

# FINAL TECHNICAL REPORT / RAPPORT TECHNIQUE FINAL FINAL NARRATIVE PROJECT REPORT

Africa Freedom of Information Centre ;

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# **Africa Freedom of Information Centre**

## **Assessment of Public Access to Information in Africa: Analysis of SDG 16.10**

**IDRC Project number: 108618-001**

**Africa Freedom of Information Centre**

**Kampala, Uganda**

**By: Africa Freedom of Information Centre**

**Final Technical Report**

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## Executive summary

Africa Freedom of Information Centre (AFIC) is pleased to present this report of an account of a research and advocacy project implemented with support from the International Research Development Centre (IDRC) from June - December 2017. The support facilitated collection of data and preliminary analysis from studied countries. It also supported printing, design and layout and French translation of both the report. The [main report](#), [full report](#) and [summary](#) (popular) versions of the report have been produced. Grant amount was US\$15,000.

The State of Right to Information in Africa Report in the context of the Sustainable Development Goals is the third report produced by AFIC on the status and progress of the advancement of the right of access to information on the African continent. The report provides a tool for civil society and governments to assess progress of the implementation of the right to information in 23 African countries in line with SDG 16.10 and international legal standards.

It provides baseline information on the different aspects of the right to information as per its Indicator 2: Number of countries that adopt and implement constitutional, statutory, and/or policy guarantees for public access to information. Furthermore, it establishes the state of public access to information in terms of three key variables: constitutional provisions for the right of access to information, the respect for international standards and agreements, and the implementation mechanisms. The report is a contribution of AFIC member organisations and other partners to implement a homogeneous methodology to collect and assess information on the progress of countries to advance on freedom of information and SDG 16, Target 10. The relationship between access to information and other SDGs is also examined.

The study finds progress in terms of ratification and domestication of regional treaties, adoption of ATI laws and their implementation, reporting to treaty bodies.

Cross-cutting challenges can be identified in most of the African countries, and those pose serious barriers to the effective guarantee of the right to information. They include:

- a) Lack of political will in most African governments to actively support legal processes for the right to information, particularly in contexts where there is a legacy of undemocratic political systems or closed government.
- b) Citizens are not aware of their legal right to information, or, in some cases, are reluctant to assert it, either because of fear of a repressive regime or a prevailing culture of not questioning authority. In other cases, there are structural barriers to poor people accessing and using information. For example, access to the internet remains low in many developing countries, particularly in remote areas.
- c) The capacity of public bodies to provide information is weak, and officials are unaware of their obligations. In low-capacity environments, records management and statistics generation are in most of the cases insufficient to support access to information.

Achieving complete observance of the right to information in Africa requires broadening the awareness of the right with both the citizenry and the authorities. In this regard, the role of civil society in the development of access to information legislation has been crucial. They have created awareness about the right and developed draft bills; they have trained civil society coalitions and government agencies on access to information. At the end of the report, we have made 25 crosscutting recommendations addressed to different actors to guide the efforts needed to achieve Sustainable Development Goal 16, Target 10 as well as the entire Sustainable Development Agenda.

The SDG report is used as well for dissemination and advocacy campaign for improved RTI policy and implementation. The report was presented during a UNESCO regional conference to mark the International Day for Universal Access to Information held in Mauritius from September 28-30, 2017. During the event, the Government of Mauritius committed to adopt an access to information legislation to meet SDG commitments. Other governments and civil society representatives also welcomed the report as an important advocacy tool to ensure that governments meet SDG commitments.

- 500 copies of the popular version were printed and disseminated to targeted audiences through courier or events.
- The reports was also disseminated through email and list servers

- Three versions were also disseminated through AFIC's website: summary version, full report and final full report (infographics). Within the first 3 days over 200 downloads had been registered. However, it was pulled down to make an adjustment in the acknowledgement. The AFIC's website was recently redesigned and so far over 300 and 200 downloads have been registered since the new website was switched on.
- Two twitter sessions on the report were held before the release of the report and two more after the report was released. Online communities engaged extensively especially on the gender session.
- AFIC is engaging Friedrich Ebert Stiftung for support of targeted advocacy around the report in 2018.

AFIC and the International Freedom Expression Exchange (IFEX) launched a joint action about Ghana in the lead up to the Day where international pressure is used to push for the establishment of ATI laws. Consequently, the Government has promised that by end of next year 2018, Ghana will have adopted the RTI law. In addition, the report with its recommendations has been sent to various governments and response is awaited. On its part the African Union has welcomed the report and noted that it is useful in pushing for ratification, domestication and implementation of ATI related treaties while AFIC is discussing with UNESCO joint advocacy campaigns based on the report.

The present report introduces baseline information on the state of ATI in 23 Africa countries. However, research on the progress of SDG 16, Target 10 should be conducted at least every two years. The assessments should focus on different aspect of the RTI regimes, quality of the legal framework, the levels of implementation, and the enabling conditions that promote the effective enjoyment of the right. The United Nations, the African Union, and other regional bodies should support this kind of research to ensure that all SDGs are being monitored. Research should also be conducted on how SDG 16.10 impacts the achievement of other goals.

### The research problem

The right of access to information is recognized in several treaties and major development agendas that have been widely ratified by members States. These include Article 9 of the African Charter on Human and Peoples Rights, Article 19 of the African Charter on Democracy,

Elections and Governance, Article 9 and 12 (4) of the African Union Convention Against Corruption, Article 10 (3d) and 11 (2i) of the African Union Youth Charter, Article 6 of the African Charter on Values and Principles of Public Service and administration and Article 3 of the African Statistics Charter, the Sustainable Development Goal (SDG) target 16.10 and the African Union Agenda 2063. In the world today, 115 out of the 195 countries have the right to free access to information enshrined in the law, establishing the right of, and procedures for, the public to request and receive government-held information. Presently in Africa, 21 out of 54 countries (39 percent) have specific access to information legislation. However, civil society is often reporting lack of implementation and enforcement as a major challenge, for example many citizens lacking awareness on ATI laws, many information requests being either not answered or out rightly refused. Obligations for proactive disclosure, transfer of requests or annual reporting are said to be violated without challenge.

The research objective was to demonstrate in which extend the ratifications of international and continental treaties and adoption of access to information law were a guarantee of the application and implementation of the legal framework. It also targeted to measure with appropriate criteria the implementation of the right to information in different legal context reflected in the 23 countries of the study and provide an evidence based report to draw recommendations on the effective implementation of access to information.

### Progress towards milestones

The overall objective of the recipient in relation to the project was to enable a better understanding on the realities of access to information (ATI) in Africa by investigating the situation in 30 African countries.

The specific objectives of the project were as follows:

1. Assess the legal framework in respect of ATI in 30 African countries;
2. Assess the implementation of the right to information in these countries; and
3. Draw recommendations for a better access to information regime in Africa in line with the African Union (AU) Model Law on Access to Information, Article 9 of the African Charter on Human and People's Rights, as well as SDG 16.10.

The overall objective has been partially replied to as there were 23 countries studied instead of 30 countries. For all these 23 countries, the FOIANet methodology (further described in part v) was applied to investigate the situation on the realities of access to information.

As regard to the specific objectives of the project:

- i. For 23 countries the legal framework was assessed.
- ii. For 23 countries the implementation of the right to information was assessed.
- iii. Per country recommendation were made for the 23 countries as well as general recommendations were made.

The study covers 23 countries instead of the planned 30 countries. This is because though AFIC had secured commitment of the 30 countries partners or members ahead of the project, 7 of them did not deliver in time or failed to deliver any content. In the case of Botswana, Liberia, Namibia, Somalia, South Sudan, Tanzania, Togo, the partners sent a country report though beyond the deadline, the findings could not be captured in the final report. For all these cases, due to the tight schedule of this project, it was too advanced in the project life time to consider engaging other partners or members in these respective countries.

### Synthesis of research results and development outcomes

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- ✓ Assess the legal framework in respect of ATI in 30 African countries;
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As regard to the specific objectives of the project:

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- For 23 countries the implementation of the right to information was assessed.
- Per country recommendation were made for the 23 countries as well as general recommendations were made.

A dissemination and engagement strategy has been elaborated to ensure results of the study are fully utilized. The uptakes of the project are the following:

- Identify countries to engage through the ACHPR, UPR and other opportunities to influence the process to have report recommendations included.
- Engage governments, AU and EU institutions on the recommendations made in the report and dissemination of the report with the collaboration of UNESCO Africa office.
- African Union (AU) is engaged in order to engage through the Permanent Representative council (PRC). Report and petition will be disseminate to each Permanent representative.
- UNESCO is engaged to send use the report in engaging respective Permanent Delegations to UNESCO.
- Respective governments will be engaged with the petition. Eg; Ghana. IFEX and AFIC launched a joint action about Ghana in the lead up to the Day where international pressure is used to push for the establishment of ATI laws.
- EU country delegations will be engaged for them to send a letter to AU. As well as, avail copy of the report and petition.

## Methodology

The methodology was developed based on the methodology developed by Freedom of Information Advocates Network (FOIANet) to help stakeholders to identify priorities and areas of improvement of the extent to which States have met SDG Indicator 16.10.02 (which is about the adoption and implementation of RTI laws).

The aim of this methodology is to give a simple, standardised tool to determine the extent to which States with RTI laws are implementing them correctly. Three main procedures to measuring implementation are included in this methodology, namely:



- (1) an evaluation of the extent to which a State is proactively publishing information;
- (2) the extent to which institutional measures have been carried out to assist with implementation and;
- (3) the extent to which requests for information are being replied to properly.

In each country, the methodology recommended to review between 5 to 10 different public authorities which are within different sectors.

For the analysis of the proactive disclosure aspect, researchers have to compare the list of information (the list was provided within the methodology) which have to be disclosed proactively to the actual information published on the authorities' website and/or at their libraries.

For the evaluation of the implementation of the institutional measures, lists of actions which should have been taken have been made in order to determine how well the ATI law is implemented.

As regard to the processing of the information requests, the researchers had to make 2 or 3 information requests to each of the 5 to 10 public authorities.

The major problem that arose from this methodology was found within the information requests which needed to be made. Care needed to be taken to avoid alerting the authorities that a test was going on. If there was suspicion which could have been raised the number of information requests to the public authority could be lowered or different individuals could be used to make them. Thus the difference between requests within the different countries studied can vary and so results cannot be strictly comparative.

A solution for this, could be to focus on information requests for which exception cannot be engaged.

Another issue experienced during the study was the time constraint to make every information requests as the methodology asked for a high number of them (around 30 information requests). Thus, a large number of individuals/organisations did not have enough time to make the information requests needed. Also, the time period for the reply of the information requests

delayed as most of them were not replied to on time or requested earlier enough so they could not be taken into account in the report.

A solution for this would be to allow more time for the information requests within the study timeline.

## Project Outputs

The general goal of the report is to generate and share knowledge on the status of ATI in 23 African countries in order to enhance its adoption and effective implementation by African governments. The following outputs have been realized.

- a) Research on the State of citizens' access to information covering 23 African countries was successfully conducted.
- b) 500 copies of the popular version were printed and disseminated to targeted audiences through courier or events.
- c) The reports was also disseminated through email and list servers.
- d) Three versions were also disseminated through AFIC's website: summary version, full report and final full report (infographics). Within the first 3 days over 200 downloads had been registered. However, it was pulled down to make an adjustment in the acknowledgement. The AFIC's website was recently redesigned and so far over 300 and 200 downloads have been registered since the new website was switched on.
- e) Two twitter sessions on the report were held before the release of the report and two more after the report was released. Online communities engaged extensively especially on the gender session.
- f) AFIC is engaging Friedrich Ebert Stiftung for support of targeted advocacy around the report in 2018.

The international and regional processes which have been planned to be engaged through the campaign initiative are the following:

- During the campaign, AFIC worked in close collaboration with UNESCO which is the lead agency within Agenda 2030 framework responsible for measuring the SDG 16.10.

UNESCO has been engaged to continue collaborating with AFIC on advancing the report and its recommendation. The Director for Freedom of Expression & Media Development has stated:

- AFIC will find out in the next month who the next chair is the Africa group of Member States, and help network with said party who may wish to include a brief in a subsequent meeting of the group.
  - In addition, AFIC plans to feature the report during the WPFDD next 3 May and to co-organise the parallel session 1 “Right to information: How can freedom of Information laws contribute to sustainable development in Africa?”. The event will be in Accra and is being jointly organised by UNESCO and the government of Ghana, with inputs from a wide range of CSOs, media organizations and academic institutions. The global theme will be “Keeping Power in Check: Media, Justice and The Rule of Law” and it will cover issues of media and the transparency of the political process, the independence and media literacy of the judicial system, and the accountability of state institutions towards the public.
  - Possibly next year, for the UNESCO IPDC Talks on 28 September, there could be a speaker on the report. And in our 2018 SDG reporting, AFIC could highlight it.
  - So, in short, Marius will be kept posted as our focal point this side, and to liaise with Africa Group and relevant secretariat colleagues.
- In follow-up to the above, UNESCO has now invited AFIC to be a co-organiser of Parallel session on the right of access to information during the forthcoming World Press Freedom Day to be held in Accra, Ghana. The theme of the session will be: ***Right to information: How can freedom of Information laws contribute to sustainable development in Africa?*** This is a very important opportunity to advance the advocacy and knowledge from research on the status of SDG 16 in Africa to policy makers in different countries, academia, civil society organisations, media and intergovernmental agencies. AFIC has already started writing session concept note and identification of panelists. However, AFIC has been requested to fund the panelists’ participation. Although no budget is available, efforts are being made to ensure that this important opportunity is fully utilized.

- AFIC engaged the African Union Advisory Board on Corruption during a recent consultative meeting on the need to put access to information on the organisations agenda and strategic plan. These recommendations were well received and we hope the final strategic plan will include this item.
- Following AFIC's engagement, the Government of The Gambia and that of Ghana have committed to expedite consideration and adoption of RTI bill to meet its obligations to realise SDG 16.10.2
- Discussing collaboration with IFEX for joint petition to other governments.
- Develop online materials and a social media campaign to disseminate messages to inform the audiences about the ATI issues in the 28 African countries that conducted the study.
- Refine and disseminate case studies that illustrate the use of ATI in other sector such as education, health, agriculture, corruption, public procurement, elections.
- Encouraged stakeholders to take part in national events around the IDUAI, September 28th in link with activities of AFIC members and partners.
- The Working Group of the African Platform on Access to Information (APAI), an alliance of African civil society organisations located in different parts of the continent and working on the promotion of access to information in Africa, advocated for the adoption of the "International Right to Information Day" by the 72nd UN General Assembly. AFIC that is one of the nine members of the APAI Working Group participated to a mission in New York to meet with different countries delegations to seek support on the adoption of the IDUAI by UNGA. The targeted delegations were Sierra Leone, Tunisia, Cabo Verde, Morocco, Nigeria, Angola, France, Greece, Brazil, Costa Rica and Austria. The UN Groups constituted of Qatar, Cabo Verde, Mexico, Norway, Sierra Leone, Tunisia, The United Kingdom; Global alliance aims at harnessing the strengths and resources of its members to support effective and meaningful reporting on

the achievement of SDG16 and related targets, taking into account different national realities, capacities and levels of development, and respecting national policies and priorities. Considering that Access to Information is recognised in the SDG 16.10.2 as an essential element for peaceful, just and inclusive societies, AFIC wants to engage the members of Global Alliance to take into account the findings of the report.

- AU reaffirmed their commitment to the promotion and protection of human rights in Africa during the Human Rights Dialogue in November 2015. The EU and AU jointly supported different events regarding Freedom of Expression, Freedom of information and Association (ratification of international and continental human rights instruments at national level in Africa, Continental Conference on Freedom of Expression in 2016, Seminar on Freedom of Association and national action plans on safety and security of journalists and freedom of expression advocates in conflict zones in Africa). Finally, the two parties decided to welcome the production of a status report on the implementation of access to information in line with the African Model Law on Access to Information adopted by the African Commission on Human and Peoples' Rights. Africa Freedom of Information Centre on behalf of the CSO Steering Committee is carrying out this study and facilitate presentation of results during the Continental Conference on Freedom of Expression in Africa as well as through other channels. The Chairperson of AUC also agreed to add a foreword for the report.
- ACHPR is promoting and reporting on the compliance of African Charter on Human and Peoples' Rights that recognizes in its Article 9 the right to access information. In that regard, the findings of the study has been shared with the institutions. AFIC will engage the ACHPR to take into account the findings when issuing concerns, observations and recommendations to State members.
- UPR is promoting the right to information in Article 19 of the Universal Declaration of Human Rights. The findings of the study will also be shared with the institutions. AFIC will engage countries via the UPR to take into account the findings when issuing concerns, observations and recommendations to State members. The country reports will

contribute to the shadow report for Cameroon at the 30th UPR session (Apr-May 2018) and the preparation for the shadow report of Senegal, Nigeria and Mauritius at the 31st UPR session (Oct-Nov 2018).

- IFEX and AFIC launched a joint action in Ghana in the lead up to the Day where international pressure is used to push for the establishment of ATI laws.

### **Compliance with IDRC's Open Access Policy**

The report is openly accessible from AFIC's website in accessible formats and people are free to freely use it. In the case of printed copies readers are also encouraged to use content without restriction.

#### **i) Problems and Challenges**

There were two aspects which could be improved. The commitment of the country researchers and the time allowed for the study. Some of the country researchers committed to work on their country report and did not reply or actually worked on it. In some cases some researchers submitted content after the finalization of the report. This could not be admitted. As for the time period, it would be better to allow more time for the information requests to be made as explained above. This would also allow for more time to explain to the methodology to the country researchers and allow for more information requests to be filed.

#### **ii) Administrative Reflections and Recommendations**

AFIC had a great experience in managing the grant from IRDC. We found open and responsive staff to exchange on unforeseen challenges and necessary adjustments. We have not experience challenges in term of the administration of the grant therefore we do not have other recommendations than to encourage the sustainability of IRDC grant management policy and mechanisms.

### **Conclusion**

The project was largely successful and brought new knowledge on the state of right of access to information in Africa in the context of SDG 16.10 target 2. It has also provided governments, civil society and intergovernmental bodies with new information regarding

state of ratification of ATI treaties, reporting to treaty bodies and experiences of communities on the ground. With this knowledge governments and civil society in particular have a tool for engagement and action. Gambia and other governments have committed to implement recommendations. Intergovernmental agencies such as UNESCO and the African Union have welcomed the report as a useful tool to engage member states to realise respective commitments on SDG 16.10.2. AFIC is grateful for support received from IDRC and Friedrich Ebert Stiftung that made the project possible.