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One step forwards, two steps back

Trends in Access to Information from the
African Media Barometer 2005 - 2010

By David Lush

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ABOUT THE AUTHOR

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FOREWORD

Twenty years ago in 1991, representatives of the print media in Africa adopted the *Declaration of Windhoek*, a milestone in the fight for a free, independent and pluralistic press. Ten years later in 2001, another media gathering in Windhoek adopted the *African Charter on Broadcasting* demanding independence, freedom of expression, diversity and the free flow of information for broadcasting.

Twenty years after the Windhoek Declaration, the focus has shifted once again. 2011 witnesses a multitude of activities around access to information as freedom of expression cannot thrive without freedom of information. The media must have access to publicly held information and other information relevant to the public to be able to inform the people properly and to fulfil its watchdog functions by holding office bearers accountable. Equally, all people must have access to information to be able to form opinions and make informed political as well as economic decisions. Access to information is not only a basic political human right but also essential to socio-economic development.

With its African media project, *fesmedia Africa*, the Friedrich-Ebert-Stiftung supports freedom of expression and access to information throughout the continent and through a number of initiatives. The reports of the *African Media Barometer* panel discussions implemented since 2005 contain a great wealth of observation, comment and analysis about the media situation, including access to information, in 27 African countries. With Africa celebrating the 20th anniversary of the Windhoek Declaration *fesmedia Africa* launches its new series of AMB Briefs with a closer look at the state of access to information in countries covered by the AMB, thereby complementing numerous freedom of information initiatives taking place across the continent.

Ongoing problems in fully achieving the right to freedom of expression can be closely linked to the lack of freedom of information and the underlying culture of secrecy permeating the political culture in so many countries. Cultural change is unlikely to happen quickly and hence - as the author of this AMB Brief aptly concludes - the campaign for Access to Information has only just begun.

'The touchstone of all freedoms'

We all need information in order to take decisions that enable us, our communities and, ultimately, our nations to develop. So the argument goes.

Access to Information (ATI) allows us to: meaningfully participate in decision-making; hold our governments accountable; thwart corruption; and, thereby, live in a genuine democracy that, ultimately, reduces poverty¹.

In this respect, the right of citizens to access information is, according to the United Nations General Assembly, "the touchstone for all freedoms"². So much so, there are also those who believe the success of the Millennium Development Goals hinges on the transparency that the free flow of information brings about³.

Therefore, promoting ATI is becoming a priority throughout Africa, particularly as advances in communication technology have made the dissemination of information more efficient.

1 Page 9 in 'Access to Information: An Instrumental Right for Empowerment', published in 2007 by Article 19 and Asociación por los Derechos Civiles (sourced from www.article19.org).

2 UN General Assembly, Resolution 59 (1), 65th Plenary Meeting, December 14, 1946.

3 See www.right2info-mdgs.org/

ATI in Africa

In Africa, 53⁴ states have ratified the 1981 African Charter on Human and People's Rights, thereby pledging to uphold the right of their citizens both to receive information as well as to express and disseminate opinions "within the law"⁵.

These rights are further defined in the African Commission's on Human and Peoples' Rights (ACHPR) 2002 *Declaration of Principles on Freedom of Expression in Africa*⁶, which states that:

"Public bodies hold information not for themselves but as custodians of the public good, and everyone has a right to access this information, subject only to clearly defined rules established by law."

Ten African states expressly guarantee the right to information in their constitutions⁷, while another 14 protect the right to information within the context of the broader right to "seek, receive and impart information"⁸. Momentum towards passing laws that promote ATI is growing: 7 African countries now have ATI laws⁹, while at least 6 others were in the process of tabling such laws as of June 2011¹⁰.

However, ATI is still far from becoming a day-to-day reality for citizens throughout the continent.

4 As of June 15, 2009 – see www.achpr.org/english/ratifications/ratification_african%20charter.pdf for list of countries.

5 Article 9 of the African Charter on Human and People's Rights – see www.achpr.org/english/_info/charter_en.html

6 Article 4 of the Commission's Declaration of Principles on Freedom of Expression in Africa – see www.achpr.org/english/declarations/declaration_freedom_exp_en.html for the full declaration.

7 As of November 2010, these countries being: Cameroon, DRC, Ghana, Madagascar, Malawi, Mozambique, Senegal, South Africa, Tanzania, and Uganda. Source: <http://right2info.org/access-to-information-laws/access-to-information-laws-overview-and-statutory/>

8 Angola, Botswana, Ethiopia, Kenya, Lesotho, Mauritius, Morocco, Namibia, Sierra Leone, Swaziland, Tanzania, Zambia and Zimbabwe – Ibid.

9 Angola, Ethiopia, Liberia, Nigeria, South Africa, Uganda and Zimbabwe, although Zimbabwe's ATI law is considered more restrictive than enabling – various sources.

10 Ghana, Kenya, Morocco, Nigeria, Sierra Leone, Tanzania and Zambia – various sources.

One step forwards...

Few African states meet even the minimum standards for ATI laid down in the African Commission's *2002 Declaration of Principles on Freedom of Expression in Africa*, and other international laws and treaties.

Throughout Africa, ATI is, at best, just beginning to take root and, at worst, being further eroded, analysis of the African Media Barometer¹¹ suggests (see Appendix 1). Even the continent's ATI trailblazers are struggling to maintain the impetus created by progressive ATI reform.

Media and other civil society experts bemoan the lack of political will to implement ATI legislation in Uganda, bureaucratic "red tape" in Mali, and over-regulation in South Africa. The provisions of South Africa's Promotion of Access to Information Act "look good on paper", notes the country's 2010 AMB report, but are difficult for "the ordinary person" to understand:

"Applying for specific documents is cumbersome. Often requests for information are ignored. Many (government) departments did not appoint Information Officers as required under the act. If an application is rejected and an applicant wants to appeal he/ she has to go the (expensive) court route." AMB South Africa 2010

And this is a country that has one of the most progressive ATI laws in the world!

Meanwhile, Ghana, Kenya, Tanzania and Zambia have ATI laws in the pipeline, but their governments appear reluctant to enact them.

At least Ghana's ATI bill made it to parliament in 2010, eight years after it had been drafted. But a pro-ATI civil society coalition remains concerned about "serious flaws" in the draft now before parliament.

An ATI bill was tabled in the Zambian parliament in 2001, only to be withdrawn. Subsequent reviews of the country's constitution have sought to water down ATI provisions.

11 The African Media Barometer (AMB) is an initiative of the Friedrich Ebert Foundation (FES) and the Media Institute of Southern Africa (MISA). The AMB had covered 27 countries between 2005 and the time this paper was prepared in November 2010. Read more about the AMB methodology in Appendix One (p.18).

Tanzania's stalled ATI bill may "further curtail access to information," says the country's AMB report for 2008, just as Zimbabwe's Access to Information and Protection of Privacy Act has done.

And these are arguably the continent's ATI role models. Elsewhere, the norm is a stifling cocktail of restrictive laws, political intransigence and a culture of secrecy that is compounded by a general lack of awareness of the right of all citizens to access public information.

"The Official Secrets Act, 1963 makes it difficult for the media and ordinary citizens to access information in the hands of government or public institutions and there are no means of appealing against government decisions. Even further, there are no formal procedures for obtaining public information. Requests for information, either by the media or ordinary members of the public, often get caught up in bureaucratic red tape." AMB report Swaziland 2009.

"Journalists are often obliged to use alternative methods (to access information) that are sometimes breaking administrative rules. As a consequence, during libel cases journalists are forced to protect their sources. Media houses have been sentenced in certain cases for possession of administrative documents." AMB report Benin 2009.

"Gaining access to official information often resembles an obstacle course. Most official files are classified as confidential or as state secrets." AMB report Madagascar 2006.

"Very often people themselves regard the services that are provided to them by public servants as a favour, and not as an obligation on the part of those who work for public institutions." AMB report Cape Verde 2007.

Trends?

As Africa's regional blocks seek to align their economies and forge common development agendas, they may be expected to follow common trends in ATI. Since 2001, members of the Southern African Development Community (SADC), for example, have been bound by an information protocol that seeks to "harmonise policies, strategies and programmes"¹².

The same year, SADC heads of state approved an anti-corruption protocol that commits member states to taking "measures which will create, maintain and strengthen...mechanisms to promote access to information to facilitate eradication and elimination of opportunities for corruption"¹³.

However, the regional blocks covered by the AMB¹⁴ each comprise a hotchpotch of ATI regimes: a few countries with progressive legislation and a degree of commitment towards promoting ATI, but most demonstrating neither.

Countries with a shared colonial history appear to have more in common when it comes to ATI, perhaps because they share legal frameworks inherited at independence. For example, former British and French colonies covered by the AMB are less likely than their Lusophone counterparts to have legal guarantees of ATI. Similarly, Francophone countries covered by AMB have a tendency to classify "administrative information" - eg. Benin and Mali.

12 SADC Protocol on Culture, Information and Sport of 2001 - www.sadc.int/index/browse/page/127

13 Article 4.1.a of the SADC Protocol Against Corruption of 2001- www.sadc.int/index/browse/page/122

14 SADC, the Economic Community of West African States (ECOWAS), the East African Community (ECA) and the Common Market for Eastern and Southern Africa (COMESA).

Culture of secrecy and the will to inform

Further analysis of the AMB suggests that laws and policies alone do not translate automatically into progressive ATI practice.

Mozambique was one of the first African countries to give constitutional protection to ATI in 1993. But this has done little to roll back the “obstructionist attitude” of civil servants highlighted in the country’s AMB report for 2009.

Similarly, Angolan civil servants exhibit “an entrenched culture” of “denying the public information”, despite being subject to the country’s ATI law (AMB Angola 2010).

Some Anglophone countries have introduced freedom of information guarantees when reforming their constitutions during the post-Cold War era. And, more recently, some have begun to introduce ATI legislation. But here too, a deep-rooted culture of secrecy and a lack of political will seem to pervade.

For example, Uganda lacked the political will to operationalise its constitutional guarantee of freedom of information as well as its ATI law:

“The law is being implemented very reluctantly because there seems to be no political will to do so. Regulations making the law operational have been in place since 2008, but the government is yet to issue a legal instrument that gives those regulations force by defining which information can and which cannot be released to the public.” AMB Uganda 2010¹⁵

It remains to be seen if Kenya will experience a similar false dawn now the country’s 2010 constitution guarantees ATI.

The one thing countries across Africa seem to have in common is a lack of political commitment to ATI. In 92 per cent of countries covered by the AMB, governments were perceived to be doing no more than the bare minimum to promote ATI.

In Mali, ATI has had the backing of none other than the country’s President, Amadou Touré. But even here, the information desks established in government ministries to facilitate public access to unclassified files “do not always provide useful information”

¹⁵ As of June 2011 the adoption of the Access to Information Regulation No. 17 of 2011 operationalises the Access to Information Act, 2005 in Uganda.

says Mali's AMB report for 2010. For an array of legal restrictions limits the information available in the first place.

Similarly, the appointment of information officers in Malawi's civil service appears to have stifled rather than opened up information flow, according to the country's AMB reports for 2008 and 2010.

Both Namibia and South Africa's liberation movements introduced new, internationally lauded constitutions when elected into power in 1990 and 1994 respectively.

Catalysts for change

Political will is a pre-requisite for ATI reform; without buy-in from politicians, pro-ATI laws will not be passed. And yet, even where political will exists, it seems to be having little impact on citizens' access to information. In all AMB reports to date, there is little evidence of ATI benefiting those outside the political and business elite.

This may be because political will fails to permeate the bureaucracy that implements the laws. The culture of secrecy seems to run deep within the African civil service and beyond.

On the other hand, these gatekeepers may be more willing to release information to the public if their political leaders showed a stronger commitment to ATI. To date, Mali's President Touré is one of only a few African leaders to have made ATI a priority.

Even if President Touré's ATI drive has encouraged civil servants to be more responsive to public requests for information, there appears to be limited information available to Malians in the first place. This suggests that ATI needs to be premised on the principle that all information is accessible to the public unless classified otherwise, rather than vice-versa, as tends to be the case.

Furthermore, gatekeepers may be more forthcoming if they felt safe releasing information to the public. Protection of so-called "whistleblowers" – those who release information in the public interest – is an essential component of laws promoting ATI. Also, citizens need independent arbiters such as an Information Commissioner if they feel their request for information has been turned down unfairly.

Both the independent regulation of ATI laws, and the protection of whistleblowers are envisaged in the ACHPR *Declaration of Principles of Free Expression in Africa*. But both are distinctly absent in most countries covered by the AMB.

A framework for action

Using the information available in the AMB reports to date, we can begin to categorise countries in terms of their trajectory towards ATI. This, in turn, points to some advocacy priorities for ensuring further progress (see table).

| Category | Characteristics ¹⁶ | Priorities for further progress |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Active reformers E.g. Ghana, Kenya, Mali, South Africa. | <ul style="list-style-type: none"> • Constitutional guarantees and / or enabling laws either in place or in the pipeline. • Civil society actively advocating for reform and / or monitoring implementation • Political commitment to advancing ATI • Some practical measures in place that improve ATI. • Signs of the civil service becoming more open. • Signs of ATI improving for citizens as a whole. | <ul style="list-style-type: none"> • Ensure legal guarantees and all related regulation are in place. • Repeal / reform any remaining restrictive laws. • Make sure new restrictive laws are not introduced • Legislate for / establish independent regulators. • Protect “whistleblowers” • Find and support political champions of ATI • Create public awareness of ATI. |

Africa’s “Active Reformers” – the likes of Ghana, Kenya, Mali and South Africa - are considering or have passed laws guaranteeing ATI, and have also shown some commitment towards putting these laws into practice. Meanwhile, “Passive Reformers” such as Angola, Botswana, Cape Verde, Cameroon, Madagascar, Malawi, Mozambique, Nigeria, Senegal, Uganda, Zambia¹⁷ appear more reluctant to put Access to Information into practice, regardless whether or not they have ATI laws.

¹⁶ Countries may have some, but not necessarily all of these characteristics.

¹⁷ The developments in Uganda and Nigeria have been too recent to be assessed here.

| Category | Characteristics | Priorities for further progress |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Passive reformers</p> <p>E.g. Angola, Botswana, Cape Verde, Cameroon, Madagascar, Malawi, Mozambique, Nigeria, Senegal, Uganda, Zambia.</p> | <ul style="list-style-type: none"> • Constitutional guarantees of ATI may be in place but little progress towards ATI reform • Restrictive laws remain in force. • Lack of practical measures to improve ATI. • Lack of openness within civil service. • Few signs that ATI improving for most citizens. • Civil society actively lobbying for ATI | <ul style="list-style-type: none"> • Implement regulations and practical measures that put enabling laws into practice. • Challenge / repeal any remaining restrictive laws. • Make sure new restrictive laws are not introduced • Identify and support political champions of ATI • Hold politicians and civil servants accountable to ATI commitments. • Protect “whistleblowers” • Create public awareness of ATI. |

In both categories, civil society campaigners could encourage and support efforts to take ATI reform further by ensuring that the laws are applied fairly and transparently, and the release of information is encouraged and protected.

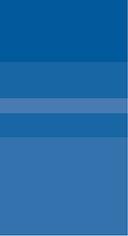
Then there are “Restrictive Reformers”; countries such as Zimbabwe and Tanzania where existing or draft ATI laws are more restrictive than enabling. Here, civil society could test and challenge these laws by applying African ATI standards and the progressive precedents set elsewhere on the continent.

| Category | Characteristics | Priorities for further progress |
|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Restrictive reformers E.g. Tanzania and Zimbabwe | <ul style="list-style-type: none"> • ATI laws exist, or are in the pipeline. But these are more restrictive than enabling. • Calls for reform ignored • Other restrictive laws remain in force. • Lack of practical measures to improve AI. • Culture of secrecy within civil service. • Few signs that AI improving for most citizens. | <ul style="list-style-type: none"> • Challenge and test the limits of the ATI law. • Identify and support political champions of ATI • Create public awareness of ATI. • Repeal restrictive laws. • Campaign for practical measures to improve citizens' access to information. |

As for countries with no ATI laws - "Non-Reformers" such as Algeria, Benin, Lesotho, Ivory Coast, Mauritius, Namibia, Swaziland - ATI activists could initiate public debate on ATI, and draft ATI laws for consideration by legislators.

| Category | Characteristics | Priorities for further progress |
|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Non-reformers E.g. Algeria, Benin, Lesotho, Ivory Coast, Mauritius, Namibia, Swaziland. | <ul style="list-style-type: none"> • No enabling laws. • Restrictive laws still in place and being used to limit public access to information. • Little civil society interest in ATI. • Lack of political will. • Culture of secrecy. • No sign that ATI is improving for most citizens. | <ul style="list-style-type: none"> • Draft and / or enact enabling laws. • Repeal of restrictive laws. • Identify and support political champions of ATI • Create public awareness of ATI. |

In all these categories, there appears to be plenty of scope for creating greater public awareness of, and mobilising political support for ATI.



Conclusion

ATI does not happen overnight following legal reforms. It is a process that could span generations, not least because it requires a change in an often-entrenched mindset and culture of secrecy. In this respect, campaigners have failed thus far to create the necessary public demand for ATI.

Zimbabwe's 2010 AMB report highlighted the lack of "incentives or precedents" for making ATI work effectively. It appears that both politicians and the publics they serve still have to be convinced of the tangible benefits of ATI and, thus, the need to prioritise freedom of information.

Even in the African countries that are setting new global ATI standards, politicians and the public remain sceptical. Here, as throughout the rest of the continent, the argument for ATI is far from won. And, therefore, the campaign for ATI has only just begun.

APPENDIX ONE: *About the AMB*

Since 2005, the African Media Barometer (AMB), an initiative of the Friedrich-Ebert-Stiftung and the Media Institute of Southern Africa (MISA), has systematically reviewed the media environment in countries throughout the continent. Panels of experts, consisting of five media practitioners and five civil society representatives, meet every two to three years in their respective countries, and assess the media situation in relation to 45 indicators derived from the standards laid down in relevant African treaties, protocols and declarations. Access to information (ATI) is one of the 45 indicators assessed.

Having discussed each indicator, the panellists rank their country on a scale of 1 to 5¹⁸. A moderator facilitates the two-day discussion using a set of guidelines and a moderators' guide that indicates issues to be discussed for each indicator. A rapporteur records the discussions and compiles a report that will be sent back to the panel for comments and endorsement. A summary of the panellists' discussions and their scores for each indicator is then published in a final AMB report¹⁹.

By 2010, some countries were undergoing their third ATI process. Having systematically compiled information on the state of media throughout Africa over a 5-year period.

With ATI being the focus of advocacy initiatives in 2011, when Africa celebrates the 20th anniversary of the *Windhoek Declaration on Promoting an Independent and Pluralistic African Press*, it was the right time to look at what the AMB reports revealed about the state of ATI in the continent.

18 The scale used by the panellists is as follows: 1 = Country does not meet indicator; 2 = Country meets only a few aspects of indicator; 3 = Country meets some/several aspects of indicator; 4 = Country meets most aspects of indicator; 5 = Country meets all aspects of indicator.

19 AMB reports available from www.fesmedia.org

APPENDIX TWO: *About the AMB brief methodology*

A content analysis of the text of all AMB reports²⁰ from 2005 – November 2010 was carried out to allow for the systematic comparison of countries covered by the AMB.

On their own, the scores given by panellists for each AMB indicator provide little insight into the panellists' reasoning for the score, and thus the situation in their respective countries with regards to each indicator. This reasoning is found in the discussions that precede the scoring.

Therefore, a content analysis of the text of the AMB reports was carried out, as this allowed for the systematic comparison of countries covered by the AMB.

The summary of the panellists' discussions on ATI in each report was re-arranged according to sub-indicators. These sub-indicators, which reflect the questions moderators use to guide the panellists' discussions (moderators' guide), are based on key ATI principles.

The sub-indicators used for the content analysis are as follows:

1. There are legal guarantees of access to information for all citizens.
2. There are no laws or regulations that can be / are used to limit access to information.
3. There is independent regulation of the release of information (i.e. there is a body independent from government that citizens can appeal to if they feel they are not provided with the information they are entitled to receive).
4. There is evidence of government commitment to making public information available to all.
5. There are no practices that limit the release of information, regardless of what the laws say.
6. Public information is available to all citizens (not just journalists or people with money / power / influence).

The re-arranged text under each sub-indicator was then scored by the author using the same scale the panelists use to rank each of the 45 main indicators. This was to see how far each country complied with each sub-indicator. The scores of countries were then tabulated and compared.

Trends emerging from this comparison were then checked against the corresponding text in order to understand developments highlighted by the numbers.

²⁰ Chad was not included in the analysis as there was only one AMB there in 2007. It is unlikely that another AMB will be conducted as FES does not have an office in the country.

APPENDIX THREE: *Discussion of the AMB brief methodology*

The content analysis was based solely on the contents of the AMB reports. Therefore the findings remain a reflection of the **panelists' perceptions** of ATI within their respective countries, as interpreted by those doing the coding.

Over the years, some AMB panelists change, and this alone may account for some of the trends reflected in the analysis; different people have different perspectives.

Therefore a comprehensive picture of the situation in a particular country only emerges after several AMBs over a number of years. Less than half the countries covered by the AMB had been reviewed more than twice by the time the analysis was carried out in November 2010. Therefore, it was too early to identify definite trends in ATI over time in many cases.

Furthermore, each AMB report is but a snapshot of the ATI situation in the respective country, framed by the direction in which the panelists – guided by a moderator – take their discussion. Something the panelists discuss one year may not be highlighted in the AMB report for another year. To avoid such irregularities a moderators' guide was introduced in 2009, four years after the AMB process began. While the guide formed the basis for the AMB brief sub-indicators to analyse the AMB reports, earlier discussions did not necessarily cover all the questioned raised in the guide.

Nonetheless, the methodology allows for the systematic analysis and comparison of AMB reports.

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