

Assessment of the Implementation of SDG Indicator 16.10.02 on Access to Information in Four African Countries

A Synthesis **Report**

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Acronyms

AFIC	Africa Freedom of Information Centre
ATI	Access to Information (used here interchangeable with RTI)
CSO	Civil Society Organization
FOIANet	Freedom of Information Advocates Network
HLPF	UN High-Level Political Forum on Sustainable Development
ICT	Information, Communication and Technology
MDAs	Ministries, Departments and Agencies
MICT	Ministry of ICT
OMA	Government Offices, Ministries and Agencies
RTI	Right to Information (used here interchangeably with ATI)
SDGs	Sustainable Development Goals
SOEs	State Owned Enterprises
VNR	Voluntary National Reviews
WPFDD	World Press Freedom Day

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1. Background of the study

Context

The right of access to information is a fundamental freedom and human right, an integral part of the right to freedom of expression and the associated right to media freedom, recognized by numerous international and regional intergovernmental organizations, including the UN Sustainable Development Goals (SDGs). In 2015, all 193 UN Member States agreed to adopt Agenda 2030, or the SDGs, consisting of 17 goals. SDG 16 calls for all countries to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. In 2021, the UN High-Level Political Forum on Sustainable Development (HLPF) will discuss the state of play of various SDGs in 44 countries with a focus on “Sustainable and resilient recovery from the COVID-19 pandemic”. This discussion will include indicator 16.10.02 on the “number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information”.

As a fundamental and universal human right, access to information is no less crucial in the management of the ongoing COVID-19 pandemic. Lessons learned from the Ebola epidemic included the crucial role of reliable, timely and independent information and the protection of media freedom, freedom of expression and reporting in times of crisis. During the epidemic, proximity media trusted by the public such as community radio played a central role in educating and raising awareness amongst the population in African countries and additionally serves as mediator of information. Through this perspective, public access to knowledge thus serves as an important avenue for halting the spread of COVID-19 through the possible distribution of knowledge to both urban areas and vulnerable, hard to reach communities where language barriers exist. Unfortunately, many Sub-Saharan countries have seen governments restricting access to information and emergency measures are misused to impose broad restrictions on speech, sweeping surveillance powers are introduced against the population, journalists, activists and whistle-blowers for attempting to release accurate information on governments’ capacity and handling of the pandemic. The COVID-19 pandemic in this sense significantly

undermines governments’ de facto commitment and implementation of the right to information. As HLPF VNRs are prepared nationally by state governments, there is a possibility that the same undermining of free speech and information will affect reporting.

The Study

To ensure a more accurate assessment of the state of implementation of SDG 16.10.02, Africa Freedom of Information Centre (AFIC) oversaw the implementation of this research project, ‘**Assessment of the Implementation of SDG Indicator 16.10.02 on Access to Information in Four African Countries**’, between 1 January 2021 – 25 April 2021. The project was funded by Free Press Unlimited with the intention to provide assessments of implementation of national RTI legislation in Namibia, Nigeria, Sierra Leone and Zimbabwe to supplement the Voluntary National Reviews (VNRs), which the majority of the project’s target countries is expected to submit to the HLPF. The purpose of these supplementary assessments is to ensure that the experiences of and challenges faced by journalists, civil society actors and private citizens in accessing information, as per legal prescriptions, are reflected in discussions at the 2021 HLPF and 2021 World Press Freedom Day (WPFDD). This project is thus in line with the SDG 16 goal, targets and indicators, in supporting civil society to contribute to an inclusive society, which should innately reflect the voices of its constituents as well as provide support to government-led implementation of ATI/RTI legislation.

Target countries were chosen based on various parameters. All target countries besides Nigeria are expected to present a VNR at the 2021 HLPF (Namibia and Zimbabwe as second time VNR presenters and Sierra Leone as third time VNR presenter). Nigeria presented in 2017 and 2020 and was chosen due to its position as a regional hub and its high population. While the methodology provides for assessment of countries with existing RTI legislation, it should be noted the target countries qualify to this parameter by varying degrees. Nigeria and Zimbabwe have both constitutional guarantees (meaning RTI is inscribed and guaranteed through the constitution of each country) as well as separate, independent RTI legislation in place.

Sierra Leone does not have a constitutional guarantee but does have a separate RTI law. Sierra Leone was chosen out of interest as a post conflict country, following the end of its civil war in 2002, and ensuing efforts for peace and state building that continue to this day. Namibia has neither a constitutional guarantee nor a separate RTI law but was chosen on basis of the country role in hosting the 2021 WPF in Windhoek on May 3 in commemoration of the 30th anniversary of the signing of the Windhoek Declaration for the Development of a Free, Independent and Pluralistic Press in 1991. Zimbabwe was further chosen to assess implementation of RTI given Zimbabwe has battled the spread of not only the coronavirus but also misinformation about the disease and increased reports of corruption since early 2020.

Methodology

The project's assessments were based on methodology developed by the Freedom of Information Advocates Network (FOIANet) of which AFIC is a member. The methodology assesses the extent to which States with RTI laws are implementing them properly in accordance with three approaches, namely; an assessment of the extent to which a State is proactively disclosing information; the extent to which institutional measures have been put in place to assist with implementation; and the extent to which requests for information are being responded to timely and dutifully (assessed via a simple request testing approach). The full methodology can be found in this report as Annex I: FOIANet Methodology (Measuring RTI Implementation). Assessments were carried out by national consultants under the under technical guidance, methodology and supervision of AFIC. Consultants were tasked with employing the FOIANet methodology to analyze the legal status of ATI in each country in line with the SDG framework, submit and analyze the responses

to information requests by public bodies in three focal sectors (health and the context of COVID-19, environment/climate and financial proactive disclosure of budgets), reflect on en-/disabling factors to the effective operation of ATI and provide at least five recommendations on the improvement of access to information in Africa in line SDG 16.10.02.

There are a few methodological biases that should be acknowledged. The assessment by national consultants are self-reported, which results in a relative subjectivity for reporting rather than full objectivity; an example being, the availability of data and disclosure being at solely dependent on the consultants' ability to find it. A difference in scoring became prevalent between target countries, with some using a 4, and others, 5-point system. Lastly, this project does not constitute a full review of any of the target countries' RTI implementation or legislation but rather offers an assessment through sampling of key institutions in the three focal sectors.

Considering the precarious circumstances because of the COVID-19 pandemic, assessments are based on a combination of virtual consultations and physical interactions.

The research was guided by the overall of objective which was to assess the implementation of access to information laws in targeted sectors in line with SDG 16.10.02.



Kash (R. D. du Congo)
#CovidAfrica

2. Assessment of RTI implementation

In accordance with the FOIANet methodology, the analysis will be broken down into three approaches: 1) Proactive disclosure; 2) Institutional measures; and, 3) Processing of requests. The methodology provides a simple, standardized tool in form of templates/tables for gathering and processing data on implementation of RTI implementation. This chapter will aggregate the findings of the four target country reports based on the three approaches.

2.1. Proactive Disclosure

Proactive disclosure is the release of information by government without a request. This type of disclosure enables many people to access information from their government. Many FOI laws include a list of information which must be made proactively available. To measure proactive release, reviewers should assess the list of information that must be made available proactively and compare it with what they see on public authorities' websites and/or at their libraries. At a minimum, public authorities should publish on a proactive basis the following categories of institutional, organisational and operative information, as well as information about their procedures for releasing information.

Availability of institutional, organisational, operative and contact information

Institutional (Are functions of the ministry/authority and its powers published?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	3	6	2	1	12
Nigeria	1	3	1	3	8
Sierra Leone					30
Zimbabwe				3	10
Organizational (Is Information on personnel, names and contacts of public officials published?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	1			4	5
Nigeria		3	2	3	8
Sierra Leone					N/A
Zimbabwe					N/A
Operational (Are any authority strategies, plans or policies published?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	7	0	3	2	12
Nigeria	2	0	2	4	8
Sierra Leone					N/A
Zimbabwe					N/A

Legislation (Are the laws governing the institutions' operations published?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	9	0	1	2	12
Nigeria	2	1	1	4	8
Sierra Leone					N/A
Zimbabwe					N/A
Service Delivery (Are the descriptions of services offered, including forms required to be filled out and deadlines for application published?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	5	0	2	5	12
Nigeria	0	4	2	2	8
Sierra Leone					N/A
Zimbabwe					N/A
Budget (Is information about the projected budget, actual income and expenditure, and/or audit reports published?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	5	0	2	5	12
Nigeria	0	0	1	7	8
Sierra Leone					N/A
Zimbabwe					N/A
Public Procurement and Contracts (Is detailed information on public procurement processes, criteria, outcomes of tenders, copies of contracts, and reports on completion of contracts published?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	9	0	1	2	12
Nigeria	0	0	1	7	8
Sierra Leone					N/A
Zimbabwe					N/A
Participation (Is information about the mechanisms and procedures for consultation and public participation published?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	4	0	3	5	12
Nigeria	0	1	1	6	8
Sierra Leone					N/A
Zimbabwe					N/A

Availability of information about the Right to Information

RTI information (Is an annual report on the status of implementation of the RTI law published including number of requests granted, refused and time taken to respond?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	0	0	0	12	12
Nigeria	2	0	0	6	8
Sierra Leone					N/A
Zimbabwe				X	N/A
How to make an RTI request (Is information on how to make an RTI request published, including contact details?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	0	0	0	12	12
Nigeria	2	0	0	6	8
Sierra Leone					N/A
Zimbabwe				X	N/A
Costs for publications (Is information about the costs/fees for paying for photocopies of information?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	0	0	0	12	12
Nigeria	0	0	0	8	8
Sierra Leone					N/A
Zimbabwe				X	N/A
Costs for publications (Is information about the costs/fees for paying for photocopies of information?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	0	0	0	12	12
Nigeria	0	0	0	8	8
Sierra Leone					N/A
Zimbabwe				X	N/A
List of information requested (Is information related to RTI requests which were granted published?)	Full	Partial-Full	Partial	Partial-None	Total
Namibia	0	0	0	12	12
Nigeria	2	0	0	10	8
Sierra Leone					N/A
Zimbabwe				X	N/A

When analyzing the data collected for this project it is necessary to consider the varying degrees of applicable RTI legislation in the four countries. While Nigeria¹ and Zimbabwe² both have constitutional guarantees and separate, independent RTI laws, Sierra Leone passed the Right to Access Information Act 2013 but has no constitutional guarantee for RTI. A constitutional guarantee means that the right to access information is enshrined in the constitution of the state. While it is essential to have legislation guaranteeing the right to information, constitutional guarantees are very important as they give overriding status to the right and make it clear that RTI is a fundamental human right, not simply a right guaranteed by law. Namibia has neither a constitutional guarantee nor an RTI law. Chapter 1 elaborated on the choice and justification of target countries, and these different country contexts are important to keep in mind in assessing the level and, perhaps more importantly, the legal obligations for RTI implementation in the four countries.

Namibia

Proactive disclosure is an important element of providing access to public information. While Namibia does not have a constitutional guarantee or RTI law in place guaranteeing this, however, the Harambee Prosperity Plan I (targeted action plan complimentary to national development plans and Vision 2030), under the Effective Governance and Service Delivery Pillar, produced an ATI bill that was tabled on 17 July 2020 in the National Assembly. Under the same plan, the Ministry of Information, Communication and Technology (MICT) also published a Communication Plan (2016/17-2019/20) titled 'Providing Access to Public Information', which set guidelines for internal and external communications. It is against this Communication Plan that Namibia's RTI implementation is currently measured. The Communication Bill is, however, not as detailed as the tabled bill, but does define the duties/functions of public relations officers tasked with providing access to public information. Duties/functions include: (1) Conduct press conferences/briefing on a regular basis, (2) Effectively utilize electronic media, (3) Embrace social media use policy, (4) Oversee the regular update of websites, (5) Engage print media for information dissemination, (6) Monitor the media regularly, (7) Corporate identity

to be developed and maintained, (8) Re-brand O/M/As³ in line with government policies, (9) Participate in trade fairs/trade expos/exhibitions to bring information closer to the people, (10) Collaborate with government central communication unit at Ministry of ICT, (11) Coordinate the translation of information into national languages.

In regard to proactive disclosure of information, Namibia fared relatively well compared to the other three project countries. It should be noted that several MDAs had made some effort to proactively disclose information, particularly on their websites. This information primarily included functions; strategies, plans and policies; laws; and public procurement information. Lists of personnel information and their contact details were rarely published fully, with most institutions disclosing only general contact information. MICT published a government directory for government offices, ministries, and agencies containing only information and contact details of personnel in senior positions. On the other hand, the Communication Plan stipulates that public relations officers should be the point of contact for information requests.

Without an exclusive RTI law/framework guiding information disclosure, outside of the Communication Plan, no specific information on RTI request procedures has been published. However, it is worth mentioning that government ministries have established customer service charters providing information on how they service public complaints and enquiries (these are not, however, specific to RTI requests). All but one of the public entities assessed have published their annual reports. Additionally, the Ministry of Finance publishes all budget documents on its website and has, commendably, been working towards greater transparency in its open budgeting processes.

Nigeria

Nigeria has both a constitutional guarantee and an RTI law in effect. The Freedom of Information Act 2011 provides that public institutions shall ensure that information referred to by the Act is *"widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources and at the offices of*

1. Constitution of the Federal Republic of Nigeria 1999, Article 36.1; Freedom of Information Act 2011

2. Constitution of Zimbabwe 2013, Article 62; Freedom of Information Act 2019

3. Government Offices, Ministries and Agencies

such public institutions". This duty also extends to the update and review of the information required to be proactively published under the Act "*periodically and immediately whenever changes occur*".

Websites of MDAs in Nigeria were analyzed in assessment of proactive disclosure in line with the methodology. Six of these MDAs published information relating to the description of the activities and services they undertook to varying degrees. The Federal Ministry of Finance had no information on its website except for links to its parastatals, while the Federal Ministry of Humanitarian Affairs and Disaster Management had no active website at all at the time of this assessment. Three out of eight institutions provided 75% information on organizational structure, names, titles, and contacts of key officials, while two MDAs published 50% and no information was published for the remaining three MDAs.

Evidenced from the research conducted on the eight MDAs, seven of these gave no information on their budget and expenditure, and six gave no information about the right to information. The Ministry of Health had information on their budget for the year 2016, suggesting a lack of adherence to the legal commitments as laid out in national RTI legislation. The analyzed MDAs to varying degrees disclosed information about their organization, functions of departments/units, organograms, annual reports, project reports, establishing acts, guidelines, etc., showing a pronounced inconsistency between individual institutions.

Sierra Leone

Sierra Leone saw the end of a brutal civil war in 2002. The country is, however, still plagued by many obstacles to democratization and stability such as high levels of corruption, poverty, reliance on aid, unemployment and poor infrastructure. While improvement has been made, the international reconstruction effort in Sierra Leone has to a large degree failed to address fundamental causes of the conflict, including institutional weakness and endemic corruption and the marginalization of youth. While this is not endemic to Sierra Leone, Sierra Leone serves as a context wherein the assurance and provision of rights, including the right to information, is deeply challenged by socio-economic and political tension.

While not having a constitutional guarantee for RTI, Sierra Leone's Right to Access Information Act 2013

has been rated as the 5th strongest Freedom of Information Act in the world. The Right to Access Information Act 2013 has nine parts with 51 sections. Part 1 (section 1) provides an interpretation of key provisions in the Act; part 2 (section 1-11) elaborates on the right to information; part 3 (section 12-26) deals with exempt information; part 4 (section 27-29) focuses on measures to promote openness; part 5 (section 30-37) speaks to the administrative provisions of the Commission; part 6 (section 38-41) concentrates on financial provisions; part 7 (section 42-46) deals with appeals; part 8 (section 47-48) focuses on offences and penalties, and; part 9 (section 49-51) makes provisions for miscellaneous elements with a key focus on regulations, whistle-blower protection and protection of bona fide action.

However, residents in Sierra Leone are yet to fully exercise their right to access information fully as enshrined in the Act. Various reasons for this may be prevalent such as the public not being fully aware of their right to access information or lack of knowledge on how to exercise this right. Furthermore, the government has been very slow in adopting instruments that are complementary to the Right to Access Information law that would encourage the full implementation and realization of the legal provisions in the Act. Consequently, the implementation and potential gains to be harnessed from the Right to Access Information Act 2013 remain a colossal challenge for the government, CSOs and citizens across the country.

Section 8 (1a-p) of the Act mandates public institutions to proactively disclose information. For Sierra Leone, 30 MDAs were analyzed with 77% of MDAs assessed having websites. Proactive disclosure of key information, however, such as detailed profile information of most institutions is hardly available, hence creating difficulties for the public to access comprehensive information on key information of many of the MDAs, which the 2013 Act entitles them to. Only 20% of MDAs disclosed names, designations, and contact details of public information officers, which leaves much room for improvement in strengthening the access points for information through public information officers, appellate authorities and the Commission/institutions. The Act further makes provision for disclosure of critical information such as a directory of officers and employees. 40% of targeted MDAs did not possess a directory of their officers/employees, hence creating further difficulty for the public to approach/engage appropriate authorities within the institutions in the bid to access information.

Minutes or summary of board/council/committee meetings, as provisioned by the Act, were further not disclosed by 70% of MDAs, as was a lack of proactive disclosure on the particulars of concessions, permits or authorizations granted by MDAs.

Zimbabwe

While Zimbabwe has both a constitutional guarantee and RTI law in place several factors threaten the equilibrium of the right to access information the implementation of RTI legislation in the country. With a new constitution (2013) and RTI law (2019), great potential for Zimbabwe to transition from yesteryears' dictatorship into an emerging democracy exist, however, the path towards democratization, and RTI, seems marred with many obstacles. While the Freedom of Information Act 2019 has been signed into law, the government has gazetted the Cybersecurity and Data Protection Bill, which is strong on surveillance of citizens and weak on balancing cybersecurity with the enjoyment of fundamental rights such as free expression online,

privacy and protection of personal data. Furthermore, the government in 2020 announced its intentions to come up with a Patriot Bill, which, if enacted, has the potential of curtailing the exercise of rights such as media freedom and freedom of expression, right to privacy, access to information, freedom of conscience, political rights, freedom to demonstrate and petition, and freedom of assembly and association. The ruling ZANU PF party has since moved a motion in Parliament on the need to introduce the bill. Media violations have also been prevalent in recent years.

Ten MDAs were analyzed in the Zimbabwean context. Three out of the ten had no functional website at the time the study was conducted. MDAs in Zimbabwe have been largely unresponsive to requests and proactive disclosure of information. While legislation is in place, the Government of Zimbabwe's sincerity in entrenching the pillars of democracy and commitment to uphold the rights to media freedom, freedom of expression and access to information as provided for by Sections 61 and 62 of the Constitution, let alone other rights in the Bill of Right, must be questioned.



2.2. Institutional Measures

The [tables for assessing institutional measures for RTI implementation are] about the overall framework for implementation (i.e. it assesses central government actions and only needs to be applied once for each country) [and the] individual authorities covered by FOIA (and should, as a result, be applied separately to each authority being assessed).

Overall Framework for Implementation

Has government established an RTI nodal ⁴ agency? (If yes, comment on its roles and functionality)	Yes	No	Remarks
Namibia		X	The Ministry of Information and Communication Technology oversees government communications, and provides standards and mechanisms for sharing information. These include, for example, the Communication Policy, the draft revised National Information Policy, and others. The Ministry tabled the ATI Bill in June 2020. Currently, there is no alternative RTI nodal agency, though the ATI Bill does provide for an Information Commissioner.
Nigeria		X	
Sierra Leone		X	Disaggregated data not available
Zimbabwe		X	
Has government established an independent RTI oversight mechanism, such as an information commission? (If yes, comment on its work and how effective it has been)	Yes	No	Remarks
Namibia		X	The ATI Bill provides for an Information Commissioner. However, the law is yet to be passed. It is anticipated that ATI legislation will be passed within the next year. It is one of the priorities on the President's Harambee Prosperity Plan.
Nigeria		(X)	The Government did not establish an independent RTI oversight mechanism per se. The Act created RTI oversight responsibilities for the Attorney General of the Federation (AGF) whose office is domiciled in the Federal Ministry of Justice and provided accompanying responsibilities to the AGF. The AGF developed guidelines on the implementation of the FOIA, created processes to handle conflicts arising from disclosure, organizes trainings and retraining of Desk officers of MDAs and ensures that reports on the implementation of the Act by institutions are submitted to the House Committee on FOI annually.
Sierra Leone	X		Disaggregated data not available
Zimbabwe	X		The commission has not gazetted guidelines governing how to make complaints.

4. A nodal agency is a central authority sitting inside of government which is responsible for coordinating, capacity building and RTI standard setting for other agencies in the country.

Implementation by Individual Public Authorities

Has the authority appointed an Information Officer who is responsible for RTI implementation? <i>(If yes comment on how the mandate functions)</i>	Yes	No	Remarks
Namibia	(X)		11 out of 12 MDAs (incl. SOEs) had appointed an Information Officer responsible for RTI implementation in line with the 2016/17-2019/20 Ministry of Information, Communication and Technology's Communication Plan, which sets guidelines for internal and external communications.
Nigeria	(X)		2 out 7 MDAs had appointed Information Officers.
Sierra Leone		N/A	Disaggregated data not available
Zimbabwe		X	No appointed Information Officer, however, public relations departments are tasked with responding to public queries.
Does the authority have an RTI implementation plan? <i>(If yes, comment on the extent to which such a plan has been operationalised)</i>	Yes	No	Remarks
Namibia	X		According to the country report, the use of social media (Facebook), electronic mail, website, press conferences, press releases, newsletter, media monitoring for queries, and annual reports constitute Namibia's RTI implementation plan, reflected in at the level of all 12 MDAs.
Nigeria	(X)		1 out 7 MDAs had an RTI implementation plan (Federal Ministry of Justice)
Sierra Leone		N/A	Disaggregated data not available
Zimbabwe		X	
Has the authority developed/ issued guidelines for receiving and responding to information requests? <i>(If yes, comment on their usage)</i>	Yes	No	Remarks
Namibia	(X)		7 out of 12 MDAs had developed guidelines for receiving and responding to information requests (however some as general/service charters and not specifically for information requests)
Nigeria	(X)		1 out of 7 MDAs had guidelines for information requests in both hard copy and online.
Sierra Leone		N/A	Disaggregated data not available
Zimbabwe		X	

Does the authority prepare and public annual reports, including statistics on requests? (If yes probe for the availability of the latest report and the period it relates to, otherwise the any hindrances to that effect)	Yes	No	Remarks
Namibia		X	
Nigeria	(X)		1 MDA provided prepared and published annual reports (Federal Ministry of Environment) and one provided partial disclosure (Federal Ministry of Justice).
Sierra Leone		N/A	Disaggregated data not available
Zimbabwe		X	The Zimbabwe Media Commission is required to do so. It has not done so yet because the bill is less than one year old.
Has the authority provided RTI training to its information officers? (If yes, comment on when the most recent training programme was conducted)	Yes	No	Remarks
Namibia		X	
Nigeria	(X)		2 MDAs provided full or partial training to information officers (Federal Ministry of Justice; Federal Ministry of Environment).
Sierra Leone		N/A	Disaggregated data not available
Zimbabwe		X	

Namibia

In the absence of national ATI legislation, the MICT functions as the unofficial agency responsible for RTI implementation. However, there is not established a nodal RTI agency or official oversight body and as the MICT Communication Plan is considerably less comprehensive than the tabled ATI bill, a consequently comprehensive definition of responsibilities and oversight remains to be done. It should be noted, however, that the Communication Plan does provide for guidance, which is reflected in appointed RTI information officers, communication outreach, amongst other things. Periodical reviews made available to the public on information requests filed could however not be found.

Nigeria

A lack of commitment of some institutional authorities towards the development of institutional processes and measures to promote ATI implementation in Nigeria. Disclosure and performance guidelines have been developed by the Attorney General of the Federation (AGF) and Minister of Justice in his oversight

responsibilities under the Freedom of Information Act⁵. The guidelines provide that public institutions should provide information, appoint a freedom of information desk officer, establish a unit with appropriate staffing, provide dedicated helplines and online assistance, create a budget line for the unit, publish the name, title, address and contact details of the desk officer who should not be lower in rank than an assistant director (level 14 officer) and provide adequate and frequent capacity building exercise for the officers to ensure adequate delivery of their obligations under the Act.

The desk officer, acting on behalf of the institution, is obligated to keep, organize, maintain and review institutional records and record-keeping maintenance procedures, report and liaise with the unit under the office of the AGF, comply with the annual reporting obligations to the AGF, meet the proactive and reactive disclosure obligations, organize trainings and retraining for the officers of the institution in line with public access objectives of the Act.

5. Guidelines on the implementation of the Freedom of Information Act 2011, Revised edition 2013

In assessing MDAs for this research, two out of eight institutions established partial levels of institutional measures. The Federal Ministry of Justice and the Federal Ministry of Environment are the only institutions with freedom of information portals on their website to enable ease of access to information. Despite these provisions, disclosure remained low on information on requesting processes, appointment of information officers, provision of RTI implementation plans, reporting and training of information officers. The desk officer for the Ministry of Justice is the only officer with whom contact could be established and the institution also published its annual report on implementation activities for the past years. The other six institutions had no institutional measures in place.

Sierra Leone

In addition to the issues remaining in proactively disclosing information by the analyzed MDAs, the Sierra Leone study revealed at least half of the institutions had defined norms for the discharge of functions. However, about a third of the total number of MDAs were found to have deficient systems in place that did not fulfil RTI obligations. Almost half of MDAs reviewed had no clear standards for discharge of functions.

The findings further revealed that 50% of MDAs reviewed do not make provision or create a platform to engage the public on policy formulation and implementation. This situation runs contrary to the tenet of the Right to Access Information Act 2013, which intends to make public institution and officials transparent and accountable to the people. Most public institutions do not divulge procedures for decision making as well channels for monitoring, accountability and transparency. This is true for 50% of the targeted institutions, reflecting half of the MDAs analyzed. A small portion of 7% has made limited progress on this. Institutions seemed aware of their obligations under the act but, whilst some are making efforts, some are purposefully refusing to and others are lethargic. Only 37% of MDAs had clear guidelines for enabling citizens to apply for information, leaving a worryingly high number of MDAs without and poses serious challenges to the right of the public to access information.

Overall, over half of the institutions, 53%, do not have a clear rules or guidelines for dealing with records related to the public and other cooperate bodies. Clear rules, were only found to be available for 30% of the institutions.

Zimbabwe

There seems to be a disjuncture between what the government does through Cabinet, as seen in the post-Cabinet media briefings by the Ministry of Publicity Media and Broadcasting Services on one hand, and what happens in public institutions especially outside the urban areas. The further one drifts from the urban centers into rural and marginalized communities, the higher the difficulty in assessing information from government institutions. This is despite the fact that the Freedom of Information Act, read together with the Constitution provide for the right to access to information for all citizens. Specifically, the act provides from proactive disclosure of information; the public institutions appointing information officers to enable the enjoyment of the right and that the Zimbabwe Media Commission (ZMC) should come up with regulations to ensure the enjoyment of the right, among others.

To this end, the government is yet to comply with the provisions of the law. It should be kept in mind that the Freedom of Information Act was passed into law less than a year ago, at the time of writing this report. Despite the constitution and Freedom of Information Act being in place, the practical rollout of RTI implementation still far from meets the dictates of a government that proactively discloses its information in an institutionalized manner.



BRandan (South Africa)
#CovidAfrica

2.3 Processing of requests

This is the most open-ended of the three approaches for measuring implementation [...] Information about making the request and how it was responded to should be recorded.

Table for recording filing and receiving response to information requests

	Date Request Submitted	How Request was Filed	Date Receipt Received	Submitted (Y/N)	Date, if any, of response	Result	How information provided	Fee charged, if any	Comments
Authority 1, Question 1		(i)	(ii)	(iii)		(iv)	(v)		
Authority 1, Question 2									
Authority 2, Question 1									
...									

Namibia

16 requests for information were made to 11 public institutions along the three focal sectors of the project: health and the context of COVID-19; environment/climate, and; financial proactive disclosure of budgets. 16 information requests were filed with the following results:

- 10 responses were received:
 - 5 contained the information requested, and in some cases, went above and beyond in providing clarity and/or additional detail
 - 2 public entities requested that a research protocol or formal letter be provided before information could be released
 - 2 requests were referred to a different person within the organization
 - 1 institution responded that they did not hold the requested information
- In 6 cases, no response was received at all
- Ultimately, 9 of the requests resulted in mute refusals

Similar to other studies, the results of the lodging of information requests showed that *“with the absence of a legal obligation to proactively disclose information, information access highly depends on the type of information requested and who it is requested from.*

Neither the characteristics of a requester, nor the method used to request for information, strongly impacts granting access” (fesmedia Africa, 2013). This highlights the need for public officials, particularly OMA public relations officers to be thoroughly briefed and educated on the importance of ATI, and trained on responding to requests for information by both the media and the general public.

Nigeria

The prescribed mode of information requesting requires that public institutions must grant access to a request for information within a time limit of seven days. An institution has three days to transfer requests if another institution holds custody of said information. The law provides for an extension of seven days in situations where information being applied for is voluminous. Mode of transmission is online, physical letter, or orally at the institution. A request made orally must be reduced into writing by a designated FOI officer and a copy given to the requester.

11 information requests were submitted to eight public institutions. Seven of these request letters were sent to institutions that have had to carry out urgent and unplanned procurements in the past year. One

letter made an inquiry into the status of the annual compliance report that public institutions are obligated to send to the office of the Attorney General of the Federation. Questions centered around the budget and unplanned expenditure of the institutions in regard to the COVID-19 pandemic.

Seven institutions out of eight institutions did not acknowledge receipt nor did they respond to the requests made to them. One institution responded to the request within time and with full disclosure. MDAs' responses to requests as part of this exercise was abysmally low.

Sierra leone

In Sierra Leone, institutions often hardly comply with responding to requested information within 15 working days as enshrined in the Right to Access Information Act, with non-compliance permeating into high level ministries. Although it has happened, the Right to Access Information Commission has in the past been hesitant to fine MDAs in response to lack of compliance with law on information disclosure.

The consultant in Sierra Leone conducted an interview with a civil society organization (CSO), the Society for Democratic Initiative, who had requested unclassified information from public institutions in in July 2020. The request was done under section 3 (a-c) of the Right to Access Information Act 2013. The request was submitted in writing, information requested was prescribed, office and email addresses for correspondence were also provided.

Information was requested from the Ministry of Health and Sanitation, Ministry of Finance, National Emergency Response Centre Ministry of Youth Affairs, Youth Commission and the National Commission for Social Action to provide them with the following information: (i) Amount received to aid the fight against the spread of Ebola in Sierra Leone, and (ii) update on how the funds were utilized.

Response time exceeded the 15 working days for institutions to respond to the requests, and no response was provided to the aforementioned request by the institutions. Three months later (September 2020), a reminder was sent, prompting three of the aforementioned institutions (Ministry of Youth Affairs, Youth Commission and the National Commission for Social Action) to respond. This resulted in the Right to Access Information Commission fining the

Ministry of Health and Sanitation 70 million leones for noncompliance to provide the above-requested information. The Commission did not fine the Ministry of Finance, raising questions of impartiality and impunity.

Zimbabwe

There is a disjuncture between government pronouncements on its drive and commitment to disseminate information at the executive level and the experience by citizens at public institutions level.

Between January and February 2021, six information requests were made to MDAs, of which three were responded to, while three MDAs denied the requests. The information requests were on critical issues such as local councils' health budgets and funding; information on the preservation of wetlands and its impact on rights to clean water and shelter and the basic governance and accountability of local councils. Requests granted were on wetlands and the budget of rural district councils, while no requests on the health budget and funding for COVID-19 was made available. This is despite the fact that the Freedom of Information Act provides for entities to proactively disclose the information, especially in the age of Information Communication Technologies (ICT), where entities could easily utilize their websites and other communication platforms to ensure that citizens can access timely and accurate information, which is even more essential during the times of the ongoing pandemic.



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3. Conclusions

This project set out to investigate the state of implementation of RTI legislation in four target countries; Namibia, Nigeria, Sierra Leone and Zimbabwe. As mentioned before, it is important to remember the varying levels of the variations between legal provisions, and consequently implementation, in the four countries. Chapter 1 (and in parts Chapter 2) elaborated on the different country contexts, which effectively provide variables for the current possibilities for implementing effective RTI regimes.

The analysis of this project and report has shown that the four countries are indeed on very different stages of democratization and ability to adopt practices that promote transparency and accountability in regard to access to information. Namibia has no legislation through either law or constitution, to guarantee the right to information, although an ATI bill has been tabled in 2020. In lieu of this, Namibia's Ministry of Information, Communication and Technology has launched a Communication Plan including ATI provisions. Despite not having a standalone law or constitutional guarantee, Namibia has been shown to fare better than the other three project countries on largely all fronts. Namibia's Communication Plan, however, does not replace actual, specific legislation of RTI. The lack of a detailed layout of duties and responsibilities, periodical reporting, disclosure, institutional setup, standards, guidelines and responsiveness to information requests, as a result of comprehensive legislation, continues to limit Namibia on their quest towards SDG 16.10.02. On the other hand, the relatively good implementation of RTI by many MDAs also shows how much of RTI implementation depends on both political goodwill (being a priority in the president's Harambee Prosperity Plan) as well as individual MDAs' commitment and capacity to implement.

In Nigeria, RTI is guaranteed by both the constitution and the Freedom of Information Act. Despite these

two monumental provisions, however, Nigeria does not have an independent RTI oversight body to enforce strong implementation. Also evident in the report's analysis, many MDAs remain unengaging or unresponsive. This could be an indicator of a lack of political push for the RTI agenda in Nigeria. This is further supported by the overall lack of appointment of RTI information officers and guidelines to promote and sustain citizen engagement and the exercising of their fundamental right to information. Again, the level of RTI implementation and adherence to the law seems to arbitrarily vary from individual institution to individual institution.

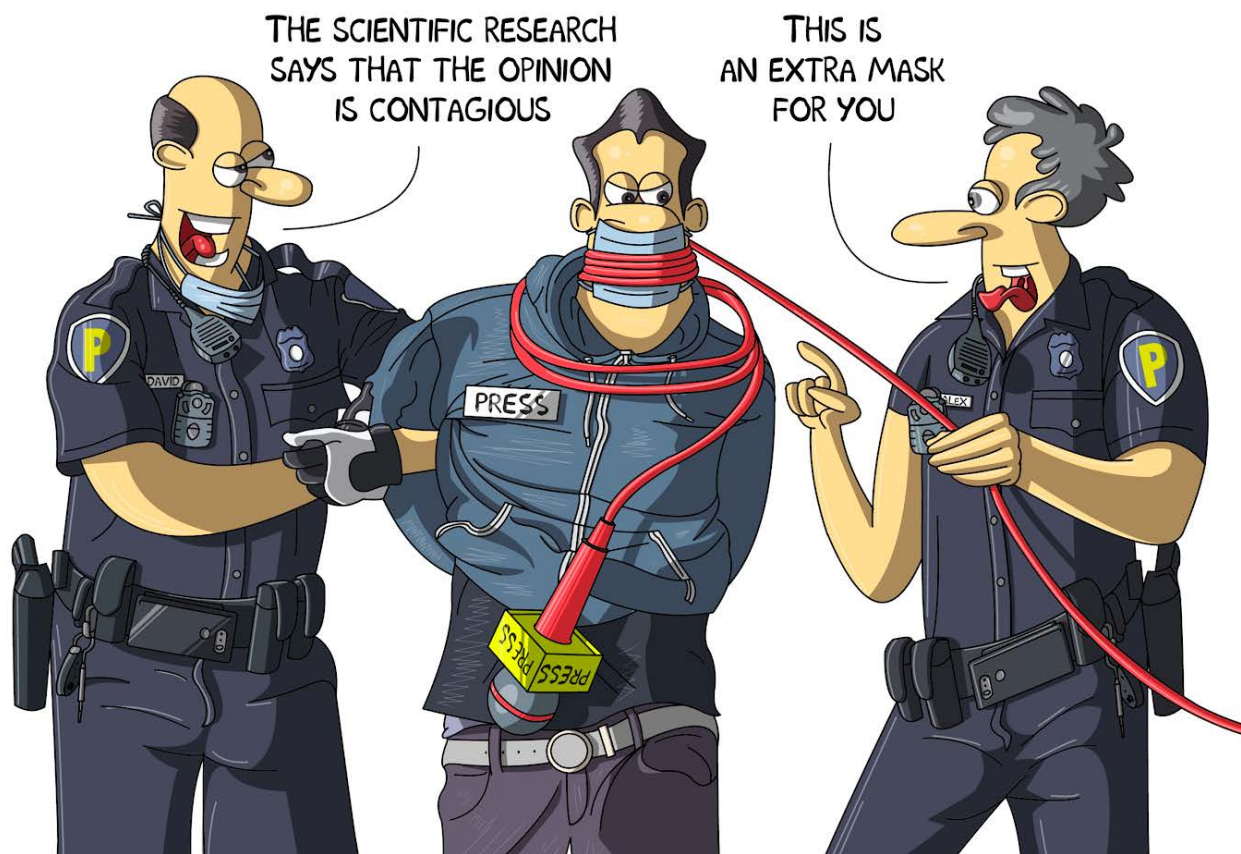
Sierra Leone reported that while $\frac{3}{4}$ of MDAs assessed had websites, the level of disclosure on all levels remained low; extending to both the institutional setup, authorities and transparency of implementation as well as access to gatekeepers of information in form of names, designations and contact information of public officials and staff directories. While not having a constitutional guarantee, Sierra Leone does have the Right to Access Information Act as well as an independent, RTI oversight body; the Right to Access Information Commission. While some key legislation and institutions are in place, issues persist in these not adhering to their legal RTI obligations for proactive and reactive (information requests) disclosure. On a positive note, some legal challenges to this non-compliance have led to successful disclosure of information, however, it has also revealed relative impunity for some MDAs. The Sierra Leonean context highlighted yet again the need for continuous engagement and updating of RTI provisions to reflect the current political milieu.

Zimbabwe has both a constitutional guarantee and the Freedom of Information Act (becoming law in 2019). This being said, the analysis showed that MDAs in Zimbabwe remained largely unresponsive in regard to both proactive and reactive information disclosure. With no appointed information officers in the analyzed MDAs, lack of guidelines on RTI and information requests and no training offered to information officers, the political will behind the effective implementation of RTI of the Government of Zimbabwe must be questioned. The law, however, is less than a year old, so it is yet to be seen whether more political traction will be added over time.

In addition to the above-mentioned conclusions, there are a few additional overall takeaways from the project. It is important to keep in mind that the project does not measure the entirety of any of the project countries' implementation of their respective RTI legislation. Rather, the project has provided a random sampling of MDAs in three sectors (health and the context of COVID-19; environment/climate, and; financial proactive disclosure of budgets) to give a snapshot into the state of RTI implementation of those institutions/sectors. Telling of this exercise is the silence from health authorities (except for Namibia), which potentially has clear implications for citizens in the target countries in their access to health and COVID-19 related information. The same can be said generally about disclosure, both proactively and retroactively, on financial matters (again, discounting Namibia). Citizens are entitled to seek information about how the public budget is and has been spent and the expenditure of MDAs should in most cases be public knowledge, justifiable exceptions excluded. Matters relating to environment/climate seems less controversial and

access was more often facilitated (although less frequently on budgetary matters).

What the project has shown is that while the right to information, and legislation and constitutional guarantees securing the legality of this right, is intrinsically important to transparent and accountable democratic governance, right to information does not necessarily equate access to information. While circumstances vary between countries, sectors and MDAs, it is not enough to solely judge on outputs. What is equally imperative to consider is governments, MDAs, civil society, the media and stakeholders' and ability to play their part in effective RTI implementation. This means assessing both political will and having a consultative dialogue, but also considering and addressing capacity issues such as sensitization, training, the building of strategic partnership between government and civil society and the new innovative possibilities of ICT to ensure that citizens have de facto access to the right to information as a fundamental freedom and human right.



Ali Ghamir



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#CovidAfrica

Recommendations

Based on the assessment and empirical data collection in the four target countries, this chapter seeks to offer actionable recommendations on how to move forward in improving and strengthening RTI implementation.

Namibia

While freedom of expression and of the media are captured as universal rights in Namibia's constitution, and although the right to information is recognized in various regional and international agreements signed and ratified by the Namibian government, the country still does not have an RTI law nor a constitutional guarantee. A bill was, however, tabled in the National Assembly on 17 June 2020 by the Minister of Information, Communication and Technology, itself a key milestone in Namibia's journey towards greater access to and transparency of information, and is expected to be passed into law as it has been prioritized in the President's Harambee Prosperity Plan II. Concerns, however, persist with civil society highlighting exemptions in the bill, including blanket confidentiality of cabinet proceedings, judicial functions and the nomination, selection and appointment of judicial officers, as well as other national laws that aid secrecy and restrict access to information such as the Protection of Information Act, Act 84 of 1982 and Public Service Act, Act 13 of 1995.

In the absence of an ATI law, despite having ratified key international and regional instruments that guarantee the right to information and although there has been strong progress over the past several years in terms of information disclosure on the websites of government offices, ministries and agencies, Namibia remains short of truly being on course to achieving SDG 16.10, 'Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements', or fully contributing to Indicator 16.10.02, 'Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information'.

The practice of requesting information produces mixed results (as evidenced by this study and many other similar assessments), with some institutions immediately responding with full information, and others remaining mute, even after follow-ups. In this regard, the following recommendations are made for Namibia:

- Each MDA should have dedicated and educated officers to deal with information requests.
- Public officials should be educated on the importance of public access to information.
- Common standards of promoting access to information should be employed.
- Online platforms for government organizations should seek to communicate government's policies and programs.
- Public organizations should encourage a culture of openness and transparency by proactively sharing information.

Additionally, the Institute for Public Policy Research, in its extensive report, 'Access Denied', extend recommendations that are supported by this report, in that:

- In line with the various international, continental and regional instruments, all Namibian actors – in government, business and civil society – should formalize and adopt practices that foster transparent and accountable interactions across all sectors of society.
- Relevant Namibian state authorities repeal all laws that undermine the emergence of progressive institutional and organizational cultures based on accessibility and openness.
- Non-state actors, both in business and civil society, advocate for the full implementation of systems and processes across the state sector that would enable greater access to information.
- Namibian state and non-state actors collaborate meaningfully in the spirit of multi-stakeholderism to continuously enhance the freedom of expression and access to information landscape and climate in the country, as well as across the southern African region and the African continent.

All the recommendations noted above – many of which are already acknowledged or prescribed in

the government's Communication Plan and other policies - remain relevant for this paper. In fact, by simply following the national policies set out for the provision of information to the public and to the media – including the MICT's Communication Plan, the Draft Revised National Information Policy, and the various overarching policies aimed at improving transparency and accountability, government OMAs would go a long way in easing access to information for all Namibians.

At a broader level, it is critical that the Namibian government move quickly towards enacting ATI legislation (addressing, as far as possible, the concerns raised by civil society with regards to the restrictions and exemptions stated), and putting in place the various mechanisms captured within that legislation to enhance public access to information, and to promote accountability and transparency. Making the necessary amendments to the ATI Bill and passing it into law is a low-hanging fruit, and would be a major step towards achieving SDG 16.10. With the necessary political willpower, this could be done by the end of this year.

Nigeria

In order to improve RTI implementation in Nigeria, the following recommendations are made:

- The current edition of the Public Service Rules⁶ should be revised to be in tandem with the provisions of the Freedom of Information Act. It is expected that the rules be reviewed every five years to align with current laws and trends in governance. The last revision was conducted over 12 years ago under the regime of former President Umar Musa Yar'Adua GCFR. The review of the rules will ease the challenges faced in the implementation of the Freedom of Information Act in public institutions as most public officers hold this rule book in higher regard than the Act itself.
- ICT use has largely been a determinant to success in compliance as it maximizes reporting capacity, cost efficiency, efficiency in record management, timeliness, and easy access to information. Public institutions should therefore explore cordial partnership models like the Bureau for Public Service Reforms–R2K Nigeria partnership to maximize ICT training for officers as there is a huge lacuna in the area of literacy in ICT.
- The Head of Service should enforce the creation of Freedom of Information (FOI) units, service cadre for FOI, and budget lines for the units in every institution of government. This will encourage interests in FOI amongst officers.
- The office of the Attorney General of the Federation, as part of its core responsibility of ensuring public institutions comply with the FOI Act working with the Office of the Head of Service, should explore reviewing the current guidelines and developing possible sanctions for defaulting public institutions with the provisions of the Act and create incentives for institutions who have maintained consistency in complying with the disclosure requirements of the Act.
- Regular training, re-orientation and capacity building be conducted for public institutions on understanding and compliance with the Act as part of both partnership and their regular sessions using among others the Act itself, Right to Know FOI Training Curriculum mainstreamed in the 3 training public institutions in Nigeria, AGF's FOI Implementation Guidelines and other Freedom of information tools.
- Public institutions should explore avenues of funding and capacity building for record-keeping infrastructure and development effective protocols for information sharing.
- Oversight institutions like the Office of the Attorney-General at the Federal at state levels and relevant parliamentary committees be spurred to be active to their responsibilities for ensuring the implementation and compliance with the Act.
- The Bureau for Public Service Reforms has set a remarkable benchmark achievement in proactive disclosure worthy of note. Public institutions should therefore emulate best practices and peer learning as part of the process for the attainment of open government standards.

Sierra Leone

Based on the Sierra Leone analysis, the following recommendations are extended to ensure proactive disclosure of information by the public institutions, to

6. The Public Service Rules (PSR) provides the operational framework, the regulatory principles and a charter of rights, privileges and duties of all public servants while detailing what sanctions erring conducts could attract.

strengthen institutional measures to improve on the RTI and to enhance public knowledge on their right to access information.

- The Right to Access Information Commission to be organizing annual meetings with executive directors/heads of public institutions on their expected roles and responsibilities in order adhere to provisions in the RAIA 2013. This will also keep them abreast of their institutions' obligations to the legal provisions in the Act.
- The Right to Access Information Commission to assist in or develop a website for public institutions that do not have one. Some public institutions might be interested in having a website but due to financial challenge might choose to go without thereby hindering the possibility of those institutions proactively disclosure information online.
- The Right to Access Information Commission to do more enhanced trainings for Information Technology Officers, Public Relations Officers and Archivists in public Institutions on key provisions in the Right to Access Information Act 2013 and on how to proactively disclosure information on the website for public consumption.
- MDAs and non-state actors should embark on nationwide sensitization on the key provisions in the Right to Access Information Act 2013. This will contribute to enhancing public knowledge on their right to access and how to access information.
- The Right to Access Information Commission to develop the Right to Access Information Regulation and submit to Cabinet for adoption. The speedy adoption of this proposed regulation will serve as a complementary instrument that will guide the implementation of the key provisions in the Right to Access Information Act 2013 by institutions.

Zimbabwe

The government of Zimbabwe must come up with an operationalization plan on how it intends to institutionalize the proactive disclose of information through its public bodies.

Government through the Zimbabwe Media Commission, which is a chapter 12 institution entrusted with the role of promoting access to information should move with speed to gazette the regulations for the public institutions towards ensuring that there is effective and efficient disclosure of information for informed decision-making.

Government of Zimbabwe should provide a roadmap towards the conclusion of the media law and policy reform process through a pro-human rights approach towards cybersecurity and data protection regulations and the amendment of the Broadcasting Services Act.

The government of Zimbabwe should go beyond the two pieces of legislation that it targeted for reforms towards the comprehensive process of reforms that ensure that all the laws that violates the constitution through sections 57, 61 and 62 on right to privacy; media freedom and expression; and access to information are repealed.

Government of Zimbabwe should prioritize the reform process and alignment of the laws to the constitution than mutilating the constitution through the proposed omnibus (27 amendments) second amendment to the constitution of the country.