bodies. There are often designated persons within private bodies, however, who can be approached in terms of accessing information. Consequently, the three top barriers to effective implementation appear to be:

1. a culture of secrecy;
2. corruption; and
3. fear of exposure.

Assessment

Kenya may have some access to information procedures reinforced by a constitutional guarantee, but the lack of other enabling legislation, such as direct protections for whistleblowers, seems to impede on access significantly.

Kenya held the first elections under the new constitutional dispensation on 4 March 2013. With its presidential results under dispute, the petitioners, using access to Information, sought to find data relevant to assist them in their cause, and the Independent Electoral and Boundaries Commission was compelled to release it. Access to information is thus performing a highly politicised role in the Kenyan context.

One of the local monthly magazines (The Nairobi Law Magazine) filed a court case against KENGEN, a public company charged with the task of providing power and energy to the country, seeking information of a suspected corrupt tender. While the court upheld that citizens could access such information, the ruling was limiting because it restricted access to information to natural persons, hence barring The Nairobi Law Magazine from accessing information as a legal entity. This is why a legislative order which clearly defines the limitations on persons and exemptions in relation to access are needed within this jurisdiction.

Interviewee

Hillary Onami is an employee of Article 19, which is a global force for freedom of expression with 25 years of experience. It has implemented projects in Africa on freedom of expression and the right to information.



**2013
Malawi**

8
Malawi got a rating of 9 out of 10 for the general state of information.

What possible legal provisions on ATI are available?

The State of Access to Information



Various characteristics of the requester affect how they are responded to in Malawi, such as gender, class, occupation etc.

Specific ATI Bill in progress!

Constitutional guarantee present

Language
The language used to provide information is not easy to and it is never translated into other languages.



Private bodies
always
have a designated person that can help a requester to access the information they may need.

Public bodies only
sometimes
have a designated person that can help a requester to access the information they may need.

Strong civil society coalitions are forwarding awareness-raising on access to information, with particular focus area being on education.



3 The top 3 barriers to implementation will be:
1. Illiteracy;
2. Capacity to store (and manage) information; and
3. Political will.

So...where's the gap?

The APAI Declaration has been used to push forward access to information in Malawi, although the country seems to be significantly impeded by the lack of a specific access law. The prospect of the new Bill means advocacy should focus on possible implementation problems.



MALAWI

Introduction

Malawi was given a **8** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. Malawi **does not have a specific access to information law**, although there is a Bill in process. There is also a **constitutional guarantee**, which supports access, but there are no sectoral laws that could be utilised as a proxy process for accessing information.

The state of access to information in Malawi

A draft policy and bill exist. However, the draft policy must first be adopted before the bill will be considered by Parliament.

PRINCIPLE 1

Fundamental right accessible to everyone

In Malawi, you can **sometimes** access the information you need and the information is **sometimes** released with restrictions or conditions on its use or publication. Further, a requester will **sometimes** be asked to justify the reason for their request. The Malawi situation seems to then display a 'mixed-bag' of response types. This extends too to the fact that there also seem to be certain characteristics of the requester, which might influence how a request is responded to. In practice it is believed:

Gender is **extremely influential**.

Class is **extremely influential**.

Race is **not at all influential**.

Political association is **extremely influential**.

Occupation is **extremely influential**.

Sexual orientation is **somewhat influential**.

Age is **extremely influential**.

Nationality is **extremely influential**.

HIV status is **not at all influential**.

It thus appears clear that several different kinds of requester characteristics will strongly influence responses in this region.

PRINCIPLE 2

Maximum disclosure

Fortunately, in practice in Malawi there is a **presumption** that information held by the state is generally public and should be disclosed.

PRINCIPLE 6

Obligation to publish information

There is **no express obligation** within Malawian law to publish information. Consequently, public bodies only **rarely** proactively disclose information. This information is then only **sometimes** up to date. However, outside of technologies, they **often** use methods of communicating information, which can assist rural or disadvantaged communities.

The **Ministry of Health** stands as a best practice example on the proactive release of information in the country.

PRINCIPLE 7

Language and accessibility

When information is provided, it is **rarely** in simple enough language for ease of interpreting by the average requester. This is made even more problematic by the fact that information will **never** be translated into the language of the requester, even when asked. The location from where information is typically provided tends to be **neither inaccessible nor accessible**.

PRINCIPLE 8

Limited exemptions

The Malawian law will have some exemptions, which will **clearly** limit access to information in certain cases. However, it does not appear that it will have a **public interest override**.

PRINCIPLE 9

Oversight bodies

There is **no specific body** charged with oversight and monitoring of the access to information law.

PRINCIPLE 10

Right to personal data

There is **no specific right** to access your own personal data in this context.

PRINCIPLE 11

Whistleblower protection

There are **no specific legal protections for whistleblowers** in Malawi.

PRINCIPLE 12

Right of appeal

The full extent of the right to appeal under provisions of the new law that will be passed is **not yet clear**.

PRINCIPLE 13

Duty to collect and manage information

There is **no legal duty** to collect and manage information, but there is an existing **national archiving law policy or standard**. In Malawi private bodies rank as managing their records at an effectiveness of around **4** out of 10, which is clearly not strong. In the public sector, it is believed that the most significant problem in relation to records management is due to **poor financial resources**, followed by a lack of human resources. Thus interventions should be directed primarily at increasing budgets to facilitate the requesting process.

PRINCIPLE 14

Duty to implement

Obviously, implementation of a law is not yet an issue. But in practice, there are currently sometimes designated persons in public bodies who can assist with access to information requests. In contrast, there are always designated persons in place in private bodies that can assist in requests – this provides a potential avenue for accessing information within the private sphere, while Malawian citizens await the passing of a law which may later improve access to public entities. It is believed the most significant barriers to implementation of access to information are:

1. illiteracy;
2. capacity to store (and manage) information; and
3. political will.

Assessment

The APAI Declaration has been used to push forward access to information in Malawi, although the country seems to be significantly impeded by the lack of a specific access law.

However, there are signs of positive change. The Ministry of Health has become much more proactive in providing health information to the public and has employed an information officer. Further, advocacy around access to information is being pursued to encourage passage of the law, as well as access to information more broadly.

Non-governmental organisations are, for instance, currently challenging the Kayeleara mining company to release information to the public. Further, a more specific education coalition has been formed which has been demanding more information on education, and has seen some positive results in terms of information flow.

Interviewee

The Media Institute of Southern Africa contributed to this section of the report. MISA is a non-governmental organisation with members in 11 of the SADC countries. The organisation focuses on the need to promote free, independent and pluralistic media as envisaged in the 1991 Windhoek Declaration.



2013

Namibia

Access to information in Namibia is limited, and heavily dependent on the information sought and who it is requested from.

The State of Access to Information

1

Namibia got a rating of 1 out of 10 for the general state of information.



There is a weak legal framework



There is no constitutional guarantee, nor a specific ATI law. There is also no Bill, or sectoral laws that could assist the potential requester.



Characteristics



Unlike other African countries surveyed, the different characteristics of an individual requester do not seem to strongly affect whether or not you will receive access to information.

There are no laws in place to protect whistleblowers!

Inequality and inconsistency

2012

ACTION
Access to Information Namibia Campaign launched.

There is a strong civil society presence trying to forward access to information in Namibia.

The practice of accessing information seems to depend very much on what you are requesting, and who you are requesting from - even physical access to information sources if very inconsistent.

9



Private bodies keep their records well - receiving a rating of 9 out of 10. Further, private bodies always have individuals designated to handle requests for information.

Proactive disclosure

There is no legal obligation to proactively disclose. However, the practice shows that SOME information is provided this way and this information is usually up to date.



So...where's the gap?

In spite of there being poor legal frameworks, and no specific access to information law, **private bodies** seem to be a potential avenue, while campaigns for a specific law continue.



"Push" by Rohan Gupta, Noun Project.

NAMIBIA

Introduction

Namibia was given a very low **1** out of 10 in relation to the access to information environment, as it stands since 19 September 2011.

Namibia **does not have a specific access to information law**, nor is there a Bill in process. There is no constitutional guarantee, or sectoral laws, which can be utilised as a proxy process for accessing information.

The state of access to information in Namibia

Access to information in Namibia is limited, and heavily dependent on the information sought and who it is requested from.

PRINCIPLE 1

Fundamental right accessible to everyone

In spite of the poor legislative protections, one can **often** access information in Namibia. However, there are sometimes restrictions or conditions on the use or publication of information that is released. You also may need to **sometimes** justify why you are asking for the information you seek.

In an interesting anomaly, in contrast to the other countries, none of the characteristics of requesters appear to affect how a request is responded to in practice in Namibia.

PRINCIPLE 2

Maximum disclosure

In the practice of accessing information, it is **unclear** in Namibia as to whether or not there is a presumption that information held by public officials is public.

PRINCIPLE 5

Clear and unambiguous process

Institutions only use information and communication technologies at around **30%** effectiveness in Namibia.

PRINCIPLE 6

Obligation to publish information

There is no express obligation within Namibia to publish information. Further to this, in practice they only **sometimes** proactively publish. Positively however, when it is released this way it tends to always be up-to-date. This means the practice in some senses

surpasses the legislative support, though they still only **sometimes** use dissemination methods, which would best expose information to rural and disadvantaged communities.

PRINCIPLE 7

Language and accessibility

When information is provided, it will only **sometimes** be in a language which the average requester can understand. Unfortunately for the data, it is too **inconsistent** to judge the reality of whether or not the location from which the information is provided, when this occurs, is accessible.

PRINCIPLE 8

Limited exemptions

There are no express exemptions in relation to access to information in Namibia, due to the lack of a specific access to information law, as well as the lack of suitable sectoral laws that could have been used as an alternative avenue for access.

PRINCIPLE 9

Oversight bodies

There is **no specific body** charged with oversight and monitoring of the access to information law.

PRINCIPLE 10

Right to personal data

It wasn't possible to determine the laws in relation to personal data in this context.

PRINCIPLE 11

Whistleblower protection

Incredibly problematically, there are **no legal protections for whistleblowers** in Namibia.

PRINCIPLE 12

Right of appeal

The lack of specific (or even sectoral) legal protections to support access to information, also mean that there are **no forms** of right to appeal a decision either administratively, judicially or internally. Thus forms of recourse in access to information cases are simply **not at all** cost effective, timely or accessible.

PRINCIPLE 13

Duty to collect and manage information

There is a **no legal duty** to collect and manage information, although there is an existing **national archiving law policy or standard**.

When it comes to private bodies in Namibia, they tend to manage records very well – with a rating of **8** out of 10. The public sector however can attribute their lack of efficacy of records management largely to a **lack of experience**, as well as a lack of political or administrative guidance. This is perhaps positive – as these would be areas seemingly with the potential to build capacity through simple intervention in terms of capacity building and training.

PRINCIPLE 14

Duty to implement

Though there is no information law *per se*, in practice the implementation of mechanisms to advance access to information mean that there are often designated persons who can handle an access to information request. Even more positively, there are always people assigned to deal with access to information within private bodies.

General reflections

It is believed that the APAI Declaration has affected access to information in Namibia and adds additional support to a strong and growing access to information advocacy campaign in Namibia, as seen through the ACTION (Access to Information Namibia) Campaign which was launched in 2012.

Assessment

The experience of access to information in Namibia is limited and highly circumstantial, with a citizen's access seemingly reliant on "the information sought and who it is requested from". This clearly brings into question the *equality* in relation to the application of the law and raises a profound question – does the existence of the law, though not necessarily totally altering the implementation, have a strong influence in relation to entrenching a principle of equal application of law, which cannot exist without it?

Although there is no law, there is also a lack of additional sectoral and other laws, which could support access – seen in the lack of whistleblower protections. Nevertheless, there is an indication that there are some systems already in place within public and private bodies, which support access to information, which bodes well for implementation of any future act that is passed.

In relation to the practice of accessing information in Namibia, the ITU Report of 2013 has demonstrated that rural youth in Namibia strongly rely on mobile phones to both engage in social debate and access information. This means that the youth "no longer need to travel long distances to gain access to newspapers and other resources and facilities, and to engage with and access information from their rural communities". It also demonstrates how, even without a law, technology can have a powerful influence in advancing access to information *proactively* on the continent.

Interviewee

The Media Institute of Southern Africa contributed to this section of the report. MISA is a non-governmental organisation with members in 11 of the SADC countries. The organisation focuses on the need to promote free, independent and pluralistic media as envisaged in the 1991 Windhoek Declaration.



2013 Nigeria

Awareness of the right of access to information is still relatively low but the situation is gradually improving as more and more people are beginning to use the law to demand information and challenging refusals in court.

The State of Access to Information

The law, and the practice, both show that in Nigeria information held by the state is presumed to be public.

Positively for implementation, the requesting process is:

clear, simple and affordable

There is a positive obligation to publish information, but this is only done: **sometimes**



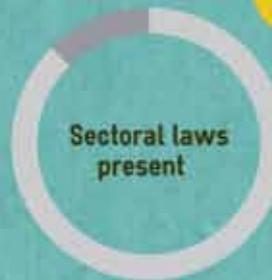
As an additional measure that assists implementation, there is an oversight body, but the public do not have direct access to the entity for recourse.

There is also no internal appeal mechanism - which means the main form of review or recourse for the public is judicial review.

There are very strong protections for whistleblowers - including protection against criminal liability.

The right of access in Nigeria extends to access to the records of private bodies.

What possible legal provisions on ATI are available?



Examples of such laws: Public Procurement Act; Fiscal Responsibility Act; and Nigeria Extractive Industry Transparency Initiative Act.

7

Nigeria got a rating of 7 out of 10 for the general state of information.

So...where's the gap?

While there is a strong legal framework, access to recourse seems problematic for the average user. Also, advocacy should focus on **raising awareness** about the law to drive up usage.

NIGERIA

Introduction

Nigeria was given a **7** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. It has a specific and dedicated **access to information law**, though there is no constitutional guarantee. The law is also supported by additional sectoral laws, which provide additional mechanisms for accessing information. Examples of these sectoral laws are the Public Procurement Act; the Fiscal Responsibility Act; and the Nigeria Extractive Industry Transparency Initiative Act.

The state of access to information in Nigeria

Awareness of the right of access to information is still relatively low but the situation is gradually improving as more and more people are beginning to use the law to demand information and challenge refusals in court.

PRINCIPLE 1

Fundamental right accessible to everyone

In Nigeria, you can **sometimes** access the information you need. However, when you are granted access, the information **does not** get released with restrictions or conditions on its use or publication (which is clearly beneficial).

While you are not required to justify why you are asking for information in terms of the law, on rare occasions you might be asked to justify your request anyway. A positive sign is that only the **occupation** of the requester may slightly influence how a request is responded to in Nigeria.

PRINCIPLE 2

Maximum disclosure

There is a **legal presumption** that all information held by public bodies is public, and thus should be subject to disclosure, and the practice of responses to requests demonstrates this presumption as well. This widely accepted position is positive.

PRINCIPLE 4

Application of the law

In Nigeria the right of access to information extends to **private bodies**, although there are certain limitations to this right in the sense that the Freedom of Information Act applies to only private bodies performing public functions, providing public services or utilising public funds. The law also applies to public bodies, though not all public bodies.

PRINCIPLE 5

Clear and unambiguous process

In Nigeria the process for requesting is **clear, simple** and **affordable**. There is a set time in which a request has to be responded to, which in Nigeria is **less than 10 days** from the date of the request.

Institutions only use information and communication technologies at around **30%** effectiveness.

PRINCIPLE 6

Obligation to publish information

There is an express obligation within the Nigerian law to publish information, which also provides guidance in relation to types or categories of information that should be proactively released. However, Nigerian institutions and agencies only **sometimes** proactively disclose information. When information is proactively released, it is also only **sometimes up to date**. On a scale of 1 to 10, Nigerian institutions only get a rating of **4** in terms of their effectiveness in using information and communication technologies to advance proactive release of information. And outside of technologies, they only **rarely** use methods of communicating information which can assist rural or disadvantaged communities.

Best practice examples of proactive disclosure in Nigeria include the **Police Service Commission, National Youth Service Corp, the Code of Conduct Bureau, National Population Commission, Independent National Electoral Commission, Revenue Mobilisation Allocation and Fiscal Commission, and the Nigerian Press Council.**

PRINCIPLE 7

Language and accessibility

When information is provided, it is **sometimes** in simple enough language for ease of interpreting by the average requester. Further, it is **never** translated into other languages – even when seekers of information request it.

PRINCIPLE 8

Limited exemptions

The Nigerian law has exemptions, which limit access to information in certain cases. These exemptions are only **somewhat clearly** expressed in the law. There are also public interest overrides, which are expressed differently according to the section in which they occur. However, the general wording can essentially be defined as follows: “A public institution shall disclose the information if that disclosure would be in the public interest”. The law does not limit the exemptions to the time at which the harm would occur.

PRINCIPLE 9

Oversight bodies

There is a **specific body** charged with oversight and monitoring of the access to information law, but this institution is not independent of government. Instead it is a Federal Government Ministry and receives its funding through appropriation. This entity has **no function** in relation to promoting proactive disclosure. It also has **no enforcement powers**. The public can also **not directly approach** the entity for recourse.

PRINCIPLE 10

Right to personal data

There is **no right** in relation to accessing personal data in this context expressed in law.

PRINCIPLE 11

Whistleblower protection

There are **legal protections to protect whistleblowers** in Nigeria which also provide protection against **criminal liability**. The protections were rated as being **10** out of 10 in terms of providing effective protections for whistleblowers, because:

[t]he law protects whistleblowers in a fairly comprehensive manner from civil or criminal liability for disclosure without authorization, but in good faith of any information which reveals wrong doing.

PRINCIPLE 12

Right of appeal

Nigeria’s laws **do not give** a right to a form of internal administrative appeal for a decision or failure in terms of a person’s request, or in terms of a failure relating to proactive disclosure. There is also **no right** to a form of **independent review**, although there are rights of judicial review in certain cases.

Generally, the review mechanisms are viewed as **not at all cost effective**, or **timely**, although they are **somewhat accessible**.

PRINCIPLE 13

Duty to collect and manage information

There is a **legal duty** to collect and manage information, as well as an existing **national archiving law policy or standard**.

Private bodies tend to manage records on a low rating average of **4** out of 10. In the public sector, it is believed that the most significant problem in relation to records management is due to poor financial resources and a lack of political or administrative guidance.

PRINCIPLE 14

Duty to implement

Implementation of the law is not ranked too highly. There are only **sometimes** persons designated to handle access to information requests in public bodies, and only **rarely** are there such persons within private bodies. This is problematic in terms of “making the right real” for requesters who approach entities for the first time.

Assessment

Nigeria has a fair legal framework for supporting access to information. However, low awareness levels mean that future efforts should centre on advocacy to create an informed citizenry that can exploit the law to its full potential. The more requesters that use the law, the better government will become at implementing mechanisms to process and deal with these requests.

Interviewee

Edetaen Ojo, the Executive Director of Media Rights Agenda, was Convener of the International Freedom of Expression Exchange (IFEX) from 2009 to 2013. He has worked on access to information in Nigeria and regionally for nearly 20 years.



2013

Senegal

Senegal does not have a law on access to information. A coalition for an access to information law [has been] working [on the issue] since 2010. The authorities are in favor but no action has been laid. Civil society has since proposed a draft law on the basis of the model of the African Union.

The State of Access to Information



Awareness raising by civil society has centred on ensuring that the right of access to information is not seen as abstract.



Age and occupation

These are the characteristics which may affect how you get responded to!

There is a duty to publish certain kinds of information.

However, information is only **SOMETIMES** proactively disclosed. It is also only **RARELY** up to date.

However, the best practice for proactive disclosure in Senegal is demonstrated by:

National Agency of Statistics and Demography

However, information is most often provided in a language simple enough for the average requester to understand.

Problems in government record keeping stem from:
• a lack of political will
• poor resources.
Implementation of the new law will require resources to be put into records if it is to function properly as an access mechanism.

Agencies don't really use ICT's effectively to assist with releasing information.

They were scored 5 out of 10.



So...where's the gap?

Without a law, information is accessed through less formal means. The APAI Declaration is able to provide a meaningful standard and guidance for both the future law, and for exploiting current mechanisms.

SENEGAL

Introduction

Senegal was given a **4** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. There is **no specific access to information law** in the country. However, there is an Access to Information Bill in progress – which bodes well for future development. There is also a form of constitutional guarantee which protects the right of access to information. There are also sectoral laws, which have access provisions, such as the **Local Government Code**.

The state of access to information in Senegal

Senegal does not have a law on access to information. A coalition for an access to information law has been working on the issue since 2010. The authorities are in favor of it but no action has been laid. Civil society has since proposed a draft law on the basis of the model of the African Union. Article 19 are working on the sectoral application of the right to information.

PRINCIPLE 1

Fundamental right accessible to everyone

In Senegal, you can sometimes access the information you need. Unfortunately, when you are granted access the information is often released with restrictions or conditions on its use or publication. Although there is no specific law, when in practice asking for information you are sometimes asked to justify the reasons for your request.

There also seems to be other characteristics of the requester which might influence how a request is responded to. In practice it is believed:

Gender is **somewhat influential**.

Class is **somewhat influential**.

Race is **not at all influential**.

Political association is **somewhat influential**.

Occupation is **very influential**.

Age is **very influential**.

The effect of sexual orientation, nationality and HIV status are **not clear**.

So the characteristics that most affect how a requester will be responded to in Senegal are the person's **age and occupation**.

“In Senegal, when certain functions are occupied, it is easier to access or not access to information. For example, when we did the project “Ask to the president” (where we wanted to talk to the head of a district hospital) we were asked if we were journalists and if so, [they would] not answer questions.”

PRINCIPLE 2

Maximum disclosure

There is **no legal presumption** that all information held by public bodies is public in law (as there is no law). However, in practice, it does appear that this **presumption** exists.

PRINCIPLE 4

Application of the law

In Senegal the right of access to information extends to **private bodies**. The law also applies to **all public bodies**.

PRINCIPLE 5

Clear and unambiguous process

As there is no access to information law, the process cannot be described as clear and unambiguous (or, at least, cannot be assessed as such). Institutions also only use information and communication technologies to process requests with an effectiveness rating of **5** out of 10.

PRINCIPLE 6

Obligation to publish information

The lack of a law limits the amount of legal obligation in regard to publication. However, in practice, on a scale of 1 to 10, Senegalese institutions only get a rating of **4** in terms of their effectiveness in using information and communication technologies to advance proactive release of information. There are other laws, which **require the publication of information**, which also provide guidance on which categories of information can be released. Regardless of this, institutions and agencies only **sometimes** proactively disclose information and this information is **rarely** up to date.

Outside of technologies, they also only sometimes use methods of communicating information, which can assist rural or disadvantaged communities.

The **National Agency of Statistics and Demography** stands as a best practice example on the proactive release of information in the country.

PRINCIPLE 7

Language and accessibility

When information is provided, it is **often** in simple enough language for ease of interpreting by the average requester, which helps to make the right of access to information meaningful in the Senegalese context.

However, it is **rarely** translated into other languages – even when seekers of information request it. The location from where information is typically provided tends to be neither **inaccessible nor accessible**.

PRINCIPLE 8

Limited exemptions

As the Senegalese law is only a Bill, the extent of the exemptions which exist to curb access to information are **not yet clear**.

PRINCIPLE 9

Oversight bodies

There is **no specific law** yet which would properly authorise (or necessitate) a dedicated and independent body charged with oversight and monitoring of the access to information law.

PRINCIPLE 10

Right to personal data

There is currently **no right** in terms of Senegalese law to access your own personal data.

PRINCIPLE 11

Whistleblower protection

It was **not clear** to the interviewee what **legal protections there are to protect whistleblowers** in Senegal.

PRINCIPLE 12

Right of appeal

It is **not clear** what right of internal appeal there may be for access to information requests, given the context.

PRINCIPLE 13

Duty to collect and manage information

It is **not clear** if there is a **legal duty** to collect and manage information, although there is an existing **national archiving law policy or standard**.

Private bodies tend to manage records with an average rating of **6** out of 10. In contrast, in the public sector it is believed that the most significant problem in relation to records management is due to a **lack of political will**, followed by poor financial resources, lack of human resources, lack of experience and finally a lack of political or administrative guidance. This means that weaknesses in records management could largely be addressed through advocacy and awareness-raising initiatives.

PRINCIPLE 14

Duty to implement

Implementation of the law is ranked at the lowest score in Senegal, at a **1** out of 10, obviously due to the lack of the existence of a *specific* law.

General reflections

In Senegal it is believed that the APAI Declaration has affected access to information ability to highlight “the importance of a law” on access to information, and thus contributes to the advocacy of the current coalition seeking to see a law adopted.

The practical application of access to information as a principle in Senegal has been demonstrated through the project RTI Maternal Health, and an intervention resulted from the hard work of Article 19 in the country. This type of intervention has:

“humanize[d]” what...could be considered an abstract concept for many people...[Through] the workshops, trainings and awareness raising activities and all the work undertaken, [citizens] have [become] used to feeling closer [to] this concept. For many people in Tambacounda [the] “right to information” it is no longer just an abstract concept or a right included in international treaties and formal documents; for them it is right now EACH of them has and that belongs to EACH of them.”

Assessment

Senegal is in the process of acquiring an access to information law. There are currently active coalitions raising awareness around the real and meaningful value of access to information, which creates a solid foundation for the passage of a well-utilised law in the future. In spite of having no express law, there are still attempts to access information through less formal mechanisms as well, which seem to be demonstrating moderate success.

Senegal demonstrates that an informalised access to information environment can still serve an access to information purpose for its people. Within this context, the APAI Declaration is able to provide a meaningful standard and guidance not only for the future law, but also for improving (and exploiting) other forms of existing mechanisms currently used to access information.

Interviewee

Khadidiatou Diaw is the Senior Program Assistant for Article 19. She holds a Master’s degree in Diplomacy and Strategic Negotiations from the University Paris XI.



2013

South Africa

The State of Access to Information

"With an increasingly factionalized government, the new focus is on national security discourses which have started to severely negatively impact access to information. There has been some progress in terms of the growing number of civil society interested in exploiting open data as a means of accessing information, but the community is struggling to come together".

What possible legal provisions on ATI are available?



7
SA got a rating of 7 out of 10 for the general state of information.

Main problems?



The main issues in South Africa relate to implementation of the law. The process for actually requesting is neither

neither clear NOR affordable

There is also

NO independent information commission

class, occupation and nationality

These are the characteristics which may affect how you get responded to.

There is also a legal presumption that info held by public bodies is public...but the practice says otherwise.



The law is applicable to private bodies!

So...where's the gap?

There are many forms of law available to assist you with making a request (laws protect whistleblowers as well). However, implementation is an issue. This means that, in RSA, efforts should focus on **proactive disclosure**.



SOUTH AFRICA

Introduction

South Africa was given a **7** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. It has a specific and dedicated access to information law: the **Promotion of Access to Information Act, No 2 of 2000**. This is supported by a constitutional guarantee of access to information, as well as sectoral laws, which also provide additional mechanisms for accessing information. These sectoral laws can be seen in the **Housing Act**, as well as mineral laws such as the **Mineral and Petroleum Resources Act**.

The state of access to information in South Africa

With an increasingly factionalized government, the new focus is on national security discourses which have started to severely negatively impact access to information. There has been some progress in terms of the growing number of civil society interested in exploiting open data as a means of accessing information, but the community is struggling to come together.

PRINCIPLE 1

Fundamental right accessible to everyone

In South Africa, you can **sometimes** access the information you need. However, when you are granted access, the information is **rarely** released with restrictions or conditions on its use or publication.

You are not required to justify why you are asking for information in terms of the law. Nevertheless, in practice you are often asked to justify your request anyway.

There also seems to be other characteristics of the requester which might influence how a request is responded to. In practice it is believed:

Gender is **slightly influential**.

Class is **extremely influential**.

Race is **very influential**.

Political association is **somewhat influential**.

Occupation is **extremely influential**.

Sexual orientation is **not at all influential**.

Age is **very influential**.

Nationality is **extremely influential**.

HIV status is **not at all influential**.

So the characteristics which most affect how a requester will be responded to in South Africa are the person's **class, occupation and nationality**.

“When we have attempted to get community members to do a request, we have noticed they have a significantly lower level of success in comparison to those of us in NGOs. Part of it is training, but also part of it is the dismissal of ‘lower class’ citizens.”

PRINCIPLE 2

Maximum disclosure

There is a **legal presumption** that all information held by public bodies is public, and thus should be subject to disclosure. However, in practice there is **no such presumption**. This means there is a conflict between the law on paper and how the law is practiced – which affects negatively how people **experience** access to information.

PRINCIPLE 4

Application of the law

In South Africa the right of access to information extends to **private bodies**. The law also applies to all public bodies.

PRINCIPLE 5

Clear and unambiguous process

In South Africa the interviewed persons **disagreed** that the process for requesting was clear; **agreed** that the process was simple; and disagreed that the process was affordable.

There is a set time in which a request has to be responded to, which in South Africa is **30 days** from the date of the request.

Institutions only use information and communication technologies at around **30%** effectiveness.

PRINCIPLE 6

Obligation to publish information

There is an express obligation within the South African law to publish information. However, the law does not provide guidance in relation to types or categories of information, which should be proactively released. It is this lack of guidance which may explain why South African institutions and agencies only **sometimes** proactively disclose information. When information is proactively released, it is only **sometimes up to date**. On a scale of 1 to 10, South African institutions only get a rating of **6** in terms of their effectiveness in using information and communication technologies to advance proactive release of information. Outside of technologies, they only **sometimes** use methods of communicating information which can assist rural or disadvantaged communities.

The **Department of Water Affairs** stands as a best practice example on the proactive release of information in the country.

PRINCIPLE 7

Language and accessibility

When information is provided, it is **rarely** in simple enough language for ease of interpreting by the average requester. Further, it is never translated into other languages – even when seekers of information request it. Further, the location from where information is typically provided tends to be inaccessible.

PRINCIPLE 8

Limited exemptions

The South African law has exemptions, which limit access to information in certain cases. These exemptions are only **somewhat clearly** expressed in the law. There is also a public interest override, which is expressed as the following:

Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1), 36(l), 37(l)(a) or (b), 38(a) or (b), 39(l)(a) or (b), 40, 41(l)(a) or (b), 42(1) or (3), 43(1) or (2), 44(1) or (2) or 45, if—

- a) the disclosure of the record would reveal evidence of—
 - i. a substantial contravention of, or failure to comply with, the law; or
 - ii. an imminent and serious public safety or environmental risk; and
- b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

The case law has ensured that these exemptions are limited to the time at which the **harm would occur**.

PRINCIPLE 9

Oversight bodies

There is no **specific body** charged with oversight and monitoring of the access to information law.

PRINCIPLE 10

Right to personal data

It wasn't possible to determine the laws in relation to personal data in this context.

PRINCIPLE 11

Whistleblower protection

There are **legal protections to protect whistleblowers** in South Africa. However, these protections do not extend to protection against **criminal liability** for whistleblowers in terms of the law. The protections were only rated as being **5** out of 10 in terms of providing effective protections for whistleblowers, because:

There is no civil or criminal protection; only labour protection. Institutions established to protect whistleblowers are weak, for instance the National Anti-Corruption Forum. There is weak political will to pursue prosecutions of fraud within organisations, which leaves the whistleblower vulnerable. There are no financial incentives, nor are there detailed security provisions (outside of the witness protection).

PRINCIPLE 12

Right of appeal

South African access to information laws give a right to a form of internal administrative appeal for a decision or failure in terms of your request. However, there is **no express right** of internal administrative appeal for a failure to proactively provide information. There is also no right to a form of **independent review**, although you do have rights of judicial review in certain cases.

Generally, the review mechanisms are viewed as **not at all** cost effective, timely or accessible.

PRINCIPLE 13

Duty to collect and manage information

There is a **legal duty** to collect and manage information, as well as an existing **national archiving law policy or standard**.

Private bodies tend to manage records with an average rating of **5** out of 10. In the public sector, it is believed that the most significant problem in relation to records management is due to a **lack of political or administrative guidance**, followed by a lack of political will, then a lack of experience, poor financial resources, and least significant is the problem of inadequate human resources.

PRINCIPLE 14

Duty to implement

Implementation of the law is ranked quite low in South Africa, at a 6 out of 10, although there are procedures and policies in place to assist in implementation. There are only sometimes persons designated and in place to handle access to information requests in public bodies, and only rarely are there such persons within private bodies. The top three challenges in regard to implementation in South Africa are seen as:

1. restrictive interpretations of the law;
2. exceptionally high rates of deemed refusals (i.e. failures to respond); and
3. low levels of guidance and support for implementing officials.

General reflections

It is believed that the APAI Declaration has affected access to information in South Africa:

"... in the sense that the AU special rapporteur is South African and has been very vocal in her support. However, [the respondent] would in fact suggest that in South Africa access to information is deteriorating".

Assessment

So what is the experience of requesting information typically like in South Africa? The research shows it matters who you are, and the practice of requesting is a lot more difficult than is to be expected given the numbers of laws in place to address questions of access to information. The APAI Declaration has application in this context as a principled document, which can drive adherence to the *spirit* underlying the law, which would include improving the implementation of the Act currently in place.

Interviewee

Gabriella Razzano is a law graduate working at ODAC as the Head of Research. She has a BA LLB from the University of Cape Town, graduating with distinction in Sociology. She formerly clerked with Justice Yacoob of the Constitutional Court and worked with the University of Witwatersrand. She has a particular focus on access to information and freedom of expression issues, and has served as an active member of the Right2Know Campaign, Coordinating Committee Member of the National Information Officers Forum and is an Honourary Member of the KwaZulu-Natal Public Sector Lawyers Association. In 2013 she was named one of the *Mail & Guardian's* 200 Young South Africans.



2013 Swaziland

1

Swaziland got a rating of 1 out of 10 for the general state of information.

When questioned on the state of access to information in Swaziland, a user merely responded:

"Awful, pathetic, dismal."

The State of Access to Information

Real Effects



Lack of information has had a negative impact on HIV prevalence amongst women, with the prevalence increasing despite global awareness about HIV preventative measures being on the rise. That information is simply not being adequately disseminated to the public at large.

Constitutional guarantee present

BUT

There is no ATI law nor are there sectoral laws

The characteristics of a requester are **extremely influential** on how a request is responded to.



How will your access work?

In practice, you will get information. However - this access will always be qualified in terms of how you can use or publish the information, and you will be asked to justify why you are seeking the information.



Technology is only used at an effectiveness of around 20% to facilitate requests!

Public bodies only **rarely**



Private bodies **often**

have a designated person that can help a requester to access the information they may need.

have a designated person that can help a requester to access the information they may need.

So...where's the gap?

There are poor legislative mechanisms and negative contextual influences that negatively influence access to information. There is, however, some indication that private bodies provide an avenue for requesting information as an alternative route.



SWAZILAND

Introduction

Swaziland was given a very low **1** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. Swaziland **does not have a specific access to information law**, nor is there a Bill in process. There is a **constitutional guarantee**, which seeks to promote access to information, but there appear to be no sectoral laws which could assist in the information requesting process.

The state of access to information in Swaziland

In a sad indictment of good governance in this country, when interviewed the respondent described the state of access to information as: "Awful, pathetic, dismal".

PRINCIPLE 1

Fundamental right accessible to everyone

In spite of relatively weak legislative protections, in Swaziland you can access information **all of the time**, although your access will always be qualified in terms of conditions or restrictions on use. You are also **always** asked to justify your request in practice.

Indicative of a country, which has informal mechanisms to facilitate access, the characteristics of requesters (such as their age, occupation and political associations etc.) are all extremely influential in terms of how a request is responded to. For instance, in one particularly noteworthy incident, an advocacy officer at MISA who had requested information from the Director of Information (at the Ministry of Information & Communication Technologies) was refused information and referred to as “young and inexperienced”. A lack of formal systems means that requesters are vulnerable to inconsistent and unequal treatment, with no recourse systems in place which can alleviate these inconsistencies.

PRINCIPLE 2

Maximum disclosure

In the practice of accessing information the practice of accessing information has demonstrated that there is **no presumption** that information held by the state should be subject to disclosure.

PRINCIPLE 5

Clear and unambiguous process

Institutions only use information and communication technologies at around **20%** effectiveness in Swaziland, which is one of the lowest results from all the countries examined.

PRINCIPLE 6

Obligation to publish information

There is an **obligation** to publish information proactively, although there is **no guidance** as to which categories of information specifically should or shouldn't be made available. In practice, though, information is not proactively released.

PRINCIPLE 7

Language and accessibility

Any information which is available is **never** in a language which can easily be understood by the average person, nor is it ever translated into other languages to assist requesters. Further, the location at which information is provided from is wholly **inaccessible**.

PRINCIPLE 8

Limited exemptions

There are no express exemptions in relation to access to information in Swaziland, due to the lack of a specific access to information law, as well as the lack of suitable sectoral laws which could have been used as an alternative avenue for access.

PRINCIPLE 9

Oversight bodies

There is **no specific body** charged with oversight and monitoring of the access to information law.

PRINCIPLE 10

Right to personal data

It wasn't possible to determine the laws in relation to personal data in this context.

PRINCIPLE 11

Whistleblower protection

There are **no legal protections for whistleblowers** in Swaziland.

PRINCIPLE 12

Right of appeal

The lack of specific (or even sectoral) legal protections to support access to information also mean that there are **no forms** of right to appeal a decision either administratively, judicially or internally. Thus forms of recourse in access to information cases are simply not at all cost effective, timely or accessible.

PRINCIPLE 13

Duty to collect and manage information

There is a **no legal duty** to collect and manage information, although there is an existing **national archiving law policy or standard**.

When it comes to private bodies in Swaziland, they tend to manage records fairly – with a rating of **6** out of 10. The public sector however can attribute their issues in relation to efficacy of records management largely to **a lack of political or administrative guidance**, as well as a lack of political will and a lack of experience. This corresponds to the weak legislative paradigm, which could have served as an opportunity to provide structure to support implementation.

PRINCIPLE 14

Duty to implement

There is no information law per se and in practice the implementation of mechanisms to advance access to information mean that there are **rarely** designated persons who can handle an access to information request. Comparatively though, there are **often** people assigned to deal with access to information within private bodies – which should be flagged as a potential means of access for citizens in Swaziland.

General reflections

Given the weaknesses within the access to information context in Swaziland, the APAI Declaration has seemingly been able to have little impact given the “national situation”. There is much room for advocacy and awareness-raising which could be informed by the standards provided in the document.

Assessment

As stated earlier, the situation in Swaziland appears dismal, with poor legislative and contextual mechanisms in place which could support access to information. There is, however, some indication that private bodies provide a form of avenue for requesting information as an alternative route.

In spite of these structural weaknesses, access to information advocacy in the region is strong, with initiatives like the “Right to Know, Right to Education” project which focusses on budgets, children’s rights, education and the concept that access to information and education are inextricably linked.

The reality of a weak access to information environment is that it has very real consequences for the standard of living for citizens more broadly. In Swaziland, the lack of information generally has had a negative impact on HIV prevalence amongst women – with the prevalence increasing, despite global awareness about HIV preventative measures being on the rise. That information is simply not being adequately disseminated to the public at large.

Interviewee

The Media Institute of Southern Africa contributed to this section of the report. MISA is a non-governmental organisation with members in 11 of the SADC countries. The organisation focuses on the need to promote free, independent and pluralistic media as envisaged in the 1991 Windhoek Declaration.



2013 Tanzania

Access to information in Tanzania is being strongly championed by civil society, however the most significant problem is that no specific access to information law is currently in place to assist requesters.

The State of Access to Information

What possible legal provisions on ATI are available?



Specific ATI Bill in progress!

Constitutional guarantee present

Sectoral laws present

6

Tanzania got a rating of 6 out of 10 for the general state of information.

3

It is predicted that the top 3 barriers to implementation will be:

1. a lack of political will;
2. a lack of knowledge about access to information;
3. a lack of experience



Public bodies often proactively disclose information. And, when published, it is always up-to-date. Technologies are used only at about a 6 out of 10 effectiveness to further proactive disclosure.



There are no laws in Tanzania that protect whistleblowers.

class, occupation, gender and age

These are the characteristics that may affect how you get responded to.

"The Ministry has been exposed to international best practice and has been trying to embrace [access to information]. The situation has changed completely since 2010".

So...where's the gap?

There is a Bill in process that will be specific to access to information. There also appears to be a steadily improving environment conducive to accessing information.



TANZANIA

Introduction

Tanzania was given a **6** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. There is currently no specific and dedicated access to information law, although there is a Bill in progress currently. This law will be supported by the constitutional guarantee which supports access to information, as well as sectoral laws, which also provide additional mechanisms for accessing information, such as can be seen in the **Mining Act**.

The state of access to information in Tanzania

Access to information in Tanzania is being strongly championed by civil society, however the most significant problem is that no specific access to information law is currently in place to assist requesters.

PRINCIPLE 1

Fundamental right accessible to everyone

In Tanzania, you can **often** access the information you need and the information is **rarely** released with restrictions or conditions on its use or publication. A requester may **sometimes** be asked to justify the reason for which they are requesting. There also seem to be certain characteristics of the requester which might influence how a request is responded to. In practice it is believed:

Gender is **extremely influential**.

Class is **extremely influential**.

Race is **not at all influential**.

Political association is **not at all influential**.

Occupation is **extremely influential**.

Sexual orientation is **not at all influential**.

Age is **extremely influential**.

Nationality is **not at all influential**.

HIV status is **not at all influential**.

So the characteristics which most affect how a requester will be responded to in Tanzania are the person's **gender, class, occupation and age**.

“Whilst carrying out it’s Most Open and Secretive Research in 2012, the MISA Tanzania Chapter sent a female intern to ask questions at one particular Ministry. The female employees at the Ministry were extremely unfriendly. When she returned to the Ministry she dealt with a male who was much more responsive to her request but also asked her out.”

PRINCIPLE 2

Maximum disclosure

In practice there is **no presumption** that information held by the state is generally public and should be disclosed.

PRINCIPLE 4

Application of the law

As seen, there is currently no law of application to access to information yet in place.

PRINCIPLE 5

Clear and unambiguous process

Although the process is obviously impacted by the lack of an applicable law, nevertheless in Tanzania institutions use information and communication technologies at around **60%** effectiveness to transfer information to the public.

PRINCIPLE 6

Obligation to publish information

There is no express obligation within Tanzanian law to publish information. However, in practice Tanzanian institutions and agencies **often** proactively disclose information. When information is proactively released, it is **always up-to-date**. However, on a scale of 1 to 10 Tanzanian institutions only get a rating of **6** in terms of their effectiveness in using information and communication technologies to advance proactive release of information. Outside of technologies, they only **sometimes** use methods of communicating information which can assist rural or disadvantaged communities.

The **Ministry of Energy and Minerals** stands as a best practice example on the proactive release of information in the country.

PRINCIPLE 7

Language and accessibility

When information is provided, it is **always** in simple enough language for ease of interpreting by the average requester. Further, it is **always readily** translated into other languages when seekers of information request it. Further, the location from where information is typically provided tends to be **very accessible**.

PRINCIPLE 8

Limited exemptions

The Tanzanian law will have some exemptions, which limit access to information in certain cases, but the extent of these limitations is **not yet clear**.

PRINCIPLE 9

Oversight bodies

There is **no specific body** charged with oversight and monitoring of the access to information law.

PRINCIPLE 10

Right to personal data

There is **no specific right** to access your own personal data in this context.

PRINCIPLE 11

Whistleblower protection

There are **no legal protections to protect whistleblowers** in Tanzania.

PRINCIPLE 12

Right of appeal

The full extent of the right to appeal in terms of the new law which will be passed is **not yet clear**.

PRINCIPLE 13

Duty to collect and manage information

It is not clear if there is a **legal duty** to collect and manage information, although there is an existing **national archiving law policy or standard**.

Private bodies tend to manage records with an average rating of **6** out of 10, which is at a fair level. In the public sector, it is believed that the most significant problem in relation to records management is due to a **lack of political will**, followed by a lack of political or administrative guidance.

PRINCIPLE 14

Duty to implement

Obviously, implementation of a law is not yet an issue. But in practice, there are currently always designated persons in public bodies who can assist with access to information requests. Similarly within private bodies, there are also always designated persons who can assist a requester. Currently, it is believed the key factors affecting the implementation of access to information are:

1. a lack of political will;
2. a lack of knowledge about access to information; and
3. a lack of experience.

General reflections

Instruments such as the APAI Declaration appear to have been influential in this jurisdiction. Prior to the Declaration, government did not appear to be accepting of the principles of access to information. However, since its passage: "... the Ministry has been exposed to international best

practice and has been trying to embrace [access to information]. The situation has changed completely since 2010." This highlights the merits of instruments which not only facilitate education, but which can be used as a direct mechanism for sharing best practice throughout the region.

Assessment

The current access to information environment seems strong, in spite of the lack of the law, which is well demonstrated by the practices relating to proactive disclosure. Importantly too, the environment seems to be improving – information about women is proactively disclosed more so than any other time in Tanzanian history, giving them greater access to information about issues which effect them. Further too in the realm of health information, the government is much more transparent about health issues than it was 5 – 10 years ago, which has led directly to an overall improvement in the health sector.

This shifting political will, as well as structural conditions, bode well for the implementation of the Tanzanian law when it is passed.

Interviewee

The Media Institute of Southern Africa contributed to this section of the report. MISA is a non-governmental organisation with members in 11 of the SADC countries. The organisation focuses on the need to promote free, independent and pluralistic media as envisaged in the 1991 Windhoek Declaration.



2013 Uganda

More is needed in terms of training, record management, additional staff, procedures at agency level, awareness raising of population, reporting in terms of the Act etc.

7

Uganda got a rating of 7 out of 10 for the general state of information.

The State of Access to Information

What possible legal provisions on ATI are available?



Examples of these sectoral laws are the National Environment Management Authority Act and the Petroleum Management Act.

political association, nationality and occupation

These are the characteristics of a requester which may effect how a request is responded to.

While there law says there is a presumption to release, the practice is that says public bodies don't agree. While you are not required in terms of the law to justify your request, in practice you are still sometimes asked to do so.

The law vs. the practice

Public Interest Override

There is a public interest override, which must be considered when applying exemptions and demands release, regardless of an applicable exemption ground, if:
(a) the disclosure of the record would reveal evidence of - (i) a substantial contravention of, or failure to comply with the law; or (ii) an imminent or serious public safety, public health or environmental risk; and (b) the public interest in the disclosure of the record is greater than the harm contemplated in the provision in question.

There is a legal obligation to publish certain types of information.



There are laws to protect whistleblowers. While there are good provisions, "...the environment does not provide confidence to [the] would be whistleblowers...people fear administrative [repercussions] or physical harm".

So...where's the gap?

The legal framework is strong, but implementation is poor. Sectoral laws should be explored for environmental information, and case studies have found **proactive disclosure** should be prioritised.



UGANDA

Introduction

Uganda was given a **7** out of 10 in relation to the general access to information environment (ranking it on par in the sample with South Africa, Nigeria and Kenya). It has a specific and dedicated access to information law, as well as a constitutional guarantee which reinforces the principle. Sectoral laws are also available which have access to information provisions, such as the **National Environment Management Authority Act** and the **Petroleum Management Act**. It appeared consistent therefore across several countries that sectoral laws in place tend to be housed within the environmental paradigm in particular.

The state of access to information in Uganda

In Uganda there is a law in place and appointed information officers who have been provided with the necessary equipment. However, "... more is needed in terms of training, record management, additional staff, procedures at agency level, awareness raising of population, reporting in terms of the Act etc". So, while it has significant legislative processes in place, implementation of the law is the advocacy priority.

PRINCIPLE 1

Fundamental right accessible to everyone

In Uganda, you can **sometimes** access the information you need (which is in line with the average across countries). Further, when you are granted access, the information is **sometimes** released with restrictions or conditions on its use or publication.

You **are not** required to justify why you are asking for information in terms of the law. Nevertheless, in practice you are nevertheless **sometimes** still asked to justify your request.

There also seems to be other characteristics of the requester which might influence how a request is responded to. In practice it is believed:

Gender is **not at all influential**.

Class is **not at all influential**.

Race is **not at all influential**.

Political association **very influential**.

Occupation is **very influential**.

Sexual orientation is **not at all influential**.

Age is **not at all influential**.

Nationality is **very influential**.

HIV status is **not at all influential**.

So the characteristics which most affect how a requester will be responded to in Uganda are the person's **political association, nationality and occupation**.

“In 2009 [in Uganda] an information request [was made] to the Kampala City Council and [the requester was expressly] asked to prove that he was a Ugandan citizen.”

PRINCIPLE 2

Maximum disclosure

There is a **legal presumption** that all information held by public bodies is public, and thus should be subject to disclosure. However, in practice there is **no such presumption**. This means there is a conflict between the law on paper and how the law is practiced – which affects negatively how people **experience** access to information.

PRINCIPLE 4

Application of the law

Juxtaposed with the more progressive draftings of specific access to information law, Uganda **does not** extend the right of access to information to **private bodies**. **Nor** does the law apply to **all** public bodies.

PRINCIPLE 5

Clear and unambiguous process

In Uganda the interviewed **strongly agreed** that the requesting process is **clear; agreed** that the process was **simple**; but **disagreed** that the process was **affordable**. This is obviously problematic – affordability bears on whether access to information processes serve vulnerable populations, often disenfranchised due to their poverty.

There is a set time in which a request has to be responded to, which in Uganda is within **10-30 days** from the date of the request.

Institutions only use information and communication technologies at around **20%** effectiveness. This is obviously a very low level, which may bring in to doubt the government's capacity to engage with technologies to advance proactive release of information through open government data initiatives.

PRINCIPLE 6

Obligation to publish information

There **is an obligation** in law to proactively publish information, which extends to providing guidance to the **categories or types** of information subject to disclosure. However, the practice reveals that institutions only **sometimes** proactively disclose information. Further, when the information is disclosed it is only sometimes up to date and **sometimes** distributed using methods of communication, which can assist rural or disadvantaged communities.

Top performing departments in terms of proactive disclosure of information include the **Uganda National Roads Authority, Ministry of Finance,** and **Department of Planning and Economic Development**.

PRINCIPLE 7

Language and accessibility

When information is provided, it is **never** in simple enough language for ease of interpretation, though as a counter it does at least tend to be provided from an accessible location.

PRINCIPLE 8

Limited exemptions

The Ugandan law has exemptions that limit access to information in certain cases. These exemptions are **clearly** defined in the law. There is also a public interest override, which is stated as follows:

34. Mandatory disclosure in public interest.

Notwithstanding any other provision in this Part, an information officer shall grant a request for access to a record of the public body otherwise prohibited under this Part if - (a) the disclosure of the record would reveal evidence of - (i) a substantial contravention of, or failure to comply with the law; or (ii) an imminent or serious public safety, public health or environmental risk; and (b) the public interest in the disclosure of the record is greater than the harm contemplated in the provision in question.

These exemptions, however, are not limited to the time at which the **harm would occur**.

PRINCIPLE 9

Oversight bodies

There is **no specific body** charged with oversight and monitoring of the access to information law.

PRINCIPLE 10

Right to personal data

There is **no specific right** for citizens to access their own personal data.

PRINCIPLE 11

Whistleblower protection

There are legal protections for **whistleblowers** in Uganda which extend to protections against **criminal liability**. These protections are quite significant, and are rated as **7** out of 10 in terms of their effectiveness. Regardless of this, while the laws have good provisions, "... the environment does not provide confidence to [the] would be whistleblowers hence people fear administrative [repercussions] or physical harm".

PRINCIPLE 12

Right of appeal

In terms of recourse, Uganda has a right to a form of **internal administrative appeal** for a failure in terms of the existing law, but this mechanism is not available for failures in terms of proactive disclosure. There is however no right to a form of **judicial review**. Unfortunately, this means that the recourse available in Uganda is **not at all cost effective, timely or accessible**.

PRINCIPLE 13

Duty to collect and manage information

There is no legal duty to collect or collate information, but there is a national **archiving law, policy or standard**. It is believed that the most significant barrier to good records management is due to a **lack of political will**, then lack of political or administrative

capacity, poor financial resources, lack of human resources and finally lack of experience. Thus, the issues are more strongly related to political, rather than capacity, issues.

PRINCIPLE 14

Duty to implement

The level of implementation in Uganda means that there are **always** persons designated and in place to handle access to information requests in public bodies, but this **rarely** occurs within private bodies. This strong differentiation in implementation levels between public and private bodies is not uncommon and is seen also, for example, within the South African example. It may be due to lesser demand, but could also be a result of differences in capacity and resources.

General reflections

It is believed that the APAI Declaration has affected access to information in Uganda quite strongly, with the government stating that it will declare 28 September as Right to Information Day, while also being willing to sponsor a resolution at the UNESCO General Assembly. Joint Declaration awareness activities were carried out with the government, African Freedom of Information Centre (AFIC) and the national coalition. Because of the Declaration "[there is generally more awareness on what a good ATI law should be and Government has requested CSOs to propose amendments to the law on the basis of APAI".

Assessment

Uganda has a strong legal basis which supports access to information, although implementation can be irregular. The law was translated into braille and launched during the 2012 Right to Information Day public dialogue by the Hon. Minister of State for Elderly & Disability. While the APAI Declaration provides a standard which can assist in improving the environment for access to information, there have still been various case studies in Uganda that have demonstrated successful application of the law at it stands. For instance, an information request filed with Bushenyi District Local Government revealed an incident in which a billion shillings had been spent to construct a stadium, but the stadium was not built. Further, following an AFIC training of CSOs in Masaka, a woman made an information request to the Mpugwe Health Centre for records relating to medicines, supplies and staff attendance. While she was given information, she demanded that it should be publically displayed – supporting calls for broader proactive disclosure of public information. This was done and, since then, there have been no reported absences of medicine.

Interviewee

Gilbert Sendugwa is involved with regional ATI around advocacy for ratification of AU treaties, capacity strengthening, networking and information sharing. He is involved with Open Government Partnership (OGP) in Africa.



2013 Zambia

Access to information is now commonly recognised, particularly by organisations, as a right in Zambia. There is still no law in place however

The State of Access to Information

3 Zambia got a rating of 3 out of 10 for the general state of information.

There is an ATI Bill in progress!

Sectoral laws are present



race, occupation, class and age
These are the characteristics which may affect how you get responded to.

70%

In Zambia institutions use information and communication technologies at around 70% effectiveness to transfer information to the public.

Whistleblowing protection in Zambia extends to protection from criminal liability.

9

These protections are deemed to be a 9 out of 10 in terms of their effectiveness for protecting whistleblowers.



Whilst carrying out annual research in to the most open and secretive public institutions in Zambia, researchers are always questioned as to where they are calling from and which institution they are attached to - this influences whether information is provided or not.

Proactive Disclosure

There is an express obligation within the Zambian law to publish information. This obligation also provides express guidance on the categories of information which should be proactively disclosed. However, in practice, information is only sometimes proactively disclosed although, when it is disclosed, it is always up-to-date.

3 It is predicted that the top 3 challenges to implementation will be:
1. a lack of political will;
2. a lack of knowledge about ATI;
3. poor records management.

So...where's the gap?

The new law will further access to information in Zambia. In the meanwhile, civil society have had some success with using **sectoral laws**



ZAMBIA

Introduction

Zambia was given a low **3** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. Zambia **does not have a specific access to information law**, although there is a Bill in process. There is no constitutional guarantee which supports access, but there are potentially some sectoral laws which could be utilised as a proxy process for accessing information.

The state of access to information in Zambia

Access to information is now commonly recognised, particularly by organisations, as a right in Zambia. There is still no law in place however.

PRINCIPLE 1

Fundamental right accessible to everyone

In Zambia, you can **sometimes** access the information you need and the information is **sometimes** released with restrictions or conditions on its use or publication. Unfortunately, a requester will always be asked to justify the reason for which they are requesting. There also seem to be certain characteristics of the requester which might influence how a request is responded to. In practice it is believed:

Gender is **somewhat influential**.

Class is **extremely influential**.

Race is **extremely influential**.

Political association is **somewhat influential**.

Occupation is **extremely influential**.

Sexual orientation is **somewhat influential**.

Age is **extremely influential**.

Nationality is **somewhat influential**.

HIV status is **somewhat influential**.

So the characteristics which most affect how a requester will be responded to in Zambia are the person's **class, race, occupation and age**.

“[W]ilst carrying out annual research into the most open and secretive public institutions in Zambia, researchers are always questioned as to where they are calling from and which institution they are attached to – [this] influences whether information is provided or not.”

PRINCIPLE 2

Maximum disclosure

In practice there is no presumption that information held by the state is generally public and should be disclosed.

PRINCIPLE 4

Application of the law

As seen, there is currently no law of application to access of information yet in place.

PRINCIPLE 5

Clear and unambiguous process

Although the process is obviously impacted by the lack of an applicable law, in Zambia nevertheless institutions use information and communication technologies at around **70%** effectiveness to transfer information to the public.

PRINCIPLE 6

Obligation to publish information

There is **an express obligation** within the Zambian law to publish information. This obligation also provides express guidance on the categories or types of information which should be proactively disclosed. However, in practice, information is **only sometimes** proactively disclosed – although, when it is disclosed, it is **always** up-to-date.

On a scale of **1** to 10, Zambian institutions get a rating of **7** in terms of their effectiveness in using information and communication technologies to advance proactive release of information. Outside of technologies, they often use methods of communicating information which can assist rural or disadvantaged communities.

The **Electoral Commission of Zambia** stands as a best practice example on the proactive release of information in the country.

PRINCIPLE 7

Language and accessibility

When information is provided, it is **rarely** in a simple enough language for ease of interpreting by the average requester. However, it is **often** translated into other languages when seekers of information request it. The location from where information is typically provided tends to be **accessible**.

PRINCIPLE 8

Limited exemptions

The Zambian law will have some exemptions, which limit access to information in certain cases, but the extent of these limitations is not yet clear. It will also have a **public interest override** of some description, which will be informed by the Zambian constitutional provision

in Article 11 (fundamental rights and freedoms – part b relating to freedom of expression):

... and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

PRINCIPLE 9

Oversight bodies

There is **no specific body** charged with oversight and monitoring of the access to information law.

PRINCIPLE 10

Right to personal data

There is **no specific right** to access your own personal data in this context.

PRINCIPLE 11

Whistleblower protection

There are **legal protections for whistleblowers** in Zambia and these protections extend to **criminal liability**. The protections for whistleblowers in Zambia are ranked highly, receiving a **9** out of 10 for effectiveness from the interviewee. The law is supported for, instance, by progressive provisions such as: “that it protects the identity of the whistleblower under the law, which encourages whistleblowing”.

PRINCIPLE 12

Right of appeal

The full extent of the right to appeal in terms of the new law which will be passed is **not yet clear**.

PRINCIPLE 13

Duty to collect and manage information

There is a **legal duty** to collect and manage information as well as an existing **national archiving law policy or standard**. In the public sector, it is believed that the most significant problem in relation to records management is due to **a lack of political will**, followed by a lack of experience.

PRINCIPLE 14

Duty to implement

Obviously, implementation of a law is not yet an issue. But in practice, there are currently **often** designated persons in place in both private and public bodies that can assist in access to information requests. Currently, it is believed the key factors affecting the implementation of access to information are:

1. a lack of political will;
2. a lack of knowledge about access to information; and
3. poor records management.

General reflections

Instruments such as the APAI Declaration appear to have been influential in this jurisdiction. The Declaration has been embraced in Zambia, particularly by civil society and faith-based organisations. Both ATI and APAI are often referred to when talking about gender issues in the Zambian context.

Assessment

The Zambian access to information context is inhibited by the lack of a law, although there is at least a law in progress. However, there have still been some access to information successes. It was revealed, for instance, that poor school leavers in rural areas were unable to access government bursaries to attend university, primarily because it was perceived to be a process dogged by corruption. Government is now scrapping the bursary scheme and replacing it with a student loan scheme which will be accessible to everyone.

Further, there is a lot more information about women's issues in Zambia now than previously. For example, the Anglican Church has launched an information campaign to provide women with information about gender-based violence.

In contrast, in the health field, SIDA recalled funds provided to the Ministry of Health for ARV medication after someone from the Ministry was found to be stealing the funds. Funding is currently suspended but, because of lack of access to information, the case within the Ministry is not going anywhere.

Interviewee

The Media Institute of Southern Africa contributed to this section of the report. MISA is a non-governmental organisation with members in 11 of the SADC countries. The organisation focuses on the need to promote free, independent and pluralistic media as envisaged in the 1991 Windhoek Declaration.



2013 Zimbabwe

The State of Access to Information

The extent to which ATI is enjoyed in Zimbabwe is limited. This is due to the lack of knowledge by the general public of the existence of the law as well as the limited nature of the provision. The ATI law in itself is inadequate. Therefore, more detailed provisions are required, covering proactive disclosure of information and whistleblower protection.

What possible legal provisions on ATI are available?



Constitutional
guarantee
present



ATI specific
law is
present

6

Zimbabwe got a rating of 6 out of 10 for the general state of information.

You are required to justify why you are making a request in the law, and in practice.



**occupation
and
political
association**

These are the characteristics of a requester that most strongly affect how their request is responded to.



The law does not extend to private bodies.

In spite of having a law in place, you can rarely access information in practice.



There is a specific body charged with oversight and monitoring of the law. However, it does not strongly appear to be independent. The body does have enforcement powers. Vitrally, the public can directly approach this entity for relief.

So...where's the gap?

While there is a law in place, it does not provide enough detail to be of adequate assistance, and should be broadened. **Proactive disclosure** should also be advanced.



ZIMBABWE

Introduction

Zimbabwe was given a **6** out of 10 in relation to the access to information environment, as it stands since 19 September 2011. It has a **specific and dedicated access to information law** which is supported by a constitutional guarantee of access to information. However, there are seemingly no sectoral laws which could be used as an alternative means for accessing information.

The state of access to information in Zimbabwe

The extent to which ATI is enjoyed in Zimbabwe is limited. This is due to the lack of knowledge by the general public of the existence of the law, as well as the limited nature of the provision. The ATI law in itself is inadequate. Therefore, more detailed provisions are required, covering proactive disclosure of information and whistleblower protection.

PRINCIPLE 1

Fundamental right accessible to everyone

In Zimbabwe, in spite of the dedicated law, in practice you can **rarely** access the information you need. Further, if you are granted access, this is **sometimes** limited in the sense that restrictions or conditions on its use or publication may be provided.

You **are also** required to justify why you are asking for information in terms of the law and consequently in practice you are then **often** asked to justify your request.

There also seems to be other characteristics of the requester which might influence how a request is responded to. In practice it is believed:

Gender is **slightly influential**.

Class is **slightly influential**.

Race is **slightly influential**.

Political association is **very influential**.

Occupation is **slightly influential**.

Sexual orientation is **not at all influential**.

Age is **slightly influential**.

Nationality is **somewhat influential**.

HIV status is **not at all influential**.

So the characteristics which most affect how a requester will be responded to in Zimbabwe are the person's **political association and occupation**.

PRINCIPLE 2

Maximum disclosure

There is a **legal presumption** that all information held by public bodies is public, and thus should be subject to disclosure, though this does not necessarily align to the practice of accessing information.

PRINCIPLE 4

Application of the law

In Zimbabwe the right of access to information **does not** extend to **private bodies**. However, the law does apply to **all public bodies**.

PRINCIPLE 5

Clear and unambiguous process

In Zimbabwe the interviewed person **disagreed** that the process for requesting was clear; **agreed** that the process was simple; and **disagreed** that the process was affordable (it is noteworthy that this was the exact same pattern for South Africa).

There is a set time in which a request has to be responded to (which assists with certainty), which in Zimbabwe is somewhere between **10-30 days** from the date of the request.

PRINCIPLE 6

Obligation to publish information

There is **no express obligation** to proactively publish information in terms of the law. Consequently, in practice, entities only **sometimes** proactively release. Further, information so provided is then only **sometimes** up-to-date – which brings into question its utility. On a scale of 1 to 10, Zimbabwean institutions only get a rating of **4** in terms of their effectiveness in using information and communication technologies to advance proactive release of information. Outside of technologies, they then also only **sometimes** use methods of communicating information which can assist rural or disadvantaged communities. Thus, the mechanisms for advancing proactive release appear weak in this context.

The **Zimbabwe Electoral Commission** stands as a best practice example on the proactive release of information in the country.

PRINCIPLE 7

Language and accessibility

When information is provided, it is **sometimes** in simple enough language for ease of interpreting by the average requester. It is also only **rarely** translated into other languages – even when seekers of information request it. Due to inconsistencies in how information is provided (which is supported in some senses by the conclusions reached under the proactive disclosure discussions) it is too difficult to judge whether the location from where information is typically provided is **accessible or inaccessible**.

PRINCIPLE 8

Limited exemptions

The Zimbabwean law has exemptions which limit access in certain cases. Problematically, these exemptions **are**

not clearly expressed within the law. There are then also **no forms** of public interest override, which could have possibly assisted in the prevention of abuse of the broad exemptions. These exemptions are also **not limited** to the time in which the harm may occur, which again speaks to breadth.

PRINCIPLE 9

Oversight bodies

There is a **specific body** charged with oversight and monitoring of the access to information law. This oversight body, however, **does not** strongly appear to be **independent** of the government and appears to be directly government-funded. The body has no powers or responsibilities in terms of advancing proactive disclosure of information. However, the body does have **enforcement powers**. Vitality, the public can directly approach this entity for relief.

PRINCIPLE 10

Right to personal data

There is a right in terms of law to **access** as well as **correct** your own **personal data**.

PRINCIPLE 11

Whistleblower protection

There are legal protections to protect whistleblowers in Zimbabwe. However, these protections do not extend to protection against criminal liability for whistleblowers in terms of the law. The protections were rated as being **6** out of 10 in terms of providing effective protections for whistleblowers, because:

The Constitutional Provision [protecting whistleblowers] is merely a general provision, which has not yet been elaborated upon. No specific law is in place yet.

However, it can be regarded as a victory that whistleblower protection is mentioned in the supreme law of Zimbabwe, the Constitution.

PRINCIPLE 12

Right of appeal

In spite of having a specific law, there is no right to an internal administrative appeal for either a failure in terms of the access to information law, or in terms of a failure relating to proactive disclosure. There is a form of recourse available in the form of an **independent oversight mechanism** (as discussed earlier). And further, there is a right to **judicial review** of an access to information decision or failure.

This results generally in recourse mechanisms which are only **slightly cost effective, not at all timely** and **slightly accessible**.

PRINCIPLE 13

Duty to collect and manage information

There is a **legal duty** to collect and manage information, as well as an existing **national archiving law policy or standard**. Problems in the records management of public bodies are viewed as being sourced in **poor financial resources** and a **lack of human resources** – pointing directly to a need for the public sector to express their prioritisation of records management through the allocation of funds.

PRINCIPLE 14

Duty to implement

In terms of implementation, there are only in practice **sometimes** designated persons in place to deal with requests in both public and private entities. However, overall implementation does not appear to be strong.

General reflections

It is believed that the APAI Declaration has affected access to information in Zimbabwe, in the sense that it has assisted by bringing access to information on to the agenda of government officials, and has also fuelled debate. While an “overseeing body is in place now ... more can be done to raise widespread awareness of the Declaration and its provisions”.

Assessment

The practical experience of requesting information is perhaps best exemplified by the **Zimbabwe Elections Commission**, which is proactively disclosing information relevant for the public. Further, in relation to natural resources, a request was made to the Marange Diamond Fields Inquiry (released June 2013) through which it was discovered that government had not received any meaningful contributions from the diamond sector since Zimbabwe was allowed to trade diamonds on the global market, as well as the alleged theft of diamond cash.

Zimbabwe thus presents a case, which demonstrates how devastating poor implementation can be, but also how those issues in implementation are often directly related to the prevailing political will in a context.

Interviewee

The Media Institute of Southern Africa contributed to this section of the report. MISA is a non-governmental organisation with members in 11 of the SADC countries. The organisation focuses on the need to promote free, independent and pluralistic media as envisaged in the 1991 Windhoek Declaration.

