



The State of Access to Information in Africa

# **A Comparative Analysis of Access to Information Legislation in Uganda, Kenya, Tanzania, Botswana, South Africa, Zambia, Zimbabwe, Ghana, The Gambia and Nigeria: Strengths, Weaknesses, and Pathways for Reform**

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## About the African Freedom of Expression Exchange (AFEX)

The African Freedom of Expression Exchange (AFEX) is a continental network of some of the most prominent freedom of expression and media rights organisations in Africa that are also members of the global free expression network, IFEX. The network is currently made up of 14 member organisations spread across West, East, Central, and Southern Africa. Some of the members operate in more than one country in a particular region. AFEX seeks to promote freedom of expression, digital rights and access to information on the continent through advocacy and campaigns, capacity building to ensure effectiveness of members and other free expression groups in Africa.

The Secretariat is hosted at Media Foundation for West Africa (MFWA) based in Accra, Ghana.

## Our Members



## Executive Summary

All of the study countries with the exception of Botswana have demonstrated a growing commitment to the principles of transparency, accountability, and citizen participation by enacting dedicated Access to Information (ATI) legislation. These legal frameworks, often underpinned by constitutional provisions, represent a significant stride towards open governance across the continent. However, a comprehensive review reveals that the mere enactment of these laws has not consistently translated into their effective implementation.

A pervasive culture of secrecy within some public institutions, coupled with a notable lack of awareness among both citizens and public officials regarding their rights and obligations, significantly impedes the practical realization of ATI rights. This challenge is further compounded by insufficient institutional capacity and the continued existence of older, often conflicting, secrecy laws that undermine the intent of existing frameworks on ATI. Critically, the independence and adequate resourcing of oversight and appeal mechanisms remain substantial weaknesses, frequently undermining the effective enforcement of these crucial laws.

To bridge the persistent gap between legislative intent and practical impact, several overarching recommendations emerge. These include prioritizing comprehensive legislative harmonisation to ensure ATI laws take precedence over conflicting provisions, establishing and adequately resourcing truly independent information commissions or oversight bodies with robust enforcement powers, and investing in widespread public education and sustained capacity-building programs for public officials to foster a genuine culture of openness. Furthermore, accelerating digitization and digitalization efforts to enable proactive disclosure of machine-readable, real-time public information and reviewing penalty structures to incentivize disclosure while penalizing wrongful withholding of information are essential steps towards realizing the full potential of ATI in Africa.

## Chapter One: Introduction



Access to information is vital to the functioning of democratic societies. This is due to the fact that democracies are based on the presumption that citizens are sufficiently educated in order to play an active role in participation and deliberation.<sup>1</sup> Citizens' demand for access to public information is usually premised on perceived opacity and lack of transparency.<sup>2</sup> Moreover, citizens can only truly hold duty bearers accountable if the duty bearers are transparent in disclosing the requested information.<sup>3</sup>

The monitoring of public institutions by citizens is believed to be a crucial condition for the successful implementation of institutional reforms aiming towards more effective and accountable governments.<sup>4</sup> This monitoring can take various forms including requesting for access to information. Accessing this

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<sup>1</sup> Paul T. Jaeger. (2007). *Information policy, information access, and democratic participation: The national and international implications of the Bush administration's information politics.*, 24(4), 840–859. doi:10.1016/j.giq.2007.01.004

<sup>2</sup> Adrienne Héritier (2003) Composite democracy in Europe: the role of transparency and access to information, *Journal of European Public Policy*, 10:5, 814-833, DOI: 10.1080/1350176032000124104

<sup>3</sup> Ibid

<sup>4</sup> E, Skoufias et al (2014) Does Access to Information Empower the Poor? Evidence from the Dominican Republic, World Bank Policy Research Working Paper 6895



information is therefore an important tool in fostering the culture of accountability and transparency,<sup>5</sup> because this information empowers citizens with confidence and enables them to take action in terms of holding relevant duty bearers accountable.<sup>6</sup>

Access to information is a fundamental human right duly recognised under the Universal Declaration of Human Rights and other international and regional human rights treaties such as the International Covenant on Civil and Political Rights as well as the African Charter on Human and Peoples Rights. The African Commission Declaration of Principles on Freedom of Expression and Access to Information in Africa makes reference to two kinds of disclosure. The first is maximum disclosure, which is denoted by the notion that access to information may only be limited by narrowly defined exemptions, which shall be provided by law and shall comply strictly with international human rights law and standards.

Proactive disclosure, which is the second, on the other hand, is when public bodies and relevant private bodies are required even in the absence of a specific request, to proactively publish information of public interest, including information about their functions, powers, structure, officials, decisions, budgets, expenditure and other information relating to their activities.<sup>7</sup> Proactive disclosure by relevant private bodies applies to activities for which public funds are utilised or public functions or services are performed.<sup>8</sup>

It is against this background that this research study on the access to information legal regimes of select African countries was undertaken. The overall objective of the study was to evaluate the effectiveness of the countries' access to information (ATI) legal frameworks in enabling citizens to exercise their right to access public information.

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<sup>5</sup> Feruglio, F. (2017) Do More Empowered Citizens Make More Accountable States? Power and Legitimacy in Legal Empowerment Initiatives, Making All Voices Count Research Report, Brighton: IDS

<sup>6</sup> Ibid

<sup>7</sup> Manuela Garcia-Tabuyo, et al. Proactive Disclosure of Public Information: Legislative Choice Worldwide. *Online Information Review*. 12 June 2017. 41 (3): at 359. <https://doi.org/10.1108/OIR-02-2016-0054>

<sup>8</sup> Helen Darbishire (n.d) Proactive Transparency: The Future of the Right to Information? A Review of Standards, Challenges and Opportunities. World Bank Institute Governance Working Paper Series No. 56598.

## Chapter Two: Methodology



### Analytical Frameworks

The study employed two analytical frameworks namely:

#### 1. OPERA Framework

The study employed the OPERA framework to analyse whether the ATI frameworks in the selected countries guarantee the realisation of the freedom of ATI. The OPERA framework stands for Outcomes (O), Policy Efforts (PE), Resources (R) and Assessment.<sup>9</sup> Although the framework was initially conceived as a tool to monitor social and economic rights, it can still be used to analyse civil rights such as the right to access information.<sup>10</sup> The uniqueness of the OPERA Framework is its adaptability to different contexts including the ATI legal regimes across the 10 selected countries. The framework is relevant because it is overarching and employs a number of tools that will paint a comprehensive picture of ATI compliance across the 10 selected countries.

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<sup>9</sup> Center for Economic and Social Rights (2015). The OPERA Framework. <https://www.cesr.org/opera-framework>

<sup>10</sup> Ibid

Framework Pillar      Assessment and Monitoring	
<b>Outcomes</b>	The number of principles from the Model Law on Access to Information for Africa 2013 adopted by the selected country.
<b>Policy Efforts</b>	Identify international, and regional commitments and obligations to ensure ATI. Identify specific national laws and policies that domesticate these obligations.  Collect feedback on the extent to which ATI principles as established under various laws are applied in practice.
<b>Resources</b>	The research used PANTHER principles to analyse the extent to which policy processes on ATI ensure human rights. The Study analysed the extent to which citizens Participate (P) in the development of ATI laws and frameworks and whether they feel that there is Accountability (A) in accessing information. Furthermore, the study assessed the extent to which ATI legal regimes facilitate Non-discrimination (N) in accessing information, whether there is Transparency (T) in the processes involved; and whether the laws promote Empowerment (E). Lastly, the study analysed the extent to which the selected countries promote Rule of Law (R).
<b>Context</b>	The research also identified the social economic, political or cultural conditions that prevent citizens from accessing information. The study also drew from the findings from previous steps to provide analysis

Table 1: The OPERA Matrix showing the different framework pillars and the metrics to assess them

## 2. Human Rights Based Approach (HRBA)

The study further employed the HRBA to analyse the extent to which the access to information legal regime of the selected countries facilitates or frustrates the realisation of citizens' right to access information. The HRBA is a conceptual framework normatively anchored in international human

rights standards and operationally directed to promotion and protection of human rights.<sup>11</sup> Using this approach, the study analysed the extent to which human rights principles such as equality and non-discrimination, participation and accountability guide the practice around ATI in the selected countries.

## **Data Collection**

### **Sampling**

The study utilised purposive sampling to select the ten study countries. The ten countries were selected on the basis that they are all members of the Commonwealth having been colonised by Britain during the 19th and 20th centuries. Upon independence, the ten countries adopted a common law system which is based on the predictability of judicial decisions called precedents.

### **Primary Sources**

13 key informants were interviewed from Uganda, Kenya, Zimbabwe, Nigeria and South Africa. The interviewees worked with civil society organisations, law firms and even academic institutions at the time the interviews were conducted. These interviews served the purpose of validating the findings of the legal analysis that was conducted.

### **Secondary Sources**

The study's secondary sources mainly took the form of legal texts. The researcher obtained official legal texts of ATI laws and policies of the selected countries, as well as the relevant sectoral laws that may impact ATI such as data protection laws, national security laws; laws on archival or even official secrets. The research also analysed selected case law from the courts of the selected countries that interpret ATI provisions.

The study also analysed academic articles, research papers and reports on ATI in the selected countries. The study also analysed available reports from key human rights bodies at the national, regional and international level. The study also examined media reports on ATI.

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<sup>11</sup> United Nations Sustainable Development Group. The Human Rights Based Approach <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>

## Chapter Three: Regional Overview of Access to Information Legislation in the Select Countries



The right of access to information in Africa is significantly influenced by international and regional standards, notably Article 9 of the African Charter on Human and Peoples' Rights, which explicitly guarantees the right to receive information.<sup>12</sup> This right is important in enabling a thriving civil society and democratic practice.<sup>13</sup> The core principle across many African ATI laws is that of maximum disclosure, which establishes a presumption that all information held by public bodies is public and subject to disclosure, unless specifically limited by narrowly defined exemptions.

### Major Principles Observed

#### Constitutional Basis

Several countries had a constitutional entrenchment of the right to information hence providing a

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<sup>12</sup> Organisation of African Unity. African Charter on Human and Peoples Rights. OAU Doc CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

<sup>13</sup> Singh, Rajeev Kumar. (2014). "Right to Information: The Basic Need of Democracy". *Journal of Education & Social Policy*. Vol. 1, No. 2

legal foundation for ATI laws. This was evident in Uganda (Article 41 of the Constitution), Kenya (Article 35 of the 2010 Constitution), South Africa (Section 32 of the Bill of Rights), Ghana (Article 21(1)(f)), and Zimbabwe (Sections 61 and 62 of the Constitution). Constitutional guarantees related to access to information are important because they provide benchmarks on which subsequent legislation can be based.<sup>14</sup>

### **Scope of Information Holders**

ATI laws usually apply broadly to public bodies and frequently extend to private entities that perform public functions or receive public funds. This inclusive scope was observed in Kenya, Tanzania, Nigeria, South Africa, The Gambia, Zimbabwe and Zambia. As governments around the world continue to outsource their roles and functions to private companies, they have responded by extending ATI laws to private bodies that carry out public functions or receive public funds.<sup>15</sup>

### **Designated Information Officers**

Another standard practice involves the requirement for public entities to appoint Information Officers (IOs) or Public Information Officers (PIOs) responsible for managing and responding to information requests. This was a feature in Uganda, Kenya, South Africa, Ghana, The Gambia, Tanzania, and Zimbabwe. These IOs are charged with a number of functions including proactive disclosure of information, assisting persons who wish to access information as well as the receipt, transfer and deferral of ATI requests. In Tanzania, public bodies are empowered to appoint one or more IOs while in The Gambia, the law allows for the appointment of IOs and their Deputies.

### **Request Procedures**

Common procedural requirements included the submission of requests in writing, providing sufficient

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<sup>14</sup> Sebina, Peter. M. (2005). Access to information: the role of freedom of information legislation and constitutional guarantees. *ESARBICA Journal: Journal of the Eastern and Southern Africa Regional Branch of the International Council on Archives*, 24, 43-57.

<sup>15</sup> Ferguson, Erin C (2020). Privatisation and public access to information in the United Kingdom [Doctorate thesis, University of Strathclyde]. doi [10.48730/2kng-ms98](https://doi.org/10.48730/2kng-ms98)

detail to identify the information sought, and including contact information for the applicant. While written requests are the standard, the ATI laws in Uganda, Kenya; South Africa, Tanzania, Ghana, Zimbabwe and Zambia allow for oral requests, enhancing accessibility for illiterate individuals. This fosters inclusion for persons who may not be able to make written requests.

## **Time Limits**

Most legislation prescribes specific timeframes for responses, typically ranging from 7 to 30 days for general requests, with expedited processing for urgent matters, such as those involving life or liberty.

<b>Country</b>	<b>Days within which to respond to ATI requests</b>
Uganda	21
Kenya	21
Tanzania	30
Zimbabwe	21
South Africa	30
Zambia	7
Ghana	14
Nigeria	7
The Gambia	21

*Table 2 showing the number of days within which information officers are supposed to respond to ATI requests by law*

## **Fees**

A general principle is that no fee should be charged for merely submitting a request. However, reasonable fees for reproduction, duplication, or transcription of documents were observed across the study countries

Country	Fees for Access (\$)
Uganda	UGX 20,000
Kenya	No set fee
Tanzania	No set fee
Zimbabwe	No set fee for access  ZWL 5,000 to lodge an appeal with the Zimbabwe Media Commission
Zambia	No set fee
South Africa	ZAR 60 to access information held by public bodies ZAR 110 to access information held by private bodies
Nigeria	Not set
Ghana	GHC 0.27 for each page photocopied GHC 0.38 for each printed page GHC 0.29 for computer readable information on an external drive
The Gambia	Not set

*Table 3 showing some of the costs paid to access information in 9 of the 10 study countries*

## Exemptions

The right to ATI is not an absolute right. The common grounds for refusing access to information across the study countries include national security, protection of personal privacy, commercial confidentiality, law enforcement, and legal privilege.<sup>16</sup> Information that could compromise national security, such as details about military operations, intelligence-gathering methods, or critical infrastructure vulnerabilities, is often withheld.<sup>17</sup> Similarly, information that could endanger public safety, like the location of police checkpoints or sensitive details of an ongoing criminal investigation,

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<sup>16</sup> Coliver, S. (Ed.). (1999). *Secrecy and liberty: national security, freedom of expression and access to information* (Vol. 58). Martinus Nijhoff Publishers.

<sup>17</sup> Ibid



are also typically protected.<sup>18</sup>

## **Public Interest Override**

A crucial safeguard in the ATI laws studied, is the inclusion of a public interest test, which allows for the disclosure of otherwise exempt information if the public benefit outweighs harm of disclosure for example where the information reveals serious public safety or environmental risk, or if the information discloses non-compliance with law.<sup>19</sup> The public interest test is essentially a balancing act. The body responsible for the information must weigh the harm of disclosure against the public benefit of knowing the information. This ensures that the right to information is not easily circumvented by broad, blanket exemptions.

## **Appeal Mechanisms**

Provisions for appealing denied requests to a higher administrative authority or to the courts as avenues of redress were also observed across nine out of the ten study countries. The ability to appeal is a crucial component of an effective freedom of information framework.<sup>20</sup> It acts as a check on the power of government bodies to arbitrarily withhold information.<sup>21</sup> Without a robust appeals process, agencies could simply deny requests without fear of challenge, making the right to information meaningless.

## **Whistleblower Protection**

Some laws explicitly include provisions for protecting individuals who disclose information on wrongdoing in the public interest. By providing protection, the law creates a safer environment for people to report misconduct, knowing they have a legal defense against punitive measures like job

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<sup>18</sup> Ibid

<sup>19</sup> Taylor, R., & Kelsey, T. (2016). Access to information laws (ATI). In *Transparency and the Open Society* (pp. 151-172). Policy Press.

<sup>20</sup> Worthy, B. (2017). The politics of freedom of information: How and why governments pass laws that threaten their power. In *The politics of freedom of information*. Manchester University Press.

<sup>21</sup> Ibid

loss, demotion and harassment.<sup>22</sup> This is a crucial element in a robust system of accountability, as internal reporting is often the first line of defense against corruption and wrongdoing.

## **Regional Challenges in Implementation**

A significant gap persists between the enactment of ATI laws and their effective implementation across the African continent. This disparity is not merely a procedural oversight but stems from deeper, systemic issues:

A primary challenge to ATI in the region is the pervasive culture of secrecy deeply entrenched within public institutions and among officials.<sup>23</sup> This bureaucratic resistance to openness is often linked to past instances of authoritarian or colonial governance.<sup>24</sup> As a result, information officers across the continent sometimes deliberately obstruct access or simply ignore requests which undermines the very intent of the ATI laws.<sup>25</sup> The absence of strong penalties for illegally withholding of information by information officers, as observed in Tanzania, further reinforces this culture by minimizing the perceived risk of non-compliance for information holders. This indicates that legal mandates alone are insufficient; a fundamental shift in institutional mindset is required, supported by clear accountability for non-disclosure.

Compounding this is the lack of public awareness and insufficient capacity among officials.<sup>26</sup> Many citizens remain unaware of their right to access information and the mechanisms available to them.<sup>27</sup> Concurrently, public officials often lack adequate training or knowledge regarding their obligations under ATI laws, contributing to delays and denials.<sup>28</sup> This dual deficiency means that even well-drafted laws may remain underutilized by the public and poorly implemented by duty-bearers, hindering the

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<sup>22</sup> Chalouat, I., Carrión-Crespo, C., & Licata, M. (2019). Law and practice on protecting whistle-blowers in the public and financial services sectors. *International Labour Organization, Working Papers*, 328, 1-61.

<sup>23</sup> Jeannine E. Rely, 2011. "Corruption, secrecy, and access-to-information legislation in Africa: A cross-national study of political institutions", Government Secrecy, Susan Maret [https://doi.org/10.1108/S0196-1152\(2011\)0000019021](https://doi.org/10.1108/S0196-1152(2011)0000019021)

<sup>24</sup> Brendan Eze Asogwa, Ifeanyi Jonas Ezema, "Freedom of access to government information in Africa: trends, status and challenges", Records Management Journal, <https://doi.org/10.1108/RMJ-08-2015-0029>

<sup>25</sup> Dale, T. McKinley. (2014) 'Secrecy and Power in South Africa'. Johannesburg: Wits University Press at 160

<sup>26</sup> Victoria L., Lemieux and Stephanie E. Trapnell. 2016. Public Access to Information for Development: A Guide to Effective Implementation of Right to Information Laws. Washington, D.C.: World Bank.

<sup>27</sup> Ann Florini (2007) "The Battle Over Transparency" in Ann Florini (Ed.) "The Right to Know: Transparency for An Open World" (p. 3). Colombia University Press

<sup>28</sup> Op. Cit. Note 15

demand-side pressure necessary for effective transparency.

Furthermore, the effectiveness of ATI laws is frequently undermined by conflicting legal frameworks. Many countries contend with older, often colonial-era, secrecy laws that contradict the principles of openness enshrined in new ATI Acts.<sup>29</sup> In Tanzania, the ATI Act explicitly states that other laws like the National Security Act takes precedence,<sup>30</sup> while in Nigeria, the Official Secrets Act continues to pose challenges to access.<sup>31</sup> More recently, newly enacted legislation, such as Zambia's Cyber Security Act has introduced new restrictions on information and civic space, creating legal ambiguities and providing loopholes for non-disclosure.<sup>32</sup> This highlights the dynamic nature of the legal landscape, and ongoing vigilance is required to ensure that ATI principles are not eroded by other legislative developments.

Finally, the weakness or political compromise of oversight and appeal mechanisms presents a critical barrier to enforcement. In Tanzania, appeals often culminate with the Minister in charge of legal affairs which raises concerns about impartiality.<sup>33</sup> Similarly, Zimbabwe's Media Commission which is the designated appellate body under the law has faced questions regarding its independence and expertise.<sup>34</sup> Without genuinely independent, adequately resourced, and specialized bodies to adjudicate disputes and monitor implementation, the right to information lacks effective enforcement, leaving citizens with limited recourse against arbitrary denials. This systemic oversight deficit renders the right to information largely unenforceable in practice, perpetuating a cycle of non-compliance and eroding public trust in the ATI framework.

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<sup>29</sup> Greenwatch. (2013). Access To Information in Africa Project: The Case of Uganda. (p. 83)

<https://greenwatch.or.ug/sites/default/files/documents-uploads/Access%20to%20Information%20in%20Africa%20Report.%20The%20Case%20of%20Uganda%20.pdf>

<sup>30</sup> Section 6 of the Tanzania Access to Information Act

<sup>31</sup> Section 28 of the Nigeria Freedom of Information Act

<sup>32</sup> Global Network Initiative. 2025. GNI Statement on Zambia's new Cyber Laws: A blow to freedom of expression and privacy. <https://globalnetworkinitiative.org/gni-statement-on-zambias-new-cyber-laws-a-blow-to-freedom-of-expression-and-privacy/>

<sup>33</sup> Section 19 of the Tanzania Access to Information Act

<sup>34</sup> Africa Freedom of Information Centre. 2020. Freedom of Information Bill passed into law in Zimbabwe, <https://www.africafoicentre.org/freedom-of-information-bill-passed-into-law-in-zimbabwe/>

## Chapter Four: Comparative Analysis using the OPERA Framework to Identify Key Trends and Gaps



The study analysed the study countries' outcomes in terms of whether access is granted to all persons, if right of access extends to private bodies and if information holders accede to oversight authority. The study also analysed whether the ATI legal frameworks have a direct presumption of disclosure as the basis of interpretation of the law, whether the laws provide for proactive disclosure of information and if refusal of access is subject to appeal.

The study also analysed the policy efforts per country in terms of adopting and domesticating international and regional commitments on ATI and whether the practice in these countries is in line with these standards. The study also analysed whether there was popular participation in making the law on ATI and whether the ATI laws have accountability and transparency mechanisms. The study also assessed whether the ATI laws empower rights holders to seek and attain information and if they contain non-discrimination provisions. The results reveal a complex landscape characterized by both encouraging progress and persistent systemic challenges.

## **Common Strengths Across the Region**

A notable trend is the constitutional recognition of the right to information, which provides a robust legal foundation for ATI laws in many nations, including Uganda, Kenya, South Africa, Ghana, and Zimbabwe. This constitutional entrenchment signifies a high-level commitment to transparency. Another common trend observed across the region is that of maximum disclosure of information being the basis of the ATI laws. In Tanzania and The Gambia for instance, the ATI laws require public authorities to prove why a particular requester should be denied information. This philosophical underpinning is crucial for fostering an open information environment.

Furthermore, there is a positive trend towards proactive disclosure mandates, where public bodies are obligated to publish certain information without waiting for individual requests hence reducing the burden on requesters and promoting routine transparency. This strength is noted in Uganda, Kenya, Nigeria, Ghana, The Gambia, and Zimbabwe. The inclusivity in applicant scope is another commendable aspect, with several laws extending the right to "any person" or incorporating provisions for oral requests and assistance for illiterate or disabled individuals, thereby promoting broader access as seen in Uganda, Nigeria, South Africa, Ghana, The Gambia and Zambia.

The widespread inclusion of public interest overrides is a vital safeguard. These provisions allow for the disclosure of otherwise exempt information when the public benefit, such as revealing a serious public safety or environmental risk, or non-compliance with law, outweighs the potential harm of disclosure. This is noted in Kenya, Tanzania, Nigeria, South Africa, The Gambia and Zambia.

Even if there is growing recognition of the importance of whistleblower protection within the study countries, the practical implementation of such protections is usually non-existent. In Nigeria, for instance, despite the existence of a whistleblower law, the weakness in its enforcement has resulted in some public officers being dismissed from work whilst little is done to remedy the exposed wrong.<sup>35</sup>

## **Persistent Weaknesses**

Despite these strengths, a significant implementation deficit remains the most pervasive weakness

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<sup>35</sup> Ugowe, A. O., & Adebayo, A. A. (2018). The role of whistle blowing for public interest and the protection of the whistle blower in Nigeria. *Commonwealth Law Bulletin*, 44(4), 563–587. <https://doi.org/10.1080/03050718.2019.1634607>

across the region. As already observed, the mere enactment of ATI laws often does not translate into effective practical access for citizens. This is primarily attributable to an entrenched culture of secrecy within public institutions and among officials, which acts as a formidable barrier to disclosure as observed in Kenya, Nigeria, Uganda, South Africa and Ghana. This bureaucratic resistance is often a legacy of past governance systems and usually translates to information officers actively obstructing or passively ignoring requests.

There is also a lack of awareness and capacity. Both citizens, who are often unaware of their rights and how to exercise them, and public officials, who frequently lack adequate training and knowledge of their obligations, contribute to the underutilization and ineffective implementation of these laws. This was observed in Uganda, Kenya, Nigeria, Ghana, South Africa. This highlights that legislative efforts are not enough and that it is crucial to put in place sustained public education and professional development. Furthermore, inadequate resources for oversight bodies and public institutions, particularly for digitization and modern record management, hinder efficient information processing and proactive disclosure as observed in Kenya and Zambia.

The issue of conflicting legal frameworks is another critical challenge. Many countries grapple with the continued existence of older, often colonial-era, secrecy laws that contradict the principles of openness. More concerning, the enactment of new restrictive laws, such as cybercrime legislation or acts targeting civil society organizations, can actively undermine ATI principles, often taking precedence over the ATI laws themselves as observed in Tanzania, Nigeria, Zambia, Zimbabwe and The Gambia. This creates legal ambiguities and provides loopholes for non-disclosure.

Weak or politically compromised oversight and appeal mechanisms are a recurring problem. Many countries struggle to establish truly independent, adequately resourced, and competent oversight bodies. Appeals often involve political appointees or bodies with conflicting mandates, undermining impartiality and effective redress as observed in Tanzania, Nigeria, Zimbabwe, and Zambia. This systemic weakness renders the right to information largely unenforceable in practice.

Some laws exhibit imbalanced penalties whereby they provide for severe penalties for wrongful disclosure by public officials but lack corresponding penalties for wrongful withholding of information by the same as observed in Tanzania. This could in turn create an incentive for information officers

to deny ATI requests. Another unique aspect noted across the study countries was the existence of appeal mechanisms for refused requests. Across the nine study countries with ATI laws, there was some form of appeal mechanism. In Nigeria, it took the form of judicial review by a court of law whereas in The Gambia, an appeal can be lodged with the Communications Commission.

Finally, a general lag in non-digitization and data accessibility means that even with legal mandates, information is often not available in open, machine-readable, or real-time formats, hinders proactive disclosure and efficient responses as observed in Kenya and Tanzania. The presence of vague exemptions in some laws also allows for arbitrary interpretation and denial of legitimate requests as seen in Nigeria.

### **Emerging Challenges**

Beyond these persistent weaknesses, new challenges are emerging that threaten the progress made in ATI. The impact of new cyber and data protection laws is a growing concern. While data protection is essential, if poorly drafted, these laws can introduce new restrictions on freedom of expression, grant broad surveillance powers, and impose penalties for "false information," thereby potentially undermining the very essence of ATI as observed in Zambia, Zimbabwe and The Gambia.

The shrinking civic space, often through legislation targeting civil society organizations, directly impacts their ability to advocate for and monitor ATI implementation. This stifles a crucial demand-side pressure for transparency as observed in Zimbabwe and Tanzania. Lastly, the proliferation of digital disinformation and surveillance is increasingly used as a pretext by governments to impose restrictive measures on online speech and increase surveillance, further impacting the overall information environment and the ability of citizens to seek and impart information freely as seen in Zimbabwe and Zambia

## OPERA Framework Matrix

Framework Outcome	Country									
	Uganda	Kenya	Tanzania	Botswana	South Africa	Zambia	Zimbabwe	Nigeria	Ghana	The Gambia
<b>Outcomes</b>				The country does not have ATI legislation		✗	✗			
Access is granted to all Persons	✓	✓	✓		✓			✓	✓	✓
Right of access extends to private bodies	✗	✓	✓		✓	✓	✓	✓	✓	✓
Direct presumption of disclosure is the basis of interpretation of the law.	✗	✓	✗		✓	✓	✓	✓	✗	✗
All information holders accede to oversight authority	✓	✓	✓		✓	✓	✓	✓	✗	✗
Refusal of access is subject to appeal										
Proactive disclosure of information	✓	✓	✓		✓	✓	✓	✓	✓	✓
Protection of disclosure in good faith			✓							



	✓	✓	✓		✓	✓	✓	✓	✓	✓
	✓	✓			✓	✓	✓	✓	✓	✓
<b>Policy Efforts</b>										
Adopted and domesticated international and regional instruments on ATI	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓
Policy challenges	The practice, however, is marred by delays in remitting information, impunity by information officers and general lack of knowledge about the ATI by public servants	In practice, however, the delay to enact Regulations has hampered implementation of the law  Non-digitisation of official records has made it difficult to access important information	Practical challenges include a lack of awareness of the ATI utility, poor coordination in data release, and reluctance by some institutions to publish request procedures.	The lack of a clear and comprehensive framework for public ATI makes attaining public information difficult	In practice, there is a lot of secrecy by public officials.  Disclosure is sometimes denied on the basis that it is not a record as provided under the law	In practice, the Human Rights Commission lacks the resources to properly implement the law on ATI	In practice, however, the bodies mandated to implement the Act lack the resources to do so  There is a lot of impunity from public officials who often refuse to grant ATI requests	The practice, is, however, different. Laws like the National Secrets Act make it difficult to disclose information on some aspects like human rights abuses  There is also a culture of secrecy which makes disclosure difficult	In practice, however, the low levels of public awareness regarding the ATI provisions and how to utilize them  Administrative bureaucracies make it difficult for people to access information	However, the Act has not been fully operationalised  Laws on sedition, criminal defamation and false news hamper realisation of ATI
<b>Resources</b>										
Popular participation in making the law on ATI	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓
Accountability										

and transparency mechanisms in the ATI law	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓
Non-Discrimination provisions in the ATI law	✓	✓	✓	✗	✓	✓	✗	✓	✓	✓
ATI law empowers rights holders to seek and attain information	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓
Rule of Law Rank	129th out of 140 countries	104th out of 140 countries	98th out of 140 countries	51st out of 140 countries	54th out of 140 countries	103rd out of 140 countries	124th out of 140 countries	119th out of 140 countries	58th out of 140 countries	86th out of 140 countries
<b>Context</b>	Located in East Africa. Political history was characterised by civil war. A new Constitution was promulgated in 1995 on which the ATI Act derives efficacy	Economic power house of East Africa following independence in 1963. Faced post-election violence in 2007 but recovered with a new Constitution in 2010	Vast country located in East Africa. After independence in 1961, the country took on a socialist state model which later failed. The Constitution of 1977 is still in force	Landlocked country in Southern Africa. Stable democracy with mineral wealth. The 1966 Constitution does not protect the freedom to seek and obtain information	Diverse nation known for its troubled history with apartheid and recovery to one of Africa's democracies. The 1996 Constitution is the basis on which the ATI law was passed	Gained independence in 1964 and witnessed one party rule followed by multi-party politics later on. The 1991 Constitution is the basis on which the ATI law is passed	The country's history is characterised by liberation followed by political and economic challenges. The 2013 Constitution provides for the right to access information	The oil nation has witnessed numerous changes between civilian and military rule. The country has maintained a democratic federal republic since the Constitution of 1999	West African nation with diverse cultures and a rich history. It recovered from successive coups to establish itself as one of Africa's democracies until the 1992 Constitution	The mainland African nation gained independence in 1965 from Britain. The 1997 Constitution does not directly mention the right to access information as a human right

Table 4: OPERA framework matrix as applied to the study countries

## Chapter Five: Case Studies from the Select Countries



### 1. Uganda

*“Regardless what is in the Access to Information Act, my experience with requesting for information from public bodies has been burdensome...In a certain case, we had to first threaten to sue the public entity in order to get the information we wanted”*

- Key respondent (Uganda)

### Country Context

Uganda became a British protectorate in 1894, and by virtue of the 1902 Order-in-Council, colonial rule in the East African country was formalised. Two years after the nation’s independence, parliament passed the Official Secrets Act which was aimed at protecting official government secrets and

penalising those who disclosed them.<sup>36</sup> This paved the way for a pervasive culture of secrecy under the guise of protecting official government secrets. After independence, the country's 1962 and 1966/67 Constitutions did not provide for the constitutional protection of the right to access public information.

In 1971, Idi Amin overthrew the constitutional order and commenced rule by military decrees. Information was largely controlled by the state since many private media agencies were nationalised and used in conjunction with state run media to disseminate state propaganda.<sup>37</sup> Obote's return to power between December 1980 and May 1985 was notorious for the jailing of journalists and banning of critical publications because they were deemed to carry information considered harmful to the state.<sup>38</sup>

In 1986, Yoweri Museveni took power through a military coup and has been the country's elected leader since. In 1988, the Penal Code Act was amended to prescribe punishment for publication of information about military installations, equipment and soldiers.<sup>39</sup> The 1995 Constitution provided for the right to access public information and empowered parliament to make a law related to accessing public information.<sup>40</sup>

### **Strengths of the Law**

Uganda passed its Access to Information Act (ATI Act) in 2005 to operationalise Article 41 of the nation's 1995 Constitution. The Act is inclusive, in as far as it provides for access to illiterate persons and PWDs.<sup>41</sup> This aligns well with international best practices for universal access such as the African Commission on Human and Peoples Rights' Model Law on Access to Information for Africa.<sup>42</sup>

The ATI Act outlines clear procedures for requesting information, requiring individuals to identify the public entity they intend to seek information from, submit a written request to a designated Public

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<sup>36</sup> Section 4 penalises wrongful communication of information

<sup>37</sup> Tabaire, B. (2007). The Press and Political Repression in Uganda: Back to the Future? *Journal of Eastern African Studies*, 1(2), 193–211. <https://doi.org/10.1080/17531050701452408>

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Article 41 of the Constitution

<sup>41</sup> Sections 12 and 20(5) of Uganda's Access to Information Act provide for access for illiterate persons as well as PWDS

<sup>42</sup> African Commission on Human and Peoples Rights. (2011) Model Law on Access to Information in Africa

Information Officer (PIO), and expect a response within 21 working days.<sup>43</sup> A key purpose of the Act is to promote efficient, effective, transparent, and accountable governance which is manifested through a provision aimed at protecting individuals who disclose evidence of contravention of the law, maladministration, or corruption.<sup>44</sup> Furthermore, the Act includes an appeal mechanism, allowing individuals to appeal denied requests to a court of law.<sup>45</sup>

## **Weaknesses of the Law**

*‘I once made requests to a government entity for information that was not even that contentious. When they refused to give it to me, I published my own figures which were obviously wrong. That government entity had to clarify and provided the right figures*

- *Key respondent (Uganda)*

Despite its early enactment, Uganda's ATI Act faces significant implementation challenges. A primary weakness is its limited impact on civil servants' actual disclosure practices. There are still some bureaucratic delays in processing access to information requests as well as providing no responses to requests in direct contravention of the law.<sup>46</sup> This erosion of trust is exacerbated by the fact that no government body has met the legal requirement to submit annual reports to parliament detailing ATI requests and responses, hindering effective monitoring.<sup>47</sup>

There is also widespread lack of knowledge about the ATI Act among elected leaders and public officials, many of whom have not received adequate training or guidance on their legal obligations.<sup>48</sup> The Act also contains specific exemptions for Cabinet records and court proceedings before conclusion, which limits the scope of application. While the fees under the law are deemed "reasonable" namely UGX 20,000 for printing, they can still pose a financial barrier for some citizens.<sup>49</sup>

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<sup>43</sup> Sections 11 and 16 of Uganda's Access to Information Act

<sup>44</sup> Sections 44 and 45 of Uganda's Access to Information Act

<sup>45</sup> Section 38 of Uganda's Access to Information Act

<sup>46</sup> Chemonges, M. Timothy. (2024) Strengthening Access to Information and Press Freedom in Uganda: Policy Recommendations for Enhancing Transparency, Accountability, and Citizen Participation. *CEPA*. <https://cepa.or.ug/wp-content/uploads/2024/07/Policy-Paper-On-Press-Plenary.pdf>

<sup>47</sup> Ibid

<sup>48</sup> Op. Cit. Note 15

<sup>49</sup> Op. Cit. Note 18

## 2. Kenya

*“Compared to Uganda, it was easier for me as a journalist to obtain information from Kenyan public entities...I sought so much information that a number of Information Officers became my friends.”*

- Key respondent (Kenya)

### Country Context

After independence, Kenya passed its version of the Official Secrets Act, which was also aimed at promoting the preservation of state secrets with little room for exposure of government information.<sup>50</sup> This led to a culture of treating public information as secretive which restricted access to information.<sup>51</sup>

In 2010, the country promulgated a new Constitution following the 2007 post election violence that threatened to destroy the country.<sup>52</sup> The Constitution provided for the right to access information as a fundamental human right thereby joining other countries in the region such as Uganda that had provided for the right under their constitutions.<sup>53</sup> Despite the constitutional guarantees to access public information, the existence of colonial era laws such as the Preservation of Public Safety Act and the Official Secrets Act threaten to undermine the realisation of this right.<sup>54</sup>

### Strengths:

Kenya's Access to Information Act (ATI Act) was passed in 2016 to operationalise Article 35 of Kenya's 2010 Constitution. The Act mandates public and certain private institutions to facilitate information access unlike neighbouring Uganda that restricts accessibility to only public institutions.<sup>55</sup> The 2010 Constitution paved the way for devolution to local administrative units called county governments. Section 86 of the County Government Act recognises that timely access to information,

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<sup>50</sup> Magina, Arnold (2019). Access to Information in Kenya: A Critical Analysis of the Access to Information Act 2016 [Masters dissertation, University of Nairobi]. Creative Commons..

<sup>51</sup> Ibid at 27

<sup>52</sup> Kramon, Eric and Daniel N. Posner. "Kenya's New Constitution." Journal of Democracy, vol. 22 no. 2, 2011, p. 89-103. Project MUSE, <https://dx.doi.org/10.1353/jod.2011.0026>.

<sup>53</sup> International Commission of Jurists - Kenya (ICJ Kenya). (2019). Access to Information Law in Kenya: Rationale and Policy Framework

<sup>54</sup> Ibid at 12

<sup>55</sup> Sections 3 and 4 of Kenya's Access to Information Act

data, documents and other information is relevant to policy formulation and implementation as one of the main principles influencing citizen participation in the management of the county government.<sup>56</sup>

A significant strength of the ATI Act is its clear obligation for public institutions to proactively disclose a wide array of information, including organizational functions, salary scales, and decision-making procedures, thereby reducing the burden on individual requesters.<sup>57</sup> The Act clearly defines the roles of Information Access Officers (IAOs), typically CEOs or their delegates, in coordinating implementation and handling requests.<sup>58</sup>

A crucial safeguard for transparency is the public interest override, which dictates that exemptions do not apply if disclosure serves a greater public interest or reveals serious public safety or environmental risks.<sup>59</sup> Furthermore, the Act includes specific offenses and penalties for IAOs and other individuals who refuse requests, fail to respond, charge excessive fees, or alter records, providing a deterrent against non-compliance.<sup>60</sup> The legislation also mandates assistance for illiterate and disabled individuals in making requests.<sup>61</sup>

In December 2023, Government of Kenya gazetted the Access to Information (General) Regulations to operationalise the Act, a significant step towards practical implementation of the law.<sup>62</sup> Another positive attribute from Kenya is the fact that the government agency in charge of overseeing implementation of the Act is playing a key role in mainstreaming ATI training for public officials and establishing an online portal to process requests.<sup>63</sup>

### **Weaknesses:**

Despite its robust framework, Kenya's ATI Act has faced implementation hurdles. For one, the lack of comprehensive regulations before 2023 significantly hampered effective implementation of the Act

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<sup>56</sup> National Council for Law Reporting, Laws of Kenya. No. 10 of 2012

<sup>57</sup> Section 5 of Kenya's Access to Information Act

<sup>58</sup> Section 7 of Kenya's Access to Information Act

<sup>59</sup> Section 6(4) of Kenya's Access to Information Act

<sup>60</sup> Section 28(3) of Kenya's Access to Information Act

<sup>61</sup> Section 8(2) of Kenya's Access to Information Act

<sup>62</sup> Government of the Republic of Kenya. Access to Information (General) Regulations. Legal Notice 161 of 2023

<sup>63</sup> The Commission on Administrative Justice (Office of the Ombudsman). Deepening Administrative Justice and Access to Information in Kenya- 2018-2024.

[https://www.ombudsman.go.ke/sites/default/files/2025-03/Commissioners%20Exit%20Report%20Final%2015th%20August%202024\\_0.pdf](https://www.ombudsman.go.ke/sites/default/files/2025-03/Commissioners%20Exit%20Report%20Final%2015th%20August%202024_0.pdf)

by creating ambiguity in processes and standards.<sup>64</sup> Another criticism of the Act is the absence of proper monitoring frameworks for proactive disclosure. This makes it challenging to assess whether the Act's objectives on proactive disclosure are being met. The variance in information causes confusion and defeats the very principle of proactive disclosure.

*"It is so challenging to assess the degree to which public bodies should be voluntarily disclosing information. One ministry will give you a certain set of information while the other will give you a different set of information. There is no harmonised standard "*

- Key Respondent (Kenya)

Kenya's "culture of secrecy" within public and private bodies continues to be a significant impediment to information access.<sup>65</sup> Furthermore, concerns have been raised that the Act's enforcement mechanisms, by entrusting authority to individuals within government agencies, could be susceptible to executive interference.<sup>66</sup> Practical challenges include the non-digitisation of many records, which hinders access to information by making it unavailable in machine-readable or real-time formats.<sup>67</sup>

### 3. Nigeria

#### Country Context

Like Kenya, Nigeria passed the Official Secrets Act two years after independence in order to protect classified public information and prevent its disclosure.<sup>68</sup> As a result, a culture of secrecy aimed at insulating the state's actions from scrutiny was launched.<sup>69</sup> The country had long periods of military rule after independence which further undermined any efforts to disclose much needed public information.<sup>70</sup>

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<sup>64</sup> David, Herbling. (2017, June 21). Kenyan firms slow in enforcing Access to Information Act. *Business Daily*. <https://www.businessdailyafrica.com/bd/economy/kenyan-firms-slow-in-enforcing-access-to-information-act-2155064>

<sup>65</sup> Magina, Arnold. 2019. Access to Information in Kenya: A Critical Analysis of the Access to Information Act. Masters Thesis. University of Nairobi.

[https://erepository.uonbi.ac.ke/bitstream/handle/11295/107732/Magina\\_Access%20to%20Information%20in%20Kenya%3b%20a%20Critical%20Analysis%20of%20the%20Access%20to%20Information%20Act%202016..pdf?sequence=1&isAllowed=y](https://erepository.uonbi.ac.ke/bitstream/handle/11295/107732/Magina_Access%20to%20Information%20in%20Kenya%3b%20a%20Critical%20Analysis%20of%20the%20Access%20to%20Information%20Act%202016..pdf?sequence=1&isAllowed=y)

<sup>66</sup> Ibid

<sup>67</sup> James Lowry (2013) Freedom of information and government records in Kenya, Uganda and Tanzania, Archives and Manuscripts, 41:1, 23-32, DOI: 10.1080/01576895.2013.777990

<sup>68</sup> Suleiman, Garba, and Zainab Y. Anzaku. "Challenges and Implications of Official Secrets Acts on Freedom of Information Act in Nigeria." *Journalism Practice, Teaching and Research in Nigeria*: 460.

<sup>69</sup> Ibid at 468

<sup>70</sup> Onwe, Emmanuel (2013). Implications of the Freedom of Information Law on the Official Secrets Act. *EBSU Journal of Mass Communication*, 1(1).



In 1993, Civil Society Organisations (CSOs) in Nigeria commenced a campaign aimed at drumming up support for the Freedom of Information Bill in order to undo this culture of secrecy that had plagued Nigerian society for decades.<sup>71</sup> Finally, in 2011, President Goodluck Jonathan signed the Bill into law after a long period of civil society lobbying and campaigning.<sup>72</sup>

## **Strengths**

Nigeria's Freedom of Information (FOI) Act was enacted by the National Assembly of Nigeria in May 2011. The FOI Act contains a broad right of access, extending to "any person"—including individuals, corporations, and regardless of nationality—to information held by public institutions and private bodies performing public functions.<sup>73</sup> This inclusive approach is a hallmark of progressive ATI legislation as demonstrated through the African Commission on Human and People's Rights Model Law on Access to Information in Africa.<sup>74</sup>

There is no requirement under the Act for applicants to demonstrate a specific interest or purpose for their request.<sup>75</sup> The FOI law also includes provisions to assist illiterate or disabled individuals by allowing requests through third parties.<sup>76</sup> These provisions ensure inclusion and non-discrimination of Nigerians who may find difficulty in utilising the provisions of the law to gain public information. The Act has been translated into the three major Nigerian languages of Hausa, Igbo, and Yoruba to enhance accessibility.<sup>77</sup>

Under the Nigerian Act, public institutions are mandated to proactively keep records and widely disseminate certain categories of information.<sup>78</sup> The Act also includes measures for whistleblower

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<sup>71</sup> Omotayo, Funmilola Olubunmi, "The Nigeria Freedom of Information Law: Progress, Implementation, Challenges and Prospects" (2015). Library Philosophy and Practice (e-journal). Paper 1219.

<http://digitalcommons.unl.edu/libphilprac/1219>

<sup>72</sup> Ibid

<sup>73</sup> Sections 1 and 2 of Nigeria's Freedom of Information Act

<sup>74</sup> Op. Cit. Note 26

<sup>75</sup> Section 1 of Nigeria's Freedom of Information Act

<sup>76</sup> Section 3 of Nigeria's Freedom of Information Act

<sup>77</sup> FOIA Nigeria. NOA Unveils Information Act in 3 Nigerian Languages.

[https://foia.justice.gov.ng/index.php?option=com\\_content&view=article&id=27:noa-unveils-information-act-in-3-nigerian-languages&catid=10&Itemid=101&lang=en#:~:text=He%20said%20that%20the%20FOI,\(NAN\).](https://foia.justice.gov.ng/index.php?option=com_content&view=article&id=27:noa-unveils-information-act-in-3-nigerian-languages&catid=10&Itemid=101&lang=en#:~:text=He%20said%20that%20the%20FOI,(NAN).)

<sup>78</sup> Section 2 of Nigeria's Freedom of Information Act

protection which in turn aids the disclosure of wrongdoing in public institutions like corruption.<sup>79</sup> Crucially, it subjects legitimate exceptions to a public interest test, which can override limitations in deserving cases.<sup>80</sup>

In terms of enforcement, applicants have the legal right to initiate court proceedings to compel compliance, bypassing traditional *locus standi* constraints.<sup>81</sup> The Act also prescribes penalties for wrongful denial,<sup>82</sup> and criminalizes the alteration or destruction of records in order to prevent accessibility.<sup>83</sup> A recent Supreme Court ruling in April 2025 affirmed the Act's applicability and enforceability across all 36 states, providing legal clarity and strengthening its reach.<sup>84</sup>

## **Weaknesses**

Despite its strong provisions, Nigeria's FOI Act faces substantial implementation challenges. A significant impediment is the low level of awareness of the Act's provisions among both the general public and public officials.<sup>85</sup> This lack of knowledge contributes to underutilization by citizens and non-compliance by institutions.<sup>86</sup> The institutional regime for implementation is widely considered weak and ineffectual, primarily because oversight responsibility is vested in the Federal Attorney General's (AGF) office, which lacks independence as a political appointee and is often overburdened.<sup>87</sup> This political oversight undermines the impartiality necessary for effective enforcement.

A pervasive "culture of secrecy" and an adversarial disposition towards information seekers persist within government institutions, often leading to deliberate delays or outright non-compliance, with many requests going unanswered for months or even years, far exceeding the stipulated 7-day response

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<sup>79</sup> Section 27 of Nigeria's Freedom of Information Act

<sup>80</sup> Section 11(2), 12(2) and 14(3) of Nigeria's Freedom of Information Act contain overrides to limitations imposed by the Act

<sup>81</sup> Section 2(6) of Nigeria's Freedom of Information Act

<sup>82</sup> Section 5 of Nigeria's Freedom of Information Act

<sup>83</sup> Section 10 of Nigeria's Freedom of Information Act

<sup>84</sup> Ejio Umukoro. (2025, April 11). *Light Ray Media*. Freedom of Information Act: All Tiers of Government Must Comply, Supreme Court Rules. <https://lightraymedia.org/2025/04/11/freedom-of-information-act-all-tiers-of-government-must-comply-supreme-court-rules>

<sup>85</sup> Ifenaike, Oluwabukunmi Dolapo and Olatokun, Wole Michael, "Freedom of Information Law and Records Management Practices Among Records Managers In Nigeria's Premier University" (2020). Library Philosophy and Practice (e-journal) . 4734. <https://digitalcommons.unl.edu/libphilprac/4734>

<sup>86</sup> Ibid

<sup>87</sup> Omotayo, Funmilola Olubunmi, "The Nigeria Freedom of Information Law: Progress, Implementation Challenges and Prospects" (2015). Library Philosophy and Practice (e-journal). 1219. <http://digitalcommons.unl.edu/libphilprac/1219>

limit.<sup>88</sup> Furthermore, despite the Act stating that it supersedes contrary laws, older secrecy laws like the Official Secrets Act and other conflicting legislation continue to pose challenges, creating legal ambiguities that agencies exploit.<sup>89</sup> The absence of an administrative redress mechanism for denied requests forces applicants directly to court, which is often costly and time-consuming, acting as a barrier to justice.<sup>90</sup> The Act also lacks a clear definition of "public interest" within its public interest test, leaving it open to subjective judicial interpretation.

#### **4. South Africa**

*"As I wrote my Master's thesis, I struggled to obtain information from the Ministry of Labour. It took me about a month and a half to be able to access information on energy transition"*

- Key respondent (South Africa)

#### **Country Context**

Under apartheid, the South African government implemented a legal order that operated on secrecy and control.<sup>91</sup> As a result, the National Party relied on laws like the Official Secrets Act of 1956 and later the Protection of Information Act of 1982 to tighten control on public information.<sup>92</sup> The result was an African citizenry that lacked access to crucial information especially on the perpetrators of human rights violations during the apartheid period.<sup>93</sup>

An interim Constitution in 1993 paved the way for the country's first open elections in 1994 with Nelson Mandela becoming the first African president of South Africa.<sup>94</sup> Mandela's rise to power

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<sup>88</sup> Alex Hannaford. (2015) Why Nigeria's Freedom of Information Act is even less effective than ours. *Columbia Journalism Review*.

[https://www.cjr.org/criticism/why\\_nigerias\\_freedom\\_of\\_information\\_act\\_is\\_even\\_less\\_effective\\_than\\_ours.php](https://www.cjr.org/criticism/why_nigerias_freedom_of_information_act_is_even_less_effective_than_ours.php)

<sup>89</sup> Statement of Media Rights Agenda and Africa Freedom of Information Centre (AFIC) on Nigeria's 5th State Report at the 56th session of the African Commission on Human and People's Rights

<https://achpr.au.int/sites/default/files/files/2022-08/africafreedomofinformationcentreafic.pdf>

<sup>90</sup> Egemonu J.N. (2022) Role of The Judiciary in Promoting Access to Justice in Nigeria, *Global Journal of Politics and Law Research*, Vol.10, No.5, p. 15

<sup>91</sup> McKinley, D. T. (2014). Secrecy and power in South Africa. *New South African Review*, 4, 150-166.

<sup>92</sup> Lefebvre, S. (2017). Reconciling Democracy and the Protection of State Secrets in South Africa. *International Journal of Intelligence and CounterIntelligence*, 30(3), 491–521. <https://doi.org/10.1080/08850607.2017.1297115>

<sup>93</sup> Osawe, Omosede A. (2022). A comparative analysis of the right of access to information under the Nigerian Freedom of Information Act 2011 and the South African Promotion of Access to Information Act 2001. *African Human Rights Law Journal*, 22(2), 476-492. <https://doi.org/10.17159/1996-2096/2022/v22n2a7>

<sup>94</sup> Op. Cit. Note 82

coincided with a number of legal reforms aimed at ensuring greater transparency in accessing public information. In 1996, the country promulgated a new constitution which provided for the right to access information in its Bill of Rights.<sup>95</sup>

### **Strengths of the Law**

South Africa's Promotion of Access to Information Act (PAIA) of 2000 was a pioneering and robust piece of legislation, which effected Section 32 of the Bill of Rights in the South African Constitution. Section 32 had established access to information as a fundamental constitutional right protected by law.

The Act has a broad scope which applies to both public and private bodies,<sup>96</sup> and allows access to information held by another person if required for the exercise or protection of any rights.<sup>97</sup> This is considered a progressive feature, particularly the inclusion of private bodies. PAIA includes a crucial supremacy clause, stating that it applies to the exclusion of any other legislation that prohibits or restricts disclosure of public body records if inconsistent with PAIA's objectives.<sup>98</sup>

The Act features a vital public interest override which mandates disclosure even if there are grounds for refusal, if access would reveal a failure to comply with the law, an imminent danger, or an environmental risk, and such harm outweighs the harm of disclosure.<sup>99</sup> The PAIA provides for proactive disclosure by tasking public bodies with duties such as compiling manuals detailing their structure, functions, and contacts of relevant officers.<sup>100</sup>

In terms of ensuring access, the Act places a duty on Information Officers (IOs) to assist requesters,<sup>101</sup> while also making provision for illiterate persons and those living with disability.<sup>102</sup> These provisions ensure that no one is left behind in the quest to access information. The Act also includes penalties for non-compliance, making it a criminal offense to destroy, damage, or conceal a record to deny

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<sup>95</sup> Section 32 of the South African Constitution

<sup>96</sup> Section 3 of South Africa's Promotion of Access to Information Act

<sup>97</sup> Section 50 of South Africa's Promotion of Access to Information Act

<sup>98</sup> Section 5 of South Africa's Promotion of Access to Information Act

<sup>99</sup> Section 46 of South Africa's Promotion of Access to Information Act

<sup>100</sup> Sections 14 and 52 of South Africa's Promotion of Access to Information Act

<sup>101</sup> Section 19 of South Africa's Promotion of Access to Information Act

<sup>102</sup> Section 18 of South Africa's Promotion of Access to Information Act

access.<sup>103</sup>

## **Weaknesses of the Law**

*“I recall doing research for a story and I needed access to some information. I applied formally but was told after about a month that the information I needed was not a record and therefore my access was denied”*

- Key Respondent (South Africa)

Despite its progressive content, PAIA faces several barriers to full realisation. A key criticism is that PAIA limits access to "records only," which is perceived to contradict the broader constitutional right to "any information". This perceived loophole is reportedly exploited by public and private bodies to deny access to information not formally categorized as a "record"<sup>104</sup> Additionally, public bodies often demonstrate inadequate operational readiness to effectively implement PAIA which usually stems from low levels of knowledge about the PAIA.<sup>105</sup>

Section 27, which states that failure to respond within 30 days is "deemed refusal," inadvertently creates a loophole where information holders can simply disregard requests without facing immediate legal consequences which in turn undermines the Act's objectives of transparency.<sup>106</sup> PAIA also lacks explicit provisions for raising awareness and educational programs for officials or the public, contributing to low implementation rates due to a general lack of knowledge about the legislation.<sup>107</sup> This contributes to a persistent culture of secrecy that hinders the full realisation of information access.<sup>108</sup>

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<sup>103</sup> Section 90 of South Africa's Promotion of Access to Information Act

<sup>104</sup> Osawe, Omosede A. (2022). A comparative analysis of the right of access to information under the Nigerian Freedom of Information Act 2011 and the South African Promotion of Access to Information Act 2001. *African Human Rights Law Journal*, 22(2), 476-492. <https://doi.org/10.17159/1996-2096/2022/v22n2a7>

<sup>105</sup> Tammy O'Connor. 2011. Review of the Promotion of Access to Information Act 2 of 2000: The civil society experience. PAIA Civil Society Network.

<sup>106</sup> Ibid

<sup>107</sup> Op. Cit. Note 15

<sup>108</sup> Ibid

## 5. Ghana

*“My experience trying to obtain information in Ghana was a horrible one. We applied for access to information on technical, vocational, education and training operations in Ghana but our emails went unanswered. We secured a contact person from the concerned ministry but even he was unresponsive. We ended up using secondary data which was not accurate”*

- Key Respondent (South Africa)

### Country Context

Ghana gained independence from Britain in 1957 but by 1962, it had enacted a State Secrets Act which sought to protect state secrets and punish public officers who disclose this information.<sup>109</sup> This Act resulted in disruptions to the realisation of Ghanaian’s right to access information.<sup>110</sup> After the fall of Kwame Nkrumah’s regime, the National Liberation Council passed the Rumours Decree with the aim of furthering control of the flow of state information.<sup>111</sup>

Unlike the country’s independence constitution which did not contain constitutional guarantees to access information, the 1992 Constitution provided for the right to information.<sup>112</sup> Despite the existence of this constitutional guarantee, it was not until 2019 that the country finally enacted the Right to Information Act following decades of pressure from local CSOs and human rights campaigners.<sup>113</sup>

### Strengths of the Law

Ghana's Right to Information (RTI) Act was passed in 2019 to directly operationalise the

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<sup>109</sup> Section 3 of the State Secrets Act provides for the offence of wrongful communication of information by public officers

<sup>110</sup> Appiagyei-Atua, K. (2015). Access to information and national security in Ghana: Drawing the balance. *Accessed November 23, 2015.*

<sup>111</sup> Festus Eribo & William Jong-Ebot (eds.) Press Freedom and Communication in Africa (1997) Africa World Press Inc. at 5

<sup>112</sup> Kludze AKP. Constitutional Rights and their Relationship with International Human Rights in Ghana. *Israel Law Review*. 2008;41(3):677-702. doi:10.1017/S0021223700000406

<sup>113</sup> Adjin-Tettey, Theodora Dame. (2023). Ghana's Right to Information (RTI) Act of 2019: Exploration of its implementation dynamics. *The African Journal of Information and Communication*, 32, 1-17.  
<https://doi.org/10.23962/ajic.i32.16223>

constitutional right to access information held by public institutions, thereby fostering transparency and accountability. Its implementation is guided by five fundamental principles: legal guarantees, proactive disclosure, clear procedures, adherence to international standards, and privacy protection.

A highly progressive feature is the allowance for both written and oral applications, which is particularly beneficial for illiterate or disabled persons, ensuring broader and more inclusive access to information.<sup>114</sup> The establishment of the Right to Information Commission (RTIC) as an independent oversight body, with the power to impose fines for non-compliance, provides a crucial enforcement mechanism.<sup>115</sup> As part of promoting the RTI Act, the RTIC has developed an abridged version of the RTI Act which is crucial for awareness of the general population.<sup>116</sup>

The Act also emphasizes proactive disclosure, encouraging public bodies to make information available without the need for specific requests.<sup>117</sup> The Ministry of Information has shown proactivity in recruiting and training Information Officers (IOs), and high-level government officials have publicly reiterated the government's commitment to transparency.<sup>118</sup>

## **Weaknesses of the Law**

A significant barrier is the low level of public awareness regarding the Act's provisions and how to utilise them.<sup>119</sup> State-sponsored education and sensitisation efforts have been insufficient, with much of the awareness-raising largely driven by non-governmental organizations rather than the government itself.<sup>120</sup> Many citizens and even some officials lack a clear understanding of the precise procedures for requesting information and this results in underutilisation of the law.

Implementation is further hindered by bureaucratic blockages stemming from an entrenched

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<sup>114</sup> Section 18 of Ghana's Right to Information Act

<sup>115</sup> Section 40 of Ghana's Right to Information Act

<sup>116</sup> Right to Information Commission. Abridged Version of the Right to Information Act, 2019  
<https://tighana.org/dmsdocument/116-abridged-version-of-the-right-to-information-act-2019-act-989>

<sup>117</sup> Section 3 of Ghana's Right to Information Act

<sup>118</sup> Ministry Of Information And RTI Commission Hold A Public Forum On Implementation Of RTI Act From 2019 – 2023, <https://rtic.gov.gh/ministry-of-information-and-rti-commission-hold-a-public-forum-on-implementation-of-rti-act-from-2019-2023/>

<sup>119</sup> Theodora Dame Adjin-Tettey. (2023) Ghana's Right to Information (RTI) Act of 2019: Exploration of its implementation dynamics. *The African Journal of Information and Communication*. 32(32):1-17.  
DOI:10.23962/ajic.i32.16223

<sup>120</sup> Ibid

administrative culture and a lack of knowledge among officials about the Act's requirements.<sup>121</sup> There is also a reported lack of qualified staff to effectively enforce the Act across various agencies, and some institutional heads exhibit inappropriate behaviour regarding information disclosure.<sup>122</sup>

## **Key Findings from the Case Studies**

### **Growing Enactment, but Uneven Implementation:**

Nine out of the ten countries have enacted ATI laws, showing a continental commitment to the right to information. South Africa (2000) passed her legislation in 2002 followed by Uganda in 2005, Nigeria in 2011 and then Kenya and Tanzania in 2016. Ghana passed her ATI legislation in 2019 while Zimbabwe did so in 2020, The Gambia in 2021 and lastly Zimbabwe in 2023. Only Botswana does not have national legislation on ATI. Despite the presence of laws, effective implementation remains a major challenge. Many countries struggle to translate the legal framework into practical access for citizens.

### **Purpose and Scope of the Laws:**

A primary objective of these laws is to enhance government transparency, reduce corruption, and foster public trust. Another component that cuts across most of the laws is their aim to empower citizens to participate more actively in governance by providing access to information on public policies, decisions, and expenditures. While most laws cover public bodies, the extent to which they apply to private entities performing public functions varies. For example, Uganda's law is primarily limited to public bodies, whereas Kenya's and Nigeria's may extend to certain private bodies.

### **Common Challenges in Practice**

Government officials are usually reluctant to disclose information which is usually manifested through delays to process requests, denials, or even never processing the requests. This contributes to a culture

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<sup>121</sup> Agyemang-Badu, Bridget. 2023. Ghana Right to Information Law (RTI Act 2019, (Act 989)) Implementation: The Role of Monitoring and Evaluation, A Case Study of Right to Information Commission in Accra Metropolis. MPhil Thesis. University of Cape Coast. <https://ir.ucc.edu.gh/xmlui/handle/123456789/10952>

<sup>122</sup> Ibid



of secrecy which in turn makes ATI difficult. Information officers and public institutions often lack the training, resources, and dedicated units necessary to effectively process information requests.

In addition to this, citizens are unaware of their right to information and how to exercise it which is detrimental to calls for accountability and transparency in public bodies. National legislation often includes exemptions to disclosure such as national security, privacy, ongoing legal proceedings which can be broadly interpreted or misused to deny legitimate requests.

The absence or weakness of independent oversight bodies (like information commissions or ombudsmen) to monitor compliance and handle appeals can undermine the effectiveness of the laws. Even when these bodies are present like in Kenya and Ghana, they are weak to carry out the functions provided for under the law.

## Chapter Six: Recommendations for Reform and Conclusion



To effectively bridge the gap between legislative intent and practical impact in ATI across the ten African nations, a multi-faceted approach focusing on legislative, institutional, and cultural reforms is essential.

### **Legislative Harmonisation and Clarity**

A critical step involves conducting comprehensive audits of all national legislation to identify and subsequently repeal or amend laws that conflict with the spirit and letter of existing ATI Acts. This is particularly pertinent for outdated secrecy laws and newly enacted legislation that may inadvertently or deliberately undermine ATI principles. It is imperative to explicitly enshrine a principle within national legal frameworks that ATI laws take precedence over other conflicting legislation, thereby eliminating ambiguities and closing loopholes that currently allow for non-disclosure. This legislative harmonisation will create a coherent and supportive legal environment for transparency.

### **Strengthening Oversight and Appeal Mechanisms**

The establishment or reinforcement of truly independent, adequately resourced, and specialized Information Commissions or similar oversight bodies is paramount. These bodies must be granted clear mandates to impartially adjudicate appeals, actively monitor the implementation of ATI laws,

proactively promote public awareness of the right to information, and possess the authority to impose meaningful sanctions for non-compliance. Ensuring their financial and operational independence from the executive branch is crucial to prevent political interference and build public trust in the redress mechanisms.

### **Enhancing Proactive Disclosure and Digitalization**

Governments must mandate and rigorously enforce comprehensive proactive disclosure of public information. This includes prioritising high-value data such as government budgets, public procurement contracts, and environmental impact assessments, ensuring they are released in open, machine-readable, and real-time formats. Significant investment in digital infrastructure, modern electronic record management systems, and centralised online portals is necessary to facilitate easy public access and reduce the administrative burden of individual requests. This technological transformation is not merely about efficiency but about fundamentally altering the landscape of information accessibility.

### **Capacity Building and Awareness**

Implementing sustained, state-sponsored public education campaigns is vital to raise citizens' awareness of their right to information and equip them with the knowledge and tools to effectively exercise this right. Concurrently, mandatory and regular training programmes for all public officials, at every level of government, are essential. These programmes should focus not only on the technical aspects of ATI law compliance but also on fostering a fundamental shift from a culture of secrecy to one of openness and public service, emphasizing the inherent benefits of transparency for good governance.

### **Balanced Penalties and Incentives**

Reviewing and rebalancing penalty structures within ATI laws is crucial. This involves introducing meaningful penalties for the wrongful *withholding* of information by public officials, thereby creating a balanced incentive structure that encourages compliance rather than avoidance. Concurrently, any excessively severe penalties for good-faith disclosure should be re-evaluated to avoid creating a chilling effect that discourages officials from releasing information. The aim is to foster an environment where the perceived risk of non-disclosure outweighs the risk of legitimate disclosure.

## **Protecting Civic Space and Media Freedom**

Recognising the indispensable role of civil society organisations and independent media in demanding and utilising public information, governments must actively protect and enable civic space and media freedom. This involves reviewing and, where necessary, repealing or amending laws that unduly restrict the operations of CSOs or impose undue burdens on journalists. Safeguarding against internet shutdowns, unwarranted surveillance, and the arbitrary application of cybercrime laws is also critical to ensure a free and open digital information environment. Fostering a truly independent media landscape, free from state bias and harassment, is essential for a robust information ecosystem.

By adopting these comprehensive reforms, African nations can move beyond mere legislative enactment to achieve genuine and effective ATI, thereby strengthening democratic institutions, promoting accountability, and empowering citizens to participate fully in their governance.

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