COMMEMORATIVE NEWSLETTER

of the ACHPR Special Rapporteur on Freedom of Expression and Access to Information in Africa

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PREFACE

I am honoured to present this commemorative newsletter, in celebration of two significant milestones of the African Commission on Human and Peoples' Rights (African Commission): the 20th anniversary of the establishment of the special mechanism on freedom of expression and access to information in Africa, and the 10th anniversary of the African Commission Model Law on Access to Information for Africa (the Model Law), which was adopted in 2013.

The special mechanism on freedom of expression and access to information in Africa was initially established by the African Commission, through the adoption of Resolution ACHPR/Res.71(XXXIV)03 during its 36th Ordinary Session in December 2004. This mechanism was established to monitor adherence to freedom of expression standards and to propose recommendations to the Commission and States Parties. It was subsequently expanded to include the right to access information which is also enshrined in Article 9 of the African Charter on Human and Peoples' Rights. Accordingly, 2024 marks the 20th anniversary of the establishment of the mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa.

Access to information is recognized as a fundamental human right under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights. Specifically, Article 9 of the African Charter guarantees both the right of access to information and freedom of expression. Access to information has been recognized as a cross-cutting and facilitative right which is instrumental in democratic governance and promotion of transparency and accountability. In recognition of the importance of this right, the 74th UN General Assembly designated 28 September as the International Day for Universal Access to Information in 2019.

Since its establishment, the mechanism of the Special Rapporteur on freedom of expression and access to information, significant efforts have been undertaken to promote and protect the right of access to information in Africa. A key initiative is the adoption of the Model Law on Access to Information for Africa, which provides a detailed set of provisions embodying the international, regional or sub-regional standards on the right of access to information. The Model Law was adopted

to assist States Parties in the development of national legislation on access to information.

The commemoration of the International Day for Universal Access to Information is significant to the Special Rapporteur particularly taking into account the unique challenges and opportunities in the effective exercise of the right of access to information. This commemorative day provides a platform to examine the challenges faced in ensuring access to information in Africa, such as lack of access to information laws or inadequate implementation of such laws, censorship, internet shutdowns, harassment of journalists, and limitations on press freedom. It is also a moment to celebrate progress made in expanding access to information through legislative advancements, government programmes, reforms, and successful advocacy efforts led by the Special Rapporteur and civil society organizations.

In view of this, the Commemorative Newsletter serves as the perfect opportunity to celebrate the establishment and contribution of the special mechanism on freedom of expression and access to information, and to raise awareness on the right of access to information in Africa. The Newsletter highlights the efforts which have been taken by the African Commission with regards to this important right, such as the adoption of the Model Law on Access to Information for Africa.

Specifically, the Newsletter explores the African Commission's contributions to the right of access to information, analyses the status quo, gains and challenges following the adoption of the Model Law on Access to Information for Africa., Through six contributions, the newsletter traces the trajectory to the adoption of the Model Law, highlights the perspective from a State Party following adoption of national legislation on access to information, unpacks the experience of an oversight mechanism established for the purpose of promoting, monitoring and protecting the right of access to information, discusses the successes and challenges from the perspective of a journalist, in addition to examining the right of access to information in the digital age.

As we commemorate both the anniversary of the establishment of the African Commission's special mechanism on freedom of expression and access to information and the adoption of the Model Law on Access to Information for Africa, it is my sincere hope that this Newsletter will contribute to the discourse on the importance of the right of access to information. I also hope that it will spark a dialogue on effective approaches to implementation of this important and facilitative right in Africa and serve as a blueprint for advancing this right going forward.

I would like to take this opportunity to extend my sincere gratitude to the contributors of this Newsletter: Pansy Tlakula, Lawrence Mute, Maxwell Kadiri, Thobekile Matimbe, Samson Lardy Anyenini and Audrin Mathe. Together they provided their insight and experience on the challenges and successes in relation to promoting and protecting the right of access to information in Africa. I also wish to extend my heartfelt thanks to the Editor, Hlengiwe Dube and the team at Fesmedia Africa for the tireless work done in producing this Newsletter. Your continued support to the work of the special mechanism has truly been the engine which has fuelled its achievements.

As we commemorate the dual celebration of the special mechanism's 20th anniversary of the special mechanism and 10th anniversary of the Model Law on the 2024 International Day for Universal Access to Information, it is my sincere hope that the readers will gain perspective on the importance of the right of access to information, in addition to the work which has been done by the special mechanism to raise awareness on this right, including adoption of the Model Law on Access to Information for Africa. I am hopeful that this will galvanize us all to commit to collective commitment to working together to promote, protect, enhance and implement this important right throughout the continent.

With these words, I welcome you to explore this Commemorative Newsletter for the 20th Anniversary of the special mechanism on freedom of expression and access to information in Africa. Enjoy exploring the milestones, challenges, insights, and forward-looking discussions that highlight our journey and future aspirations for access to information and freedom of expression in Africa.

Commissioner Ourveena Geereesha Topsy-Sonoo

The Special Rapporteur on Freedom of Expression and Access to Information in Africa, of the African Commission on Human and Peoples' Rights

Panel on the 10th anniversary of the Model Law on Access to Information for Africa, 77th Ordinary Session, Arusha, Tanzania Photo credit: African Commission on Human and Peoples' Rights

Article 1

The Right to Access Information In Africa: Reflecting On Contributions Of The Special Rapporteur On Freedom Of Expression And Access To Information In Africa

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Introduction

In this article, I reflect on the contributions which the Special Rapporteur on Freedom of Expression and Access to Information in Africa has made to the right of access to information. This reflection is significant, among others, because 2024 is the 20th anniversary since the African Commission on Human and Peoples' Rights established the Special Rapporteur.

In the article, I address the following two questions:

1. How has the Special Rapporteur contributed to norm-elaboration on access to information on the continent?

2. How are those norms benefiting the exercise of the right to access information on the continent?

Context

Since the establishment of the Special Rapporteur by the African Commission in 2004, five Commissioners have held that mandate: Andrew Chigovera, Pansy Tlakula, I, Lawrence Mute, Jamesina King and the current mandate-holder, Ourveena Geereesha Topsy-Sonoo.

The Special Rapporteur supports the African Commission, and state and non-state actors to realise Article 9 of the African Charter on Human and Peoples' Rights on the right to freedom of expression and access to information. The terms of reference of the Special Rapporteur are:

1. Analysing media legislation, policies and practice within states parties to the African Charter in relation to their compliance with freedom of expression and access to information standards

in general and other relevant norms;

2. Undertaking fact-finding missions to member states in relation to reports of systemic violations of the right to freedom of expression and denial of access to information, and making appropriate recommendations to the African Commission;

3. Undertaking promotion missions and other activities to strengthen the full enjoyment of the right to freedom of expression and the promotion of access to information in Africa;

4. Making other interventions regarding violations of the right to freedom of expression and access to information, including by issuing public statements and press releases and sending appeals to states parties;

5. Keeping a proper record of violations of the right to freedom of expression and denial of access to information; and

6. Submitting reports at each Ordinary Session of the African Commission on the status of the enjoyment of the right to freedom of expression and access to information in Africa.[1]

Norm-elaboration and dissemination on access to information

Article 9 of the African Charter provides that individuals have the right to receive information, as well as the right to express and disseminate their opinions.[2] These rights establish a bedrock on which Africa's people have endeavoured to frame, demand and actualise civil and political, as well as economic, social and cultural rights for over four decades since the Charter was adopted in 1981.[3]

The right to freedom of expression is, at a fundamental level, exercisable by and between individuals when they express themselves orally, in writing and indeed in various forms of art. The right is fully realised only when individuals or groups of individuals commune with others including by sharing ideas. The truism that freedom of expression is an

[1] ACHPR. "Special Rapporteur on Freedom of Expression and Access to Information in Africa." Available at: https://achpr.au.int/en/mechanisms/special-rapporteur-freedom-expression-and-access-information.

[2] African Charter on Human and Peoples' Rights (1981). Available at: https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pd.

[3] Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A Commentary*. Oxford University Press. Chapter 10.

enabler of other rights and an anchor of a democratic society is as apt now as ever before:[4] Leveraging its freedom to speak enables a far-distant village to communicate that its food stocks are running low, or that it is experiencing a novel disease; leveraging their freedom to know enables deaf persons to demand information on health in sign language; and the freedom to know supports accountable electoral processes.[5]

Africa's human rights instruments have established an apt basis for ensuring the right to speak and the right to know. In the past two decades, successive Special Rapporteurs have spearheaded the development of soft-law instruments to elaborate the meaning and implications of Article 9 of the Charter. These instruments have subsequently been adopted and deployed by the African Commission.

Model Law on Access to Information for Africa

My predecessor as Special Rapporteur, Commissioner Tlakula, oversaw the development of the Model Law on Access to Information for Africa.[6] The Model Law, which the African Commission adopted in 2013, provides detailed guidance on the content that should be included in national access to information laws. To conform with the Model Law, national legislation should guarantee the right to access information to every individual and not just to a citizen. National laws should also legislate for the principle of proactive disclosure under which those who hold information of public interest routinely provide such information to the public even without being requested to do so. As well, national laws should require information holders to create, organise and keep records systematically and accurately.[7]

The Model Law has in time become a gold standard for guiding and assessing states in the development of

[4] O'Flaherty, M. (2015). "International Covenant on Civil and Political Rights: Interpreting Freedom of Expression and Information Standards for the Present and the Future," in T. McGonagle & Y. Donders (eds), *The United Nations and Freedom of Expression and Information: Critical Perspectives.* Cambridge University Press, 59.

[5] Mute, L. (2021). "State of Freedom of Expression in Africa: Leveraging the Roles of African Human Rights Mechanisms to Anchor the Freedom to Speak and the Freedom to Know," Keynote address at Roundtable on Regional Mechanisms on Emerging Trends and Developments on Freedom of Expression, 21 October 2021, African Court on Human and Peoples' Rights and the American Bar Association Rule of Law Initiative.

[6] ACHPR (2013). Model Law on Access to Information for Africa. Available at: https://achpr.au.int/en/node/873.

[7] Ibid.

Lawrence Mute engaging with the late President of Namibia on Freedom of Expression and Access to Information. Photo credit: Action Namibia

access to information legislation. 29 of Africa's 55 states have developed access to information laws.[8] Yet, while some of these laws comply with the overall legislative guidance established in the Model Law, others do not. This is illustrated by Kenya's Access to Information Act[9] which, largely, conforms to the standards established in the Model Law. [10] On the contrary, Zimbabwe's Freedom of Information Act[11] departs markedly from the guidance established in the Model Law. For example, the Act limits the independence of the Zimbabwe Media Commission, a constitutional commission which is independent and not subject to the direction or control of anyone,[12] by subjecting its decisions to the minister responsible for information. Under the Act, the Commission may make regulations for the better

[8] https://africafoicentre.org/wp-content/uploads/2024/01/Countries-with-ATI-Laws-in-Africa_2024.pdf

[9] AccesstoInformation Act (2016). Available at: https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/AccesstoInformationActNo31of2016.pdf.

[10] Razzano, G. (ed) (2017). *State of Access to Information in Africa*. APAI Working Group. Available at: https://www.africanplatform.org/fileadmin/Content/PDF/Resources/State-of-ATI-in-Africa-2017.pdf.

[11] Freedom of Information Act (2020). Available at: https://zimlii.org/akn/zw/act/2020/1/eng@2020-07-01.

[12] Constitution of Zimbabwe (2013), art. 235. Available at: https://www.constituteproject.org/constitution/Zimbabwe_2017.

implementation of the Act only after consulting the Minister responsible for Information.[13] This provision does not conform to the Model Law which requires that the oversight mechanism for access to information must be independent and impartial.[14]

The value of the Model Law as a standard-setter for access to information legislation cannot be overstated. As the Special Rapporteur from 2017 to 2020, I undertook an advocacy visit to Nigeria, where I met a broad spectrum of state and non-state actors, including the then Vice President of Nigeria, the Ministry of Justice, the Independent National Electoral Commission, the National Human Rights Commission, the Extractive Industries Transparency Initiative, the ECOWAS Network of Electoral Commissions, and civil society actors. Subsequent to the visit, I developed an advisory on the further legislative and other measures that Nigeria should take towards ensuring full access to information in the country.[15] My recommendations suggested significant changes to the Freedom of Information Act (2011) to align it with the Model Law. While these changes may not have happened, my recommendations remain a key element of the ongoing Nigerian discourse of overhauling the Act.[16]

Guidelines on Elections and Access to Information in Africa

As the Special Rapporteur, I oversaw the tail-end of the development and adoption of the Guidelines on Elections and Access to Information in Africa,[17] whose development Commissioner Tlakula had initiated. The Guidelines, which were adopted by the African Commission in 2017, recognise that access to information is pivotal in ensuring free and fair elections. They elaborate on the information which electoral stakeholders holding information of public interest should

[13] Mututwa, B. & Ndlovu, M. "Policy Change or Tactical Retreat? Media Policy Reform in Zimbabwe's New Dispensation." Available at: https://journals.co.za/doi/epdf/10.10520/comcare_v40_n1_a5.

[14] Model Law, Part V.

[15] Special Rapporteur on Freedom of Expression and Access to Information in Africa (2018). *Ensuring Effective Implementation of Nigeria's Freedom of Information Act (2011): Advisory Paper Prepared for the Federal Government of Nigeria.* Available at: https://achpr.au.int/en/special-mechanisms-reports/effective-implementation-nigerias-freedom-information-act-201.

[16] AfricLaw (2024). "Implementation of the Access to Information Law in Nigeria." Available at: https://africlaw.com/2024/06/24/implementation-of-the-access-to-information-law-in-nigeria/.

[17] ACHPR (2017). Guidelines on Elections and Access to Information in Africa. Available at: https://achpr.au.int/en/node/894.

disclose proactively to the public even without being requested to do so.[18] The stakeholders identified in the Guidelines are authorities responsible for appointing election management bodies and the election management bodies themselves, political parties and candidates, law enforcement agencies, election observers and monitors, media and media platform providers, media regulatory bodies, and civil society organisations.[19]

In the past five years, stakeholders have used the Guidelines to assess elections in a number of countries. In 2022, I undertook a study commissioned by the Centre for Human Rights of the University of Pretoria, to assess the extent to which Kenya's 9 August 2022 general elections complied with the Guidelines.[20] The study offered me an excellent opportunity to witness how the Guidelines might influence actual transparency and accountability in the electoral process. My overall assessment was that the devil was in the detail of the information which key stakeholders such as the Independent Electoral and Boundaries Commission chose to provide proactively and the information that it did not reveal, either because providing it was onerous, or officials thought it unwise to publicise it.

Declaration on Principles of Freedom of Expression and Access to Information in Africa

Finally, I also spearheaded the development of the Declaration of Principles on Freedom of Expression and Access to Information in Africa,[21] which was adopted by the African Commission in 2019 to replace a freedom of expression declaration adopted by the Commission in 2002. The revised Declaration clarifies and supplements Article 9 of the African Charter by elucidating on relevant individual components of freedom of expression and access to information both offline and online. It affirms the access to information norms framed in the earlier two soft-law instruments. Additionally, the Declaration obligates states to establish protected disclosure regimes to protect a person who releases information on wrongdoing or discloses a serious threat to health,

[18] Ibid.

[19] Ibid.

[20] Mute, L. (2023). *Proactive Disclosure of Information During Elections: An Assessment of Kenya's Compliance with the Guidelines on Access to Information and Elections in Africa*. Centre for Human Rights and Article 19 Eastern Africa.Availableat:https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/Proactiive_Disclosure_of_Information_During_Elections_Kenya.pdf.

[21] ACHPR (2019). Freedom of Expression and Access to Information in Africa. Available at: https://achpr.au.int/en/node/902.

safety or the environment, or makes a disclosure in the public interest. It also affirms that universal, equitable, affordable and effective access to the internet is necessary for the realisation of access to information and the exercise of other human rights.[22]

The enduring value of the Declaration was illustrated recently for me when I reviewed it from the perspective of enhancing digital inclusion for persons with disabilities. I was glad to find that the Declaration was conscious of the imperative of ensuring access to information for all, including marginalised and vulnerable individuals and groups.

Indeed, both the Declaration and the Guidelines recognise the importance of ensuring that digital rights are inclusive of persons with disabilities generally and during elections. in particular:

1. The Declaration recognises "… the need to protect and promote the right to freedom of expression and access to information of marginalised groups and groups that face multiple discrimination, including … persons with disabilities …".[23]
2. The Guidelines recognise that vulnerable and marginalised groups, such as persons with disabilities, continue to face disproportionate challenges that limit their participation in the electoral process.[24]
3. The Declaration affirms that everyone has "… rights to exercise freedom of expression and access to information without distinction of any kind, on one or more grounds, including … disability …"[25]
4. States are obligated to "… take specific measures to address the needs of marginalised groups in a manner that guarantees the full enjoyment of their rights to freedom of expression and access to information on an equal basis with others. Marginalised groups include … persons with disabilities …"[26]
5. States are obligated to ensure grant of access to information for persons with disabilities in accessible formats and technologies, and that persons with disabilities are provided appropriate support to make

[22] Ibid.

[23] ACHPR (2019). Declaration of Principles on Freedom of Expression and Access to Information in Africa. Available at: https://achpr.au.int/en/node/902.

[24] Ibid, ACHPR (2017). Guidelines on Access to Information and Elections in Africa. Available at: https://achpr.au.int/en/node/894.

[25] ACHPR (2019). Declaration of Principles on Freedom of Expression and Access to Information in Africa. Available at: https://achpr.au.int/en/node/902 principle 3.

[26] Ibid, Principle 7.

requests for information on an equal basis with others.[27]

6. States are obligated to adopt measures to provide universal, equitable, affordable and meaningful access to the internet without discrimination, by promoting local access initiatives such as community networks for enabling the increased connection of marginalised, unserved or underserved communities. States are also obligated to take specific measures to ensure that marginalised groups have effective exercise of their rights online.[28]
7. Finally, the Guidelines require political parties and candidates to proactively disclose mechanisms for public participation, including any special mechanisms for persons with disabilities.[29]

Influencing national processes for enacting and implementing access to information laws

One of the roles I relished immensely during my time as Special Rapporteur was engaging with states which came before the African Commission under the Article 62 procedure to report on the extent to which they were implementing their obligations under the African Charter on the right to freedom of expression and access to information. I recall quizzing Zimbabwe's delegation on internet shutdowns which it effected in 2019, [30] suggesting that the heavy-handedness of their response was akin to killing a mosquito with a hammer.

The recommendations which the African Commission has made over time have, in my view, played a role in moving states to make legislative and policy reforms on access to information, such as in 2018-2019 when Rwanda decriminalised defamation.[31]

[27] Ibid, Principle 31.

[28] Ibid, Principle 37.

[29] ACHPR (2017). Guidelines on Access to Information and Elections in Africa. Available at: https://achpr.au.int/en/node/894.

[30] Access Now (2024). "Zimbabwe Orders a Three-Day Country-Wide Internet Shutdown." Available at: https://www.accessnow.org/press-release/zimbabwe-orders-a-three-day-country-wide-internet-shutdown/.https://www.accessnow.org/press-release/zimbabwe-orders-a-three-day-country-wide-internet-shutdown/.

[31] KT Press (2018). "RMC Salutes Decriminalization of General Defamation and Press Offences." Available at: https://www.ktpress.rw/2018/09/rmc-salutes-decriminalization-of-general-defamation-press-offences/.

Challenges

The Special Rapporteur continues to face challenges in enforcing and monitoring compliance with standards on freedom of expression and access to information. These include inconsistencies in adherence to standards by states, compounded by varying degrees of political will to implement standards. This situation may be illustrated by internet shutdowns which are a particular impediment to access to information. Internet shutdowns, often framed as necessary for maintaining order, continue to be used to suppress dissent and control information flow. Censorship undermines media freedom and public discourse, while governmental control inhibits transparency and accountability. Quite recently, this was manifested when Kenya's principal telecommunications company, Safaricom PLC, reportedly throttled the internet during Gen-Z organised demonstrations against the government of Kenya. Despite denials by the company, users experienced outages and slow connections for hours on 25 June 2024 when protesters stormed parliament.[32]

The Special Rapporteur also faces financial and technical challenges which limit the mandate's capacity to oversee implementation of Article 9 of the Charter.

Conclusion

Gauging the success of human rights interventions on the continent, and indeed globally, has to be premised on the fact that human rights violations and abuses are a never-ending cyclical continuum with wins, pushbacks and more wins: the defence of human rights is a marathon, not a sprint.

In that context, moving forward, mandate holders must learn and perfect the strategies that have worked to enhance access to information. three reflections come to mind.

First, Special Rapporteurs must engage states under the Article 62 reporting procedure robustly. They must review state reports and triangulate information with third parties. To this end, civil society actors must provide mandate holders with credible information. In turn, the African Commission must, in its concluding observations and recommendations, furnish each state with deliberate, as distinct from template, recommendations.

Second, advocacy visits remain an incredibly versatile tool that mandate holders must use to visit and engage with stakeholders in states across Africa. Indeed, I have fond recollections of my advocacy visits, including in September 2019 to Namibia. In that

[32] Standard Media (2018). "Safaricom Scrambles to Shore Up Gen-Z Market in Wake of Protests." Available at: https://www.standardmedia.co.ke/enterprise/article/2001498683/safaricom-scrambles-to-shore-up-gen-z-market-in-wake-of-protests.

visit, the Namibia Media Trust and other civil society organisations hosted me while I met state and non-state actors, including a parliamentary committee, and the Electoral Commission of Namibia. During the visit, President Hage Geingob also graciously hosted me,[33] where we discussed the need for Namibia to expedite enactment of what became the Access to Information Act.[34] Its regulations have been developed to enable its implementation.

Finally, I remain a firm believer in the critical role that the Commission must keep playing to develop jurisprudence under the African Charter. While I could not reflect on the Commission's Article 9 jurisprudence in this article for want of space, the Commission has indeed developed jurisprudence on freedom of expression and access to information[35] which has in turn percolated into the normative instruments I have discussed. It is critical that stakeholders across Africa continue to file triable Article 9 cases before the African Commission, and indeed before other human rights mechanisms, including the African Court on Human and Peoples' Rights, and the African Committee of Experts on the Rights and Welfare of the Child.

[33] Lawrence Mute urges Namibian government to publish access to information bill Available at: https://www.youtube.com/watch?v=ZTTBQi5TygA.

[34] Access to Information Act (2022). Available at: https://www.lac.org.na/laws/2022/7986.pdf.

[35] For example, see Special Collection of the Case Law of the African System of Human and Peoples' Rights, Global Freedom of Expression, Columbia University https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/11/Special-Collection-on-the-Case-Law-on-Freedom-of-Expression-African-System-of-Human-and-Peoples%C2%B4-Rights.pdf

Article 2

Understanding the Right of Access to Information in Africa: The Model Law and Its Current Implementation

Maxwell Kadiri, Senior Legal Officer
Open Society Justice Initiative

Introduction

This article is an effort at documenting the evolution of the right of Access to Information (ATI) in Africa, including the leadership provided by the African Commission on Human and Peoples' Rights through the Special Rapporteur on Freedom of Expression and Access to Information (FoE & ATI), leading to the adoption of the Model Law on ATI in Africa and its impact on the promotion and protection of the right of Access to Information in Africa. It also focuses on the progress made and the challenges encountered in implementing the right of access to information across the continent.

Since its adoption, the Model Law has played a crucial role in promoting legislative reforms aimed at enhancing transparency and accountability. It has inspired several countries to establish their own access to information laws, thus increasing the number of countries with ATI laws. However, nearly half of the continent remains without these laws. Despite increased awareness and advocacy for the right of access to information within spaces like civil society, public institutions, the security sector, private entities, the media and the academia, amongst others, broader public engagement and activism is needed to ensure increased awareness of this right amongst the populace. Such engagement is crucial for driving both the demand and supply side of the transparency spectrum, thus promoting a more informed citizenry.

Notably, in countries where access to information laws have been enacted, improvements in public access to records and information have been minimal. These laws have sadly not been robustly implemented thus the promise they hold of substantially contributing to much better governance practices across the public and private sector alike, is yet to be realised. Experience on the continent has shown that this troubling state of affairs is due largely to a number of factors. Principal among these includes strong resistance by information holders in both the public and private sector, towards ensuring effective compliance

and implementation of these laws, inconsistent implementation, bureaucratic inefficiencies, inadequate infrastructure, limited resources, gaps in institutional capacity, and either weak oversight frameworks/ mechanisms or outright lack of it. In some instances, there is an outright refusal to implement these laws in any shape or form. Other challenges include, restrictive exemptions, vague guidelines, and a lack of political support all of which contribute towards undermining effective realisation of the right of access to information and any efforts to achieve transparency.

While the Model Law on Access to Information for Africa is an instrumental benchmark in advancing transparency and accountability, overcoming the challenges of implementation, resistance, and capacity deficits is crucial for realising its full potential and promoting a more open and accountable governance landscape across the continent.

Background

The right of access to information has deep historical roots, evolving from its early connection with freedom of expression and press freedom. This journey dates back to 1766 when Sweden enacted its landmark Press Freedom law, championed by a clergyman, Reverend Anders Chydenius. Similarly, in 1888, Colombia advanced the right of access to information by incorporating it into its Code of Political and Municipal Organization, highlighting the early recognition of the right of access to information within democratic frameworks.

Years later, this framing was further reinforced through various international and regional human rights instruments. The Universal Declaration of Human Rights[36], the International Covenant on Civil and Political Rights[37] and the African Charter on Human and Peoples Rights[38] all enshrine the principles of freedom of expression and access to information, reflecting a global consensus on its fundamental role in safeguarding democracy.

As the experience of the importance of access to information grew through deployment in practice, its significance also grew in leaps and bounds, and was explicitly affirmed on 14th December 1946, by the United Nations General Assembly, with the adoption of Resolution 59(1). This Resolution proclaimed that *"Freedom of Information is a Fundamental Human Right and the touchstone of all freedoms to which the United Nations is consecrated."* This declaration underscored access to information as an essential component of democratic governance and individual liberty.

[36] Universal Declaration of Human Rights, Art. 19.

[37] International Covenant on Civil and Political Rights, Art. 19.

[38] African Charter on Human and Peoples' Rights, Art. 9.

This position was further substantiated by the then UN Special Rapporteur on Freedom of Opinion and Expression, Mr. Abid Hussain. He emphasised in his report, in 1995, to the UN Commission on Human Rights that; *"Freedom would be bereft of all effectiveness, if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked".*[39]

The centrality of access to information as a cornerstone of democratic practice was also affirmed by the Indian Supreme Court in the case of S.P. Gupta v. Union of India, wherein the court stated:

"where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed, and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of government…… The citizen's right to know the facts, the true facts about the administration of the country is thus one of the pillars of a democratic state."[40]

Furthermore in *Navarro Gutierrez v. Lizano Fait* (Judgement of the Constitutional Chamber of the Supreme Court of Costa Rica of April 2nd, 2002, as translated in the 2003 Report of the Special Rapporteur for the Freedom of Expression 161), the court held that *"the right to information ….. implicates the citizens' participation in collective decision-making, which to the extent that freedom of information is protected, guarantees the formation and existence of a free public opinion, which is the very pillar of a free and democratic society."* [41]

The court further held that *"the state must guarantee that information of a public character and importance is made known to the citizens, and, in order for this to be achieved, the state must encourage a climate of freedom of information…. In this way, the State….is the first to have an obligation to facilitate not only access to this information, but also its adequate disclosure and dissemination,*

[39] UN Commission on Human Rights, 'Report on the Right to Freedom of Opinion and Expression', UN Doc E/CN.4/1995/32, para 35, as cited in T Mendel, 'Freedom of Information as an Internationally Protected Human Right' https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf (accessed 19 July 2024).

[40] *S.P. Gupta v Union of India* (1982) AIR (SC) 149 at 232.

[41] *Navarro Gutiérrez v Lizano Fait* (Supreme Court of Costa Rica judgement, Case No: Exp: 02-000808-0007-CO, Res: 2002-03074).

and towards this aim, the state has the obligation to offer the necessary facilities and eliminate existing obstacles to its attainment."[42]

These historical and judicial affirmations in these landmark decisions highlight that access to information is a fundamental democratic necessity, not just a legal right. It emphasised that effective democracy relies on citizens having the tools to scrutinise and influence governance, thereby promoting transparency, accountability, and trust in government. This perspective has driven global reforms, with many countries enacting or revising access to information laws to enhance governance. In Africa, the adoption of the Model Law on Access to Information for Africa in 2013 marked a significant step towards standardising and advancing transparency across the continent.

The foregoing historical context, which predates advocacy for the adoption and implementation of access to information laws and policies in the 55 member states of the African Union, clearly affirms the overarching importance of access to information globally and its continued relevance presently.

Adoption of the ATI Model Law

With the enactment of the Promotion of Access to Information Act (PAIA)[43], South Africa became the first African country to enact an access to information law. This was a pivotal moment on the continent, not only because it meant that Africa now appeared on the global access to information scene, but also for its innovative approach. PAIA advanced the global extant access to information framing by amongst other things, extending access to information held by private entities, when such information was necessary to protect or enforce a requester's fundamental right(s). Previously access to information had been limited to accessing information held by public institutions and not private entities. PAIA's broader scope earned it the distinction of being a "gold standard" in the global access to information landscape.

It was expected that other African countries would follow South Africa's lead. However, sadly that was not the case. Subsequent access to information laws, namely, the Zimbabwean 2002 Access to Information and Protection of Privacy Act (AIPPA) and the Angolan access to information law[44] fell short of PAIA's progressive provisions and did not align with global best practices, so

[42] Ibid.

[43] Promotion of Access to Information Act No 2 of 2000, available at https://www.gov.za/documents/promotion-access-information-act (accessed 19 July 2024).

[44] Law 11/02 of 16 August 2002, on Access to Documents held by Public Authorities.

Official Launching of the Model Law on Access to Information in Africa Photo credit: African Commission on Human and Peoples' Rights

much so that AIPPA was often criticised as being more symbolic than substantive on promoting and protecting the right of access to information in the country. Uganda's access to information law, enacted in 2005[45], improved upon the Zimbabwean and Angolan frameworks but still did not match PAIA's advancements. Furthermore, with just 4 national level access to information laws in place in Africa at the time, the continent painted a somewhat gloomy picture in terms of access to information advancement, when compared to other parts of the globe.

It was against this background that the African Commission on Human and Peoples' Rights took up the gauntlet to address this challenge and by doing so contributed towards advancing the promotion and protection of ATI as enshrined in Article 9(1) of the African Charter on Human and Peoples' Rights. The African Commission did this in several proactive steps. The first being the adoption of Resolution ACHPR/ Res.122(XXXXII)07 at its 42nd Ordinary Session held in November 2007, in Congo Brazzaville. The Resolution expanded the mandate of the Special Rapporteur on Freedom of Expression to include the promotion and protection of the right of access to information. This development was epochal, as it afforded the mandate holder at the time, Advocate Pansy Tlakula the opportunity to embark on the journey of advancing access to information all over Africa.

Furthermore, just about this time, at a significant continental convening that took place in Accra, organised by

[45] Access to Information Act, 2005 (Uganda), available at https://www.ugandalaws.com/statutes/principle-legislation/access-to-information-act-2005 (accessed 19 July 2024).

The Carter Centre in partnership with the Ghanaian Government under the leadership of the then President, John Attah Mills and attended by several AU member states, a representative of the Ethiopian Government expressed strong objections to the criticism directed at the state of Access to Information in Africa. He challenged both the Special rapporteur and civil society actors to develop an African Model access to information law that would guide AU member states in their quest to develop and adopt national level access to information laws. This challenge was not only noted but well taken by the Special Rapporteur and the African civil society organisations present. It was this development that prompted the Special Rapporteur to seek approval from her colleagues at the African Commission to develop a Model law on ATI in Africa. The Commission through Resolution 167 (XLVII) adopted at its 48th Ordinary Session held from 10th – 24th November 2010, granted this request. Over the next three years, the Special Rapporteur, working with a group of experts and other stakeholders on the continent, including AU member states, developed the draft Model Law on ATI for Africa that was subsequently adopted by the Commission at its 53rd Ordinary Session in April 2013. The Model Law is a very progressive soft law instrument containing detailed provisions that embody various international, regional and sub-regional soft law standards on ATI. It is meant to assist AU member states in developing progressive national ATI legislation that meets the needs of the African people.

The impact of the Model Law has been phenomenal. Even before its official adoption its draft version influenced legislative processes in several African countries due to the robust advocacy efforts led by the Special Rapporteur. Countries such as Ethiopia, Liberia, Nigeria, Rwanda and Sierra Leone, to mention a few, began utilising the draft Model Law as their guide in the process of developing their national ATI laws. Following its adoption, it has continued to serve as a valuable resource. Many more AU member states have found it helpful in the process of developing their ATI laws and that continues to be the experience to date.

Being a regional soft law standard, the Model Law has also provided a comparative framework for reviewing the contributions of regional human rights mechanisms to the process of developing norms and standards that advance the right of access to information at the level of the sub-regions in Africa and at the continental and global levels.

On the global front it compares quite favourably with the Model ATI law of the Organisation of American States (OAS) and could even be said to be more advanced both in terms of its progressive provisions that are novel and groundbreaking as well as the robust framework and all-inclusive,

multi-stakeholder consultative process it underwent during its development, which enhanced its acceptability across board within Africa and beyond.

Current Status of ATI in Africa

There are currently 29 national ATI laws in Africa, with the latest being Zambia, which adopted its ATI Law on 22nd December 2023, when President Hakainde Hichilema assented to the ATI Bill. While this represents significant progress in the ATI Law adoption process in Africa, it remains insufficient when viewed against the fact that there are 55 member states of the African Union (AU). Moreover, the frequency of new ATI law adoptions, which surged during the period when the draft African Commission ATI Model Law was being refined and shortly thereafter, has significantly decreased. Whilst not wanting to pontificate on the reasons behind this slowdown, the more pressing concern is the increasing prevalence of ineffective or tepid compliance and implementation of existing access to information laws among many AU member states. This concerning situation is exemplified by countries such as Angola, Tanzania, Togo, Burkina Faso, Niger and Guinea. In particular, there are instances where laws have been adopted but no concrete steps taken towards implementation in any shape or form. This includes failure to establish oversight mechanisms where the law provides for their establishment. A case in point is Angola, where despite having a right to information law, which was enacted in 2002, concrete steps have not been taken towards its implementation, including the non-establishment of the mandated oversight body.[46]

There have been instances where successive governments have tried to either directly or indirectly truncate or stifle the process of implementing the provisions of existing access to information laws. Such attempts have manifested through multiplicity of ways, including the enactment of new laws that either expressly override or limit the applicability of provisions of the extant ATI law.

- Continually harping on the application of the Official Secrets Act where such laws exist, to truncate the application/ implementation of the access to information law, despite the extant clarity stipulated in the ATI laws to the effect that they amend/ override relevant provisions of the Official Secrets Act, including in instances where any conflict arises between both laws. This position is also in tandem with the recommendations of the ATI Model law. In this instance, Nigeria represents a classic case study. Senior officials of both the immediate past administration

[46] Articles 17, 18, and 19 of the law, which deal with the Monitoring Commission.

and the current administration have been steeped in this practice, including continually threatening public officials with sanctions for disclosing information which come within the letters and spirit of the Freedom of Information Act, 2011.

- Chucking up arguments of national security concerns as the basis for limiting ATI compliance and effective implementation across board in several countries on the continent. For example, in Ghana, a request from a citizen, Manasseh Azure Awuni, for information pertaining to the travels of the current President including the cost of such travels, was refused on the grounds of national security. This was affirmed by the Right to Information Commission,[47] demonstrating a broader pattern of using national security as a pretext to limit transparency and restrict access to information.

- Withholding funding for the effective implementation of existing ATI laws. In this instance Liberia represents a classic case study. Shortly after the enactment of the law in 2010 and the appointment of the Liberian Information Commissioner, the Government failed to provide him with the requisite human, material and financial resources to enable him effectively discharge his obligations under the Freedom of Information Law 2010. This lack of support severely hindered the Commissioner's ability to fulfill the law's mandates, undermining the law's effectiveness and impeding progress towards implementation.

- Threatening public officials with imprisonment if they disclose information pursuant to the provisions of the ATI law. This has become the refrain under the current administration in Nigeria. Such threats have profound implications for transparency and accountability and creates a climate of fear, deterring officials from releasing information and undermining the ATI law's purpose. This practice not only stifles open governance but also erodes public trust in the effectiveness and integrity of information access mechanisms.

- Failing to establish effective frameworks for proper record keeping, record organisation and maintenance and in ways that advances the public right to know. This has significant implications for the right to access information. Several countries on the continent fall in this category. Coupled with this is

[47] 'RTI in Ghana', available at https://rtic.gov.gh/wp-content/uploads/2023/01/FOURTH-ESTATE.pdf (accessed 19 July 2024).

persistent insufficient document/ information management infrastructure which hinders the efficient retrieval and management of information.

- Erroneously fostering a mistaken culture, where the right to privacy is thought to be at odds with advancing the public's right to know, which is certainly not true. Thankfully in this instance, South Africa represents a beacon of hope that other countries on the continent should emulate. This is based on the encouraging performance of the Information Regulator in seeking to create the appropriate balance between the right to privacy and the right of access to information. The information Regulator oversees the promotion and protection of both the right of access to information and the right to privacy as stipulated under the Promotion of Access to Information Act (PAIA) and the Protection of Personal Information Act (POPIA).

- Failing to invest in building the capacity and understanding of staff of information holders on the requirements for advancing the public's right to know. Several countries on the continent fall into this category. This lack of investment results in inadequate handling of information requests and poor implementation of transparency measures.

- Contested framework for enacting the ATI law, thus creating a stalemate on the true status of the law, as is the case in Guinea. This uncertainty hampers the law's operationalisation and prevents stakeholders from effectively using it to access information, thereby stifling transparency and undermining the public's right to know. The resulting ambiguity also impedes the establishment of necessary enforcement mechanisms and delays progress towards a more open and accountable governance system.

- Failure to promote and implement the whistle-blower protection provisions, which exists in both the Model Law and in many of the access to information laws adopted in Africa thus far. This has created the unhealthy situation where whistleblowers are not only at risk, but sometimes prosecuted by the state on trumped up charges or face vendetta from those in authority. There are several examples of this situation occurring in several parts of the continent.

- Journalists who disclose information in the course of discharging their professional

responsibilities, including through the instrumentality of the right of access to information law in several African countries are sometimes detained and prosecuted and at other times even killed by what is now popularly termed as "unknown gunmen."

These are but a few examples of the strategies that we see being deployed across various countries on the continent, that stifle compliance and effective implementation of ATI laws adopted thus far. These developments effectively roll back the gains of the ATI Model Law.

Having highlighted some of the persisting challenges militating against effective compliance and implementation of ATI laws in Africa, it must also be said that it's not all doom and gloom, as there are also inspiring developments in a number of countries where some public institutions including the ATI oversight mechanisms and the judiciary, amongst others have been forthright in advancing the promotion and protection of this right and we are hoping that going forward, we would be seeing more of this happening in several countries around Africa. Examples of these include:

- South Africa, where the Information Regulator which oversees both the right of access to information and the right to privacy has worked assiduously towards advancing the promotion and protection of both rights, while also creating the much-needed balance between both rights that also makes them mutually reinforcing in practice.

- Kenya, where efforts are ongoing to advance ATI adoption and implementation at the county government level. There have also been several progressive decisions of Kenyan courts that promote and protect the right of access to information as stipulated in the Kenyan ATI law of 2016. In addition, despite extant challenges, the Commission on Administrative Justice, the institution vested with the responsibility of overseeing compliance with the Act continues in its efforts at instituting processes and programmes for advancing implementation of the Act.

- Nigeria, where under the administration of former President Goodluck Ebele Jonathan[48], the then Minister of Justice and Attorney General of the Federation, Mohammed Bello Adoke, issued an initial set of FoI compliance advisories to all institutions to which the Freedom of Information Act applies. These

[48] Who assented to the Freedom of Information Act on 28 May, 2011.

Panel on State compliance with the 2017 Guidelines on Access to Information and Elections in Africa and unpacking the 2018 SADC Model Law on Elections Photo credit: Centre for Human Rights (University of Pretoria)

compliance advisories which was widely published in national newspapers[49] was appropriately titled "The Attorney General's Memorandum on the Reporting Requirements under Section 29 of the Freedom of Information Act, 2011.[50] The Minister promptly followed this up by issuing a set of Guidelines on compliance/ implementation of the FoI law to all public institutions in the country. While the first set of Guidelines was issued in February 2012, a second set of Guidelines that built on the first one and updated it based on the need to address emerging implementation challenges being experienced at the time, was issued on 29th March 2013.[51] However, quite sadly, successive administrations have either failed or neglected to build on these progressive steps taken to advance compliance/ implementation of the FoI law in line with the obligations of the Justice Minister under the FoI law.

- There have also been several positive pronouncements by courts in Nigeria advancing the promotion and protection of this right as envisaged in the Law. Some of these include the decision in the case of *Yomi Ogunlola*

[49] 'Daily Trust Newspapers', on 21st January 2012.

[50] Attorney General's Office (Nigeria), Circular Ref No: HAGF/MDAS/FOIA/2012/1.

[51] National Library of Nigeria https://nigeriareposit.nln.gov.ng/server/api/core/bitstreams/e96e7d28-f3dc-4e51-9e76-57baf8e98eab/content (accessed 19 July 2024).

& Another v. The Speaker Oyo State House of Assembly & Three Others, Suit No:M/332/12, where the court held that the FoI Act also applied to States. His Lordship stated thus: "*It is quite clear that the FoI Act was enacted by the National Assembly pursuant to Section 4(4)(b) of the 1999 Constitution (as amended) in order to bring into effect the provisions of Section 39(1) of the same constitution which guarantees the fundamental right to receive and impart ideas and information without interference. It is my further view that the National Assembly has enacted the FoI Act to be operational throughout the country in the interest of the common good and national interest. See Attorney General of Ondo State v. Attorney General of the Federation (supra)..... The FoI Act is of general application to both Federal and State Governments in Nigeria. Section 15 of the Interpretation Law of Oyo State has provision in it where the Act shall be read with such formal alterations as to names, localities, offices, persons, as to make it applicable to our circumstances.*"

- In the case of *Uzoegwu F.O.C v. The Central bank of Nigeria & The Attorney General of the Federation (FHC/ABJ/CS/1016/2011)*, the court held that the salaries of officials of the Central Bank of Nigeria, including the Central Bank Governor, his Deputies, Directors et al, being payment made from the public treasury which is funded by taxpayers did not fall within the exemption of personal information and so was liable to being disclosed to the applicant in furtherance of the provisions of the FoI Act, 2011.

- Also in *Boniface Okezie v. Attorney General of the Federation & the Economic and Financial Crimes Commission, Suit No: FHC/L/CS/514/2012,* the institutions must comply with the 7 days timeline stipulated for responding to requests for information under the Act. If they refuse to comply, they must clearly supply the specific basis for the refusal under the FoI Act, in a notice to the applicant within 7 days as stipulated under the Act. The Court further held that institutions must respond to requests for information, even if the information requested is properly classified in the interest of national security.

- Ghana, where the Government has since established the oversight mechanism (the Right to Information Commission) as stipulated under the Act and the institution has been up and

doing, including enlightening the public on the provisions of the Act, alongside adjudicating on complaints brought before it. Albeit it is also worth noting that some of its decisions appear to be quite contentious, including from the perspective of progressively advancing the right of access to information as stipulated in the Act.

- The Ghanaian courts have also in some instances been quite strong in affirming the right. A case in point is the case of *Lolan Know Sagoe-Moses & 6 Others v. Hon Minister for Transport & The Attorney General of The Republic of Ghana*.[52] In the said suit, Justice Anthony K. Yeboah, sitting at the Human Rights Court Division 2 held thus:

"For the above reasons, I am convinced that under Article 21(1) (F) of the Constitution, 1992, persons including the Applicants are entitled to access public information that is in the custody or possession of the Government upon a request, and, where appropriate and lawful, the Government is bound to release the requested information or document to the person requesting. The factors that may be considered in deciding to answer the request favourably may include other human rights and freedom to which the right to information is subject, the national interest, public order, national security and public morality. Also, to be considered is whether the information is already available or yet to be collected. The list of factors to consider is not exhaustive. But, of overriding importance is the fact that, in a democracy, the free and unrestricted marketplace for the free exchange of ideas and public debate is the heartbeat of democracy as well as the assurance of probity and accountability…. The cost of the bus branding contract is a matter of public debate and discussions. It is a matter of public interest and the purpose of the request for information on and about the bus branding contract is in the public interest by virtue of Article 41 of the Constitution, 1992. It is legitimate for the Applicants to request for the necessary information, if only in their view such information will enable them fully to participate in the public debate or even for their private research. It matters little whether the purpose of the request is to even enable a journalist to report."

- Côte D'Ivoire: Albeit the initial text of the Access to Information law which was adopted based on the effort of the cabinet Minister at the time, with no engagement

[52] Suit No: HR/0027/2015.

with the then nascent Ivorian Access to Information Civil Society Working Group/Coalition and the broader Ivorian populace working in ATI Law adoption advocacy had some weaknesses., examples of which included the lengthy timeline for responding to requests for information (30 days), insistence that all requests for information must be in writing and submitted in french. Civil society groups within and outside the country engaged with the Minister and other relevant actors in government/institutions at the time, to address these weaknesses amongst others and it is quite commendable that the government responded positively and they were addressed in subsequent amendments/ regulations. They also established an oversight mechanism led by a progressive team that amongst other things established a programme plan for advancing implementation of the legislation.

- In the context of Uganda, the ATI law, though enacted in 2005, remained inoperative for 6 years until the enactment of the implementation regulations in 2011.[53] Civil society groups, working closely with parliament have fought to operationalise the provisions of Article 43 of the Act, requiring the submission of annual compliance reports by Ministers on the status of access to information compliance by their various ministries and parastatals. Given the lukewarm approach of several public institutions towards complying with the provisions of the law, this step was considered important for purposes of securing increased compliance with the legislation.

- There have also been several decisions by Ugandan courts, including before the enactment of the access to information law[54] that advanced the promotion and protection of the right in Uganda.[55]

- On the access to information law reform front, Zimbabwe represents a good case study on what is possible with the aid of consistent advocacy over many years led by a coalition of civil society groups under the auspices of Media Institute of Southern Africa (MISA) Zimbabwe, which

[53] Statutory Instruments No:17 of 2011.

[54] *Major General Tinyefuza v Attorney General,* Constitutional Petition No 1 of 1997 (Supreme Court) (unreported).

[55] Centre for Health, Human Rights and Development (CEHURD), *Michael Mubangizi and Jennifer Musimenta v ED, Mulago National Referral Hospital* and the AG, HCCS No 212 of 2013.

resulted in the repeal of the obnoxious Access to Information and Protection of Privacy Act (AIPPA) 2002 with the new Freedom of Information Act 2020. Although not all the submissions of the CSO groups which were premised on the Model Law were taken onboard, however, the new law is certainly more progressive than its predecessor.

- Sierra Leone, where the Right of Access to Information Commission (RAIC), established pursuant to the provisions of the Right of Access to Information Act, 2013, is not only up and running but has taken steps towards operationalising the provisions of the Act, including conducting public enlightenment programmes aimed at sensitising the populace to the provisions of the law and how it can be put to good use and for the benefit of the society at large.

In view of the foregoing, the challenge that the African Commission on Human and Peoples' Rights and other like-minded institutions and civil society groups on the continent, advocating for the promotion and protection of the right of access to information are faced with is ensuring that we experience many more of the aforementioned examples of positive developments on advancing the promotion and protection of the right of access to information in Africa, so much more that going forward, this becomes the norm throughout the continent.

Suggestions on the Way Forward/Recommendations

Given the progress already made by the African Commission in advancing the promotion and protection of ATI on the continent, including through developing key soft law instruments such as the Model ATI Law, the revised Declaration of Principles on Freedom of Expression and Access to Information and the Guidelines on ATI and Elections in Africa, it would be useful for the Commission to utilise its extant mechanisms and processes to reinvigorate national level ATI adoption processes on the continent, while also advancing effective implementation of existing access to information laws. Some of these would include:

- Undertaking advocacy visits to AU member states to engage with key governmental entities and other relevant stakeholders both on the access to information adoption front and on the effective implementation front respectively.

- Deploying the extant country reporting framework at the Commission to engage strategically with member states

with a view to getting them to make commitments aimed at dealing with the challenges militating against effective implementation of access to information laws on the continent.

- Systematising the shadow reporting framework from CSOs with observer status at the ACHPR, that enables the Special Rapporteur to optimise the feedback from them and deploying it in the process of considering country reports, in ways that advance the promotion and protection of Article 9(1) of the African Charter on Human and Peoples' Rights.

- As part of the process of fostering greater appreciation and understanding of the inherent value of ATI in advancing and optimising national security, mainstreaming understanding, adoption and implementation amongst AU member states of the provisions of the Global Principles on National Security and the Right to Information-RTI (otherwise known as the Tshwane Principles).[56] These were jointly developed and adopted in 2013 by the then four Special Rapporteurs on Freedom of Expression and/or Media Freedom at the African Commission on Human and Peoples' Rights (Advocate Faith Pansy Tlakula), the United Nations (Frank Larue), the Organization of American States (Catalina Botero), the Organisation for Security and Co-operation in Europe (Dunja Mijatovic), alongside the UN Special Rapporteur on Counter-Terrorism and Human Rights (Ben Emmerson).

- Considering the overarching importance of ATI, it is humbly submitted that African Civil Society Groups working in concert with the Special Rapporteur on ATI and FoE, actively consider framing and submitting to the African Court on Human and Peoples' Rights, a request for an advisory opinion on the obligations of member states of the AU to advance ATI compliance mandatorily.

- The African Commission working in concert with AU member states, NHRI's, CSO's and other stakeholders, popularising the content of extant soft law instruments of the ACHPR and others developed in concert with mandate holders of other international human rights mechanisms, that give life to the provisions of Article 9 of the African Charter. These include, the ATI Model Law for Africa,

[56] Global Principles on National Security and the Right to Information-RTI, available at

the Declaration of Principles on Freedom of Expression and Access to Information in Africa, the Guidelines on access to information and Elections in Africa and the Global Principles on National Security and Right to Information.

- In line with extant Resolutions adopted by the African Commission, it should immediately institute a process/ programme for continuously auditing the status of access to information compliance/ implementation by State parties to the African Charter. Doing this would not only provide the

- Commission with up to date information on status of access to information compliance/ implementation but also provide the Commission with the opportunity of working with member states to overcome extant challenges militating against the effective realisation of this right on the continent.

https://sgp.fas.org/library/tshwane.pdf (accessed 19 July 2024).

Article 3

Namibia's Access to Information Landscape: Evaluating Successes, Challenges and Opportunities in the Digital Age

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In December 2022, then-President Dr. Hage G. Geingob signed the Access to Information Act into law,[57] marking a significant step in Namibia's journey towards greater transparency and democratic governance. This landmark legislation highlights the country's commitment to the constitutional rights of freedom of expression, freedom of the press, and the right to access information, affirming Namibia's dedication to these fundamental principles. The Access to Information Act is designed to empower the public by providing a legal framework for accessing information held by public bodies and certain private entities. This advancement promotes openness and accountability, reflecting Namibia's progressive approach to promoting a transparent society. Through extensive consultations and negotiations with civil society organisations, the Act highlights the vital role of information access in a vibrant democracy, supporting informed public participation and enhancing governmental integrity.

The Government of Namibia has reinforced its resolve to the right to information by ratifying several key international instruments. By endorsing the United Nations (UN) Charter, Namibia aligned itself with the Universal Declaration of Human Rights, which underscores the right to information as a cornerstone of democratic governance and individual freedom. Namibia has also ratified the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, affirming its dedication to ensuring that individuals can freely seek, receive, and share information. The country's ratification of the African Charter on Democracy, Elections and Governance and the United Nations Convention Against Corruption, which called for the implementation of access to information laws and mechanisms, highlights its commitment to transparency and accountability

[57] Access to Information Act 8 of 2022.

in governance. These international agreements collectively emphasise the necessity of implementing robust access to information laws and mechanisms.

Namibia's endorsement of the Sustainable Development Goals (SDGs) is also indicative of its dedication to global standards of governance and transparency. By becoming a signatory to these goals, Namibia has pledged to implement comprehensive access to information frameworks as outlined in Goal 16, which aims to nurture inclusive societies and promote effective, accountable institutions. This commitment reflects Namibia's broader efforts to ensure transparency, enhance public participation, and uphold democratic principles, aligning its national policies with internationally recognised standards for good governance.

As the home of the Windhoek Declaration, which is considered a global benchmark for media independence and press freedom, Namibia has established itself as a proponent of press freedom.[58] The Windhoek Declaration, adopted in 1991, emphasises the critical role of a free and open press in democratic societies, and Namibia has consistently upheld these principles.[59] In line with its commitment to a transparent and accountable government, the Namibian Government is dedicated to the effective implementation of access to information mechanisms. This includes the appointment of an Information Commissioner, who will play a crucial role in safeguarding and promoting the right to access information through public awareness campaigns, and educational and training programmes, designed to inform the public about their rights and how to access government information. In further support of these initiatives, the Namibian National Assembly has approved ATI regulations, reinforcing the country's dedication to open governance. These regulations will ensure that the people of Namibia have access to relevant government information, aligning with the existing policy of effective governance and accountability. By establishing clear frameworks and mechanisms for information access, Namibia aims to empower the public, enhance public participation, and maintain high standards of transparency and accountability in government operations.

Challenges

To effectively address the perception of secrecy in the public sector, it is crucial for the Namibian government and other relevant entities to employ interventions that aid in changing attitudes and building widespread skills for upholding the right to information. It

[58] 30th Anniversary of the Windhoek Declaration (UNESCO, 18 February 2021) https://www.unesco.org/en/articles/30th-anniversary-windhoek-declaration accessed 19 September 2024.

[59] Ibid.

is necessary to recognise that the Access to Information Act not only relates to information held by the government but also by relevant private bodies. The broad scope indicates that the law is not created to police governmental transparency but also as a means to ensure accountability across all sectors. As such, efforts to promote the Access to Information Act must focus on promoting a culture of openness and equipping both public and private sector entities with the necessary skills and knowledge to comply with the law.

Furthermore, unlike in other countries where lack of funding and low political will has significantly hampered the effective implementation of right-to-information laws Namibia, presents a different and more positive example. Since the Access to Information Act was enacted, adequate funding has been appropriated through parliamentary approval, with a commitment to provide additional support as needed. However, challenges remain, including the need for a robust record management system, to ensure the efficient retrieval and timely provision of information. In addition, the shortage of appropriately skilled practitioners adept in managing and implementing access to information continues to pose a significant challenge to the effective implementation of ATI. Addressing these issues will be crucial for realising the full potential of the Access to Information Act and promoting a more transparent and accountable environment in Namibia.

One of the biggest challenges facing Namibia in the realm of access to information is addressing concerns related to accessibility, affordability and privacy in the increasingly digital world. These concerns are well-founded and often valid, especially in light of recent global cyber attacks and rapid development and deployment of artificial intelligence, further exacerbating risks associated with digital information management. In the last reporting period alone, Namibia recorded 2,7 million cyberattacks, highlighting the urgent need for robust cybersecurity measures. Despite these challenges, it is essential to strike a balance that justifies any restrictions on the right to information. While safeguarding privacy and ensuring digital security are critical, it is equally important to maintain transparency and public access to information. This balance will help ensure that the implementation of access to information laws does not unduly compromise the rights of individuals to access information while addressing legitimate security and privacy concerns.

Misinformation and disinformation have become manifest in the Namibian landscape. Very often, rumours will abound on social media about the death of several high-profile individuals – only to be rebutted. Insults have become commonplace. While there are no specific laws in Namibia dedicated solely to regulating social media, existing legislation, such as the Communications

Sub-regional consultation to revise the draft Declaration of Principles on Freedom of Expression and Access to Information in Africa in Windhoek, Namibia, 2019. Photo credit: Namibia Media Trust

Act (Act No. 8 of 2009) and the Criminal Procedure Act (Act No. 51 of 1957),[60] contains provisions that can be applied to address issues related to online conduct, including defamation, hate speech and cyberbullying. It is important to note that the right to freedom of expression enshrined in our constitution must be balanced with the responsibility to prevent harm and uphold societal values. One of the primary challenges in regulating social media in Namibia is that most social media companies are not registered entities within the Namibian jurisdiction. This limits the government's direct ability to enforce regulations on these platforms. However, social media companies have established online policies and community standards that can be utilised to protect users and hold individuals accountable for abusive behaviour on their platforms. Furthermore, it is worth noting that the Namibian media industry is free, independent, pluralistic and self-regulatory, thus making censorship impossible. It is for this reason that Namibia has been ranked amongst the top countries with the freest press in Africa and the world by reporters without borders due to the self-regulating media environment.

Namibia's natural resources are vital to the lives of its population and form the basis of the country's economic development, for example through

[60] Communications Act No. 8 of 2009 and Criminal Procedure Act No. 51 of 1957.

agriculture, mining and tourism. The fair and sustainable use of natural resources is a core goal of Namibia's strategy for alleviating poverty and a key requirement for maintaining social peace. Fairly recently, Namibia also discovered high deposits of oil and gas. The general perception has been that a few connected individuals are the primary beneficiary of these resources. That perception can easily be erased by the application of proactive disclosure by line institutions. A fair allocation will see increased economic empowerment of resources to benefit those at the bottom of the economic ladder. After all, Namibia is the second most unequal society in the world – coming only after South Africa. Namibia's marginalised and vulnerable groups generally lack access to basic education provision, employment, health services and shelter and are often exploited as sources of cheap labour and live in segregated conditions. In the case of the Ovahimbas in the north-western Namibia, tourists use them for pictures which get sold at exorbitant prices overseas. The San people too are valuable to tourists only to the extent that their pictures tell a tale. These pictures find themselves on social media unbeknown to them. Given the inherent complexities in regulating social media, focusing on initiatives that promote ethical use is crucial.

Opportunities

Namibia currently ranks 17 on the global Right to Information rating with an overall score of an impressive 116 out of 150, highlighting significant progress in the realm of transparency and accountability, despite not having operationalised its access to information law yet.[61] The Act is designed to enhance transparency, accountability, and good governance by guaranteeing the public's right to access information held by both public and private entities. This right is fundamental not only for ensuring that the public remains well-informed on issues of public interest but also for empowering individuals to demand accountability, actively participate in public life, and combat corruption.

In 2023, Namibia ranked 49th out of 180 countries on the Corruption Perception Index.[62] The ranking shows the need for effective measures to address corruption. Implementing the Access to Information Act presents a crucial opportunity to create a more transparent and accountable governance framework, which can significantly contribute to reducing corruption and promote a more participatory democracy. The Act also allows for the participation of all in the

[61] Press, Namibia: Access to Information Bill Strong But Reforms Could Make it an African Leader (April 30, 2021) https://www.law-democracy.org/live/namibia-access-to-information-bill-strong-but-reforms-could-make-it-an-african-leader/ accessed 19 September 2024.

[62] Corruption Perception Index (The Brief, February 2023) https://thebrief.com.na/2023/02/

democratic processes of the land as well as socio-economic innovation and development.

Moreover, the implementation of the Act provides an opportunity for the government and other entities to develop effective records management systems and processes that are automated and streamlined. This may include a digital database to keep, catalogue and allow easy searching across records, a list of available information, set processes to log new records and assign IDs to reliably track records, ensure access controls on confidential documents and procedures to protect integrity and availability of records, and convert paper records to digital formats. Developing automated and streamlined processes, including digital databases for cataloguing and searching records, establishing systematic procedures for logging and tracking new records, and converting paper records to digital formats, will facilitate better management and accessibility of information. Such advancements will not only support the effective implementation of the ATI Act but also improve overall organisational efficiency, ensuring that information is readily available and secure. This modernization effort aligns with broader goals of socio-economic development and innovation, ultimately contributing to more effective governance and public engagement.

In Namibia's predominantly conservative society, the administrative culture of secrecy can pose significant challenges to the effective implementation of access to information laws. This culture of secrecy, combined with low levels of public awareness, may lead to diminished responsiveness to ATI requests, potentially stifling transparency and public engagement. While the concept of access to information may be relatively new to Namibia, it is far from a novel phenomenon globally. Embracing the principle of proactive disclosure can be essential in overcoming these challenges. Proactive disclosure involves making public information readily accessible without requiring individuals to submit formal requests or navigate administrative hurdles, thereby enhancing transparency and reducing the associated costs and complexities for information seekers. For public organisations, this approach not only facilitates easier access to information but also alleviates the administrative burden of responding to individual ATI requests, ultimately fostering a more open and accountable governance environment.

ATI in the digital era

The principle of proactive disclosure is increasingly facilitated or supported by the use of information and communication technologies. The

namibia-drops-on-international-corruption-perceptions-index/ accessed 19 September 2024.

growing use of digital technology in recent years has transformed how communication, access to services and information, are accessed. The internet has become central for disseminating information and has significantly enhanced individuals' ability to exercise their right to seek, receive and impart information. However, digital exclusion remains a substantial barrier and significantly hinders access to information. Similarly, low digital literacy rates and inaccessibility in rural or remote areas or areas lacking connectivity, further exacerbate this problem, creating significant gaps in access to information distributed through modern technologies.

To address these challenges, the Namibian government has implemented several initiatives aimed at bridging the digital divide. The establishment of Rural ICT Centres in each region provides essential access to computers and digital resources for those who might otherwise be excluded.[63] The government is also investing approximately N$115 million in infrastructure projects to enhance connectivity in the most remote areas of the country, with a goal of increasing connectivity from 88% to 100% over the next three years.

Despite these efforts, it is crucial for information officers in various organisations to ensure the right to information for individuals unable to access digital services. This can be achieved through provision of alternative non-digital avenues like face-to-face meetings, telephone helplines, printed material and call centres. Effective implementation of the Access to Information Act will require a collaborative effort among civil society organisations and the private sector to fully realise the Act's objectives and ensure equitable access to information for the public.

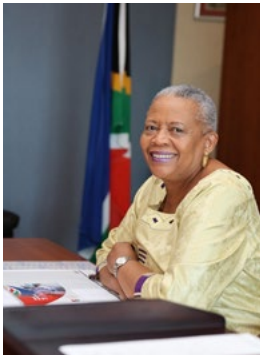
Conclusion

In conclusion, Namibia's enactment of the Access to Information Act in December 2022 represents a significant milestone that underscores the country's adherence to the fundamental right of access to information. It also reflects the nation's progressive stance towards promoting an open and accountable society. Despite the challenges of overcoming a legacy of administrative secrecy, limited public awareness, and the complexities of implementing new information management systems, the Act promises to be a transformative tool for empowering the public and

[63] Government of Namibia: 'statement By Minister Of Information and Communication Technology (Mict)
Dr. Peya Mushelenga, MP' 30 August 2021 https://mwt.gov.na/web/mict/remarks-and-statements/-/document_library/afkx/view_file/1011057 See also, IST Africa: 'Current ICT initiatives in Namibia http://www.ist-africa.org/home/default.asp?page=doc-by-id&docid=5554

strengthening public participation. By promoting proactive disclosure and facilitating easier access to information, Namibia is poised to make substantial strides in reducing challenges such as corruption and improving government accountability. The collaborative efforts with civil society organisations during the development of the Act further shows its importance in supporting a vibrant democracy and ensuring that the public can engage effectively with both governmental and private sector entities. As Namibia continues to navigate the implementation of this landmark legislation, it shows the country's dedication to upholding democratic principles and advancing the right to information.

Article 4



Experience of an Oversight Mechanism Established to Promote, Monitor and Protect The Right Of Access to Information

Adv. Pansy Tlakula, Chairperson
Information Regulator (South Africa)
Former Special Rapporteur on Freedom of Expression and Access to Information in Africa (2005 – 2017)

Introduction

Twenty years ago, the African Commission on Human and Peoples Rights (ACHPR) established the mandate of Freedom of Expression and appointed former Commissioner Andrew Chigovera as the first Special Rapporteur. In 2005 I was privileged to be the mandate holder for the twelve years of my tenure at the ACHPR. During my tenure the mandate was extended to include Access to Information. The extension was informed by the realisation that although Article 9 of the African Charter on Human and Peoples Rights (African Charter) provides for the right of every individual to receive information, very few states parties to the African Charter had adopted access to information laws to give effect to this article. The historic Model Law on Access to Information which was adopted by the ACHPR in 2013, was meant to assist countries without such legislation to develop their own access to information laws. Since the adoption of the Model Law, about 29 have adopted access to information laws, and of these, about 21 have established oversight bodies. However, the independence and effectiveness of some of these oversight bodies remain a challenge.

The Information Regulator (South Africa)

The Information Regulator (Regulator) is an independent statutory body responsible for the promotion, protection and monitoring of the right of access to information in terms of the Promotion of Access to Information Act (PAIA).[64] It is also responsible for the protection of personal information (data protection) as provided for in the Protection of Personal Information Act

[64] Promotion of Access to Information Act, No. 2 of 2000.

(POPIA).[65] The Regulator was established in 2016 and consists of 5 Members who are appointed by the President of the Republic on the recommendation of the National Assembly for a renewable period of five years.[66] It accounts to the National Assembly. My appointment as the Chairperson of the Regulator has enabled me to continue with the work that I did during my twelve-year tenure as the Special Rapporteur.

The mandate of the Regulator includes the investigation of complaints, monitoring implementation of PAIA, public education, making recommendations for the development, improvement, modernisation, reform or amendment of PAIA or other legislation or common law having a bearing on access to information and training of information and deputy information officers.[67] Two things set PAIA apart from other access to information legal regimes globally. Firstly PAIA applies to information held by both public and private bodies.[68] Any person can request access to any information held by a public body, or held by a private body if they require that information to exercise or protect any right.[69] Secondly, PAIA applies to political parties and independent candidates.

After exhausting internal appeals, individuals can either file a complaint with the Regulator or go directly to court for information held by national, provincial, or local governments.[70] Recent court rulings now require those requesting information from bodies which without internal appeal mechanisms such as private entities or specific state organs like the Auditor-General and the South African Human Rights Commission, to first lodge a complaint with the Regulator before approaching the courts. This decision will undoubtedly have an impact on the workload of the Regulator.

For the purpose of investigating complaints, the Regulator has powers similar to those of a High Court. These powers include summoning and enforcing the appearance of any person before it to give evidence under oath and entering and searching premises with a warrant issued by a judge of the High Court. Concealing information to deny access is a criminal offence, punishable by a fine or up to two years imprisonment. Currently, one of the Magistrates Court is investigating a

[65] South Africa. Protection of Personal Information Act, Act 4 of 2013.

[66] Parliament of South Africa (2011). 'INFORMATION REGULATOR: STRUCTURE'. Available at: https://pmg.org.za/files/docs/110919annexureB_0.doc.

[67] Information Regulator. About the Regulator. Available at: https://inforegulator.org.za/#:~:text=About%20the%20Regulator&text=The%20information%20regulator%20is%2C%20among,(act%204%20of%202013).

[68] Promotion of Access to Information Act, No. 2 of 2000.

[69] Ibid.

[70] Ibid.

case against the head of a private body who made a false statement under oath during an investigation that was conducted by the Regulator regarding the existence of information which was requested by a complainant. The court has subpoenaed the head of the private body concerned and his two colleagues who were involved in the matter.

After investigating a complaint, the investigation report is submitted to the Enforcement Committee, which consists of external experts and one Member of the Regulator. The Enforcement Committee reviews the investigation report, makes a finding and makes recommendations to the Regulator Members, of actions to be taken by the information officer of the identified public body or the head of a private body. If the Members agree with the recommendations of the EC, they will issue an Enforcement Notice directing the relevant information officer of a public or the head of a private body to take specific actions, such as, disclosing information requested by a complaint within a specified period. Failure to comply with an Enforcement Notice is a criminal offence. Since the coming into effect of its enforcement powers in July 2021, the Regulator has investigated 889 complaints, referred 20 to the EC and issued 6 Enforcement Notices, out of which 2 are currently being challenged in court. It has settled 175 complaints through conciliation. Through conciliation, one of the large insurance companies which had refused to grant a widow information relating to the death benefit due to her after the death of her husband, did not only release the information but also paid out the benefit.

The Regulator is currently handling ground breaking investigations that hold significant implications for the future of access to information in South Africa. One notable case involves a complaint lodged by a journalist who was refused access to certain information held by the State Security Agency. This case is particularly significant because it will be the first to balance the national security exemption against the public interest override. The outcome could set a critical precedent for how national security concerns are weighed against the public's right to access information, potentially reshaping the boundaries of transparency and accountability in government.

The Regulator is also investigating complaints by civil society organisations regarding denied access to information held by a number of social media platforms. These platforms, which play a central role in modern communication, are increasingly scrutinised for their control over data and information. The Regulator's inquiry into these complaints is crucial as it addresses the emerging challenges of information access in the digital age, including the transparency and accountability of social media companies. The significance of these cases extends beyond the

International Conference of Information Commissioners in Manila, Phillipines, 2023. Photo credit: Information Regulator gallery

immediate disputes. They represent critical tests of the existing legal frameworks governing information access and privacy in a rapidly evolving technological landscape. The outcomes will influence future enforcement actions, shape public and institutional attitudes towards information rights, and potentially drive legislative or policy reforms to address contemporary issues in information access and security.

The monitoring of the implementation of PAIA is performed through assessments of public and private bodies to determine their compliance. These assessments are either conducted by the Regulator on its own initiative or at the request of a public or private body or any other person. The Regulator, Political Parties represented in Parliament, Universities, Metropolitan Councils, publicly listed companies on the Johannesburg Stock Exchange and major global tech firms like Google, Meta and TikTok. Future assessments will include Parliament and Constitutional Institution. Evaluating these critical institutions is particularly noteworthy, as it will examine the adherence of key democratic institutions to transparency standards, reinforcing the principle of accountability at the highest levels of governance.

After each assessment, the Regulator compiles a report with recommendations for improving compliance, which is submitted to the assessed bodies for implementation.

PAIA enjoins the Regulator to conduct educational programmes to advance the understanding of the Act, particularly within disadvantaged communities. This initiative is crucial as it empowers marginalised groups with the knowledge and tools needed to exercise their rights effectively, ensuring that access to information is not limited by socioeconomic barriers. To give effect to this mandate, the Regulator has established a flagship programme called *Dikopano*- (meetings) which plays a significant role in bridging the information gap. By bringing educational sessions directly to communities in townships and far-flung rural areas, Dikopano addresses the challenges of geographical and economic isolation. The initiative is often executed in collaboration with local municipalities and traditional councils, which helps to integrate and tailor the educational content to the specific needs and contexts of the communities.

The programme includes a range of activities designed to reach diverse audiences. These include activations at shopping complexes and taxi ranks, where community members frequently gather, as well as town hall meetings that facilitate open dialogues. Also, high level workshops for professionals provide deeper insights into PAIA, promoting a greater understanding among those who play a role in information management and advocacy. The involvement of other regulatory bodies in these initiatives further amplifies their impact. By sharing information about their own work, these organisations contribute to a broader understanding of the regulatory landscape and encourage collaborative efforts to enhance transparency and accountability. Overall, these educational initiatives are vital for ensuring that all citizens, regardless of their background or location, have the knowledge and capacity to engage with their right to access information, thereby strengthening democratic participation and promoting a more informed and equitable society.

Challenges

The Regulator's enforcement powers began amid significant fiscal constraints and the organisation did not escape budget cuts which were implemented across government and state institutions in 2023. With an annual budget of US$5 million, the Regulator struggles to implement its dual mandate of promoting access to information and protecting personal information. The limited financial resources hinder the Regulator's ability to adequately staff its operations, invest in essential technological infrastructure, and undertake comprehensive enforcement actions.

The situation is further compounded by a rising number of court challenges from both private and public bodies, which place additional demands on the Regulator's already strained

budget. These legal disputes not only consume financial resources but also divert attention and effort from proactive oversight and enforcement activities. This financial strain undermines the Regulator's capacity to operate efficiently and maintain its crucial functions. Strengthening the Regulator's financial resources is vital for ensuring its operational resilience and its capacity to enforce South Africa's access to information and data protection framework effectively.

South Africa was a trailblazer in adopting access to information legislation on the continent more than two decades ago. PAIA was widely acclaimed as one of the most advanced pieces of legislation at the time, setting a high standard for transparency and public access to information. However, as technology has rapidly evolved, the original framework of PAIA has become increasingly outdated. The rise of digital platforms, social media, and advanced data analytics has transformed how information is created, shared, and consumed, presenting new challenges and opportunities for access to information and transparency.

To remain effective, PAIA needs to be modernised to address these technological advancements and their implications. Updating PAIA is crucial to ensure that it can effectively regulate information access in the context of contemporary technological realities, protect citizens' rights in a digital environment, and maintain its status as a leading framework for information access globally. This modernisation will help bridge the gap between the original intent of the law and the current information landscape, ensuring that PAIA continues to serve as a robust tool for transparency and accountability.

Also, PAIA's enforcement powers require strengthening and updating to align with those of POPIA. While POPIA includes robust enforcement mechanisms—such as fines up to US$560,000 and imprisonment for up to ten years for non-compliance with assessment reports—PAIA currently lacks equivalent legal consequences. This discrepancy limits PAIA's effectiveness in ensuring compliance and addressing violations. Enhanced enforcement provisions in PAIA are essential to ensure that the right to access information is upheld consistently and effectively. Without adequate penalties for non-compliance, there is insufficient deterrence against neglecting or flouting the law. Strengthening PAIA's enforcement powers will provide a clear legal framework for addressing breaches, compel public and private bodies to adhere to transparency requirements, and reinforce the integrity of the access to information regime. By updating these provisions, PAIA can achieve a higher standard of accountability, align with international best practices, and better protect citizens' rights to access information in a manner that reflects the modern digital and regulatory environment.

African Network Of Information Commissions (ANIC)

The Regulator is actively involved in the global and regional access to information movement, aiming to be a leading world class institution in personal information protection and information access. As already indicated, a number of countries on the continent have established access to information oversight bodies. In 2019 a number of these bodies established the African Network of Information Commissions (ANIC) on the margins of the meeting of the International Conference of Information Commissioners (ICIC), a global network of information commissioners, which was hosted by the Regulator in Johannesburg. The network is now fully functional and has adopted a constitution, elected its office bearers and adopted a strategic plan. Its office bearers for 2024-2026 are:

Chairperson and Secretariat: South Africa
Vice Chairperson: Ghana
Treasure: Morocco
Additional Members: Kenya and Sierra Leone.

The strategic objectives of ANIC include to:

- publicise and position the network.
- promote collaborative work.
- strengthen member capacities.
- ensure the proper functioning and sustainability of the network.

ANIC is committed to ensuring that it keeps abreast of the emerging issues on the right of access to information regionally and internationally. A key concern is information integrity, which is increasingly threatened by misinformation and disinformation. There is no doubt that information integrity is necessary for the free flow of accurate, reliable and credible information. At its Annual General Assembly in May 2024, held in Johannesburg, ANIC adopted an outcome statement titled *"The Role of Access to Information Oversight Bodies in Advancing Information Integrity in Africa"*. In the outcome statement, ANIC members commit themselves, amongst others to:

- initiating and implementing joint actions to develop understanding, capacity, and expertise to operate as access to information oversight bodies in a rapidly changing information society and information economy.
- promoting peer learning to strengthen information integrity in their countries and in the African Region, supported by alliances with governments, development partners and civil society.
- undertaking a study to develop guidelines and propose actions

for enhancing the role of access to information oversight bodies in the global agenda to strengthen information integrity.

These commitments not only reinforces ANIC's role in safeguarding information integrity but also sets a powerful example of proactive leadership in a rapidly evolving information landscape. As ANIC moves forward, its efforts will be instrumental in ensuring that the right to access information remains a robust and reliable cornerstone of democratic societies across Africa.

ANIC's success in advancing access to information in Africa hinges on strategic partnerships with key organisations. To this end, ANIC has decided to enter into a Memorandum of Understanding with the ACHPR Special Rapporteur on Freedom of Expression and Access to Information. Collaborating with the Special Rapporteur is crucial for aligning regional oversight efforts and strengthening the enforcement of information rights. It has also taken a decision to collaborate with the African Alliance on Access to Data. This partnership is essential for advocating digital data access and usage, which are increasingly vital in today's information economy. These collaborations enhance ANIC's ability to address diverse challenges, share expertise, and drive collective progress toward more effective and comprehensive access to information across the continent.

ANIC has made notable strides since its establishment, which is indicative of its growing influence and effectiveness in advancing the right of access to information across Africa and globally. Two of its members, namely South Africa and Kenya serve on the Exclusive Committee of the ICIC. This is a testament to ANIC's leadership and its members' commitment to shaping global standards and best practices in information access. These roles allow ANIC to contribute to and influence international discussions, ensuring that African perspectives are well-represented in global forums. Also, Sierra Leone's upcoming role as the host of the 2026 Edition of the ICIC, represents a landmark opportunity for ANIC to showcase its achievements and promote greater regional collaboration. Hosting such a prestigious event enhances ANIC's visibility and strengthens its network, promoting deeper engagement with global and regional stakeholders.

However, despite these successes, there remains substantial work to be done. The ongoing efforts are crucial to fully realising the right of access to information for the people of Africa, ensuring that the foundational goals set 20 years ago by the ACHPR, through the establishment of the Freedom of Expression and Access to Information mandate, continue to evolve and meet current challenges.

Article 5

Transformative Impact of Access to Information on Ghanaian Journalism

Samson Lardy Anyenini, Lawyer & Human Rights Activist
A-Partners @ Law

Introduction

The right to information is a fundamental component of democratic governance, enshrined in the bill of rights in most democratic societies. In Ghana, as in other democratic nations, this principle is embedded in the constitution as a fundamental human right. However, it was not until 2019 that it was given full expression when the Ghanaian Parliament passed the Right To Information Act (Act 989).[71] The Act is an adaptation and elaboration of the Model Law on Access to Information for Africa, tailored to meet local needs. It provides a detailed framework for accessing official information held by public institutions and relevant private bodies that receive public resources or perform public functions. The introduction of the Right to Information Act has marked a transformative shift in Ghanaian journalism, offering both substantial opportunities and notable challenges. On one hand, the Act has substantially enhanced the ability of journalists to access critical information, thereby improving the transparency and accountability of both governmental and private sectors. This has enabled more rigorous investigative journalism, leading to significant revelations and increased public awareness on a range of issues. As a result, media credibility has strengthened, contributing to a more informed and engaged citizenry. However, the implementation of the Act has not been without difficulties. Challenges such as compliance issues among public institutions, lack of awareness and training regarding the Act, resistance from some sectors, and the need for robust enforcement mechanisms have emerged. These challenges have occasionally impeded the effective utilisation of the Act and its potential impact on journalism. This article explores the transformative contributions of the Right to Information Act to journalism in Ghana, examining both the milestones achieved and the ongoing challenges faced. By analysing

[71] Right to Information Act, 2019, Act 989.

these dimensions, the article aims to provide a comprehensive understanding of the Act's role in shaping the media landscape and its implications for democratic practices in Ghana.

Two Decades of Advocacy - The Journey to Ghana's Act 989

The Right to Information Act, often referred to as the RTI law, embodies a significant legislative achievement in Ghana though its journey to enactment was arduous. Despite the Constitutional provision guaranteeing access to information under article 21 of the 1992 Constitution,[72] it took two decades of sustained advocacy to become a reality in 2019. The Bill faced numerous setbacks, including three successive parliaments ending their four-year terms without passing it. While the 7th Parliament of the Fourth Republic completed debate on the bill just before its dissolution, it was ultimately the 8th Parliament that passed it, and even so, under considerable public pressure. Notably, some legislators, including the current Minister of Trade, Kobina Tahir Hammond, and was a six-term legislator at the time, actively sought to impede its passage. During a debate on 2nd July, 2015, Hammond expressed his concerns about the potential negative impacts of the RTI law, cautioning that "[o]pen access to government invariably leads to weak governance."[73] He supported his argument by citing the substantial number of RTI requests in the UK following the enactment of its Freedom of Information Act in 2000, noting that approximately 300,000 requests had been made within the first three years of the law's passage.

Many individuals, like this legislator, and mostly in public office or politically exposed roles, preferred the pre-access to information regime where public information was treated as private property. This posture was dominant despite the constitutional imperative that the powers of government must be exercised to promote the welfare of the people. In fact, in the preamble of the Constitution is the plain declaration that the framework of government is one committed to "probity and accountability" in a democracy, built on "[t]he Principle that all powers of Government spring from the Sovereign Will of the People."[74]

Oversight Mechanism: Right To Information Commission, Makes The Big Difference

The regulatory body responsible for overseeing the implementation of the

[72] Constitution of the Republic of Ghana, 1992, Article 21.

[73] Citi FM (2015). Ghana Not Ready for RTI – KT Hammond. Available at: https://citifmonline.com/2015/07/ghana-not-ready-for-rti-kt-hammond/

[74] Constitution of the Republic of Ghana, 1992.

Right to Information Act is the Right to Information Commission (RTIC or the RTI Commission).[75] It addresses complaints and ensures that public and relevant private institutions comply with the law's requirements to provide access to information. The Commission has played a crucial role in granting information requests, particularly in cases where many institutions have initially refused to comply. It has been commended for its adherence to the law and its efforts to enforce transparency and accountability. By upholding the principles of the RTI Act, the Commission has cultivated hope that public institutions will adopt a more professional and responsible approach, ultimately serving the public's best interests.

In 2022, it imposed fines ranging from US$3,200 to USS$6,400 on several institutions for failing to comply with information requests. Institutions that wrongfully denied access were required to fulfil the requests and pay the imposed fines. Among those penalised were the Ghana Fire Service, the Ghana Police Service, the Ministries of Education and National Security, the Ghana Education Service, and the Lands Commission.

In 2021, prior to Parliament setting official fees for information requests including charges for copies of information that must be paid for by applicants, the RTIC got massive applause for its decisive action against the Minerals Commission.[76] The Minerals Commission had initially demanded GH¢12,000 for disclosing information to The Fourth Estate, but was ordered by the RTI Commission to charge only GH¢1.90 pesewas (approx. GH¢2.00) for PDF copies and GH¢1.80 pesewas per page for an A4 photocopy.[77] The RTI Commission's authority was further validated when the Minerals Commission's challenge to this order in the High Court resulted in a resounding loss, including the expenditure of GH¢27,000 on legal fees. The Minerals Commission's attempt to overturn this decision in the Court of Appeal is ongoing. This is a decision the Minerals Commission must have regretted having suffered heavy public backlash for wasting scarce public resources. The case highlights the significant impact and scrutiny the RTI Commission faces in its enforcement of transparency.

[75] Right to Information Act, 2019, Act 989.

[76] The Fourth Estate (2021). Release Information for GH¢2 not GH¢6,000: RTI Commission Orders Minerals Commission. Available at: https://thefourthestategh.com/2021/07/release-information-for-gh%E2%82%B52-not-gh%E2%82%B56000-rti-commission-orders-minerals-commission/ .

[77] Ibid.

Impact of The RTI Law On Journalism

The phrase "the culture of silence" did not lose popularity with the end of the revolutionary days in the late 1980s. The expression captured the height of the repressive military regimes with criminal and seditious libel laws that saw journalists such as Kwaku Baako Jnr. and Kwesi Pratt Jnr. in prison. The liberalisation of the airwaves, the repeal of these laws in the democratic regime wherein the freedoms of expression and of the media are erected in the Constitution did not completely result in easy access to information. In April 2016, the media could not access information that ordinarily ought to be disclosed by the government. It took an NGO and a group of citizens to get to the court to compel the Ministry of Transport to make full disclosure of an amount of GHC 3.6 million spent on what became known as the bus branding saga.[78] The amount involved in the corrupt deal was eventually refunded to the State by the Smarttys Management and Production Limited, the company awarded the contract. Public institutions and officials have generally not been proactive nor responsive in sharing especially information about contracts and procurements. Many have hidden behind secrecy laws to deny the media information even where those rules do not apply to the information sought or those officials. In the result, even informed speculation has brought hefty defamation lawsuits. The relief brought by the RTI Act is therefore very significant. The media is actively using the RTI law. The fact information in the public interest is free of charge, and that section 85 suspends and overrides all other disclosure laws, bolters the increasing resort to it by the media

What Ghanaian Journalists Say About The Rti Act

Here are the perspectives of several journalists reflecting on how the RTI Act has influenced their journalistic practices, providing insights into its practical effects and benefits in their day-to-day work. These testimonies illustrate how the Act has shaped their ability to access information, conduct investigations, and uphold transparency and accountability in their reporting.

"The RTI has been thoroughly useful for me in my work as a journalist and fact checker. But for the RTI I wouldn't have been able to access vital information from the FDA for an investigative piece I was involved in as it is the subject of a court case. I used the RTI in getting vital information about mining from the Bank of Ghana, Minerals Commission and the PMMC"- Nathan Gadugah. Editor, Dubawa.Org, Accra

[78] GhanaWeb (2015). NDC Girl Grabs GH¢3.6 Million Bus Branding Contract. Available at: https://www.ghanaweb.com/GhanaHomePage/NewsArchive/NDC-girl-grabs-GH-3-6-million-bus-branding-contract-401816#google_vignette.

"I have suffered setbacks, but have also used the Law to get information I would not have had in the past without the Act. I believe it's the best legislation that has happened to journalism in Ghana since the repeal of the Criminal Libel Law" -Manasseh Azure Awuni, Investigative Journalist, Author, Accra

"I requested for information on the number of public officeholders who had complied with the law for my thesis. The Audit Service refused to give me the information, citing confidentiality. Ten years down the line, through an RTI request, I have had access to information as to compliance even by the President, his Cabinet and justices of the Supreme Court" - Seth Bokpe, The Fourth Estate, Accra

"I now have access to information that hitherto, I wouldn't have had. It could get better. From the Frontiers contract, Wi-Fi and then to SML, the RTI law has been a potent tool in accessing information. Thanks partly to the RTI Commission for stamping its authority by exacting fines on recalcitrant institutions that have refused to provide information requested"- Evans Aziamor-Mensah, The Fourth Estate, Accra

"Since the coming of the RTI law, the watchdog role of the media has improved. Today, I am able to file an RTI request for information I previously could not obtain. It may not [be] perfect, but the law is helping to hold [the] government more accountable to the people" -Emmanuel Ajarfor Abugri, Editor, Modernghana.com, Accra

"The RTI Act has been a game changer in my practice of journalism. Something must be done about delays in processing a request" -Kwetey Nartey, Investigative Journalist, Joynews, Accra

"The RTI law, coupled with the proactive efforts of the RTI Commission, has resulted in public institutions responding to information requests more promptly than before. It is significant to read about politicians (including legislators) using it when they frustrated its passage"-Elvis Darko, Editor, The Finder, Accra.

Some Success Stories

Some journalists have produced ground-breaking reports using information obtained through RTI requests. For example, the report Nathan refers to above alleges with ocular proof a cartel in the retail of expired food products and toiletries brought into the country by one of the biggest confectionery importers. The Food and Drugs Authority responded by alerting the police, who subsequently arrested a dealer in central Accra.[79]

[79] N Gadugah and M Danso 'Consuming trash: unravelling the multi-million cedi business in Ghana's expired products business (Part 1)' 26 April, 2022 *Dubawa* https://ghana.dubawa.org/consuming-trash-unravelling-the-multi-million-cedi-business-in-ghanas-

The Authority's response to Nathan's RTI request has become a key piece of evidence for a formidable defence against the importer's Strategic Lawsuit Against Public Participation (SLAPP). The 2022 documentary series is entitled *"Consuming trash: unravelling the multi-million-cedi business in Ghana's expired products business", highlights these findings.*[80] However, the full release of the documentary is pending due to a restraining order pending the final determination of the suit.

Manasseh, Evans and Seth have utilised the RTI requests to produce documentaries that have exposed both petty and grand corruption. Their investigations have uncovered instances of high-ranking public officials failing to adhere to asset declaration laws and the mismanagement of government scholarships for higher education abroad. Prior to their work, it was almost impossible to definitively prove non-compliance with asset declaration laws. However, through RTI, they exposed defaulters who were presumed to harbour intentions to use public office for private gain by not declaring their assets. Their findings have been significant in prompting compliance and accountability. For instance, in one notable publication titled *"294 political appointees rush to declare assets following The Fourth Estate's exposé."*[81] In the other publication, they succeeded in getting a significant public institution which had evaded such accountability for decades to supply information revealing educational scholarships were allocated out to children and associates of the rich, powerful and politically connected rather than to the "academically gifted but financially needy" marked by law to benefit. The series also uncovered cases where affluent beneficiaries received multiple scholarships. The series had one publication dubbed *"Scholarships Bonanza: How Scholarships Secretariat blows millions abroad on courses available in Ghana."*[82]

Overcoming The Challenges

In her 2023 Annual Report to Parliament, Information Minister,

expired-products-business-part-1/

[80] Citi Newsroom (2022). Consuming Trash: Unravelling the Multi-Million Cedi Business in Ghana's Expired Products Business. Available at: https://citinewsroom.com/2022/05/consuming-trash-unravelling-the-multi-million-cedi-business-in-ghanas-expired-products-business/.

[81] Bokpe, S. J. (2023). 294 Political Appointees Rush to Declare Assets Following The Fourth Estate's Exposé. The Fourth Estate. Available at: https://thefourthestategh.com/2023/02/294-political-appointees-rush-to-declare-assets-following-the-fourth-estates-expose/.

[82] Bokpe, S. J. (2024). Scholarships Bonanza: How Scholarships Secretariat Blows Millions Abroad on Courses Available in Ghana. The Fourth Estate. Available at: https://thefourthestategh.com/2024/04/scholarships-bonanza-how-scholarships-secretariat-blows-millions-abroad-on-courses-available-in-ghana/.

Fatimatu Abubakar revealed that 1,749 RTI requests were submitted to 173 institutions, with 1,225 (70%) of these requests being approved.[83] This indicates a notable improvement in the processing and approval of RTI applications. However, greater success could be achieved with increased public awareness campaigns, particularly in conjunction with key events such as the commemoration of the International Day for Universal Access to Information (IDUAI), which is observed by the RTIC.

In addition to providing training for Information Officers, there should be a strong emphasis for proactive disclosure of information as mandated by the law. This could be effectively achieved by incorporating proactive disclosure into the key performance indicators (KPIs) of institutions.

High officeholders should be actively involved in demonstrating their commitment to transparency by publicly denouncing the lawless conduct, including any unwarranted denial of RTI requests. This responsibility should be spearheaded by the Attorney-General who is known for their responsiveness to RTI matters, the supervising Information Minister and the President. Additionally, heads of institutions superintending baseless repeated denials of RTI requests should be held accountable, potentially facing personal financial penalties for non-compliance.

If errant officers face sanctions, including dismissals, actions that embarrass the Government and the country, they are more likely to adhere to proper conduct. This approach aligns with the President's pronouncement in 2019, declaring the Right to Information Act as the mother of all anti-corruption laws.

A "roll of shame" could be published to highlight errant and non-compliant institutions. The media could also regularly publish this list, blacklisting institutions that fail to comply while publicly praising those that adhere to the standards. This approach would serve as both a deterrent for poor compliance and an incentive for institutions to improve their practices.

Finally, it is anticipated that the guidelines for the Right to Information Act's implementation and received pre-laying approval in Parliament in June 2024, will be enacted within the year. This Instrument is set to significantly enhance the Act's effectiveness by extending its application to private entities that perform public functions or receive public resources, thereby broadening the scope of transparency and accountability. Additionally, it will

[83] Ghana News Agency (GNA) (2023). 2023 RTI Report: 322 Institutions Submit Annual Reports to RTI Commission – Information Minister. Available at: https://www.myjoyonline.com/2023-rti-report-322-institutions-submit-annual-reports-to-rti-commission-information-minister/

establish specific timelines for the Right to Information Commission (RTIC) to process and resolve appeals, thereby streamlining the dispute resolution process and ensuring timely access to information.

Conclusion

This article focused on the significant transformation that access to information has brought to journalism in Ghana since the enactment of the RTI Act. The Act has fundamentally reshaped how journalists operate by facilitating access to crucial information and enabling more robust investigative reporting. Journalists have leveraged RTI requests to expose corruption, hold public officials accountable, and highlight issues of public concern that might otherwise remain concealed. As the RTI framework evolves with the support of the new implementation regulations, it promises to further empower journalists by broadening their access to information and improving procedural efficiency. This continued enhancement of the RTI Act will likely drive greater transparency, promote more investigative journalism, and strengthen the role of the media in promoting democratic accountability. The successful implementation of this framework is essential for advancing the transformative impact of access to information on journalism in Ghana, ensuring that the media remains a vital force in upholding public interest and integrity.

Southern Africa Regional Workshop on the Information Ecosystem and Elections in Africa 2024 Photo credit: Centre for Human Rights (University of Pretoria)

Article 6

Commemorating the Model Law – Gains and Challenges in Africa

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Introduction

Access to information is a fundamental right enshrined in Article 9 of the African Charter on Human and Peoples' Rights (the African Charter) alongside freedom of expression due to its role in dissemination of information.[84] This articulates the fine line between promotion of freedom of expression and the attendant access to information. Any laws or practices barring the free flow of information undermine the realisation of the right to access information. In the context of government services and information generated by government agencies, access to information goes beyond free speech and involves documentation and reporting on critical information that enhances enjoyment of a plethora of rights such as civil and political rights as well as socio-economic rights. In the era where e-government systems are bringing efficiency of service delivery and government processes, the harnessing of technology to disclose information is a significant benefit of the digital age. However, despite being entrenched in the African Charter, the realisation of the right of access to information has been on a sluggish trajectory since the African Charter's adoption in 1986.

Gaps at National Level

The digital age is the superpower that holds significant potential to revolutionise access to information, provided there is strong commitment from governments. As of January 2024, 29 African countries had adopted access to information laws,[85] some

[84] African Charter on Human and Peoples' Rights (1981). Available at: https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf.

[85] Africa Freedom of Information Centre. Why Access to Information Matters for Africa:

inspired by the Model Law on Access to information for Africa (the Model Law). However, the impact of the existing laws[86] in some instances is a figment of imagination as some members of the public may struggle to access information while some countries are yet to enact ATI laws. Barriers imposed by policies and practice at national level existing across Africa imperil access to information, disenfranchising many. For instance, in 2017, Paradigm Initiative resorted to litigation in Nigeria to obtain information after the government refused to respond to their information request.[87] A 2024 report by Afrobarometer, based on a survey of 39 African countries, reveals that 72 % of respondents felt that it was somewhat unlikely or very unlikely that they could access information pertaining to local government contracts among other information on national budgets.[88]

The inability of citizens to meaningfully access information to hold governments accountable remains a challenge. The Afrobarometer report demonstrates the significant perceptions on the African continent of the difficulties of accessing information, which could be addressed through the implementation of digitised systems and e-services that facilitate efficient and timely dissemination of information. The current Model Law, which serves as a standard benchmark for access to information legislation, does not adequately address the critical role of the internet and technology in advancing access to information.

Few African countries have to date implemented e-Government services focused on improving service delivery. Among those that have, there is often a lack of particular focus on enabling efficient timely access to information using digital tools. The integration of Artificial intelligence (AI) into e-Government systems could, for instance, enhance citizen engagements by making information more accessible. AI can also streamline data processing to inform decision making and enhance transparency[89] through proactive and meaningful information disclosure.

Exploring the Challenges and Importance of ATI Implementation. Available at: https://www.africafoicentre.org/overview-of-the-current-state-of-access-to-information-in-africa/.

[86] Africa Freedom of Information Centre. "FOI Laws." Available at: https://www.africafoicentre.org/foi-laws/.

[87] Paradigm Initiative. V. Hon. Minister of Science and Technology, Federal Ministry of Science and Technology. Available at: https://paradigmhq.org/wp-content/uploads/2021/04/v.-hon.-minister-of-science-and-technology-federal-ministry-of-science-and-technology.pdf.

[88] Afrobarometer (2024). Dispatch No. 771: Veiled Transparency: Access to Public Information Remains Elusive Despite Progress on Right-to-Information Laws. Available at: https://www.afrobarometer.org/wp-content/uploads/2024/02/AD771-PAP10-Access-to-public-information-remains-elusive-across-Africa-Afrobarometer-20feb24.pdf.

[89] Chettinad Vidyashram (2023). Transforming E-Governance with Artificial Intelligence: Opportunities, Challenges, and Future Directions. Volume 14, Issue 1. Available at:

Regular updating of information on government websites can ensure timely and meaningful accessibility. However, the adoption of AI and other emerging technologies should be guided by international human rights standards, ensuring transparency on the use of collected data and its impact on access to information.

Some countries are adopting technology to improve their processes without considering the implications on access to information. In judicial proceedings, for instance, the Integrated Electronic Case Management System (IECMS) has reportedly restricted media access to information that would typically be in the public realm. In October 2023, for instance, a Zimbabwean journalist Desmond Chingarande, raised concerns with the Judicial Service Commission highlighting through a letter that journalists were excluded from accessing information concerning criminal and civil cases as the system only allowed access to the parties in the dispute and court officials. This case highlights the need for technology to be implemented inclusively, ensuring transparency, consulting key stakeholders, and facilitating the free flow of information through accessible platforms and websites.

Digital Access to Information

As the digital era ushers into the world numerous and evolving digital technologies including AI, most access to information laws across the continent are vague without clear provisions for digital technologies and open internet access. The Model Law is still lagging behind in keeping in step with the advancements in the digital age. While it has not been revised to take cognisance of the developments, the 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa,[90] establishes pertinent obligations, in the form of principles, that states should adopt in complying with freedom of expression and access to information obligations in the digital age, as enshrined in the African Charter. The Declaration outlines the following key elements that advance digital access to information:

- Proactive Disclosure: Information be made available through all mediums, including on digital platforms, in line with internationally accepted open data principles.[91]

- Expeditious access: Information

https://iaeme.com/MasterAdmin/Journal_uploads/IJARM/VOLUME_14_ISSUE_1/IJARM_14_01_001.pdf.

[90] ACHPR (2019). Declaration of Principles on Freedom of Expression and Access to Information in Africa. The 2019 Declaration replaced the 2002 Declaration, which did not take into account the digital age. Available at: https://achpr.au.int/en/node/902.

[91] Ibid, Principle 29(3).

should be accessible, timeously, through various formats and technologies.[92]

- State duty to facilitate online access: It is the duty of the State to facilitate access to information online and recognise that universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and other human rights.[93]

- Non-interference: States are strongly urged not to interfere with individuals' rights to seek, receive, and impart information via any communication means and digital technologies. Interference, such as content removal, blocking, or filtering, should only occur if justifiable and consistent with international human rights laws and standards.

Celebrating Resolution 581

In addition to the Declaration, the ACHPR has taken a commendable step through the adoption of Resolution 581 on the Need for a Study on the Extent of Implementation of the ACHPR Soft Laws on Access to Information in Africa on 8 March 2024.[94] The Resolution recognises the role of new digital technologies in the realisation of access to information and the relevance of open government data in fostering transparency, efficiency and innovation.[95] In terms of the Resolution, the Special Rapporteur on Freedom of Expression and Access to information is tasked with conducting a study to assess the extent of implementation of the ACHPR soft laws on access to information in Africa. It is also pertinent for the Special Rapporteur to concurrently undertake a review of the existing soft laws on access to information, leveraging expertise among key actors specialising on digital rights to revise the relevant soft law in keeping with the fast-paced evolution of technology and lived digital realities.

The Model Law

The Model Law on Access to Information for Africa, adopted in 2013, did not account for advancements in digital technology that have since transformed information access and integrity. Given the significant impact of technological progress on access to information, it is essential to update the Model Law to address contemporary digital realities.

[92] Ibid, Principle 31(3).

[93] Ibid, Principles 37(1).

[94] ACHPR (2022). Resolution on the Study on the Extent of Implementation of Soft Laws on Access to Information. Available at: https://achpr.au.int/en/adopted-resolutions/581-study-extent-implementation-soft-laws-access-information.

[95] Ibid.

Revising the Model Law will ensure it aligns with current technological standards and effectively supports the right to access information in the digital age. This update should address several key considerations, including:

1. **Aim:** The aim of the Model Law should be revised to guide the development and review of existing ATI legislation to include access to the internet and embracing of digital technologies in the realisation of the right to access to information.

2. **General Principles:** In revising the Model Law, there should be indication that the right to access information should be realised offline and online in line with international human rights standards.

3. **Objectives:** The objectives section should be aligned with the principle that 'the same rights that people have offline should be protected online and in accordance with international human rights law and standards'. This should ensure that the right of access to information, as guaranteed by the African Charter on Human and Peoples' Rights, encompasses all data held by public and relevant private bodies, including digital formats. Voluntary and mandatory procedures to facilitate swift, affordable, and easy access to accurate information, should leverage digital tools. The Act should mandate information holders to organise and maintain data in accessible digital formats and promote transparency, accountability, and good governance by educating individuals about their rights and their protection in both offline and online environments.

4. **Duty to create, keep, organise and maintain information**: The Model law should highlight the importance of keeping, creating and organising information using digital formats that are both safe and easy to access, bearing in mind the need for data protection and builds trust.

5. **Proactive Disclosure:** The Model Law should have a provision on the need for public bodies and relevant private bodies to publish information on their websites within 30 days. This establishes a system of constantly updating information and fosters inclusivity as those with logistical constraints have a faster and efficient mode of access through the internet.

6. **Requests for Access and Response**: The Model Law should indicate that the process of requesting access to information and receiving responses must also

be enhanced through websites and electronic means. As such, it should not only be in writing or made orally as digital formats provide easy tracking of responses to information requests and efficient management of data.

7. **Transfer of Requests:** In revising the Model Law, it is essential to include terms that mandate the use of electronic means for transferring requests to relevant agencies. Incorporating such provisions ensures that requests are communicated swiftly and efficiently, facilitating faster processing and response times. In transferring requests to relevant agencies, there is a need for inclusion of terms that promote the use of electronic means to communicate the transfer and get a response expeditiously.

8. **Internet Access:** In revising the Model Law, it is necessary to highlight and emphasise the importance of the internet and emerging technologies in dissemination, creating, organising and maintaining information. The revision should also address how internet shutdowns and other technological disruptions can have adverse implications on the efficacy and effectiveness of access to information, particularly by delaying the processing of information requests and undermining compliance with key access to information requirements.

9. **Alignment with other related laws:** In revising the Model Law, it is also important to highlight the importance of alignment of access to information laws with data protection laws and national artificial intelligence strategies to ensure that automated systems do not lead to a breach of privacy and other consequential human rights violations. By doing so, this will help address emerging challenges and ensure that access to information remains both secure and equitable in the digital age.

Elections and Access to Information in the Digital Age

The Guidelines on Access to Information and Elections in Africa (the Guidelines)[96] adopted by the ACHPR in 2017 were inspired by article 9 of the African Charter. The Guidelines also require a review, taking into account the role of the internet and emerging technologies in information management and dissemination of election-related

[96] ACHPR (2017). Guidelines on Access to Information and Elections in Africa. Available at: https://achpr.au.int/en/node/894.

information, not only for the media but all stakeholders in electoral processes. With the rise in the use of biometric technologies during elections, access to information in digital formats has become particularly important. Ensuring open internet access is crucial for facilitating information availability during election cycles.

Conclusion

The Declaration, adopted after the passing of the Model Law and Guidelines, has progressively embraced the importance of the digital age and pointed governments towards ways that promote timeous provision of information to the public using the internet and technology. It is therefore crucial to revise the Model Law and the Guidelines to better address aspects of the digital age, particularly digital access to information and digital vulnerabilities that may undermine access and the integrity of information. Leveraging technology to improve and facilitate access to information represents an evolving area that holds significant potential for advancing open and inclusive implementation of access to information laws. Therefore, the role of the ACHPR Special Rapporteur on Freedom of Expression and Access to Information is critical in advocating for the enactment and effective implementation of access to information laws, the inclusive leveraging of technology as well as the updating of existing soft laws.

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