
ACCESS TO INFORMATION IN AFRICA

Examining progress since the APAI
Declaration in infographics



Campaign for
**AN AFRICAN
PLATFORM ON
ACCESS TO
INFORMATION**

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Article 19

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ALL COUNTRY SUMMARY

African Platform on Access to Information

The African Platform on Access to Information (APAI) working group was formed in 2009 in order to initiate a campaign to promote Access to Information in Africa around the 20th anniversary of the Windhoek Declaration on Press Freedom. As a fundamental campaign objective, the group seeks to promote the celebration of Right to Information Day on 28 September each year.

Introduction to the research

In order to further the ambitions of the APAI working group, in 2013 we undertook research – based upon the expertise and experience of our working group on access to information (ATI) issues in the region – which set out to provide a basic assessment on the state of access to information on the continent as a general reflection on the environment since the passage of the APAI Declaration on 19 September 2011. In order to do this, we created a survey based upon the APAI Declaration as a form of standard for assessing progress in the different countries. The APAI Declaration provides us with an informal standard for assessing the state of play in terms of different aspects of access to information, regardless of whether a specific access to information law exists in the country or not. However, not all the principles are applicable in every case.

This review covered fourteen countries, namely:

- | | | | | |
|---------------------------------------|---|-----------------|---|--------------|
| 1. BOTSWANA | ⋮ | 5. MALAWI | ⋮ | 11. TANZANIA |
| 2. DEMOCRATIC
REPUBLIC OF
CONGO | ⋮ | 6. NAMIBIA | ⋮ | 12. UGANDA |
| 3. GAMBIA | ⋮ | 7. NIGERIA | ⋮ | 13. ZAMBIA |
| 4. KENYA | ⋮ | 8. SENEGAL | ⋮ | 14. ZIMBABWE |
| | ⋮ | 9. SOUTH AFRICA | ⋮ | |
| | ⋮ | 10. SWAZILAND | ⋮ | |

LEGAL STATUS

When reviewing the state of access to information in our African countries generally, countries were only given an average of 5 out of 10 – a not quite pass mark. The African countries reviewed are thus only halfway towards where they should be in terms of access to information.

Out of the twelve countries surveyed, only four have specific access to information laws.

These countries are:

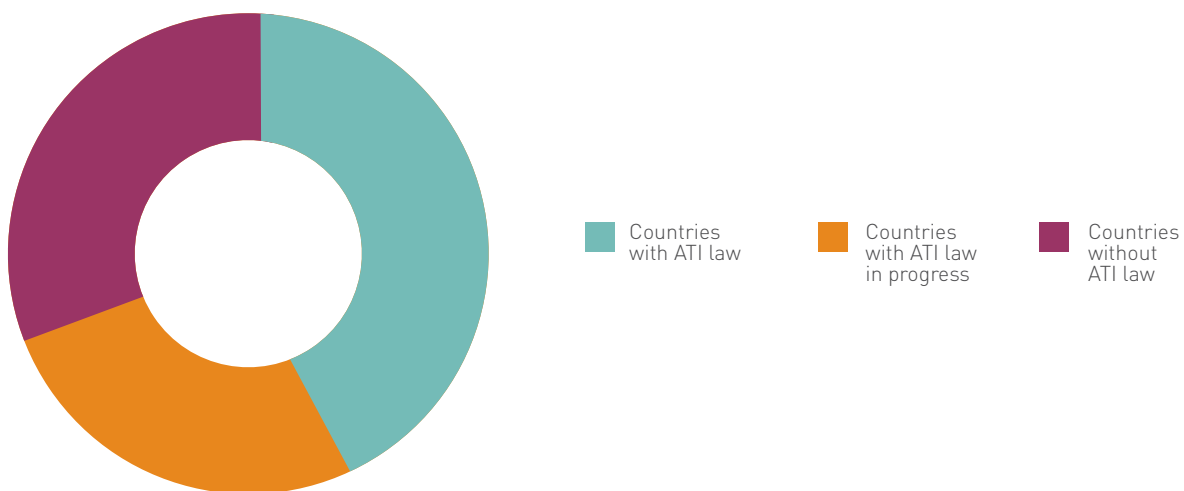
1. Nigeria
2. South Africa
3. Uganda
4. Zimbabwe

However, a significant indication of the shifting tide on the continent is that six of the countries surveyed have some form of specific access to information in a Bill or parliamentary process.

These countries are:

1. Democratic Republic of Congo
2. Kenya
3. Malawi
4. Senegal
5. Tanzania
6. Zambia

There are also progressive laws now in place in African countries like Liberia and Rwanda, however these countries were not surveyed as part of the research project.



RATINGS

Respondents were asked to rate the state of access to information in their countries of study on a scale of 1 to 10. The results were as follows:

Malawi	8
Kenya	7
Nigeria	7
South Africa	7
Uganda	7
Tanzania	6
Zimbabwe	6
Senegal	4
Zambia	3
Botswana	3
Democratic Republic of Congo	1
Gambia	1
Namibia	1
Swaziland	1

It is worth noting that three of the countries ranked within the top five are countries which have specific access to information law, with the top two ranked countries both having laws in process.

OTHER LAWS

Sectoral laws, which contribute to the access to information environment on the continent, also exist in some countries. According to the research, **65%** of the countries surveyed have sectoral laws, which can be utilised as an alternative mechanism. Importantly, of those countries, which do have sectoral laws, **five** (Senegal, Tanzania, Zambia, Democratic Republic of Congo and Kenya) do not have ATI-specific law. This means that these countries have an avenue for accessing information which could be explored as an alternative to a specific law and which could utilise the APAI Declaration as a principled standard for understanding their utility and implementation.

There are also other laws, which may not provide access mechanisms, but nevertheless contribute to the access to information environment. In this research, the two key forms examined were in relation to whistleblower protection and rights to access or correct personal data. However, in spite of their close association, only in Zimbabwe is it clear that there is a specific right and law allowing access to one's personal data. Perhaps more worrying is that 30% of the respondents were not sure whether or not the right exists, which reflects poorly on the generalised information environment.

Constitutional provisions may also have application. In Kenya, for example, the constitutional provision has been used in the place of an ATI-specific law with some success.

ACCESSING INFORMATION

When we considered the practice of accessing information, there was a divergence of experience. However, in our sample, the interviewees felt that on average you could **sometimes** access information if you requested it. This is therefore almost a middle-ground response and is probably indicative of not only divergence amongst countries, but also strong divergence within countries themselves. There is a strong sense in the research of the inconsistency of practice across departments, which makes the job of the

ordinary requester – who may not be well-versed in the peculiarities of different entities – all the more difficult.

It does appear clear, though, that a lack of formal mechanisms that may arise from an ATI-specific law can impact significantly on access to information practices. All four of the lowest ranked countries, which received the lowest possible rate by their country experts (Swaziland, DRC, Namibia and Gambia), lack such a law. However, Swaziland also provides an interesting exception – in spite of being so low ranked in general, if someone seeks information, it can be accessed **all of the time**. This reinforces the more general finding of the research: access to information law is only a contributory part of the access to information environment, which is why principled assessments need to be made to properly examine different contexts.

The potential for access to information is steadily growing on the continent – with multiple new avenues for advancing the right, as well as the practice, in order to make it a practical reality for African people. New laws suggest that we are learning from the best practice and mistakes of other jurisdictions internationally that have passed laws before us. However, the struggle for making access to information a reality on the continent has only just begun.

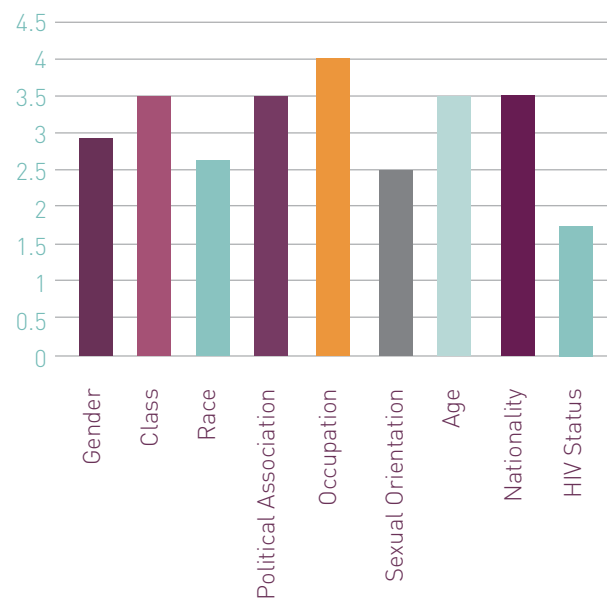
EQUALITY

One of the most pertinent areas for comparison is whether or not there exists a fundamental right of access to information, which is accessible to everyone. How requesters are treated is an excellent determinant of the reality of the access to information environment.

What influences how you are responded to?

Gambia and **Namibia** are the countries seemingly least affected by the characteristics of the requesters, whereas Swaziland is the most affected. This is interesting as both Gambia and Namibia lack ATI-specific law, and are also ranked as lowest in terms of their general performances. The discrepancy in the

overall ranking may be a result of two factors. The first is that equal treatment alone does not necessarily heavily influence all experiences in relation to access to information. Secondly, as the questions seek merely to determine the level to which characteristics affect access to information, it is quite possible that most citizens experience access to information *equally poorly*. So, how do the different characteristics affect requests on average?



(Note that 1 = Not at all influential; 2 = Slightly influential; 3 = Somewhat influential; 4 = Very influential; 5 = Extremely influential)

This means that in Africa it appears that your **class**, **political association** and **occupation** are the factors most likely to affect how you access information. In terms of occupation, narrative from results in Senegal demonstrated that media and journalist professions are the reason for this discrepancy – it appears that there exists in some African countries an entrenched mistrust in the public sector of journalists and, more broadly the media, which could potentially affect any request for information. It is also an important point for access to information activists – a suspicion of the media

generally means that intrinsically linking media causes and freedom of expression with access to information advocacy may negatively impact on political will.

PROACTIVE DISCLOSURE

Only in **Tanzania** do institutions often proactively disclose information; on average, however, institutions in the region only **sometimes** proactively disclose. **Swaziland** was the weakest performer in this regard, with information never being proactively disclosed. This is unfortunate, as proactive disclosure is a means of receiving information for citizens, which avoids the pitfalls of poorly implemented information requesting processes.

Interestingly, electoral commission bodies recur frequently as best practice examples of institutions, which proactively disclose strongly.

TECHNOLOGY

The world of access to information is changing as a response to external factors, such as the increasing influence of technological advances. Information and Communication Technologies (ICT), in particular, could profoundly influence how Africans access information. The research sought to try and establish how effectively institutions were using these advancements for both requests for access to information and proactive disclosures.

Zambia performed the most positively in this regard – getting a 70% effectiveness rating for the use of ICT's in relation to both requesting information processes and in terms of proactive disclosure. However, the average ranking across countries for the requesting process is at a low **40%**, with the rating in terms of proactive disclosure only marginally better at **50%**. This marginal increase is probably due to the fact most institutions find putting information on their websites as the easiest mechanism for broadcasting “non-controversial” pieces of information, but proactive disclosure through mass provision of open data would be a significant achievement for access to information through

alternative avenues.

That technology will have an important role to play in broadening the meaning of ‘access’ has been demonstrated well in the Namibian example. The ITU Report of 2013 has demonstrated that rural youth in Namibia strongly rely on mobile phones both to engage in social debate, and to access information. This means that the youth:

... no longer need to travel long distances to gain access to newspapers and other resources and facilities, and to engage with and access information from their rural communities.

Without the existence of an access to information law in Namibia, technology has powerful potential for making information a reality for citizens.

ADVOCACY

As seen when considering equality of treatment in relation to requesters, the research may suggest a need for advocacy campaigns to consider political attitudes toward the media.

Another consideration is that the Southern African Development Community (SADC) seems to perform similarly on average, with South Africa and Malawi however standing as slightly better performers (at least in terms of their overall ranking). Both countries may have a role to play in promoting lessons of best practice in the region.

CONCLUSION

Because the APAI declaration provides a statement of broad principles, its application can be expanded significantly to the varied access to information regimes we see spread across the African continent. The main task of access to information activists, as indicated by the research, becomes answering a central question in each country context: **where's the gap?** Can access be sought through private bodies, either in the law or in practice? Is it perhaps better to rely on state bodies, either in law or in practice? What of sectoral laws? Or, instead, is it perhaps better to be promoting proactive disclosure in law or in practice? This research provides the first stepping stone for trying to answer these questions.



2013

Botswana

Information held by private bodies or parastatals can be accessed easily. State hold information is hardly accessible, government institutions are secretive and information requests are not dealt with in a timely manner.

The State of Access to Information



Constitutional guarantee present

There is a weak legal framework

3

Botswana got a rating of 3 out of 10 for the general state of information.

occupation, nationality and political association

These are the characteristics which may affect how you get responded to.

You can rarely access information from the state in Botswana

There is a legal duty to publish, proactively, specified categories of information, but this rarely done. The best public entity for this?

Shifts to openness



In 2012 Parliament for the first time - held the hearings of the all-important Public Accounts Committee in public. Parliament has also given itself powers to start openly investigating any allegations into any suspected misappropriation. Investigations are held in public.

Records management by public bodies is perceived as effective:

70%

The Electoral Commission

So...where's the gap?

In spite of there being poor legal frameworks, and no specific access to information law, **private bodies** seem responsive to request for information.





Democratic Republic of Congo

"There is a vast information deficit between those that hold information and the public that may need access to the information. The access to information infrastructure is quite weak. The constitutional guarantee, in terms of section 24 of the constitution, has not been relied on to advance openness and transparency in the DRC."

The State of Access to Information

What possible legal provisions on ATI are available?



No ATI law!



1 DRC got a rating of 1 out of 10 for the general state of information.

Enabling environment?



Proactive disclosure isn't an avenue for ATI -

There is no whistleblower protection or right to access personal data.



class and political association
These are the characteristics which may affect how you get responded to.

There is a legal duty to publish, proactively, specified categories of information, but:

So...where's the gap?

a) ICT's are not used to forward information.



b) Information is also rarely proactively disclosed.

The access to information environment is generally quite weak, with public awareness on the issue low. However - there is room to explore both **constitutional challenges** and **sectoral law.**



The Gambia 2013

The State of Access to Information

Access to Government information is elusive to the private press. Government is known to favour the state-owned media (and not government media as wrongly believed in certain quarters). The private media is left unattended in its right to seek for information. Over half of the population live in rural areas, where income levels and standards of living are low and, as such, access to information is unthinkable.

What possible legal provisions on ATI are available?



And, if you do request information - you are always asked to justify why you are requesting the information!



Information is rarely translated into a language easier to understand

political association and sexual orientation

These are the characteristics which may affect how you get responded to.

The population is largely rural, but ICTs are not well used to try and circumvent this - and information is only sometimes proactively disclosed.



Implementation?

Nevertheless, you may sometimes find a designated person to whom you can make a request in both public and private bodies.

So...where's the gap?

There is a weak legal framework in the Gambia which could support access to information. **Proactive disclosure** should be prioritised and the exploitation of communication and information technologies should be explored to assist with access.





2013 Kenya

Access to information was guaranteed for the first time in Kenya's constitution in the year 2010. Since then, a number of citizens have used the provision to access information from the public/ state institutions, but the provisions have not been utilised to the desirable levels. Average Kenyans shy away from requesting for information. Further, the government has not been willing to pass an access to information law that gives guidance on the actualisation of the constitutional provision.

The State of Access to Information

What possible legal provisions on ATI are available?



7
Kenya got a rating of 7 out of 10 for the general state of information.

Proactive disclosure of information is rare.

class and occupation
These are the characteristics which may affect how you get responded to.

An information requester was turned away in Mombasa for asking some questions which the area MP termed as 'incitement from political rivals' and thus would not release some information meant for the public.

4 March 2013
The first elections under the new constitutional dispensation were held. Access to information principles were used to release disputed data from the Independent Electoral and Boundary Commission.

Nevertheless, the Constitution Implementation Commission and the Kenya Law Reform Commission demonstrate best practice in relation to proactive disclosure in Kenya.

3 The top 3 barriers to implementation will be:
1. The culture of secrecy;
2. Corruption; and
3. Fear of exposure.

So...where's the gap?

There is a Bill in process that will be specific to access to information. Steps should be taken now to preempt issues that may impede implementation. The **constitutional provision** should be used as a direct tool for gaining access.




**2013
Malawi**

8

Malawi got a rating of 9 out of 10 for the general state of information.

What possible legal provisions on ATI are available?

The State of Access to Information



Various characteristics of the requester affect how they are responded to in Malawi, such as gender, class, occupation etc.

Specific ATI Bill in progress!

Constitutional guarantee present

Language

The language used to provide information is not easy to and it is never translated into other languages.



Private bodies

always

have a designated person that can help a requester to access the information they may need.

Public bodies only

sometimes

have a designated person that can help a requester to access the information they may need.

Strong civil society coalitions are forwarding awareness-raising on access to information, with particular focus area being on education.

3

The top 3 barriers to implementation will be:

1. Illiteracy;
2. Capacity to store (and manage) information; and
3. Political will.



So...where's the gap?

The APAI Declaration has been used to push forward access to information in Malawi, although the country seems to be significantly impeded by the lack of a specific access law. The prospect of the new Bill means advocacy should focus on possible implementation problems.





2013

Namibia

The State of Access to Information

Access to information in Namibia is limited, and heavily dependent on the information sought and who it is requested from.

1

Namibia got a rating of 1 out of 10 for the general state of information.



There is a weak legal framework



There is no constitutional guarantee, nor a specific ATI law. There is also no Bill, or sectoral laws that could assist the potential requester.

Characteristics

Unlike other African countries surveyed, the different characteristics of an individual requester do not seem to strongly affect whether or not you will receive access to information.



There are no laws in place to protect whistleblowers!

Inequality and inconsistency

2012

ACTION
Access to Information Namibia Campaign launched.

There is a strong civil society presence trying to forward access to information in Namibia.

The practice of accessing information seems to depend very much on what you are requesting, and who you are requesting from - even physical access to information sources is very inconsistent.

9



Private bodies keep their records well - receiving a rating of 9 out of 10. Further, private bodies always have individuals designated to handle requests for information.

Proactive disclosure

There is no legal obligation to proactively disclose. However, the practice shows that SOME information is provided this way and this information is usually up to date.



So...where's the gap?

In spite of there being poor legal frameworks, and no specific access to information law, **private bodies** seem to be a potential avenue, while campaigns for a specific law continue.





2013 Nigeria

Awareness of the right of access to information is still relatively low but the situation is gradually improving as more and more people are beginning to use the law to demand information and challenging refusals in court.

The State of Access to Information

The law, and the practice, both show that in Nigeria information held by the state is presumed to be public.

Positively for implementation, the requesting process is:

clear, simple and affordable



As an additional measure that assists implementation, there is an oversight body, but the public do not have direct access to the entity for recourse.

There is a positive obligation to publish information, but this is only done: **sometimes**

There is also no internal appeal mechanism - which means the main form of review or recourse for the public is judicial review.

There are very strong protections for whistleblowers - including protection against criminal liability.

The right of access in Nigeria extends to access to the records of private bodies.

What possible legal provisions on ATI are available?



7

Nigeria got a rating of 7 out of 10 for the general state of information.

Examples of such laws: Public Procurement Act; Fiscal Responsibility Act; and Nigeria Extractive Industry Transparency Initiative Act.

So...where's the gap?

While there is a strong legal framework, access to recourse seems problematic for the average user. Also, advocacy should focus on **raising awareness** about the law to drive up usage.



2013

Senegal

Senegal does not have a law on access to information. A coalition for an access to information law [has been] working [on the issue] since 2010. The authorities are in favor but no action has been laid. Civil society has since proposed a draft law on the basis of the model of the African Union.

The State of Access to Information



4 Senegal got a rating of 4 out of 10 for the general state of information.

Awareness raising by civil society has centred on ensuring that the right of access to information is not seen as abstract.

age and occupation

These are the characteristics which may affect how you get responded to!

There is a duty to publish certain kinds of information.

However, information is only **SOMETIMES** proactively disclosed. It is also only **RARELY** up to date.

However, the best practice for proactive disclosure in Senegal is demonstrated by:

National Agency of Statistics and Demography

However, information is most often provided in a language simple enough for the average requester to understand.

Agencies don't really use ICT's effectively to assist with releasing information.

They were scored 5 out of 10.

So...where's the gap?

Without a law, information is accessed through less formal means. The APAI Declaration is able to provide a meaningful standard and guidance for both the future law, and for exploiting current mechanisms.



2013

South Africa

The State of Access to Information

"With an increasingly factionalized government, the new focus is on national security discourses which have started to severely negatively impact access to information. There has been some progress in terms of the growing number of civil society interested in exploiting open data as a means of accessing information, but the community is struggling to come together".

What possible legal provisions on ATI are available?



Main problems?



The main issues in South Africa relate to implementation of the law. The process for actually requesting is neither

neither clear NOR affordable

There is also

NO independent information commission

class, occupation and nationality

These are the characteristics which may affect how you get responded to.

There is also a legal presumption that info held by public bodies is public...but the practice says otherwise.



The law is applicable to private bodies!

So...where's the gap?

There are many forms of law available to assist you with making a request (laws protect whistleblowers as well). However, implementation is an issue. This means that, in RSA, efforts should focus on **proactive disclosure**.





2013 Swaziland


1
Swaziland got a rating of 1 out of 10 for the general state of information.

When questioned on the state of access to information in Swaziland, a user merely responded:

"Awful, pathetic, dismal."

The State of Access to Information

Real Effects



Lack of information has had a negative impact on HIV prevalence amongst women, with the prevalence increasing despite global awareness about HIV preventative measures being on the rise. That information is simply not being adequately disseminated to the public at large.

Constitutional guarantee present

BUT

There is no ATI law nor are there sectoral laws

The characteristics of a requester are **extremely influential** on how a request is responded to.



How will your access work?

In practice, you will get information. However - this access will always be qualified in terms of how you can use or publish the information, and you will be asked to justify why you are seeking the information.



Technology is only used at an effectiveness of around 20% to facilitate requests!

Public bodies only **rarely**



Private bodies **often**

have a designated person that can help a requester to access the information they may need.

have a designated person that can help a requester to access the information they may need.

So...where's the gap?

There are poor legislative mechanisms and negative contextual influences that negatively influence access to information. There is, however, some indication that private bodies provide an avenue for requesting information as an alternative route.



2013 Tanzania

Access to information in Tanzania is being strongly championed by civil society, however the most significant problem is that no specific access to information law is currently in place to assist requesters.

The State of Access to Information

What possible legal provisions on ATI are available?



6

Tanzania got a rating of 6 out of 10 for the general state of information.

3

It is predicted that the top 3 barriers to implementation will be:

1. a lack of political will;
2. a lack of knowledge about access to information;
3. a lack of experience

class, occupation, gender and age

These are the characteristics that may affect how you get responded to.



Public bodies often proactively disclose information. And, when published, it is always up-to-date. Technologies are used only at about a 6 out of 10 effectiveness to further proactive disclosure.



There are no laws in Tanzania that protect whistleblowers.

"The Ministry has been exposed to international best practice and has been trying to embrace [access to information]. The situation has changed completely since 2010".

So...where's the gap?

There is a Bill in process that will be specific to access to information. There also appears to be a steadily improving environment conducive to accessing information.





2013 Uganda

More is needed in terms of training, record management, additional staff, procedures at agency level, awareness raising of population, reporting in terms of the Act etc.

The State of Access to Information

What possible legal provisions on ATI are available?

7

Uganda got a rating of 7 out of 10 for the general state of information.



Sectoral laws present



Specific ATI law in place



Constitutional guarantee



While there law says there is a presumption to release, the practice is that says public bodies don't agree. While you are not required in terms of the law to justify your request, in practice you are still sometimes asked to do so.

The law vs. the practice

Examples of these sectoral laws are the National Environment Management Authority Act and the Petroleum Management Act.

political association, nationality and occupation

These are the characteristics of a requester which may effect how a request is responded to.

Public Interest Override

There is a public interest override, which must be considered when applying exemptions and demands release, regardless of an applicable exemption ground, if:
(a) the disclosure of the record would reveal evidence of - (i) a substantial contravention of, or failure to comply with the law; or (ii) an imminent or serious public safety, public health or environmental risk; and (b) the public interest in the disclosure of the record is greater than the harm contemplated in the provision in question.

There is a legal obligation to publish certain types of information.



There are laws to protect whistleblowers. While there are good provisions, "...the environment does not provide confidence to [the] would be whistleblowers...people fear administrative [repercussions] or physical harm".

So...where's the gap?



The legal framework is strong, but implementation is poor. Sectoral laws should be explored for environmental information, and case studies have found **proactive disclosure** should be prioritised.



2013

Zambia

The State of Access to Information

There is an
ATI Bill in
progress!

Sectoral
laws are
present

70%

in Zambia institutions use information and communication technologies at around 70% effectiveness to transfer information to the public.

Proactive Disclosure

There is an express obligation within the Zambian law to publish information. This obligation also provides express guidance on the categories of information which should be proactively disclosed. However, in practice, information is only sometimes proactively disclosed although, when it is disclosed, it is always up-to-date.

Whistleblowing protection in Zambia extends to protection from criminal liability.

9

These protections are deemed to be a 9 out of 10 in terms of their effectiveness for protecting whistleblowers.



Access to information is now commonly recognised, particularly by organisations, as a right in Zambia. There is still no law in place however

3

Zambia got a rating of 3 out of 10 for the general state of information.

race, occupation,
class and age

These are the characteristics which may affect how you get responded to.

Whilst carrying out annual research in to the most open and secretive public institutions in Zambia, researchers are always questioned as to where they are calling from and which institution they are attached to - this influences whether information is provided or not.

3

It is predicted that the top 3 challenges to implementation will be:

1. a lack of political will;
2. a lack of knowledge about ATI;
3. poor records management.

So...where's the gap?

The new law will further access to information in Zambia. In the meanwhile, civil society have had some success with using **sectoral laws**





2013 Zimbabwe

The State of Access to Information

The extent to which ATI is enjoyed in Zimbabwe is limited. This is due to the lack of knowledge by the general public of the existence of the law as well as the limited nature of the provision. The ATI law in itself is inadequate. Therefore, more detailed provisions are required, covering proactive disclosure of information and whistleblower protection.

What possible legal provisions on ATI are available?



Constitutional guarantee present



ATI specific law is present



Zimbabwe got a rating of 6 out of 10 for the general state of information.

You are required to justify why you are making a request in the law, and in practice.



occupation and political association

These are the characteristics of a requester that most strongly affect how their request is responded to.



The law does not extend to private bodies.

In spite of having a law in place, you can rarely access information in practice.



There is a specific body charged with oversight and monitoring of the law. However, it does not strongly appear to be independent. The body does have enforcement powers. Vitrally, the public can directly approach this entity for relief.

So...where's the gap?

While there is a law in place, it does not provide enough detail to be of adequate assistance, and should be broadened. **Proactive disclosure** should also be advanced.



