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REGIONAL DIALOGUE

Preparing to Implement Access to Information

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Searching for Access to Information in Africa

By Mukelani Dimba

Most people have become quite familiar with the satellite image map that shows the usage of the Internet across the globe. In this image the U.S., Europe, and Japan shine brightly in the night while one can trace very vaguely the profile of usage in South America, Russia and South Asia. However, according to this map, Africa does not exist. This is because our continent barely makes an impression on this map due to very little Internet activity in comparison to other continents.

There is also a map that attempts to make a similar demonstration but from a Right to Information law (RTI) point of view. It shows a global image of countries that have adopted Freedom of Information (FOI)/Access to Information laws (ATI) – over 85. Again, it appears from this image that Europe, the Americas and Asian countries lead the pack with Africa lagging behind (six countries have adopted RTI laws). While these maps may portray very minimal activity on the continent on matters of ATI and usage of information & communications technology (ICT) on the African continent, this should not be read to mean that no significant efforts and developments are being carried out in advancement of the right of access to information on the continent. An example of these significant developments include, among many others, the African Regional Conference on Access to Information that took place in Ghana in 2010 leading to the adoption of an continental plan of action for advancement of the right of access to information. The Africa Freedom of Information Centre was established in 2008 and is based in Uganda. The International School of Transparency was launched in 2010 and hosted by the University of Cape Town in South Africa and the Soderton University in Sweden. There have also been significant developments at the national level, including adoption of a right-to-information law.

Regionally, a key development has been the process initiated by the African Commission on Human and Peoples’ Rights’ (ACPHR) Special Rapporteur on Freedom of Expression and Access to Information to develop a model RTI law relevant to African countries. This initiative was supported in a multi-stakeholder conference on access to information that took place in Ghana in 2010. This initiative is in response to requests by government officials that had lamented the fact that there wasn’t an indigenous instrument that African drafters of RTI law could refer to for guidance in drafting these laws. The ACHPR’s initiative is being driven by seasoned RTI specialists from across the continent.

Another key continental effort is the establishment of the working group on an African Platform on Access to Information, consisting of organizations that have been at the forefront of advocacy of advancement of RTI on the continent, such as the Media Institute of Southern Africa, the Open Democracy Advice Centre, Highway Africa, the Africa Freedom of Information Centre, the Media Foundation of West Africa and Media Rights Agenda. The objective of this group is the development of an African Union (AU) - and UNESCO-backed non-binding regional instrument on access to information. The working group is currently in consultations with the AU and UNESCO on this.

At national level great strides have been made in promoting the adoption of access to information laws and policies. In Nigeria the long-running FOI Bill has been reintroduced to Parliament and activists are working towards adoption of sub-national (State-level) FOI laws as in the case of Lagos state. There is even experimentation with adoption of Chinese-style Open Government Information policies as is the case in Rivers State through a government-initiated and civil society-supported process.
Perhaps among the most significant and positive developments on RTI in Africa in the last year (2010) it is important to highlight the adoption of a new constitution in Kenya that upholds the right of ATI. This is a major fillip to the Kenyan civil society’s campaign for the adoption of an RTI law there.

The second important development has been the adoption of an RTI law in Liberia. This brings the number of African countries that have passed RTI laws to six: Angola, South Africa, Uganda, Zimbabwe, Ethiopia and now Liberia.

The last major development has been law reform processes in South Africa that may strengthen the Promotion of Access to Information Act (PAIA), the South African RTI law. Currently before the justice committee of the South African parliament is the Protection of Personal Information Bill, which will introduce a regulatory and enforcement body over both data protection and ATI matters. Currently PAIA suffers a major weakness because there is no enforcement mechanism built into it except that requestors only have recourse to the courts as avenues for redress.

There are also attempts being considered to strengthen the Zimbabwean RTI law, the Access to Information and Protection of Privacy Act (AIPPA), through a new draft law that will have an effect of repealing the much despised AIPPA, which is seen as having an opposite effect of promoting RTI.

It has been reported that the erstwhile military transitional government of the Republic of Guinea promulgated a progressive press law (L2010-002 CNT) of 22 June 2010, which was promulgated through the Government Gazette of 28 June 2010. According to reports, this law contains FOI provisions. Unfortunately it has been difficult to obtain a copy of this legislation in order to verify this claim.

On the negative side, there have also been some major setbacks on the continent. Despite what has been reported above regarding South Africa, there have also been some developments that may be cause for concern. Before a different parliamentary committee, the ad hoc committee on the Protection of Information Bill, is the Protection of Information Bill which is referred to by its detractors as “the Secrecy Bill”. Critics of the Bill have raised alarm about some provisions that, many fear, will have an effect of reversing the provisions of PAIA. There is currently a strong civil society campaign of about a hundred organizations and close to a hundred thousand individuals that have signed a petition to have the Secrecy Bill either amended extensively or withdrawn.

There is also concern in South Africa about proposed amendments to the Companies Act, which may make it more difficult to access company registers.

Unlike in Kenya, a similar constitutional review process carried out in Zambia through the multi-stakeholder National Constitutional Conference has not included a right to information within the Bill of Rights in the current draft of the new constitution.

Given these positive and negative developments, it may be time for RTI advocates in Africa to rethink some of the strategies that had hitherto been used to promote RTI on the continent. They need to decide whether their goal of advocating for the adoption of RTI laws ought to remain the key objective of their campaigns, or perhaps recognition must now be made of the fact that the ultimate goal is entrenchment of openness and transparency in the conduct of public affairs. An RTI law should not be seen as an end in and of itself but one of many tools for fostering a culture of openness and transparency.

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There ought to be an exploration of other tools that can be used to improve access to information practices such as promoting adoption of principles of Freedom of Information 2.0, which is about moving the practice of RTI based on a model that requires requesters to request information from a public institution to a model where public institutions voluntarily make information available.

Proactive disclosure policies are examples of FOI 2.0 principles in practice. Some of the experimentation that is happening in Nigeria, South Africa, Uganda, among others, is an indication that RTI advocates are not satisfied with the pace of implementation of effective ATI laws, policies and practices in Africa and they are ready to explore how else RTI can be advanced by whatever legal means necessary.

Mukelani Dimba is the Chairperson of the Africa Freedom of Information Centre, a pan-African RTI advocacy organization based in Uganda.
Summary of VC#1 on “Demystifying FOI Legislation: Fact or Fiction?”

This videoconference examined perceptions and beliefs associated with FOI legislation and provided insight into whether they are based in factual evidence or are simply fiction. Melanie Pustay, the Director of the Office of Information Policy at the U.S. Department of Justice, shared her perspective with FOI Act (FOIA) in the U.S. Chairs Richard Calland, Co-director of the International School of Transparency, and Laura Neuman, Manager of the Carter Center’s Access to Information Project, presented the speaker with statements that she affirmed or debunked.

**FOI is for the media: FICTION.** Media is an essential part of any FOI regime, especially at the beginning when the law is being debated and passed. Buy-in from the media is important so that journalists use the law in investigative reporting and publicize it by demonstrating concrete ways to use FOI. But FOI is not only for journalists. In most countries, journalists do not make up the majority of requesters. In the U.S., most requesters seek information about themselves.

*Allowing a free flow of information is detrimental to national security and can destabilize fragile democracies: FICTION.* It is logical that no government wants something that hurts its national security. For FOI, protection of critical information should be built into the law. By contrast, the recent disclosure of information via Wikileaks occurred outside of the FOIA context. In the U.S. FOIA, national security is the first exemption, which creates a balance between competing interests and protects critical information. However, this protection should be limited, narrow, specific and properly applied with oversight. The perceived tension between national security and transparency should not be reduced to an either-or situation.

**FOI is too costly for a developing country: FICTION.** Although there may be a sense that FOI is an unaffordable luxury, there is no monetary value that can be placed on the importance of having an open government. FOI can contribute to a government’s legitimacy and accountability, and ultimately, these advantages outweigh the costs. Yet there is no doubt that FOI implementation requires funds. In South Africa, there is a push for FOI to become a part of the process to improve service.

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Key Messages from VC #1

After an FOI law is passed, governments are unlikely to be overwhelmed by requests.

- Government and civil society are responsible for raising awareness and creating demand.
- Records management systems are critical for effective implementation of FOI laws, but governments should not wait for records management to be perfected before beginning the implementation process.

The multi-stakeholder group of participants from Liberia discusses FOI-related issues during the February 23 VC session.
Governments should contextualize FOI to fit the people’s needs for information. If bread and butter issues are the most important to people, then that should be the focus of the release of information.

delivery and be conceptualized as an efficiency measure rather than a cost. FOI can help foster a space for meaningful public engagement between communities and government and act as a safety valve to focus on development goals.

The minute a law is passed there will be an overwhelming flood of requests: FICTION. This simply does not happen. Rather, some countries are disappointed when the public does not use the law as it was anticipated. But over time, if properly implemented, demand for the law will grow. In the U.S. there are 600,000 requests\(^1\) in a single fiscal year to the 97 agencies that are responsible for implementation – but it took decades to get to this scope of usage. In the U.S., requests for personal information comprise the majority of requests, and the number of requests for sensitive and potentially embarrassing information is minute. A participant from Sierra Leone asked the Liberian delegates what the flow of requests had been like since they have passed the FOI law. The Deputy Minister who was present said that the ministry of information did not collapse the day Liberia passed the law, and citizens come to the office to request information for their personal use, which is a good sign. Outreach about FOI from the government is essential because sometimes governments fail to spread awareness, resulting in few FOI requests.

Thus outreach should be part of the implementation plan. In developing countries, despite illiteracy, people want information. NGOs can be intermediaries to get information that matters to people. Moreover, governments can contextualize FOI to fit the people’s needs for information. If bread and butter issues are the most important to people, then that should be the focus of the release of information.

Records systems should be established and functioning before a law is brought into effect or even passed:

FICTION. Many countries implement an FOI law one year after its passage. Processes for sharing and disseminating information within government pre-date FOI in most countries and this can serve as the foundation of an FOI law. Governments should not wait to perfect their records management system before passing and implementing a law. Rather, FOI laws and records management can mature together over time, which happened in Jamaica. It is ideal to move forward with the law and address the challenges of records management as the FOI regime matures.

Leadership, training of key staff and internal policy guidelines are critical for effective implementation: FACT. Laws will not work without leadership and guidance. FOIA trainings are not a onetime affair; the value of the trainings and guidance is to keep refreshing the importance of the law within agencies. Within government, everyone needs some level of sensitization to the law. It is critical that high level officials know what is expected of them, so that those in charge of answering requests are not stifled in attempts to access information within their own departments. The U.S. Attorney General’s guidelines for FOIA implementation refer to FOI as a responsibility of everyone inside government, and this is a significant mentality shift. Also, President Obama’s continued leadership on this issue has been essential.

The U.S. Department of Justice both encourages compliance from agencies and holds them accountable by overseeing compliance. The Office of Information Policy provides trainings for agencies and advice on cases as well as outreach to the public. This constant dialogue between the government, OIP, and the public helps to manage expectations about what the law does and does not do.

\(^1\) It is important to put in context the amount of requests in the U.S. While there are 600,000 requests a year, the population is roughly 300 million.
Country Reports

GHANA
The Right to Information Coalition in Ghana has over the past three years been actively engaged in sensitizing and mobilizing the Executive, Parliament, civil servants, targeted groups and the general public to support the campaign for the passage of an effective RTI law. It has organized workshops and seminars on the RTI Bill to reiterate the importance of RTI legislation and produced a series of comprehensive critiques of the Bill, focusing in particular on its shortcomings with the aim of emphasizing the need for further review to bring the Bill into conformity with the constitutional guarantee and international human rights good practice standards. The leaders of the Parliamentary Joint Committee on Constitutional, Legal, and Parliamentary Affairs pledged its commitment to the FOI Bill and sought to conduct a nationwide consultation on the Bill beginning in August 2010, though it does not have the funds to conduct it. The RTI Coalition, through its leadership, engaged with the Joint Committee and the World Bank to seek the funding. The World Bank may consider sponsoring a consultation, depending on what the Joint Committee proposes. Currently, it is still unclear when the Joint Committee intends to carry out this activity.
Focal Point: Nana Oye Lithur, Executive Director, Human Rights Advocacy Centre

LIBERIA
After President Johnson Sirleaf signed the FOI law in September 2010, the law is now in its implementation stage. Media organizations, such as the Press Union of Liberia, Liberia Center for Media Studies and Peace Building, and the Liberia Media Center, lobbied the Congress to consider and pass the law. These media groups were joined by civil society organizations and in 2010 they, and a few government departments, formed the Liberia Freedom of Information Consortium, with support and technical assistance from the Carter Center. The Consortium worked closely with the key legislators to help them better understand the value of the law as well as to refine some of the law’s key provisions. With the law’s passage, the Consortium has continued to meet and engage in activities to raise awareness and to consider means for monitoring implementation. On the government-side, the Ministry of Information, Culture and Tourism has begun creating an implementation plan and working with some pilots Ministries and agencies to serve as a vanguard in the law’s implementation. In January, 2011, the Government of Liberia signed a Memorandum of Understanding with the Carter Center to provide technical support for capacity building for implementation, promoting effective compliance and increasing awareness.
Focal Point: Alphonsus Zeon, Project Coordinator, The Carter Center Access to Information Project, Liberia

SIERRA LEONE
In early March 2011, the Minister of Information announced that the FOI bill will be passed by Parliament soon. Prior to this, Sierra Leone’s FOI Bill had been tabled before the House of Parliament in October 2010. It went through the first and second reading and was forwarded to the Legislative Committee. The Legislative Committee completed its line by line analysis recently after the urging of civil society and the Ministry of Information. The next step is to present the bill to the House of Parliament for passage, although the date is subject to the approval of the Majority leader of Parliament. After the legislative Committee stage there will be no more debates on the bill, it will be automatically enacted. The bill has been recommended to be called The Freedom of Information Act 2011.
Focal Point: Kwame Yankson, Senior Assistant Secretary/Personal Assistant to the Minister, Ministry of Information and Communication

To learn more about the regional dialogue on FOI, visit The Carter Center Access to Information Project at www.cartercenter.org/accesstoinformation.html or the International School of Transparency at http://www.istinfo.net/.