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TRANSPARENCY IN ACTION



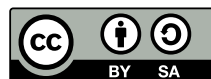
STATE OF  
ACCESS TO  
INFORMATION  
**IN AFRICA**  
2017

# STATE OF ACCESS TO INFORMATION **IN AFRICA** 2017

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Completed in partnership with the APAI Working Group

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## ACRONYMS

APAI – African Platform on Access to Information  
APRM – African Peer Review Mechanism  
AU – African Union  
ATI – Access to Information  
FOI – Freedom of Information

ICT - Internet and Communication Technologies  
OGP – Open Government Partnership  
PACAI – Pan-African Conference on Access to Information  
UNESCO – United Nations Educational, Scientific and Cultural Organization



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Accessing information

In celebration of International Right to Information Day in 2015, the African Platform on Access to Information (APAI) Campaign and fesmedia Africa released a research study on the state of access to information in Africa. Reviewing fourteen countries, and using the expertise and experience of the APAI Working Group Members, the research provides a useful snapshot of the state of access to information on the continent while providing clear and simple summaries and infographics, measured against the APAI Declaration of Principles<sup>1</sup>. It was completed largely by survey.

In 2016 UNESCO officially adopted 28 September as the International Day for Universal Access to Information. The Day was adopted after intense lobbying by the African Platform on Access to Information Working Group. To mark the Day in 2017, and to reflect on developments in the state of access to information in Africa, this study has been launched as a development on the 2015 study.

The previous review covered Botswana, Democratic Republic of Congo, Gambia, Kenya, Malawi, Namibia, Nigeria, Senegal, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. In slight contrast, this study examines:

1. COTE D'IVOIRE	2. KENYA
3. MADAGASCAR	4. MALAWI
5. MOZAMBIQUE	6. NAMIBIA
7. NIGER	8. NIGERIA
9. SOUTH AFRICA	10. TANZANIA
11. UGANDA	12. ZIMBABWE

A FULL OUTLINE OF THE METHODOLOGY USED CAN BE FOUND IN APPENDIX A.

## THE APAI CAMPAIGN

The APAI Campaign is founded upon the APAI Declaration<sup>2</sup>. Following the adoption of the Declaration, and PACAI Conference in 2011, the APAI Working Group was established to take forward the ambitions of the document with the broader goal of helping to enable every person in Africa to fully enjoy the right of access to information.

Using the Group hopes to strengthen the framework for access to information on the continent, which requires African governments to establish access to information legislation and provides guidance to stakeholders during the drafting and implementation phase of such legislation.

This research is thus a continuation of those aims.

## THE AU MODEL LAW

In 2013 the African Commission on Human and Peoples' Rights, during its Extra-Ordinary Session, adopted the African Union Model Law. As more and more African countries adopt access to information laws, the Commission hoped the creation of this document would encourage countries to draft progressive and considered laws. The main logic for passing the Model Law was simple – if the African Union is creating positive obligations on countries to enact laws that protect ATI and other human rights, support should be provided to states (in the form of a framework) that makes human rights compliance easier. It is clear then the creation of a standard was an underscoring objective. As the Model Law itself importantly stated:

“ The model Law thus aims to ensure that legislative drafters and policy-makers address all issues relevant to the African context in their adoption or review of access to information legislation. It also **serves as a benchmark** for measuring compliance with regional and international”.





1. The report is available here: [http://www.africanplatform.org/uploads/media/ATI-in-Africa\\_01.pdf](http://www.africanplatform.org/uploads/media/ATI-in-Africa_01.pdf).

2. The Declaration can be accessed here: [http://www.africanplatform.org/fileadmin/user\\_upload/pdf/APAI-Declaration/APAI-Declaration-English.pdf](http://www.africanplatform.org/fileadmin/user_upload/pdf/APAI-Declaration/APAI-Declaration-English.pdf)



# MODEL LAW METHODOLOGY REVIEW

As part of this wave of the research, a methodology was created for reviewing the content of access to information laws measured against the AU Model Law on Access to Information. While more detail on the actual methodology is contained in Appendix A, the main design priorities of the methodology were that it be:

 <p>1. Based on the Model Law;</p>	 <p>2. Simple;</p>
 <p>3. Sensitive to contexts;</p>	 <p>4. Capable of cross-comparison.</p>

The creation of the methodology was not in order to create a “ranking” of laws, but rather to be able to action the AU Model Law as a tool for highlighting weaknesses, and strengths, in domestic legislation.

Out of the twelve countries covered in this study, the methodology tested the laws of eight of those surveyed, namely:

1. KENYA	2. MALAWI
3. NIGER	4. NIGERIA
5. SOUTH AFRICA	6. TANZANIA
7. UGANDA	8. ZIMBABWE



While the results of the reviews are contained within the country case study, and general reflections, it is worth noting that testing the methodology allowed us to gain insight into the practice of the methodology. An external assessment of the methodology was also obtained, which will be used to further develop the indicators, but it is worth noting that the assessment stated:

“ This initiative is an excellent one that will significantly improve the development, application and implementation of access to information laws in Africa. The AU model law is an appropriate benchmark for the assessment of ATI laws across the continent because of the legitimacy accorded to the process of adoption of the model law. Extensive consultations took place with various stakeholders including state and non-state actors, which has since led to an increase in adoption of ATI laws in Africa...Noting the increase in activity on ATI on the continent, an assessment on the extent to which adopted ATI laws truly serve as a framework for the realisation of the right of access to information is necessary. This index serves as a useful tool for future law reform”.

## ALL COUNTRY SUMMARY

### THE IMPACT OF THE APAI DECLARATION

As noted, the APAI Declaration was adopted on 19 September 2011, upon a motion for adoption moved by Advocate Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People’s Rights and seconded by Honourable Norris Tweah, Deputy Minister of Information, Culture and Tourism for the Republic of Liberia.

This research has demonstrated, however, that the document has had impact beyond its mere “declaration”. Members of the APAI Working Group were able to outline the variety of ways this ambitious Declaration has managed to impact domestic environments.

In Uganda for instance, though the Ugandan ATI Law preceded the adoption of the Declaration, the African Freedom of Information Centre have used both it, and the AU Model Law, to analyse their existing law and propose recommendation on amendments to improve the Law itself, as well as its implementation. In Tanzania and Nigeria too, the Declaration has been used as an awareness-raising tool both with government and the public. In fact, the Nigerian Government, through its National Delegation to UNESCO in Paris, was one of the three countries that sponsored the Resolutions championed by the APAI Working Group at the UNESCO Executive Board and at the General Conference in 2015, which subsequently resulted in the proclamation of September 28 as International Day for Universal Access to Information. The willingness of the Nigerian Government to play this role was evidently as a result of the profile and impact that the APAI Declaration had at the national level. The Declaration itself was adopted with an official delegation led by the then Minister of Information, Mr. Labaran Maku, in addition to several media practitioners, representatives of civil society organizations and digital technology activists, among others, in attendance from Nigeria. In Kenya too, its freedom of information network was reinvigorated after the APAI Declaration was successfully launched.

### ACCESS TO INFORMATION LAWS

Of the twelve countries examined, ten have specific access to information laws<sup>3</sup>. Only Namibia and Madagascar did not, though both did have an Access to Information Bill in process. This is encouraging – particularly as in our last survey in 2015 three of the countries we looked at, which we have examined again now, only had a Bill in progress (Kenya, Malawi and Tanzania).

The ATI law methodology provided the following scores to the countries reviewed:

COUNTRY	SCORE	%
KENYA	66	75
MALAWI	68	77
NIGER	38	43
NIGERIA	38	43
SOUTH AFRICA	69	78
TANZANIA	52	59
UGANDA	48	55
ZIMBABWE	49	56

This results in an average percentage of the countries reviewed of **61%**. In other words, the laws reviewed only achieved the best practice vision of the AU Model law in 61% of its text. It is probably also worth noting that – except for South Africa – the top three scoring African laws (Malawi, Kenya and Tanzania) all come into being after the AU Model Law, with the bottom four scoring laws (Niger, Nigeria, Uganda and Zimbabwe) all coming into being prior to the AU Model Law being drafted. This potentially speaks to the AU Model Law’s influence on current African legislative drafting, but is of course affected by the bias of the methodology itself given its AU Model Law roots.

The research also provided interesting evidence in relation to scope. Of the ten countries that had access to information laws, only Uganda and Zimbabwe’s law provided no provision for requests

3. Other African countries which do have laws, but were not a part of our sample, included (as of July 2017) Angola, Burkina Faso, Ethiopia, Guinea, Liberia, Mozambique, Rwanda, Sierra Leone, South Sudan, Sudan, Togo and Tunisia.



to private bodies in any capacity. Again, these are both laws that came into existence prior to the AU Model Law and can therefore fit into an “older cohort” of regional laws. This means, our “newer laws” are showing a positive trend over time in the broad extension of their application.

Sectoral laws also form an important part of the legislative environment. Many laws that deal with specific issues (such as the National Environmental Management Act in Uganda, or the Clients Services Charter in Tanzania) provide an important additional mechanism through which a citizen might be able to gain access to certain information types. While 75% of the countries surveyed were able to give examples of such laws applicable in their countries, worryingly both of the countries without a specific law – Namibia and Madagascar – are also within the small group of countries that do not have such sectoral laws. This highlights the urgent importance of a specific law for those contexts.

Other laws that contribute to the access to information and transparency environment are laws that protect whistleblowers, and laws that protect the personal information of citizens. Only 58% of the countries surveyed were certain that specific whistleblowing legislation existed, with 41% noting specific protections for personal data. Interestingly, of the 41% of countries with specific protection of personal privacy, 60% derived the right straight from their ATI Law (highlighting the importance of the right to information and the right to privacy coexisting in law).

In relation to the implementation of the laws, when an average was taken of the ratings provided by respondents on the level of implementation of laws, the result was a very low 4 out of 10. In other words, the existence of laws alone is not enough to make access to information a reality, and the cohort of African countries we reviewed with law seem to be struggling to strongly implement the mechanisms they have sought to put in place.

## ACCESSING INFORMATION

Respondents were asked to rate the state of access to information in their countries of study on a scale of 1 (being very weak) and 10 (being very strong). The results were as follows:

Cote D'Ivoire:	<b>5</b>	Kenya:	<b>4</b>
Madagascar:	<b>4</b>	Malawi:	<b>4</b>
Mozambique:	<b>5</b>	Namibia:	<b>7</b>
Niger:	<b>3</b>	Nigeria:	<b>2</b>
South Africa:	<b>8</b>	Tanzania:	<b>7</b>
Uganda:	<b>6</b>	Zimbabwe:	<b>3</b>

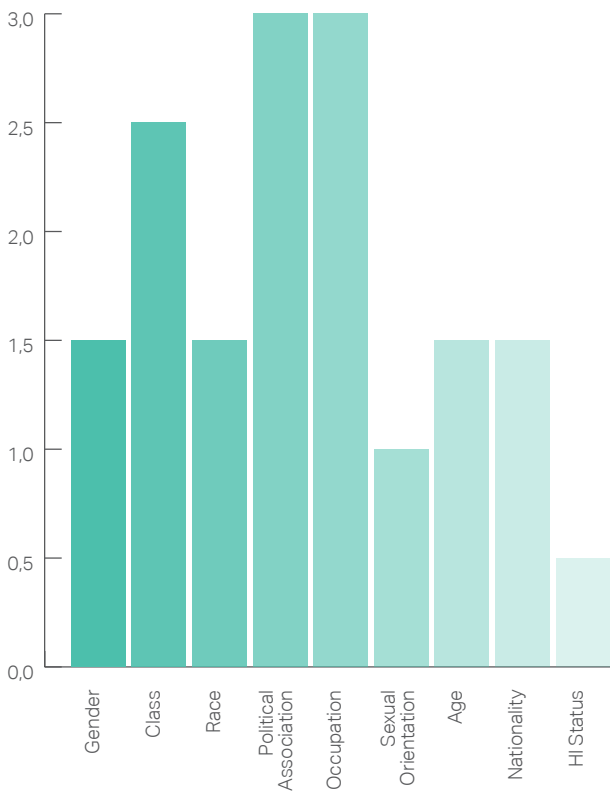
The respondents were also asked to consider whether this score was an improvement, or retrogression, on the state of ATI in previous years. Of the respondents, 50% noted an improvement of some type, with Namibia and Tanzania noting significant improvement. The Namibian example is interesting, because it is without a law – it does however have a Bill in process, and this score reflects the political shifts in motion that point to an improving environment (and a context ripe for ATI activism).

Only Mozambique has been able to note deterioration in the environment for access to information. While a comparison between the scores provided in 2015 and 2017 is not necessarily instructive given the variation in both the sample and the respondents, both in 2015 and 2017 the average score given to the countries sampled was below 5 (4.8 and 4.4 respectively). The state of access to information therefore seems to be consistently mediocre.

In an African environment of a growing number of specific ATI laws, growing ATI principles and materials, and strong ATI activism, what can be done to shift the experience of ATI on our continent to being a more positive experience for people?

The practice of accessing information is also of interest. On average respondents felt that only **sometimes** were they able to access information if requested (Tanzania was the only country in which the respondent felt they could **often** access information once requested). While 25% of respondents noted they could **rarely** access information, included within this pool was Namibia, which is notable given that it is one of the two countries without a dedicated access to information law.

The characteristics of the requesters themselves might impact negatively their response rights, which contravenes the presumption that the right to access information should apply equally to everyone. We asked respondents to consider how much the different characteristics of a requester have been seen to affect their ability to request information. "Political association" and "occupation" are the characteristics that seem to impact the experience of requesting the most, with "HIV status" and "sexual orientation" being the least. The least influential characteristics are not surprising; given these are features of a person that will not be apparent on sight or in written correspondence.



[Note that 1 = Not At All Influential; 2 = Slightly Influential; 3 = Somewhat Influential; 4 = Very Influential; and 5 = Extremely Influential].

The results linking to "occupation" are probably rooted in differential treatment of journalists, in particular. For instance, in the case of Uganda noted:

" In refusing to grant request for asset declaration filed by Ronald Ssekyewa, a News Editor of Kampala Dispatch Newsletter, the Inspector General of Government cites among others 'risk of it being published further'...."<sup>4</sup>

Similar incidences were also noted in Cote D'Ivoire, Madagascar and Malawi. Interestingly, the 2015 survey confirmed both "occupation" and "political association" as the most influential, and "sexual orientation" and "HIV status" as the least. This difference in occupational treatment was also revealed in a case study in South Africa<sup>5</sup>, and Zimbabwe:

"While the law is blind to status of citizens who request information and provides for the right to access information on an equal basis, public bodies tend to respond differently to each case. For example, in its efforts to put the law to the test MISA Zimbabwe has worked with community-based organisations in requesting for information held by various public bodies. The response and turnaround time is much quicker when it comes to MISA requests than it is for some of the small organisations that we work with.

Although there is no clear explanation for this, it would appear that because MISA is a national organisation of high repute, public bodies are fully aware of the implications of denying information to such an entity, which is fully aware of its rights and can go public about its experiences as well as seek remedies from available bodies. Small organisations can easily be ignored, as has been the case in the past".<sup>6</sup>

The issue of course with subjective measures is that the ability to assess impact really depends on who the respondent is. This is why the qualitative components of the answers is instructive. In Kenya, the respondent noted:

" We asked different categories of citizens to request information from parliament and parliamentarians and the officials tended to respond positively to academics, journalists and least to ordinary citizens".

Activists are clearly aware of the potential for differential treatment (hence that several respondents have actually engaged in studies examining exactly that issue).

4. ATI Report Uganda  
 5. ATI Report  
 6. Zimbabwe report.





## PROACTIVE DISCLOSURE

There are legal obligations to publish information (in other words, you don't need to request it to see it) in 60% of the countries surveyed. Yet, in practice, respondents note that institutions or agencies in country proactively disclose information on **rarely** or **sometimes**. No country performed better than this. This brings us a clearer reality of the experience of access to information, as a principle that cannot be realised merely through the existence of a law or obligation.

### Experience matters.

## OPEN GOVERNMENT PARTNERSHIP

It is worth reflecting on broader transparency initiatives, as well. In fact, in our ATI law methodology space is included for considering results from additional indicators, or contextual influences.

The Open Government Partnership (OGP) is a multilateral initiative, launched in 2011, that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a Steering Committee including representatives of governments and civil society organisations.

 **Of the countries reviewed, Cote d'Ivoire, Kenya, Malawi, Nigeria, Tanzania and South Africa are members of the OGP.**

Malawi in particular have used the OGP effectively as a platform for pushing access to information reform – and in fact included the passage of their specific Access to Information Act as part of their express commitments. Platforms such as this, and the African Peer Review Mechanism<sup>7</sup>, can be used both as opportunities to advance access to information, as well as factors for contextually considering the state of access to information within the countries themselves.

## CONCLUSION

An overview of the countries as a whole provides support for the AU Model Law methodology as an effective tool for considering gaps, and strengths, in laws, when contextualised against other measures. By cross-referencing these results with both the survey results from this year, and the 2015 research results, a rich picture of the state of access to information in the region has begun to emerge.

### A key reflection relates to implementation.

The existence of an ATI law is a necessary, but insufficient, step for ensuring a positive access to information environment. Problems with the implementation of ATI laws often cited a lack of awareness of the laws, and weak political will for implementation, as key inhibitors. Both of these factors highlight the important role ATI activists must play in developing the positive discourse around ATI to both encourage users, as well as bureaucratic and administrative actors.

There is also generally a very weak implementation of proactive disclosure, and low levels of utilisation of Internet and Communication Technologies (ICTs) to facilitate access. Both of these indicators make the reality of open government data, in particular, a problematic area on the continent. Proactive disclosure and open data are vital avenues for access – particularly when we consider the non-existence or weakness of laws, coupled with discriminatory access practices.

A further identified trend is that not a single country cited a practice in the domestic contexts that demonstrated a presumption of openness. While some countries have laws, which provide such a presumption – practice does not correspond with this obligation. This is not surprising when we consider the notes on implementation, but it again means that the reality of trying to access information for citizens is still a struggle on the continent.

There are positive trends however – a steadily increasing number of countries with laws, as well as the growing breadth of application of laws. The AU Model Law stands as a real opportunity, particularly given its credence, for advancing access to information laws. And the APAI Declaration provides a useful, practical standard for helping to capacitate and reinforce positive access to information practices in the region.

7. You can download a study that explains how mechanisms such as the OGP and APRM can co-exist and reinforce each other from here: [http://opendemocracy.org.za/images/docs/OGP\\_in\\_context\\_report.pdf](http://opendemocracy.org.za/images/docs/OGP_in_context_report.pdf)

# COUNTRY CASE STUDIES

## Introduction to case studies

Each country case study considers the country context under general categories, and also categories of principles as contained in the APAI Declaration. This links to the survey methodology contained in Appendix A.

## COTE D'IVOIRE



### Introduction

Cote d'Ivoire has a recent dedicated access to information law.

### Highlights



#### ENVIRONMENT

Cote d'Ivoire received a score of **5** out of 10 for its access to information environment.



#### COMMUNITY

Civil society is active on access to information.



#### LAWS

There is a constitutional guarantee of access to information, as well as a specific law. Laws relating to the media also provide a form of sectoral protection of access to information



#### PROACTIVE DISCLOSURES

There is no obligation in the law to promote proactive disclosure. In practice too, institutions only **rarely** proactively provide information given a prevailing culture of secrecy.



#### OVERSIGHT

There is an oversight mechanism provided for by the Law, which is relatively independent. It has enforcement powers and can be approached directly by the public. This strong legal provision means that on a scale of 1 to 10 on accessibility, the mechanisms received an **8**.



### Action Areas

Cote d'Ivoire has a relatively young access to information law, which will require monitoring and creative public awareness. There are indications that capacity building is still required to aid implementation. Poor proactive disclosure practices mean that accessing information without the law fully effective remains problematic.



## COTE D'IVOIRE



### Introduction

Cote d'Ivoire received a score of **5** out of 10 for its access to information environment for the current year, which is viewed as a slight improvement on previous years.

The law is quite recent; voted in 2013, the implementation regulations were set up in 2014, and the commission was put in place in 2015.

A civil society coalition has been building up since 2016. The requests for information and appeals started in 2016, and so far the commission has made decisions on four appeals.

### Assessment

Cote d'Ivoire has a relatively young access to information law, which will require monitoring and creative public awareness. There are indications that capacity building is still required to aid implementation. Unfortunately however, poor proactive disclosure practices mean that accessing information without the law fully effective remains problematic.

### Principle 3: Established in Law

There is a constitutional guarantee of access to information, as well as a specific law. Laws relating to the media also provide a form of sectoral protection of access to information.

### Principle 1: Fundamental right accessible to everyone

One can only **rarely** access information when requested in the country, and when it is eventually given, it is **sometimes** provided with conditions on its use. You also need to justify why you are asking for information when requesting. No characteristics of requesters appear to have a strong influence on whether or not access to information requests are responded to in the country. However the respondent did suspect media personnel may have notable problems, as one vocal female journalist of the public newspaper "Fraternite Matin" went to the police for information, and they asked her to send a written request, but she never received the information.

### Principle 2: Maximum Disclosure

The law creates a presumption of openness. However, worryingly, in practice this presumption is not necessarily applied.

### Principle 4: Application of Law

The Law applies to private bodies if they are involved in works of public interest, or implementing a mandate of the state. It also applies to all public bodies. The application of the law is thus fairly broad.

### Principle 5: Clear and unambiguous process

The process is viewed as clear, simple and affordable. However, on a scale of 1 to 10, institutions use information and communication technologies to assist with access to information requests at a level of **3**, leaving scope for improvement of such mechanisms for processing.

**Principle 6: Obligation to publish information**

There is not obligation in the law to promote proactive disclosure. In practice too, institutions only **rarely** proactively provide information given a prevailing culture of secrecy.

Proactively disclosed information is **rarely** up to date when it is provided. On a scale of 1 to 10, institutions and agencies are only rated a **3** for their effective use of information and communication technologies to help in this regard. Institutional also only **rarely** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows. Proactive disclosure is thus not a strong alternative avenue for accessing information.

**Principle 7: Language and accessibility**

When information is provided, it is **never** in a language that the average requester can understand and it will **never** be translated. The location from which the information is provided is generally **inaccessible**, as well. However, civil society are actively trying to assist this - a coalition of civil society organisations has summarised and translated the ATI law into four local languages: baoulé, bété, dioula, and koulango.

**Principle 8: Limited exemptions**

The Act does provide for exemptions, which are clear. There is also a public interest override, but it does not limit the harm.

**Principle 9: Oversight bodies**

There is an oversight mechanism provided for by the Law, which is relatively independent. It has enforcement powers and can be approached directly by the public. This strong legal provision means that on a scale of 1 to 10 on accessibility, the mechanisms received an **8**.

**Principle 12: Right to Appeal**

The Law provides for a form of administrative review of access to information decisions, but these mechanisms are only **somewhat** cost effective, timely and accessible.

**Principle 13: Duty to collect and manage information**

There is a legal duty in Cote d'Ivoire to collect and manage information, as well as a national archiving law/policy. However, a lack of human resources, and expertise, are seen as the main negative contributing factors on the records management practices of the public sector.

**Principle 14: Duty to Implement**

On a scale of 1 to 10 on consideration of the implementation of the Act, Cote d'Ivoire was given a score of 7, with institutions and agencies having procedures or policies in place to help guide implementation. There are **often** designated persons in place in public institutions to handle requests, but only **sometimes** within private institutions. Ways to improve implementation would be to encourage proactive disclosure, public awareness, and capacity building for public bodies.

**Researcher**

Gabriel Baglo of the Federation for African Journalists completed the survey. Gabriel is the General Secretary of the Federation of African Journalists, FAJ. He was Africa Director of the International Federation of Journalists, IFJ.



# KENYA



## Introduction

There is a strong legislative environment supporting access to information in Kenya – but there can be legislative contradictions.

## Highlights



### ENVIRONMENT

Kenya received a low score of **4** out of 10 for its access to information environment for the current year, compared to a strong 7 it received under the previous survey.



### LAWS

There is a constitutional guarantee of access to information, as well as a specific law. There are also sectoral laws that can provide avenues for access, such as the Environmental Management and Coordination Act, and the Mining Act.



### RATING THE ATI LAW

The law received a score of 75% when assessed against the Model Law, which is a strong rating. However, there is no internal review procedure.



### EQUALITY

Class, political association, age and nationality are characteristics of requesters that are considered **extremely influential** on how a requester of information is treated.

“We asked different categories of citizens to request information from parliament and parliamentarians, and the officials tended to respond positively to academics, journalists and least to ordinary citizens”.



## Action Areas

Kenya's Law did well in the assessment, but implementation and practice are contributing to poor access to information experiences. Kenya was also one of the country's that noted that the individual characteristics of a requester have a significant influence on how requests are responded to. This has worrying implications for equal access, and is also a cautionary tale for other countries: once laws are passed, and implementation begins in earnest, a new struggle which then arises is the need to ensure that certain persons don't get left behind as the access to information environment develops.

## KENYA



### Introduction

Kenya received a low score of **4** out of 10 for its access to information environment for the current year, compared to a strong 7 it received under the previous survey.

The respondent noted that the situation had improved somewhat. There is a strong legislative environment supporting access to information in Kenya – but there can be legislative contradictions.

### Assessment

Kenya's Law did well in the assessment, but implementation and practice are contributing to poor access to information experiences. Kenya was also one of the country's that noted that the individual characteristics of a requester have a significant influence on how requests are responded to. This has worrying implications for equal access, and is also a cautionary tale for other countries: once laws are passed, and implementation begins in earnest, a new struggle which then arises is the need to ensure that certain persons don't get left behind as the access to information environment develops.

### Principle 3: Established in Law

There is a constitutional guarantee of access to information, as well as a specific law. There are also sectoral laws that can provide avenues for access, such as the Environmental Management and Coordination Act, and the Mining Act.

#### Assessing the ATI Law

The law received a score of 75% when assessed against the Model Law, which is a strong rating. However, there is no internal review procedure (though there are other forms of recourse that provide additional avenues of access for requesters). It is one of the strongest laws reviewed during the study.

### Principle 1: Fundamental right accessible to everyone

One can **sometimes** access information when requested in the country, but when it is eventually given, and it is **sometimes** provided with conditions on its use. You do not need to provide reasons for why you are requesting the information.

Class, political association, age and nationality are characteristics of requesters that are considered **extremely influential** on how a requester of information is treated.

Further, noted by the respondent:

"We asked different categories of citizens to request information from parliament and parliamentarians, and the officials tended to respond positively to academics, journalists and least to ordinary citizens".

### Principle 2: Maximum Disclosure

The law does not create a presumption of openness, nor in practice is such a presumption ever applied.

### Principle 4: Application of Law

The Law applies to private bodies, especially in cases where the information held is necessary for protection of individual rights, and where the private bodies have used or benefitted from public resources through public tenders. It applies to some public bodies, with the National Security agencies and diplomatic corps excluded from its mandate.

### Principle 5: Clear and unambiguous process

The process for requesting information is both clear and simple, though affordability is neutral. However, on a scale of 1 to 10, institutions use information and



communication technologies to assist with access to information requests at a level of 3, leaving scope for improvement of such mechanisms for processing.

### Principle 6: Obligation to publish information

The Act obliges proactive disclosure, and also provides guidance as to the type of records that should be disclosed. In practice, institutions only **sometimes** proactively provide information, but Parliament (National Assembly and Senate) stands as an exemplar of best practice in this regard. Proactive disclosure is inhibited by the fact that most public bodies have not designated information officers. Further, records are not kept in easily retrievable and “archivable” formats.

Proactively disclosed information is only **rarely** up to date when it is provided. On a scale of 1 to 10, institutions and agencies are only rated a **3** for their effective use of information and communication technologies to help in this regard. Institutional also only **rarely** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows, making equality of access for all persons inconsistent.

### Principle 7: Language and accessibility

When information is provided, it will **rarely** be in a language that the average requester can understand and it will **never** be translated.

### Principle 8: Limited exemptions

The Act does provide exemptions, which are **somewhat** clear. There is also a public interest override:

“Despite anything contained in subsections (1) and (2), a public entity or private body may be required to disclose information where the public interest in disclosure outweighs the harm to protected interests as shall be determined by a Court”.

### Principle 9: Oversight bodies

There is an independent oversight mechanism created by the Law. The oversight mechanism also has oversight of proactive disclosure issues. It has enforcement powers and can be approached directly by the public. And while the mechanisms scored relatively well on its written assessment, it nevertheless received only a **4** on a scale of 1 to 10 on accessibility.

### Principle 10: Right to personal data

The Access to Information Act provides a right to both access, and correct, your own personal information.

### Principle 11: Whistleblower protection

There are whistleblower protections provided for in Kenyan law, which extends to protection from criminal liability. However, on a scale of 1 to 10 on effectiveness, the protections only received a **3**. This low score is largely a result of the age of the law (it is only a year old), and due to a current lack of regulations.

### Principle 13: Duty to collect and manage information

There is a legal duty in Kenya to collect and manage information, as well as a national archiving law/policy. Private bodies are not viewed as being particularly effective in their records management, and in the public sector poor financial resources and a lack of political will are seen as key inhibitors to good practice. As seen, poor records management is also cited as being responsible for the negative aspects of Kenya’s proactive disclosure practices.

### Principle 14: Duty to Implement

On a scale of 1 to 10 on consideration of the implementation of the Act, Kenya was given a score of **3**, not aided by the absence of procedures or policies to help guide implementation. There are **sometimes** designated persons in place in public institutions to handle requests, but only **rarely** within private institutions. Problems with implementation are based on a poor understanding of the law, bureaucratic inertia, as well as contradictory laws and policies.

#### Researcher

Henry Maina of Article 19 completed the survey. Henry is a key expert on access to information in Africa. He was part of the team that drafted the Model Law on Access to Information for Africa.

# MADAGASCAR



## Introduction

Civil society movements and the media have been mobilising for the adoption of an access to information legislation, but the draft bill has been hanging between government and parliament since 2006. There is a Committee promoting proactive disclosure in the public bodies, but it works under the Presidency and is not independent.

## Highlights



### ENVIRONMENT

Madagascar was given a **4** out of 10 for its general access to information performance, which is a slight improvement on previous years.



### PROACTIVE DISCLOSURES

The Conseil pour la Sauvegarde de l'Intégrité (CSI) promotes ATI and proactive disclosure in government institutions and the ministries.



### RECORDS MANAGEMENT

A lack of financial resources and a lack of political will are seen as the main contributing factors for poor records management practices of the public sector.



## Action Areas

Madagascar has no access to information law, and the appearance of a generally weak environment. A priority in for the country should be pushing for the passage of the Bill. The fact that there is already an entity in place with some oversight should be used as political leverage for the law and may contribute positively to the implementation of the law later.





## MADAGASCAR



### Introduction

Madagascar was given a **4** out of 10 for its general access to information performance, which is a slight improvement on previous years. It was one of only two of the African countries in the sample without a specific access to information law.

Civil society movements and the media have been mobilising for the adoption of an access to information legislation, but the draft bill has been hanging between government and parliament since 2006.

There is a Committee promoting proactive disclosure in the public bodies, but it works under the Presidency and is not independent..

### Assessment

Madagascar has no access to information law, and the appearance of a generally weak environment with no whistleblowing or personal information protections existing either. Unfortunately too, weak proactive disclosure doesn't provide citizens with any other outlet for accessing information.

A priority in for the country should be pushing for the passage of the Bill. The fact that there is already an entity in place with some oversight should be used as political leverage for the law and may contribute positively to the implementation of the law later.

### Principle 3: Established in Law

There is no constitutional guarantee of the right of access to information, nor is there a specific law. There is a Bill in place however, and administrative oversight of access to information. The Conseil pour la Sauvegarde de l'Intégrité (CSI) promotes ATI and proactive disclosure in government institutions and the ministries.

The body was put in place in 2003 and was called the High Council to Fight Corruption (CSLCC), in French: Conseil Supérieur de Lutte contre la Corruption). In 2006 the same body CSLCC was renamed Conseil pour la Sauvegarde de l'Intégrité (CSI) and has taken on new duties such monitoring the level of the anti-corruption fight, and transparency in the management of public affairs in the country.

### Principle 1: Fundamental right accessible to everyone

Given the weak legal environment, it is unsurprising that one can only **sometimes** access information when requested in the country and it is **sometimes** provided with conditions on its use. The characteristics of a requester, such as their age or gender, are do not seem to be strongly influential on whether or not access is granted, though journalists have been shown to have particular challenges.

### Principle 6: Obligation to publish information

There are no legal obligations in Madagascar to proactively publish information, nor guidance on the specific categories and types of information that could be disclosed. The practice of proactive disclosure is thus unsurprisingly poor – with institutions and agencies **rarely** proactively disclosing. The main hindrance to proactive disclosure is the culture of secrecy that pervades the administration.

### Principle 7: Language and accessibility

When information is provided, it will only **sometimes** be in a language, which the average requester can understand and will only **sometimes** be translated. Further, the location from which the information is provided, when this occurs, is **inaccessible**.

### **Principle 13:** Duty to collect and manage information

There is no legal duty in Madagascar to collect and manage information, though there is a national archiving law/policy. While the private sector on a scale of 1 to 10 is ranked as having a records management practice of a **4**, a lack of financial resources and a lack of political will are seen as the main negative contributing factors on the records management practices of the public sector.

### **Principle 14:** Duty to Implement

There is of course no law in Madagascar, which can be implemented. However, there should still be an access to information practice. But with record keeping that is archaic, few public bodies have information handy and at their fingertips, which impedes access significantly.

#### Researcher

Gabriel Baglo of the Federation for African Journalists completed the survey. Gabriel is the General Secretary of the Federation of African Journalists, FAJ. He was Africa Director of the International Federation of Journalists, IFJ.

# MALAWI



## Introduction

Malawi has recently passed an Access to Information Act, as part of its commitments made under the Open Government Partnership. This new law also has some whistleblowing protections.

## Highlights



### ENVIRONMENT

Malawi received a weak score of **4** out of 10 for its access to information environment for the current year (which was a much weaker score than the 7 it received in the 2015 survey). This is probably reflective of the delay in the commencement of the Act, which is said to be having a negative impact on proactive disclosure and response times.



### RATING THE ATI LAW

The law received a score of 77% when assessed against the Model Law, which is strong.



### WHISTLEBLOWING

"There are no clear remedies or [penalties] when whistleblowers are victimised or penalised. In addition, the oversight body does not have enforcement powers. This leaves the courts as the best option for whistleblowers if victimised or penalised. Accessing the courts is however costly and lengthy process, thus not easily accessible by most Malawians"



### IMPLEMENTATION

On a scale of 1 to 10 on consideration of the implementation of the Act, Malawi was given a very low score of **3** – this is not aided by the fact that there are not seemingly procedures or policies in place to help guide implementation.



## Action Areas

Malawi now has a strong legislative environment, which includes protections of personal information, promotes proactive disclosure and protects whistleblowers all reinforced by a new Access to Information Act. However, there are noticeable implementation issues, strongly demonstrated by weakness in records management. Further, full commencement of the Act should be an issue of absolute priority.

## MALAWI



### Introduction

Malawi received a weak score of **4** out of 10 for its access to information environment for the current year (which was a much weaker score than the 7 it received in the 2015 survey).

This comparison is interesting, considering Malawi passed its Access to Information Act in 2017.

However, this score is probably reflective of the delay in the commencement of the Act, which is said to be having a negative impact on proactive disclosure and response times.

Malawi also recently submitted its first National Action Plan to the Open Government Partnership, with a strong focus on strengthening access to information.

### Assessment

Malawi now has a strong legislative environment, which includes protections of personal information, promotes proactive disclosure and protects whistleblowers all reinforced by a new Access to Information Act.

However, there are noticeable implementation issues, strongly demonstrated by weakness in records management. Further, full commencement of the Act should be an issue of absolute priority for both government and civil society in the upcoming period.

### Principle 3: Established in Law

There is a constitutional guarantee of access to information, as well as a specific law. There are also sectoral laws that can provide avenues for access, such as the Declaration of Assets, Liabilities and Business Interests Act, 2013 and the Public Procurement and Assets Disposal Act, 2017.

#### Assessing the ATI Law

The law received a score of 77% when assessed against the Model Law, which is strong. This was probably impacted by the fact that the Act was passed after the Model Law came into effect. A review of the Malawi law did assist in identifying a problem with the methodology, however. It did not score strongly in relation to the oversight mechanism – but largely due to the fact that its oversight is through an institution that has its powers defined within another law (there is a brief discussion on this in the introduction to the assessment method). The review noted that a particular weakness is the exemption sections, made weaker by the lack of a public interest override.

### Principle 1: Fundamental right accessible to everyone

One can **sometimes** access information when requested in the country. When it is eventually given, it is **sometimes** provided with conditions on its use. The practice also seems to require requesters to explain why they are requesting information, which can be problematic, and is not made clear in the law itself (and make it easier to discriminate against particular types of requesters).

No characteristics of a requester appear to have a strong affect on a requester's ability to access records. However, the respondent nevertheless noted that:

"Our experience has shown that class, political affiliation, occupation and nationality matters at times as far as accessing information is concerned. Malawi Broadcasting Corporation (MBC) reporter Patrick Dambula and cameraman Hastings Khombo were on July 17, 2017 manhandled and denied access to information by striking prison warders for allegedly being pro-ruling Democratic Progressive Party (DPP). This can be considered an example where 'political affiliation' assumed or otherwise, is seen to affect request for information. The two MBC journalists were not granted any interview or opportunity to do their story".



## Principle 2: Maximum Disclosure

The law creates a presumption of openness. However, worryingly, in practice this presumption is not applied.

## Principle 4: Application of Law

The Law applies to private bodies that either that are owned or controlled or financed directly, or indirectly, by public funds, and those that perform a public function or service. It also applies to all public bodies. The application of the law is thus fairly broad.

## Principle 5: Clear and unambiguous process

The process for requesting is viewed as simple, affordable and clear. However, on a scale of 1 to 10, institutions use information and communication technologies to assist with access to information requests at a level of **3**, leaving scope for improvement of such mechanisms for processing.

## Principle 6: Obligation to publish information

The Act both obliges proactive disclosure, and provides guidance as to the type of records that should be disclosed. The Act in fact provides significant guidance, which may be a result of the example set by the AU Model Law. However, in practice, institutions **rarely** proactively provide information given a prevailing culture of secrecy.

Proactively disclosed information is only **sometimes** up to date when it is provided. On a scale of 1 to 10, institutions and agencies are only rated a **3** for their effective use of information and communication technologies to help in this regard. And they only **sometimes** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows. So the implementation on proactive disclosure seems to be lagging behind its drafting.

## Principle 7: Language and accessibility

When information is provided, it will **rarely** be in a language that the average requester can understand and it will only **sometimes** be translated. However, the location from which the information is provided is generally **accessible**.

## Principle 8: Limited exemptions

As mentioned, the Act does provide exemptions, which are only somewhat clear. However, there is no public interest override

## Principle 9: Oversight bodies

The oversight mechanism for the Law is interesting as it extends oversight powers to a body that already exists - the Human Rights Commission as provided for by the Human Rights Commission Act (1998). The public can approach the body directly, and it also has a role to play in promoting proactive disclosure. However, on a scale of 1 to 10 on accessibility, the mechanisms received a **6**.

## Principle 10: Right to personal data

There is a right to access and correct your own personal information in terms of the Births and Deaths Registration Act.

## Principle 11: Whistleblower protection

There are whistleblower protections provided for in Malawian law (notably, within the Access to Information Act itself), which include protection from criminal liability. On a scale of 1 to 10 on effectiveness however, the protections only received a **5**. This is because:

“There are no clear remedies or [penalties] when whistleblowers are victimised or penalised. In addition, the oversight body does not have enforcement powers. This leaves the courts as the best option for whistleblowers if victimised or penalised. Accessing the courts is however costly and lengthy process, thus not easily accessible by most Malawians. This means that although the law provides for whistleblower protection, such protection may be delayed and limited to a few who can afford lawyers and sustain a court case”.

## Principle 12: Right to Appeal

The Malawian law also provides a right to internal appeal on information request decisions (but this does not extend to proactive disclosure issues). Later judicial review is also permitted. This other forms of appeal mechanisms are viewed as **somewhat** cost effective, **somewhat** timely, and only **slightly** accessible.

### Principle 13: Duty to collect and manage information

There is a legal duty in Malawi to collect and manage information, as well as a national archiving law/policy. While the private sector on a scale of 1 to 10 is ranked as having a records management practice of a 5, a lack of poor financial resources and a lack of experience will be seen as the main negative contributing factors on the records management practices of the public sector (there's are largely thus internal capacity problems).

### Principle 14: Duty to Implement

On a scale of 1 to 10 on consideration of the implementation of the Act, Malawi was given a very low score of **3** – this is not aided by the fact that there are not seemingly procedures or policies in place to help guide implementation. It is however important to note that the Access to Information Policy (adopted by Malawi Cabinet on January 27, 2014) has implementation strategies and activities that were crafted to assist in the implementation of the policy and the law. The strategies are however out-dated, and require revision. There are **often** designated persons in place in public institutions to handle requests, but only **sometimes** within private institutions. Problems with implementation are based on three key realities:

1. A lack of political will, not helped by the fact the Minister of Information needs to set a date for the commencement of the Act. He is yet to do so seven months after President Mutharika assented to the Bill.
2. Low literacy and awareness levels of the access to information law.
3. Poor record keeping.

#### Researcher

Aubrey Chikungwa of MISA-Malawi completed the survey. Aubrey holds a degree in Journalism and Masters in Communication for Development. Aubrey was part of a special taskforce that developed the ATI Policy (2014) and Act (2017).

# MOZAMBIQUE



## Introduction

The culture for access to information in Mozambique is weak. An Access to Information Law exists, but there is still the challenge of dissemination of information to citizens, as well as poor capacity and awareness amongst officials.

## Highlights



### ENVIRONMENT

Mozambique received a score of **5** out of 10 for its access to information environment for the current year, which was viewed as somewhat of a deterioration from the preceding year.



### EQUALITY

The political association of a requester is seen to be **very influential** in how a requester is treated, which presents a significant barrier to equal access.



### LANGUAGE

When information is provided, it will **rarely** be in a language that the average requester can understand and it will **rarely** be translated.



### PROCEDURES

The Act describes a clear procedure for accessing information, although the affordability and simplicity of the process is more questionable. Further, on a scale of 1 to 10, institutions use information and communication technologies to assist with access to information requests at low level of **1**.



## Action Areas

The Mozambique law suffers from inadequate recourse mechanisms. Poor practices of proactive disclosure, and a strong authoritarian culture, combine to create an environment, which is not conducive to strong access to information. There is still room for significant capacity building, as well as general awareness raising to encourage a greater use of the law.

## MOZAMBIQUE



### Introduction

Mozambique received a score of **5** out of 10 for its access to information environment for the current year, which was viewed as somewhat of a deterioration from the preceding year.

There is not much of a culture of access to information in the country yet. Although the Freedom of Information Act was passed in 2014, and its regulations in 2015, there is still the challenge of dissemination of information to citizens, as well as poor capacity and awareness amongst officials.

### Assessment

The Mozambique law suffers from inadequate recourse mechanisms. Poor practices of proactive disclosure, and a strong authoritarian culture, combine to create an environment, which is not conducive to strong access to information. There is still room for significant capacity building, as well as general awareness raising to encourage a greater use of the law.

### Principle 3: Established in Law

There is a constitutional guarantee of the right of access to information in Mozambique, as well as a specific access to information law called the Freedom of Information Act. There are also sectoral laws that can provide avenues for access, such as the laws on local authorities.

### Principle 1: Fundamental right accessible to everyone

One can only **sometimes** access information when requested in the country. And, when it is eventually given, it is **sometimes** provided with conditions on its use. You do not, however, have to justify why you are making requests when you do. The political association of a requester is seen to be **very influential** in how a requester is treated, which presents a significant barrier to equal access. As the respondent noted:

"In general, a member of ruling party, Frelimo, used to be [at an advantage] in terms of access to important information for business, even for individuals or political decisions. If, for instance, [we] talk about corruption, we can conclude that many cases happen in term of facilitation of information from high official bodies in favor [of their] party comrades".

### Principle 2: Maximum Disclosure

The law creates a presumption of openness. However, worryingly, in practice this presumption is not applied.

### Principle 4: Application of Law

The Law applies to private bodies hold information in the public interest. The law also applies to all public bodies. The application of the law is thus fairly broad.

### Principle 5: Clear and unambiguous process

The Act describes a clear procedure for accessing information, although the affordability and simplicity of the process is more questionable. Further, on a scale of 1 to 10, institutions use information and communication technologies to assist with access to information requests at a level of **1**, leaving massive scope for improvement of such mechanisms to aid processing.

### Principle 6: Obligation to publish information

In practice, institutions **rarely** proactively provide information. The main hindrance to proactive disclosure is described thus:





"[There is a negative] culture related to the provision of information, taking into consideration that, for a long time, the public administration has been established in an authoritarianism...[with] little openness".

Proactively disclosed information is **sometimes** up to date when it is provided. And on a scale of 1 to 10, institutions and agencies are only rated a 2 for their effective use of information and communication technologies to help in this regard. They also only **sometimes** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows.

### Principle 7: Language and accessibility

When information is provided, it will **rarely** be in a language that the average requester can understand and it will **rarely** be translated.

### Principle 8: Limited exemptions

The Act does provide for legislated exemptions, but they are described by the respondent as only being **somewhat clear**.

### Principle 11: Whistleblower protection

Mozambique does have whistleblower laws, which extend to protection against criminal liability. However, on a scale of 1 to 10 the protections are only described as having a rating of **4** for effectiveness. This rating is because:

"Even if there is a law to protect whistleblowers, there is always a risk of knowing who has reported it. There is no practical guarantee of protection for whistleblowers due to system defects. There is always a risk of whoever claims to be known and not deserving of due protection".

### Principle 12: Right to Appeal

The Act also provides for a right to internal appeal on information request decisions (but this does not extend to proactive disclosure issues). Later judicial review is also permitted, but this method is considered to not be at all cost effective, timely, or accessible.

### Principle 13: Duty to collect and manage information

There is a legal duty in Mozambique to collect and manage information, as well as a national archiving law/policy. While the private sector on a scale of 1 to 10

is ranked as having a records management practice of a **4**, a lack of political will and a lack of political or administrative guidance seen as the main negative contributing factors on the records management practices of the public sector.

### Principle 14: Duty to Implement

On a scale of 1 to 10 on consideration of the implementation of the Act, Mozambique was given a low score of **3** – this is not aided by the fact that there are not seemingly procedures or policies in place to help guide implementation. Further, there are **rarely** designated persons in place in public institutions to handle requests, and **rarely** within private institutions.

Problems with implementation arise because of:

1. A need for capacity building of public officers;
2. A need for behavior changes on matter of access to information (cultures);
3. Budget and human resources constraints of the public sector;
4. A need for citizens, journalist and non-governmental organisations to increase their use and force better compliance.

### Stories of practice in Mozambique

#### Natural resources

Due to the problems we mentioned above, there are still no successful cases of law enforcement of the right to information for the defense of specific interests that are publicly known. However, it is important to note that Mozambican civil society organizations, since 2015, have been working in the areas of exploitation of natural resources, especially in the communities of Palma, in Cabo Delgado, where resettlement is under way for the construction of complex industries of natural gas exploration; in Moma, Nampula, where the exploitation of heavy areas occurs; and in Moatize, Tete where the mineral coal is exploited. One of the focuses of organisations in enforcing the right to information on mineral resource issues is to ensure that government and business respect the rights of communities, whilst also ensuring that the projects developed result in benefits for them.

#### Researcher

Ernesto Nhanale of MISA-Mozambique completed the survey. Ernesto has a degree in journalism (2008) and a Masters in media studies and journalism (2010). Nhanale is the Executive Director of MISA-Mozambique.

# NAMIBIA



## Introduction

Namibia does not currently have an access to information law, but there is one in progress.

## Highlights



### ENVIRONMENT

In our 2015 report, Namibia was given a low score of 1 out of 10 for its access to information environment. In 2017 that score has shot up to **7** out of 10 (with the respondent noting this environment has “improved significantly”).



### LAWS

There is no constitutional guarantee of the right of access to information, nor is there a specific law. There is a Bill in place. This weak legislative environment extends to a lack of a specific whistleblower protection law, as well as a lack of a specific personal data protection law.



### LANGUAGE

When information is provided, it will only **sometimes** be in a language, which the average requester can understand and will only **sometimes** be translated.



### PROACTIVE DISCLOSURE

“[Poor proactive disclosure results from] an overall practice of secrecy, the presumption that [information] held by government is not intended for public consumption”.

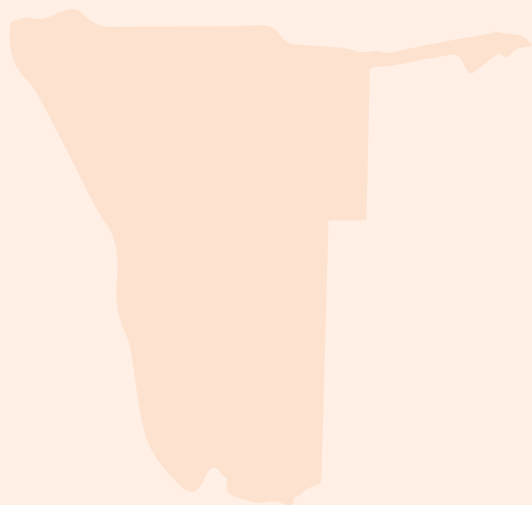


## Action Areas

The dominating theme in the transparency environment in Namibia is a lack of specific laws. In such a case, sectoral laws or proactive disclosure might facilitate access to information, but the systematic environment for such avenues is also lacking. This all adds support to the call for the passage of laws to provide both obligations, but also normative support to a facilitative and efficient access to information environment.



## NAMIBIA



### Introduction

In our 2015 report, Namibia was given a low score of **1** out of 10 for its access to information environment.

In 2017 that score has shot up to 7 out of 10 (with the respondent noting this environment has “improved significantly”), which is a reflection of the exciting stage the country finds itself in, with an Access to Information Bill strongly in process.

### Assessment

The dominating theme in the transparency environment in Namibia is a lack of specific laws. In such a case, sectoral laws or proactive disclosure might facilitate access to information, but the systematic environment for such avenues is also lacking (though the foundations for sound records management practices that can help with the implementation of laws once they are passed does appear to be present).

It is also noticeable that a lack of political will and guidance are hindrances in both the records management and proactive disclosure context. This is important – it adds support to the call for the passage of laws to provide both obligations, but also normative support to a facilitative and efficient access to information environment.

### Principle 3: Established in Law

There is no constitutional guarantee of the right of access to information, nor is there a specific law. There is a Bill in place however – which has contributed significantly to improving the general access to information environment in Namibia.

This weak legislative environment extends to a lack of a specific whistleblower protection law, as well as a lack of a specific personal data protection law as well.

### Principle 1: Fundamental right accessible to everyone

Given the weak legal environment, it is unsurprising that one can only **rarely** access information when requested in the country. However, when it is eventually given, it is rarely provided with conditions on its use. This may be a reflection of the informal environment in which access to information is in practice happening. A further potential consequence of this informality (and the fact that access happens so occasionally) is that the characteristics of a requester, such as their age or gender, are uniformly not at all influential on whether or not access is granted (this anomaly was in fact also apparent in the 2015 survey).

### Principle 6: Obligation to publish information

There are certain legal obligations in Namibian law to proactively publish information, which also tends to provide guidance on the specific categories and types of information to be disclosed. In spite of this legal obligation though, in practice institutions and agencies only **sometimes** do so. The main hindrance to proactive disclosure is described thus:

“[Poor proactive disclosure results from] an overall practice of secrecy, the presumption that [information] held by government is not intended for public consumption”.

Generally, proactively disclosed information is only **sometimes** up to date when it is eventually provided. And, on a scale of 1 to 10, institutions and agencies are only rated a 5 for their effective use of information and communication technologies to help in this regard. They also only **sometimes** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows.

The Department of National Treasury in Namibia does set a positive example on the practice of proactive disclosure.

### Principle 7: Language and accessibility

When information is provided, it will only **sometimes** be in a language, which the average requester can understand and will only **sometimes** be translated. 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. Interestingly, this situation was replicated in the 2015 survey results.

### Principle 8: Limited exemptions

While there is no Access to Information Law, and thus specific exemptions are not legislated, there has been some general jurisprudence on attempting to access information through alternative mechanisms that has resulted in the existence of exemptions of different types.

### Principle 13: Duty to collect and manage information

There is a legal duty in Namibia to collect and manage information, as well as a national archiving law/policy. While the private sector on a scale of 1 to 10 is ranked as having a records management practice of a **6**, a lack of administrative guidance and a lack of political will are seen as the main negative contributing factors on the records management practices of the public sector.

### Principle 14: Duty to Implement

There is of course no law in Namibia, which can be implemented. However, mechanisms are in place where the public may access information on certain issues relevant to them. Accessing these mechanisms may on occasion be bureaucratic.

#### Researcher

Zoe Titus of the Namibia Media Trust completed the survey. Zoe is an industry-trained journalist, media and development policy researcher and press freedom advocate with 19 years of experience in development communications.

# NIGER



## Introduction

Even though Niger has adopted an access to information standard (Ordinance), this right remains very poorly implemented due to the lack of a law on access to information.

## Highlights



### ENVIRONMENT

Niger received a weak score of **3** out of 10 for its access to information environment for the current year.



### LAWS

There is a constitutional guarantee of the right of access to information in Niger. However, instead of a law per se, there is an Ordinance in place referred to as the "Charte d'accès à l'information publique et aux documents administratifs". There are also sectoral laws that can provide avenues for access.



### RATING THE ATI LAW

The Ordinance receives a score of 43% when assessed against the Model Law.



### PROCESS

The clarity of the process for requesting is not noticeably clear, simple or effective. The review of the Ordinance ranked the procedure at around 60%, weakened by the lack of detail provided.



### LANGUAGE AND ACCESS

When information is provided, it will **rarely** be in a language that the average requester can understand. Further, the location from which the information is provided is generally **inaccessible**.



## Action Areas

The Ordinance was a positive step toward formalising the constitutional right of access to information, but the lack of a law is having seriously negative impacts on the implementation by government and the private sector in relation to the right. The Ordinance provides weak guidance for implementers – and the AU Model Law could particularly have a profoundly important role to play in guiding the development of a law for the future.

## NIGER



### Introduction

Niger received a weak score of **3** out of 10 for its access to information environment for the current year.

Even though Niger has adopted an access to information standard (Ordinance), this right remains very poorly implemented due to the lack of a law on access to information.

The existence of the Ordinance over a law makes assessment interesting, as the Model Law is of course very centrally premised on a traditional statute-led model.

Niger did not form part of our 2015 assessment.

### Assessment

The Ordinance was a positive step toward formalising the constitutional right of access to information, but the lack of a law is having seriously negative impacts on the implementation by government and the private sector in relation to the right.

The Ordinance provides weak guidance for implementers – and the AU Model Law could particularly have a profoundly important role to play in guiding the development of a law for the future, or even to just provide additional depth and clarity to the Ordinance.

### Principle 3: Established in Law

There is a constitutional guarantee of the right of access to information in Niger. However, instead of a law per se, there is an Ordinance in place referred to as the “Charte d'accès à l'information publique et aux documents administratifs”. There are also sectoral laws that can provide avenues for access.

#### Assessing the ATI Law

The Ordinance receives a score of 43% when assessed against the Model Law. This score must be read bearing in mind that this is a guidance, rather than statute. The Niger case is interesting for considering shortcomings in the Model Law methodology we have used, in fact, which is why the respondent data remains important for contextualising the actual access to information environment. The Ordinance was put in place prior to the Model Law coming into existence. The most significant shortcoming is the general lack and clarity provided by the Ordinance, which is of course largely reflective of its intrinsic nature.

### Principle 1: Fundamental right accessible to everyone

One can **sometimes** access information when requested in the country. Fortunately, the practice suggests that when requesters try to access information they are **not** required to explain why they are requesting information. The Ordinance is also applicable to all people – which promotes equal access.

### Principle 4: Application of Law

The Law applies to private bodies that perform a public function, and all public bodies.

### Principle 5: Clear and unambiguous process

The clarity of the process for requesting is not noticeably clear, simple or effective. The review of the Ordinance ranked the procedure at around 60%, weakened by the lack of detail provided. On a scale of 1 to 10, institutions use information and communication technologies to assist with access to information requests at a level of **3**, leaving large scope for improvement of such mechanisms for processing. When the process is unclear, it is difficult for citizens to actually use.



### Principle 6: Obligation to publish information

There are obligations in the Ordinance to proactively disclose information. However, in practice, institutions **sometimes** proactively provide information. The main hindrance to proactive disclosure is also cited about being rooted in the lack of a specific access to information law. Problematically, proactively disclosed information is **rarely** up to date when it is provided. However, on a scale of 1 to 10, institutions and agencies are only rated a **4** for their effective use of information and communication technologies to help in this regard.

### Principle 7: Language and accessibility

When information is provided, it will **rarely** be in a language that the average requester can understand. Further, the location from which the information is provided is generally **inaccessible**. This helps to contribute to the “reality” of access to information for citizens.

### Principle 8: Limited exemptions

The Ordinance does outline exemptions to access, but – while clear – with a substantial lack of detail. There is also no public interest override. The exemption grounds are only described in brief – with little guidance provided on potential internal limitations etc. – allowing for a broad scope in their application.

### Principle 9: Oversight bodies

Niger does provide for an ombudsman as an oversight mechanism. The body can be accessed directly by the public, but it has no enforcement powers. On a scale of 1 to 10, however, its accessibility is only seen as been rated at **2**.

### Principle 14: Duty to Implement

On a scale of 1 to 10 on consideration of the implementation of the Act, Niger was given a very low score of **2** – this is not aided by the fact that there are not seemingly procedures or policies in place to help guide implementation given the lack of a law. There are **rarely** designated persons in place in public institutions to handle requests, and **never** within private institutions. Problems with implementation are based on the lack of law, a poor freedom of expression environment, as well as a lack of public awareness on the law.

### Researcher

Sylla Sow of Article 19 East Africa completed the survey. Sylla is an associate legal researcher at Article 19. Sylla has Doctorate in International Law, and works on issues of transparency and accountability.

# NIGERIA



## Introduction

Nigeria's Freedom of Information (FOI) Act was enacted on 28 May 2011. However, at all of the levels of analysis, the implementation of the FOI Act has been generally poor with institutional compliance being weak as well



## Highlights

### ENVIRONMENT

Nigeria received a very weak score of **2** out of 10 for its access to information environment for the current year, which is notably less than the 7 it received in the previous survey.



### LAWS

There is no constitutional guarantee of access to information, though there is a specific law. There are also sectoral laws that can provide avenues for access, such as the Public Procurement Act, 2007, the Banks and Other Financial Institutions Act, 1991; and the Births, Deaths, Etc. (Compulsory Registration) Act of 1991.



### RATING THE ATI LAW

The law received a low score of 43% when assessed against the Model Law. The main issues in the assessment were revealed to relate to oversight.



### PROACTIVE DISCLOSURE

The Act both obliges proactive disclosure, and provides guidance as to the type of records that should be disclosed. However, in practice institutions only **rarely** proactively provide information given a prevailing culture of secrecy.



### DISADVANTAGED COMMUNITIES

MRA is currently using the FOI Act to engage Lagos State Government on a neglected community located in the heart of Ikeja. Through the instrumentality of the Act, the intervention has yielded three notable achievements, even though the exercise is still on going. These achievements are: bringing the community to government's attention; prevention of exploitation of the community by the relevant government agency; and the expression of willingness by members of the community to engage the government as a result of changed orientation, having previously resisted such motivation.



## Assessment

Nigeria has a longstanding law, with relatively straightforward processes. However, the lack of independent recourse and a poor political environment appear to be creating an access to information environment that is not open and accessible to citizens.





## NIGERIA



### Introduction

Nigeria received a very weak score of **2** out of 10 for its access to information environment for the current year, which is notably less than the 7 it received in the previous survey. Nigeria's Freedom of Information (FOI) Act was enacted on 28 May 2011.

However, at all of the levels of analysis, the implementation of the FOI Act has been generally poor with institutional compliance being weak as well. While there has been minimal progress made in the last few years in terms of access to information, there seem to be concerted efforts by some persons and institutions to handicap the Act.

This situation therefore reverses the progress made or, at least, stagnate the access to information regime.

### Assessment

Nigeria has a longstanding law, with relatively straightforward processes. However, the lack of independent recourse and a poor political environment appear to be creating an access to information environment that is not open and accessible to citizens.

### Principle 3: Established in Law

There is no constitutional guarantee of access to information, though there is a specific law. There are also sectoral laws that can provide avenues for access, such as the Public Procurement Act, 2007, the Banks and Other Financial Institutions Act, 1991; and the Births, Deaths, Etc. (Compulsory Registration) Act of 1991.

#### Assessing the ATI Law

The law received a low score of 43% when assessed against the Model Law. The main issues in the assessment were revealed to relate to oversight. There is no internal review mechanism, and no oversight mechanism except for administrative duties on the part of the Attorney General. The right to review is for the courts only, which has limits in terms of accessibility for citizens.

### Principle 1: Fundamental right accessible to everyone

One can **sometimes** access information when requested in the country, but when it is eventually given, it is **never** provided with conditions on its use. You do not need to provide reasons for why you are requesting the information. Interestingly however, the respondent noted that across the board the characteristics of the requester do not influence the responses they get from institutions. In that sense, there is equality – but unfortunately still not a positive general experience in terms of response.

### Principle 2: Maximum Disclosure

The law creates a presumption of openness. However, worryingly, in practice this presumption is not necessarily applied.

### Principle 4: Application of Law

The Law applies to private bodies that receive public funds. It also applies to all public institutions. "Public institution" means any legislative, executive, judicial, administrative or advisory body of the government, including boards, bureau, committees or commissions of the State, and any subsidiary body of those bodies, including but not limited to committees and sub-committees which are supported in whole or in part by public fund, or which expends public fund and private bodies providing public services, performing public functions or utilizing public funds. The application of the law is thus fairly broad.

### Principle 5: Clear and unambiguous process

In Nigeria, the process is generally viewed as simple, accessible and cost effective (the assessment of the law itself however did not find the process sufficiently clear on paper). And immensely positively, on a scale of 1 to 10, institutions use information and communication technologies to assist with access to information requests at a level of **9**.

### Principle 6: Obligation to publish information

The Act both obliges proactive disclosure, and provides guidance as to the type of records that should be disclosed. However, in practice institutions only **rarely** proactively provide information given a prevailing culture of secrecy (the Bureau of Public Service Reform does however stand as a positive exemplar). The problems in the proactive disclosure environment stem from:

1. A lack of awareness about the obligation;
2. A history of secrecy laws and oaths in civil and public service; and
3. A lack of effective Freedom of Information recourse system.

Proactively disclosed information is only **rarely** up to date when it is provided. On a scale of 1 to 10, institutions and agencies are only rated a **5** for their effective use of information and communication technologies to help in this regard. Institutions and agencies **never** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows, making equality of access for all persons inconsistent.

### Principle 7: Language and accessibility

When information is provided, it will **always** be in a language that the average requester can understand, but in contrast will **never** be translated. The location from which the information is provided is also generally **very inaccessible**, as well.

### Principle 8: Limited exemptions

The Act does provide exemptions, which are clear. There is also a public interest override, worded thus: "A public institution shall disclose any information described in subsection (l) of this section if that disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and, if the public interest in the disclosure clearly outweighs in importance any financial loss or gain to, or prejudice to the competitive position of or interference with contractual or other negotiation of a third party."

Courts are also obliged to raise the public interest override if applicable.

### Principle 9: Oversight bodies

There is a form of oversight by the Attorney General, but it has no independence from government. The public can approach the entity directly and it will deal with proactive disclosure issues, but it has no enforcement powers and, in terms of accessibility, only receives a 5 (on a scale of 1 to 10).

### Principle 11: Whistleblower protection

There are whistleblower protections provided for Nigerian law, but, on a scale of 1 to 10 on effectiveness, the protections only received a 2. The FOI Act itself provides some protections, which include protection from criminal liability. There are also some sectoral protections, such as the Economic Financial Crimes Commission (Establishment) Act, 2004; the Independent Corrupt Practices and Other Related Offences Act; and Evidence Act. Also, there is a Federal Government Whistle-blowers Policy, under which, disclosure made in good faith could lead to an award of between 2.5% (minimum) and 5.0% (maximum) of the total amount of money recovered. These forms of financial incentives are incredibly progressive.

### Principle 12: Right to Appeal

The Nigerian law doesn't provide a right to internal appeal on information request decisions. As mentioned, there is a form of additional review (though it lacks independence), and a form of judicial review is also provided for – but the recourse aspects of the law are its weakness.

### Principle 13: Duty to collect and manage information

There is a legal duty Nigeria to collect and manage information, as well as a national archiving law/policy. A lack of political will, and a lack of political or administrative guidance, are seen as the main negative contributing factors on the records management practices of the public sector.



## Stories of practice in Nigeria

### Elections

MRA in collaboration with the Transition Monitoring Group (TMG), a coalition of over 150 election observer and human rights organisations in Nigeria, deployed the FOI Act in 2015 in relation to Nigeria's elections.

The MRA in collaboration with the TMG reasoned that, if civil society groups and other election observer groups, adopt a view to save, monitor or influence the entire election process, then these groups do not have to wait till Election Day to find out if the Independent National Electoral Commission (INEC) and other institutions and agencies of Government which have various roles to play in the process are adequately prepared for the elections.

The organisations reasoned that election observer groups should no longer risk the elections failing for lack of proper preparation, as has been the case often in the past.

The groups instituted a project aimed to leverage on the TMG's extensive nationwide network of CSOs to determine, through requests for information from all INEC offices in the 36 states and the headquarters in Abuja, the plans and structures that INEC has put in place to ensure a smooth, free and fair election in 2015.

The monitoring also extended to other government agencies working on the elections. Under the project, MRA and the TMG selected over 150 member organizations from TMG members across the country.

The event contributed to the radical shift that characterised the 2015 elections, when compared to the previous ones in the country and highlighted the significance of citizens' access to information in instituting a transparent, free and fair electoral process.

Reports from the FOI assessments contributed to shaping debates, as issues of transparency, accountability and corruption became a central part of campaign rhetoric. Indeed, the election has been described by local and international observers as the freest, fairest and most transparent since Nigeria's return to civil rule in 1999.

### Disadvantaged communities

MRA is currently using the FOI Act to engage Lagos State Government on a neglected community located in the heart of Ikeja.

Through the instrumentality of the Act, the intervention has yielded three notable achievements, even though the exercise is still on going.

These achievements are: bringing the community to government's attention; prevention of exploitation of the community by the relevant government agency; and the expression of willingness by members of the community to engage the government as a result of changed orientation, having previously resisted such motivation.

### Researcher

Ridwan Adigun Sulaimon of Media Rights Agenda completed the survey. Ridwan is a Freedom of Information (FOI) Expert, trained many Journalists, and assists communities to ensure service delivery, using FOI Act. He analysed Nigeria's FOI Implementation Reports for five years

# SOUTH AFRICA



## Introduction

South Africa has a long history of a progressive access to information law (the Promotion of Access to Information Act was passed in 2000), as well as a strong supporting legislative environment.

## Highlights



### ENVIRONMENT

South Africa received a strong score of **7** out of 10 for its access to information environment for the current year, which is the same score it in fact received in the previous survey.



### RATING THE ATI LAW

The law received a score of 78% when assessed against the Model Law, which is strong. This score was largely assisted by the addition of an independent oversight mechanism through another law – the Protection of Personal Information Act – that amends the access to information law to include such an entity.



### OVERSIGHT

The oversight mechanism has been the subject of a major amendment to the Law in recent years. While previously the South African Human Rights Commission had oversight, but with limited enforcement power, an Information Regulator was established in 2016 that now has significant recommendation and enforcement powers that relate to both access to information and personal privacy. The Office of the Regulator is still being established.



### HEALTH

A non-profit based in South Africa, working with the South African Regional Programme on Access to Medicines and Diagnostics (SARPAM), was able to demonstrate the direct pricing benefits of having open access to medicine data. By helping provide States with open information to medicine pricing data the Botswana government learnt they were paying ten times the price South Africa was paying for medicine from the same service provider, called Nifedipine (which combats angina and heart disease). Knowing this, they were able to renegotiate the prices they were paying and make a direct saving of over USD\$1 million a year (with additional savings on its two other versions of Recombinant Human Erythropoetin).



## Assessment

While South Africa has a long legacy of access to information thanks to the age of its law, its implementation of the law has been inconsistent and weak. However, the recent establishment of the Office of the Information Regulator is a significant development that should be consistently and enthusiastically monitored.



## SOUTH AFRICA



### Introduction

South Africa received a strong score of **7** out of 10 for its access to information environment for the current year, which is the same score it in fact received in the previous survey.

The strengths in the environment largely arise from a long history of a progressive access to information law (the Promotion of Access to Information Act was passed in 2000), as well as a strong supporting legislative environment.

Concerns remain however as to implementation, and ad hoc retrogressive laws that make the environment tenuous.

### Assessment

While South Africa has a long legacy of access to information thanks to the age of its law, its implementation of the law has been inconsistent and weak.

However, the recent establishment of the Office of the Information Regulator is a significant development that should be consistently and enthusiastically monitored.

### Principle 3: Established in Law

There is a constitutional guarantee of access to information, as well as a specific law. There are also sectoral laws that can provide avenues for access, such as National Environmental Management Act and the Public Management Finance Act.

#### Assessing the ATI Law

The law received a score of 78% when assessed against the Model Law, which is strong. This score was largely assisted by the addition of an independent oversight mechanism through another law – the Protection of Personal Information Act – that amends the access to information law to include such an entity. This body (the Information Regulator) is in the process of being established. There are however individual weaknesses, such as a lack of detailed guidance on proactive disclosure, and fee requirements for the making of a request (as well as reproduction of records).

### Principle 1: Fundamental right accessible to everyone

One can **sometimes** access information when requested in the country, but when it is eventually given, it is **never** provided with conditions on its use. You do not need to provide reasons for why you are requesting the information (though for a request to a private body you are required to show that it is required for the exercise or protection of another right).

The class and occupation of requesters has an extremely strong influence on a requester's ability to access records. In a study conducted by a Statistics student and ODAC in 2014, there was a statistically strong indication that 'legalistic' requests that are submitted are more likely to be responded to than 'normal' ones. A comparison between the statistics of that student requester compared to the statistics of a coalition of non-governmental organisations that work on PAIA also demonstrated that a novice requester will receive far more refusals (86% refused for the novice requester versus 56.5% refused)

### Principle 2: Maximum Disclosure

The law creates a presumption of openness. However, worryingly, in practice this presumption is not necessarily applied.

### Principle 4: Application of Law

The Law applies to private bodies as far as is required

for the exercise or protection of any other right. It also applies to all public bodies (and included within the definition of public bodies are those bodies that perform an administrative function). The application of the law is thus fairly broad and South Africa was in fact the first African country to extend the right directly to private entities.

### Principle 5: Clear and unambiguous process

The biggest issue in relation to the South African process is that it is not simple enough – largely a result of the requirement of specific forms and procedures that are quite bureaucratic, and potentially off putting. Further, on a scale of 1 to 10, institutions use information and communication technologies to assist with access to information requests at a level of **4**, leaving scope for improvement of such mechanisms for processing.

### Principle 6: Obligation to publish information

The Act obliges proactive disclosure, but provides minimal guidance as to the type of records that should be disclosed. In practice too, institutions only **sometimes** proactively provide information given a prevailing culture of secrecy (the Department of National Treasury is a positive exemplar in this regard). The proactive disclosure environment is impeded by a lack of clarity in the law, and a lacuna of regulation or policy in relation to open data. This leads to practitioners being reluctant to proactively disclose for fear of contravening privacy, confidentiality or intellectual property rules.

Proactively disclosed information is only **sometimes** up to date when it is provided. On a scale of 1 to 10, institutions and agencies are only rated a 6 for their effective use of information and communication technologies to help in this regard. Institutional also only **rarely** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows, making equality of access for all persons inconsistent.

### Principle 7: Language and accessibility

When information is provided, it will **rarely** be in a language that the average requester can understand and it will **never** be translated (records tend to be in English only). The location from which the information is provided is generally **inaccessible**, as well.

### Principle 8: Limited exemptions

The Act does provide exemptions, which are clear – with both internal limitations and strong detail. There is also a public interest override, and a strong body of case law providing extra depth of understanding into the limits on the use of such exemptions (which include limitations on the harm).

### Principle 9: Oversight bodies

The oversight mechanism for the Law is interesting as it has been the subject of a major amendment to the Law in recent years. While previously the South African Human Rights Commission had oversight, but with limited enforcement power, an Information Regulator was established in 2016 that now has significant recommendation and enforcement powers that relate to both access to information and personal privacy. The Office of the Regulator is still being established, so a reflection on its accessibility is not currently possible. It is funded by the Department of Treasury, but reports to Parliament to improve independence.

### Principle 10: Right to personal data Appeal

There is a right to access and correct your own personal information in terms of the Protection of Personal Information Act.

### Principle 11: Whistleblower protection

There are whistleblower protections provided for in South African law through the Protected Disclosures Act. The protections have just recently been extended to include protection from civil and criminal liability (the Act largely relating to workplace protections). On a scale of 1 to 10 on effectiveness, the protections received a strong 7 – but this is reflective of the recent amendments, which still need to be assessed after their implementation over time.

### Principle 12: Right to Appeal

The South African law also provides a right to internal appeal on information request decisions (but this does not extend to proactive disclosure issues). Later judicial review is also permitted. These other forms of appeal mechanisms are viewed as **somewhat** cost effective, **not at all** timely, and only **somewhat** accessible. Judicial review is particularly problematic in relation to cost and time.



### Principle 13: Duty to collect and manage information

There is a legal duty in South Africa to collect and manage information, as well as a national archiving law/policy. A lack of political will, and a lack of administrative guidance, is seen as the main negative contributing factors on the records management practices of the public sector.

### Principle 14: Duty to Implement

On a scale of 1 to 10 on consideration of the implementation of the Act, South Africa was given a score of **6**, with only some institutions and agencies having procedures or policies in place to help guide implementation. There are **sometimes** designated persons in place in public institutions to handle requests, but only **rarely** within private institutions. Problems with implementation are based on a lack of political will and a pervading culture of secrecy. However, up till now it has also been the lack of a fully empowered and independent oversight mechanism that has impeded implementation; so it will be interesting to monitor if the new Information Regulator impacts in this environment.

### Stories of practice in South Africa

#### Health

A non-profit based in South Africa, working with the South African Regional Programme on Access to Medicines and Diagnostics (SARPAM), was able to demonstrate the direct pricing benefits of having open access to medicine data.

By helping provide States with open information to medicine pricing data, the Botswana government learnt they were paying ten times the price South Africa was paying for medicine from the same service provider, called Nifedipine (which combats angina and heart disease).

Knowing this, they were able to renegotiate the prices they were paying and make a direct saving of over USD\$1 million a year (with additional savings on its two other versions of Recombinant Human Erythropoetin).

#### Researcher

Gabriella Razzano of the Open Democracy Advice Centre completed the survey. Gabriella is the Director of the Open Democracy Advice Centre. 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 University of Witwatersrand, amongst others. She has a particular focus on access to information and freedom of expression issues in a digital context. She is a Founding Director of OpenUp (formerly Code for South Africa), an Internet Governance Fellow, an alumnus of the International Visitor Leadership Program (Global Digital Leader), and is currently an Atlantic Fellow studying Social Inequality at the London School of Economics.

# TANZANIA



## Introduction

In 2015, there was a move by government to enact two bills all under the certificate of urgency (the Access to Information Bill 2015 and the Media Services Bill 2015). Stakeholders vehemently opposed this move, and Parliament refused to continue with the enactment processes, instead asking government to use a normal procedure of enactment of laws that would involve public consultations. The two Bills were subsequently passed into law in 2016. Despite the fact that the two Laws are not the exact quality that stakeholders wished for, they are inclusive of stakeholder opinions.

## Highlights



### ENVIRONMENT

Tanzania received a strong score of **7** out of 10 for its access to information environment for the current year, which was viewed as a significant improvement from the preceding year.



### RATING THE ATI LAW

The law received a score of 59% when assessed against the Model Law. Noticeable weaknesses are the lack of an independent oversight mechanism and considered internal review mechanism.



### PROACTIVE DISCLOSURE

The review of the Act noted that reference is made to proactive disclosure in the Act's own objectives. And specific guidance on proactive disclosure is provided in section 9.



### RIGHT TO ACCESS

"[There is a] lack of understanding of the right of the public to know or to be informed. Public servants still believe that people don't need to know certain information. The culture of secrecy is still embedded in their minds".



### ELECTIONS

The 2015 General Elections were probably the most contested elections in the history of this country. Because of the flow of the information and perhaps due to the widespread use of social media, there were massive turnouts of people during the registration process, during the campaigns and during voting. Access to voter information was plenty and this encouraged two of the sections of the public who rarely take part in electoral processes - women and youth - to turn out in large numbers during the process.



## Assessment

In spite of an improved legislative environment, there is still scope for depth to be provided to the law and improved implementation. A major weakness of the Act itself is its brevity, and its subordination to other laws. However, it does seem as if a strong environment is busy being established that may contribute to improving access to information through proactive disclosure.





## TANZANIA



### Introduction

Tanzania received a strong score of **7** out of 10 for its access to information environment for the current year, which was viewed as a significant improvement from the preceding year. The right to seek, obtain and disseminate information is provided for under Article 18 of the Constitution of the United Republic of Tanzania of 1977.

In 2015, there was a move by government to enact two bills all under the certificate of urgency (the Access to Information Bill 2015 and the Media Services Bill 2015). Stakeholders vehemently opposed this move, and Parliament refused to continue with the enactment processes, instead asking government to use a normal procedure of enactment of laws that would involve public consultations.

The two Bills were subsequently passed into law in 2016. Despite the fact that the two Laws are not the exact quality that stakeholders wished for, they are inclusive of stakeholder opinions. While these laws have improved the environment, the passage of other laws has threatened access to information.

### Assessment

In spite of an improved legislative environment, there is still scope for depth to be provided to the law and improved implementation. A major weakness of the Act itself is its brevity, and its subordination to other laws. However, it does seem as if a strong environment is busy being established that may contribute to improving access to information through proactive disclosure.

### Principle 3: Established in Law

There is a constitutional guarantee of the right of access to information in Tanzania, as well as a specific law called the Access to Information Act, 2016. There are also sectoral laws that can provide avenues for access, such as the Client Services Charter.

#### Assessing the ATI Law

The law received a score of 59% when assessed against the Model Law. Noticeable weaknesses are the lack of an independent oversight mechanism and considered internal review mechanism. The Act was passed after the Model Law came into effect.

### Principle 1: Fundamental right accessible to everyone

One can **often** access information when requested in the country. And, when it is eventually given, it is **rarely** provided with conditions on its use. The practice also seems to require requesters to explain why they are requesting information, which can be problematic (and make it easier to discriminate against particular types of requesters).

The only characteristic to be **very influential** in a requester's ability to access records was cited as being occupation. The respondent noted a case study to demonstrate this:

"I went there as a university student requesting information that [could] help me write my research report. However, they refused to receive my request letter just because I personally wrote it and not the College that I said I was from. Thus not only was I denied information, but even my letter was rejected."

The Act applies to citizens, rather than all persons as well.

### Principle 2: Maximum Disclosure

There is no presumption of openness in practice, which contextualises the Act and implementation in a negative light, although a presumption of openness is in contrast implied through the wording of section 5 of the Act itself.

### Principle 4: Application of Law

The Law applies to private bodies that either use public funds, or are information holders of information with "significant public interest". It also applies to "any public authority". The application of the law is thus fairly broad.

### Principle 5: Clear and unambiguous process

Although the act itself describes a set procedure, the respondent noted that these provisions are not as clear, simple and effective as they should be. On a scale of 1 to 10, institutions use information and communication technologies to assist with access to information requests at a level of **5**, leaving scope for improvement of such mechanisms for processing.

### Principle 6: Obligation to publish information

Importantly, the review of the Act noted that reference is made to proactive disclosure in the Act's own objectives. And specific guidance on proactive disclosure is provided in section 9. This legislative embedding of proactive disclosure may be linked to the fact that the Act was passed after the Model Law, which provides a strong framework on this form of access. In practice, institutions **sometimes** proactively provide information. The main hindrance to proactive disclosure is described thus:

"[There is a] lack of understanding of the right of the public to know or to be informed. Public servants still believe that people don't need to know certain information. The culture of secrecy is still embedded in their minds".

Proactively disclosed information is **often** up to date when it is provided. However, on a scale of 1 to 10, institutions and agencies are only rated a 5 for their effective use of information and communication technologies to help in this regard. They only **sometimes** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows. This demonstrates how a strongly phrased law can potentially contribute to better proactive disclosure practice, but also how important the political environment remains.

### Principle 7: Language and accessibility

When information is provided, it will **often** be in a language that the average requester can understand and it will **often** be translated. Further, the location from which the information is provided is generally **accessible**. This helps to contribute to the "reality" of access to information for citizens.

### Principle 8: Limited exemptions

The Act does provide for legislated exemptions, which are described by the respondent as **clear**. There is no express and uniform public interest override, though. And the exemption grounds are only described in brief

– with little guidance provided on potential internal limitations etc. – allowing for a broad scope in their application.

### Principle 9: Oversight bodies

There is no oversight mechanism in place for either enforcement (or promotion and monitoring) of the Act, though there is scope within regulations for the formation of such.

### Principle 11: Whistleblower protection

Tanzania has legislative protections for whistleblowers in place, which includes protection from criminal liability. However, the effectiveness of these provisions is difficult to currently judge, as the law is new and regulations are not yet in place.

### Principle 14: Duty to Implement

On a scale of 1 to 10 on consideration of the implementation of the Act, Tanzania was given a very low score of **1** – this is not aided by the fact that there are not seemingly procedures or policies in place to help guide implementation. There are **often** designated persons in place in public institutions to handle requests, but only **sometimes** within private institutions. Problems with implementation are based on three key realities:

1. A lack of political will to implement the law. The Law was the first to be enacted before the Media Services Act. However, the latter has regulations in place already and the former has not.
2. A lack of knowledge of the Law among the public servants.
3. A low level of awareness among the public.

## Stories of practice in Tanzania

### Elections

The 2015 General Elections were probably the most contested elections in the history of this country. Because of the flow of the information and perhaps due to the widespread use of social media, there were massive turnouts of people during the registration process, during the campaigns and during voting. Access to voter information was plenty and this encouraged two of the sections of the public who rarely take part in electoral processes - women and youth - to turn out in large numbers during the process.



## Corruption

Corruption has been a big issue in Tanzania for the past decade. At no point has there been as many corruption scandals revealed in Tanzania than in the last 10 years. There has been a lot of information coming out especially from the Parliament of Tanzania, information that has led to shaking of the government to the extent of reshuffling the cabinet several times. Free flow of this information, and others from Parliament, was due to the live airing of the Parliament sessions which has led the public to react and push the authorities to hold those responsible to account. In recent years, some members of the public were seen paying a few shillings to the TV Kiosks, where they normally show football matches for a fee, to watch what was happening in the Parliament. Access to Parliament information has really helped the nation to realise that something is wrong - and pushed them to stand for their nation.

## Researcher

Gasirigwa Sengiyumva of MISA-Tanzania completed the survey. Gasirigwa is a Tanzanian national and a Journalist by Profession. He has worked for both state owned and private print media in Tanzania. He has worked as a Country Coordinator for the Canadian based Journalist for Human Rights (JHR). He has coordinated human rights training for journalists and worked towards establishing a human rights training curricula in Journalism Schools and colleges. Currently, he works as a Programme/Information & Research Officer for the Media Institute of Southern Africa (MISA) Tanzania Chapter. He holds a Bachelors Degree in Mass Communication from Kampala International University in Uganda has over 10 years in the information industry.

# UGANDA



## Introduction

While Uganda has an Access to Information Act and regulations, and as with many of the other African countries in this survey that do as well, implementation remains a challenge. This implementation is made more challenging but the lack of sufficient recourse.

## Highlights



### ENVIRONMENT

Uganda received a weak score of **6** out of 10 for its access to information environment for the current year (a similar score to that it received in the 2015 survey).



### RATING THE ATI LAW

The law received a weak score of 55% when assessed against the Model Law.



### SCOPE

The Act does not apply to private bodies under any circumstances. It is interesting to note how, more and more, this lack of extension is actually an anomaly amongst the countries reviewed. There are also limitations on the types of public bodies, which the Act applies to.



### LANGUAGE AND ACCESS

When information is provided, it will **rarely** be in a language that the average requester can understand and it will **never** be translated.



### MEDIA TREATMENT

"In refusing to grant request for asset declaration filed by Ronald Ssekyewa, a News Editor of Kampala Dispatch Newsletter, the Inspector General of Government cites among others "risk of it being published further....".



## Assessment

Uganda has had problems in the implementation of its law, which is not aided by the limited forms of recourse available to requesters. The scope of the law is also unusually limited. There may be opportunities to push for reform of the law in line with the AU Model Law, which could assist in remedying some of the implementation problems borne of weak drafting in particular.



## UGANDA



### Introduction

Uganda received a weak score of **6** out of 10 for its access to information environment for the current year (a similar score to that it received in the 2015 survey).

While Uganda has an Access to Information Act and regulations, and as with many of the other African countries in this survey that do as well, implementation remains a challenge.<sup>8</sup>

This implementation is made more challenging but the lack of sufficient recourse.

### Assessment

Uganda has had problems in the implementation of its law, which is not aided by the limited forms of recourse available to requesters.

The scope of the law is also unusually limited. There may be opportunities to push for reform of the law in line with the AU Model Law, which could assist in remedying some of the implementation problems borne of weak drafting in particular.

### Principle 3: Established in Law

There is a constitutional guarantee of access to information, as well as a specific law. There are also sectoral laws that can provide avenues for access, such as the National Environmental Management Act, and the Petroleum (EPD) Act.

#### Assessing the ATI Law

The law received a weak score of 55% when assessed against the Model Law. This was probably impacted by the fact that the Act was passed after the Model Law came into effect. The main weaknesses relate to a lack of independent oversight and a lack of internal appeal as alternative forms of recourse. The scope and application of the law is also viewed as being quite narrow.

### Principle 1: Fundamental right accessible to everyone

One can **sometimes** access information when requested in the country. However, when it is eventually given, it is **never** provided with conditions on its use and you are not required to justify your request.

Political association, nationality and occupation are the characteristics of requesters that are noted to affect how a person's requests are responded to. As the respondent noted:

"In refusing to grant request for asset declaration filed by Ronald Ssekyewa, a News Editor of Kampala Dispatch Newsletter, the Inspector General of Government cites among others "risk of it being published further...".

This is thus symptomatic of the problems illustrated in a number of the country case studies where journalists in particular are discriminated against in the requesting process.

### Principle 2: Maximum Disclosure

The law creates a presumption of openness. However, worryingly, in practice this presumption is not applied.

### Principle 4: Application of Law

The Act does not apply to private bodies under any circumstances. It is interesting to note how, more and more, this lack of extension is actually an anomaly amongst the countries reviewed. Documents such as the AU Model Law are thus playing an increasingly important role in mainstreaming the idea that the law should be as broadly applicable as possible. There are also limitations on the types of public bodies, which the Act applies to: contrary to the good practice of protecting information based on the contents of the record itself, Uganda's Access to Information Act protects all cabinet records and those of its sub committees.

### Principle 5: Clear and unambiguous process

The process for requesting is viewed as simple, but it is not clear. On a scale of 1 to 10, institutions use information and communication technologies to assist with access to information requests at a level of **4**, leaving scope for improvement of such mechanisms for processing.

### Principle 6: Obligation to publish information

The Act both obliges proactive disclosure, and provides guidance as to the type of records that should be disclosed. However, in practice, institutions only **sometimes** proactively provide information, which stems from a lack of awareness of the obligations and a lack of resources (especially equipment and internet) for responsible staff.

Both the Ministry of Finance Planning and Economic Development and the Ministry of Lands, Housing and Urban Development stand as examples of best practice on proactive disclosure in Uganda.

Proactively disclosed information is **often** up to date when it is provided. However, on a scale of 1 to 10, institutions and agencies are only rated a **4** for their effective use of information and communication technologies to help in this regard. And they **rarely** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows.

### Principle 7: Language and accessibility

When information is provided, it will **rarely** be in a language that the average requester can understand and it will **never** be translated. However, the location from which the information is provided is generally **accessible**.

### Principle 8: Limited exemptions

There are exemptions provided for in the law, which are somewhat clear. There is a public interest override provided for in the law, as well:

“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”.

### Principle 11: Whistleblower protection

There are whistleblower protections provided for in Ugandan law that include protection from criminal liability. On a scale of 1 to 10 on effectiveness however, the protections only received a **1**. This is because:

“Most citizens do not trust institutions mandated to implement Whistleblower Act. This is partly because appointment in many public offices is based on loyalty, rather than competence, affecting the independence of institutions. The second factor is lack of public awareness of the [law itself]”.

### Principle 12: Right to Appeal

The law provides a right to judicial review, but this form of review **not at all** cost effective, timely or accessible for citizens.

### Principle 13: Duty to collect and manage information

There is a legal duty in Uganda to collect and manage information, as well as a national archiving law/policy. Poor financial resources and a lack of human resources are seen as the main negative contributing factors on the records management practices of the public sector (there's are largely thus internal capacity problems).

## Stories of practice in Uganda

### Health

The disappearance of malaria medicine was a persistent problem at Mpugwe Health Centre. Following the African Freedom of Information Centre's access to information training, a participant made an information request regarding records of delivery of medicine and doses in each delivery. Information revealed that, in spite of regular supply, there were unexplained shortages. The requester demanded that information be displayed on notice board following, which there was no reported lack of medicine.<sup>9</sup>

### Researcher

Gilbert Sendugwa of the African Freedom of Information Centre completed the survey. Over the last 6 years Gilbert has championed advancement of ATI in Africa through research, advocacy and capacity building programmes.

8. Additional and more detailed information on Uganda (as well as Malawi and Kenya) can be sourced at: <http://africafoicentre.org/index.php/reports-publications/216-ati-baseline-study-final-report>

9. You can read more about the case study here: <http://africafoicentre.org/index.php/reports-publications/194-afic-case-studies-impact-stories/file>



# ZIMBABWE



## Introduction

Although Zimbabwe has an access to information law, accessing information held by public bodies remains a challenge. There is no proactive disclosure of information and citizens have to go through a cumbersome process to access information.

## Highlights



### ENVIRONMENT

Zimbabwe was given a low score of **3** out of 10 for its access to information environment in the current year (a score lower than that provided in the previous survey).



### RATING THE ATI LAW

The law received a score of 56% when assessed against the Model Law. Noticeable weaknesses are in the lack of an internal review mechanism, and in terms of lack of clarity and guidance in the procedure mechanisms.



### INEQUALITY

Nationality is cited as **extremely influential** in a requester's ability to access records (this in spite of the fact the Act refers to 'every person'), with political association and occupation also demonstrated to be **very influential** (with a similar pattern reflected in the 2015 survey results).



### PRESUMPTION OF OPENNESS

There is no legal (though there is some insinuation in the objects of the Act) or practical presumption of openness



### CULTURE OF SECRECY

"There is strong centralised bureaucracy in Zimbabwe whereby every decision, however inconsequential, will have to be bounced off heads of public bodies. This has engendered a culture of secrecy and insulated public bodies from public scrutiny. And there is no willingness by government to open up, as that would expose excesses and ultimately result in citizens demanding accountability".



## Assessment

Zimbabwe is a key example of how the existence of a specific access to information is a necessary, but not sufficient, step for insuring a strong access to information environment. Both the quality of the law, and its implementation, are also incredibly significant for the reality of citizens.

## ZIMBABWE



### Introduction

Zimbabwe was given a low score of **3** out of 10 for its access to information environment in the current year (a score lower than that provided in the previous survey).

Although Zimbabwe has an access to information law, accessing information held by public bodies remains a challenge.

There is no proactive disclosure of information and citizens have to go through a cumbersome process to access information. In fact, instead of enabling easy access to information, the law makes it practically difficult to exercise this right.

### Assessment

Zimbabwe is a key example of how the existence of a specific access to information is a necessary, but not sufficient, step for insuring a strong access to information environment. Both the quality of the law, and its implementation, are also incredibly significant for the reality of citizens.

A particular issue that arises from examining both the law and the environment is the issue of equality of access. How you experience access to information is heavily influenced by both who you are, and where you are, with insufficient use of either processes or technologies to help make accessing information more equal.

If you compare these results from that of 2015 survey, there is an appearance of degeneration in the experience of accessing information, particularly in relation to the process. This is not helped by the lack of an internal review mechanism within the Act itself.

### Principle 3: Established in Law

There is a constitutional guarantee of the right of access to information in Zimbabwe, as well as a specific law called the Access to Information and Protection of Privacy Act, 2002. There are however, no notable sectoral laws to provide additional access to information assistance.

#### Assessing the ATI Law

The law received a score of 56% when assessed against the Model Law. Noticeable weaknesses are in the lack of an internal review mechanism, and in terms of lack of clarity and guidance in the procedure mechanisms. The Act, drafted before the Model Law came into existence, also provides significant power and discretion – which has been shown to be problematic in practice. This highlights the need for sufficient guidance to be provided for in laws, whilst of course skirting the boundaries of providing for sufficient discretion to action takers.

### Principle 1: Fundamental right accessible to everyone

One can only **rarely** access information when requested in the country. However, when it is eventually given, it is **rarely** provided with conditions on its use. Within the Zimbabwean context, the procedural weaknesses of the Law itself may contribute to this.

Nationality is cited as **extremely influential** in a requester's ability to access records (this in spite of the fact the Act refers to 'every person'), with political association and occupation also demonstrated to be **very influential** (with a similar pattern reflected in the 2015 survey results). These patterns are always concerning, as they make the reality of accessing information a highly unequal process depending on who the requester is.

### Principle 2: Maximum Disclosure

There is no legal (though there is some insinuation in the objects of the Act) or practical presumption of openness, which contextualises the Act and implementation in a negative light.

### Principle 4: Application of Law

The Act does not apply to private bodies and, while it applies to public bodies, there are some broad limitations. However, these limitations largely relate to record type, rather than entity type.

### Principle 5: Clear and unambiguous process

The assessment of the Act highlighted the problematic procedural aspects of the requesting process, and the survey noted too that the **lack of**





**simplicity** was the most troublesome aspect of the procedure. The respondent also disagreed that the process was affordable. This exacerbated by the fact that, on a scale of 1 to 10, the institutions use information and communication technologies to assist with access to information requests at a level of **2**.

### Principle 6: Obligation to publish information

There are no obligations in Zimbabwean law to proactively publish information, which also tend to provide guidance on the specific categories and types of information to be disclosed. Unsurprisingly, the practice is also weak – with institutions **rarely** proactively providing information.

The main hindrance to proactive disclosure is described thus:

“There is strong centralised bureaucracy in Zimbabwe whereby every decision, however inconsequential, will have to be bounced off heads of public bodies. This has engendered a culture of secrecy and insulated public bodies from public scrutiny. And there is no willingness by government to open up, as that would expose excesses and ultimately result in citizens demanding accountability”.

And the quality of the process and content of information proactively disclosed is also not strong. Proactively disclosed information is only **rarely** up to date when it is eventually provided.

And, on a scale of 1 to 10, institutions and agencies are only rated a **2** for their effective use of information and communication technologies to help in this regard. They also **never** use mechanisms or means of disseminating information that assist rural or disadvantaged communities, such as through brochures or road shows. This issue contributes to the poor accessibility of information, and implicates the equality of the process.

### Principle 7: Language and accessibility

When information is provided, it will only **rarely** be in a language, which the average requester can understand and will **never** be translated. Further, the location from which the information is provided is generally **inaccessible**. Interestingly, this situation was replicated in the 2015 survey results.

### Principle 8: Limited exemptions

The Act does provide for legislated exemptions, although they are only **somewhat clear**. There is no express public interest override, though. A lack of clarity in exemption grounds provides significant room for the broad application of exemptions, which can prove a hindrance to making the right of access real when the law is being implemented.

### Principle 9: Oversight bodies

The assessment of the Act provided guidance on the manner of the oversight body (which was not dealt with by the survey results). There is a right to review to a Commission, but there is a serious question raised about its independence (echoed within the 2015 survey results). There is some difficulty in the conflation of media regulation and access to information within the same Act that makes assessment difficult.

### Principle 10: Right to personal data

The Act itself provides a right to access and correct your own personal data. There is also a definition of personal information provided to give clarity.

### Principle 13: Duty to collect and manage information

There is a legal duty in Zimbabwe to collect and manage information, as well as a national archiving law/policy. A lack of political or administrative guidance and poor financial resources are seen as the main negative contributing factors on the records management practices of the public sector.

### Principle 14: Duty to Implement

On a scale of 1 to 10 on consideration of the implementation of the Act, Zimbabwe was given a very low score of **2**. While there are technically procedures in place that should guide implementation, neither private nor public bodies have properly designated information officers available in practice. This problematic implementation is based on three key realities:

1. A cumbersome process in accessing the information makes it practically difficult to enjoy the rights.
2. There is a lack of political will to make the right a reality and the intent appears to be to control the free flow of information than enhancing access.
3. There is a lack of public awareness on their rights to access to information and how they can use the law to enjoy the rights.

### Researcher

Nhlanhla Ngwenya of MISA-Zimbabwe completed the survey. Nhlanhla is the current director of MISA-Zimbabwe, an organisation that actively lobbies around the adoption of adequate safeguards for the enjoyment of freedom of expression, media freedom and access to information.

## APPENDIX A: METHODOLOGY

Three main sources of data were triangulated to provide the content of the research:

- a.** The results of an assessment of eight of the ATI Laws based on the AU Model Law, and completed by an independent third party researcher on the basis of the test of the law;
- b.** Completion of a survey on both access to information laws and practice in twelve countries, completed by an APAI Working Group ATI expert working in, or with, the assessed country; and
- c.** The results of the 2015 State of Access to Information in Africa Survey.

The results of both A and B went through an independent quality control by the editor, and were used to quality control the results from each other.

## LAW ASSESSMENT INDICATOR CATEGORIES AND SCORING:

The assessment contained around 54 Indicators (with four additional introductory categories) totalling 88 points. A review of the methodology is available on application.

Certain category subtotals have specific notes, and some indicators have additional notes for guidance in scoring the indicators. Bearing in mind the goal was to have a simplified, yet cross-comparative, index there are some indicators that may appear broad. The researcher is provided space, however, to justify scoring for each indicator in the summary of findings sections.

A decision was taken to include “unclear” provisions as scoring zero. This is because the written text of law demands clarity under traditional rule of law principles. Thus, we consider any clarity lacuna as directly having a negative impact on the quality of the law assessed.

It is worth noting that the Model Law provides significant detail on establishing “oversight mechanisms”. In constructing the scoring, we have greatly reduced the detail in the section. This is

because we believe that part of the reason so much detail is provided is due to the fact that – in most instances – a significant level of detail would be needed to support the “assisting” function of the Model Law in establishing the new body, but not necessarily as a reflection of it being a complete pre-requisite. It is further an acknowledgment of the fact that, even though in some contexts an oversight mechanism is not required, an agency may have some of the functions of such a mechanism that are nevertheless useful. It is also worth noting in considering that section that in the Right to Information Methodology the promotion function is not specifically required to be an oversight mechanism, but in the Model Law it is. We have tried to give consideration to this difference by allowing the researcher to consider “other agencies” too, if revealed from the text of the law.

A final significant point of divergence from other indicators is the allowance of the researcher to provide additional “bonus points” up to a limit of 5 if provisions or preambles of the rated law reveal support for the spirit of the Model Law, which the scoring does not necessarily reflect. To guide the allocation of these points, the researcher can only award these additional points when all the other indicators have already been completed, as these points should only be awarded for provisions, sections or structural issues that have not elsewhere been taken into consideration in the scoring.

### ATI Survey Indicator Categories:

- a** Introduction and Demographic (6 questions)
- b** Principle 3: Established in Law (4 questions)
- c** Principle 1: Fundamental right accessible to everyone (6 questions)
- d** Principle 2: Maximum disclosure (2 questions)
- e** Principle 4: Application of law (4 questions)
- f** Principle 5: Clear and unambiguous process (5 questions)
- g** Principle 6: Obligation to publish information (8 questions)
- h** Principle 7: Language and accessibility (3 questions)
- i** Principle 8: Limited exemptions (5 questions)
- j** Principle 9: Oversight bodies (7 questions)
- k** Principle 10: Right to personal data (3 questions)
- l** Principle 11: Whistleblower protection (4 questions)
- m** Principle 12: Right of appeal (5 questions)
- n** Principle 13: Duty to collect and manage information (4 questions)
- o** Principle 14: Duty to fully implement (5 questions)
- p** General reflections (3 questions)



PRELIMINARY QUESTIONS AND INTERPRETATION QUESTIONS				
INDICATOR	SCORE	SCORE RECEIVED	SUMMARY OF FINDINGS	NOTES
<b>GENERAL/FOUNDATIONS</b>				
General Subtotal:		10		
<b>DEFINITIONS</b>				
Section Note: This only touches on a selection of the definitions (it merely seeks to review a sample), but does so as it is believed that clarity in definitions improves the potential for implementation and is the basis of a clear and rational law.				
Definition Subtotal:		5		
<b>APPLICATION/SCOPE</b>				
Application Subtotal:		5		
<b>PROCEDURE</b>				
Procedure Subtotal:		20		
<b>EXEMPTIONS</b>				
Exemption Subtotal:		15		
<b>INTERNAL REVIEW</b>				
Internal Review Subtotal:		10		
<b>OVERSIGHT MECHANISM</b>				
Within the Model Law, the provisions on the oversight mechanism are particularly detailed. This is because the establishment of such bodies will often be initiated by that law, and we remained cognizant therefore of not letting that need for detail way to heavily on the methodology scores. An important note for interpreting: a country may have a government department of some sort in this role - should still be scored in functions, but will reflect in independence.				
Oversight Review Mechanism Subtotal:		15		
<b>ADDITIONAL PROVISIONS</b>				
Additional Provisions Subtotal:		5		
TOTAL POINTS:		85		
54	Bonus points	3		
<b>TOTAL POINTS WITH BONUS:</b>		<b>88</b>		



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