

DIGITAL RIGHTS AND ACCESS TO INFORMATION SERIES **5**

PUBLIC INTEREST JOURNALISM AND GOOD GOVERNANCE

Access to information laws promote public interest journalism and good governance

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Access to information is an essential component of best practices in public administration management and governance in Africa. Transparency is progressively becoming the rule, and secrecy the exception.



The campaigns for the expansion of access to information alongside the development of the digital era have enhanced the scope of journalism, especially investigative reporting in several African countries.



Currently, 25 African countries have adopted Access to information laws. The African Union, its organs and African governments ought to boost the adoption of constitutional provisions and laws on access to information for everyone.

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INTRODUCTION

In Africa, Freedom of Information (FOI) legislation began to be implemented in the early 2000s. Two decades later, more than half of the continent has embraced FOI laws and the principles of access to information (ATI) in both public affairs and governance. This has substantially reduced secrecy in public affairs and expanded the scope for journalists in collecting records and data.

Transparency is becoming the rule, and secrecy the exception, as the expansion of ATI continues to advantage journalism, media development and good governance on the continent.

It must be remembered that the campaigns for freedom of information and access to information were grounded on universal and regional instruments, including article 19 of the Universal Declaration of Human Rights adopted on 10 December 1948:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

This was confirmed and expanded by article 19, paragraph 2, of the International Covenant on Civil and Political Rights (ICCPR) of 1966:

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

Closer to home, article 9 of the African Charter on Human and Peoples' Rights of 1981 provides that:

Every individual shall have the right to receive information.

The first law promoting freedom of information in Africa was adopted in South Africa, namely the Promotion of Access to Information Act 2 of 2000 (PAIA). It followed on the heels of vigorous campaigning which requested the specific implementation of article 32(1) of the South Africa Constitution of 1996:

Everyone has the right of access to any information held by the state, and any information held by another person and that is required for the exercise or protection of any right.

The adoption of PAIA made it possible for any person to request and access any information or records held by public bodies. This was the beginning of a process that saw the expansion of freedom of information on the African continent.

The Declaration of Principles on Freedom of Expression in Africa, adopted in 2002 by the African Commission on Human and Peoples' Rights (ACHPR)¹, provided that:

Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.

1. The Declaration of Principles on Freedom of Expression in Africa was adopted by the ACHPR in November 2002. It was reviewed in 2019 to become The Declaration of Principles on Freedom of Expression and Access to information in Africa.

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ACCESS TO INFORMATION IS KEY TO FREEDOM OF EXPRESSION

As the campaigns for FOI laws expanded, new terminologies were adopted, such as freedom of information, the right to information, freedom of access to information, and access to information. Along with this new thinking came the belief that only access to information could bring about meaningful freedom of expression. It has been referred to as the 'mother of all rights' and calls mounted in many countries such as Zimbabwe, Angola, Nigeria and Uganda, where civil society movements strongly advocated this approach. A few governments heeded the call, and countries like Zimbabwe (2002), Angola (2002) and Uganda (2005) adopted such laws.

The ATI impetus fuelled and intensified in-country campaigns, which led to the creation of continental coalitions such as the African Freedom of Information in Centre (AFIC) in 2006, and the African Platform on Access to Information (APAI) in 2009.

APAI led the fight for ATI laws in Africa and made tremendous headways on the continent and at global levels. Among other achievements, APAI successfully campaigned at the UNESCO General Assembly in 2015 and, consequently, at the General Assembly of the United Nations in September 2019 to adopt the International Day on Universal Access to Information (IDUAI) on 28 September.

ATI is an essential component of best practices in public administration management and for good governance in Africa. Many governments vying for the Open Government Partnership (OGP)² membership have been compelled to embrace transparency and allow access to public records and information. The conditions set by the OGP for country membership applications have added value to ATI campaigns on the continent.

2. OGP is a multilateral initiative that aims to secure concrete commitments from national and sub-national governments to promote open government, empower citizens, fight corruption, and harness new technologies to strengthen governance. The OGP was formally launched in September 2011.

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CONTINENTAL INSTRUMENTS EMBRACE ACCESS TO INFORMATION

Across the continent, organisations, especially the African Union and its organs, have placed emphasis on ATI. Article 9 of the African Union Convention on Preventing and Combating Corruption provides for this:

Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption.

The ACHPR has added “access to information” to all its instruments and positions related to freedom of expression, hence the appointment of a Special Rapporteur on Freedom of Expression and Access to Information.

In 2019, the declaration was reviewed and expanded to become the Declaration of Principles on Freedom of Expression and Access to Information in Africa. In the same vein, many resolutions in favour of access to information in Africa were passed, such as Resolution 122 on expanding the mandate of the Special Rapporteur on Freedom of Expression in November 2007 to include Access to Information.

Citizens, journalists, researchers, media freedom advocates, human rights defenders, and corruption crusaders have embarked on programmes to promote ATI and the adoption of related legislation, to uphold the regulations and best practices in public and private bodies. The right to access information held by public bodies is progressively becoming an entrenched principle.

Free access to information should become the rule, and secrecy the exception, as recommended by the declaration to this effect:

Any restrictions shall be provided by law, serve a legitimate interest and be necessary in a democratic society.

The Access to Information Model Law, adopted in 2013 by the ACHPR, provides:

An information holder may refuse to grant access to information only if the information falls within an exemption stated” clearly by law.

Many African countries have now endowed their constitutions with provisions on ATI for all. Some of them, such as South Africa, have adopted ATI legislation and implemented regulations. However, others lag behind. For instance, Article 11 of the Constitution of Madagascar states that access to information is guaranteed for all persons, but the government is yet to adopt an ATI law to enforce this.

Thus far, only 25 African countries have adopted ATI laws. For example, the draft ATI bill in the Democratic Republic of Congo has been with parliament for the last 10 years. The slow pace of ATI adoption can be mainly attributed to governments’ fears of giving open access to investigative reporters, corruption crusaders, researchers and ordinary citizens. Many governments still confuse ATI legislation and media laws; or are yet to understand the benefit of having an ATI dispensation for transparency, good governance, and citizen participation in public affairs. This situation requires new and innovative approaches to the APAI campaigns to engage such governments.

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ADOPTION OF FREEDOM OF INFORMATION AND ACCESS TO INFORMATION LAWS IN AFRICA

The adoption of FOI in Africa differs between countries. Of the 25 countries which adopted an ATI law, some have fully implemented the law and its regulations, while others have adopted an ATI law but are yet to put in place regulations and oversight mechanisms to monitor implementation. In some countries, such as the Democratic Republic of Congo and Senegal, governments and parliaments are considering the bills before them.

In Nigeria, it took more than 12 years for the Freedom of Information Act of 2011 to be adopted. The campaigners for the law were able to influence public opinion and engage citizens, persons, NGOs, professional organisations, and journalists' networks to use the act as soon as it came into force. Journalists and media organisations have extensively used the FOI act to enhance their reports and the quality of their productions. Through requests and litigation, human rights defenders, transparency and corruption crusaders have built the necessary pressure for open governance at all government levels. The jailing of the editor of *CrossRiverWatch*, Agba Jalingo,³ in Cross River state highlighted the watchdog role played by civil society, who advocated and pleaded until he was released 30 months later.

In Côte d'Ivoire, the government took the initiative to adopt ATI⁴ legislation while planning to join the OGP in 2013. By the time civil society organisations started escalating their campaigns to request the adoption of an ATI law, the bill was quickly passed by parliament and adopted in 2013 without public knowledge and discourse. However, it took another 2 years to set up the oversight body, which required sensitisation, awareness raising and implementation engagements. Cote d'Ivoire is presently one of the few francophone African countries where the oversight commission on access to information (Commission d'accès à l'information d'intérêt public et aux documents publics: www.caidp.ci) functions efficiently. Civil servants, civil society leaders and media professionals were trained to fast-track the implementation. Information officers were appointed, National Archives officers were engaged and trained, and journalists formed a network to uphold access to information. The media have enhanced the quality of their productions, outputs, broadcasts and publications to become more and more factual.

3. <https://cpj.org/2022/03/nigerian-journalist-agba-jalingo-acquitted-of-all-charges-30-months-after-arrest/>

4. FOI and ATI are interchangeably used to mean the same thing.

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ACCESS TO INFORMATION HAS IMPROVED JOURNALISM AND INVESTIGATIVE REPORTING

In several African countries, campaigns for access to information, alongside the development of the digital era, have enhanced the scope of journalism, especially investigative reporting. In places where 'undercover' journalism was contentious and slammed as controversial, unprofessional, unethical, and denounced by public office holders and public figures, the advent of ATI legislation has made it possible to progressively make official requests for public documents and records during investigations. However, this has not reduced the hardship, threats and attacks many investigative reporters face.

For instance, in Ghana, Ahmed Hussein-Suale,⁵ an investigative reporter working for *Tiger Eye*, was shot dead by unidentified assailants on 16 January 2019 while on his way home from work in Accra, the capital. Before the assassination, he was part of a team led by award-winning journalist Anas Aremeyaw Anas, whose investigation led to the resignation of the head of the Ghana Football Association. Dozens of football referees and officials in several countries were also banned as a result of the investigation for receiving cash from undercover journalists posing as agents. It should be noted that the 'undercover' journalism practised by some investigative reporters who record and collect data without revealing their identity has led to heated debates in the media industry concerning ethical journalism.⁶

With the advent of the ATI legislation in Ghana in 2019, the rights of everyone, including journalists, to access public

records, documents and information held by public officers have been guaranteed and can be defended in court. This will help douse the tensions generated by the controversial reports and broadcasts by undercover investigative reporters through the practice of ethical journalism.

Coalitions have been instrumental in the implementation of ATI laws. The South Africa ATI Network,⁷ set up in 2008 as a pressure group, has enhanced the implementation of the ATI law through campaigns and shadow reports. The network is presently canvassing for the reform of the Promotion of Access to Information Act 2 of 2000. This would enable and expand, among other provisions, records management and proactive disclosure. Proactively disclosing records and information by public and private bodies on their digital platforms is crucial for journalists reporting on current affairs and investigations.

Oversight bodies have also played a crucial role in enhancing the scope of access to information in Africa. The information commissions, such as the Information Regulator of South Africa, have contributed significantly to monitoring the requests and complaints of media professionals trying to access public records, documents and information in public custody. The movement led by the South Africa Information Regulator at the continental level to initiate a network of African Information Commissions is a timely development for improvements. It may encourage countries that have not yet adopted ATI laws.

5. <https://cpj.org/2019/01/investigative-journalist-killed-in-ghana/>

6. Media outlets engaged in crusading journalism have published and broadcast reports on corruption in a number of public bodies that triggered outcries about the method of undercover reporting.

7. <https://cer.org.za/wp-content/uploads/2019/09/ATI-Network-Shadow-Report-2018.pdf>

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PROACTIVE DISCLOSURE HAS IMPROVED IN THE DIGITAL ERA

The development and expansion of digital technology have tremendously enhanced the proactive disclosure of records and information held by public and private bodies. Even in countries where ATI is yet to be legislated, such disclosure has benefited everyone, including journalists and researchers. Government and public entities are now using websites and social media to disseminate public documents, records and information in their possession. For example, in Senegal,

many records and information from the government and public bodies are uploaded on digital platforms for public consumption. However, there are still complaints that the data is either insufficient or not timeously uploaded. Digital technology has also facilitated reporters' efforts to research and fact-check information in their possession. In a nutshell, the digital era has worked well in favour of ATI and media development, although there is room for improvement.

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CONCLUSION

In support of the work done by CSOs and NGOs, the African Union organs (engaged in monitoring human rights violations, good governance, anti-corruption, and free and fair elections) and African governments ought to boost the adoption of constitutional provisions and laws on ATI for everyone. It is also expected that organs of the African Union emphasise human rights, good governance, anti-corruption, transparency, and democracy and embrace ATI as a criterion in their proceedings.

The African Commission on Human and Peoples' Rights has progressed toward these goals and, in 2019, adopted the Declaration of Principles of Freedom of Expression and Access to Information in Africa; and by adopting the Model Law on Access to Information for Africa in 2013; the Guidelines on Access to Information and Elections in Africa in 2017;

among others. It is expected that other organs, such as the African Governance Architecture, the African Peer Review Mechanisms, and the African Union Advisory Board on Corruption, will follow suit.

Legislated and well-implemented ATI is crucial to enhancing quality expression, ethical journalism and media development. There is little doubt that over the past few years, access to information and public records have positively impacted the development of the media and the quality of their output and enhanced good governance in Africa. The challenge going forward is to find the best way to regulate and navigate through the quirks of the digital era and the Fourth Industrial Revolution. Initiatives and innovations of APAI and other coalitions are urgently needed to build campaigns to address the new challenges.

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ABOUT THIS PROJECT

fesmedia Africa is the regional media project of the Friedrich Ebert-Stiftung (FES) in Africa. Its work promotes a free, open, liberal and democratic media landscape that enables ordinary citizens to actively influence and improve their lives, as well as those of the communities and societies they live in. *fesmedia* Africa believes that in order to participate in public life and decision-making, people need to have the means, skills and

opportunities to access, exchange and use information and knowledge. They need to be able to communicate and exchange ideas, opinions, data, facts and figures about issues that affect them and their communities.

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