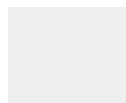
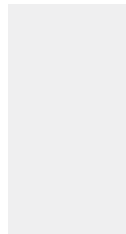
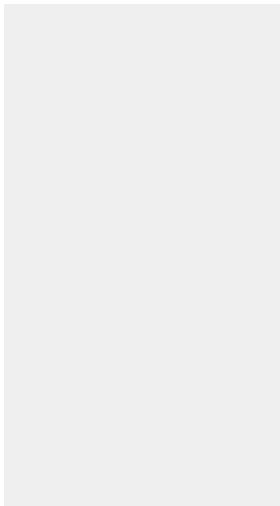
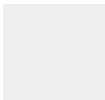
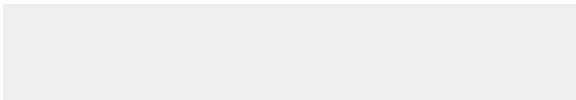


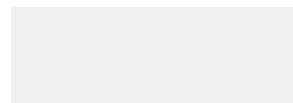
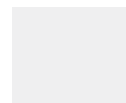
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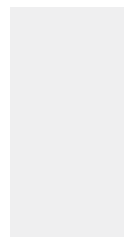
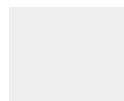
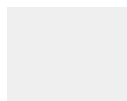
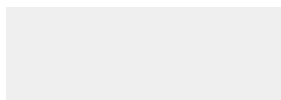
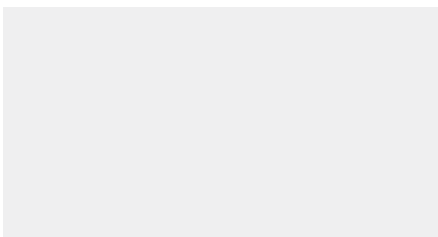
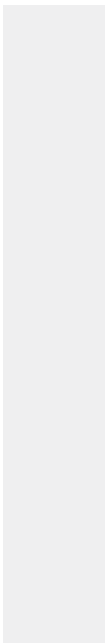


Leaving No One Behind: Assessing the Role of UNESCO in Promoting Adoption and Implementation of the Right to Information in Africa

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LEAVING NO ONE BEHIND: ASSESSING THE ROLE OF UNESCO IN PROMOTING ADOPTION AND IMPLEMENTATION OF THE RIGHT TO INFORMATION IN AFRICA

*Susan Juliet Agwang**

Abstract:

The right to information, while a fundamental human right itself, is the “oxygen” for realising all other human rights. In discussing the progress of the Right to Information in Africa, this study analyses the mandate of UNESCO, the United Nations custodian agency for Sustainable Development Goal Indicator 16.10.2, in promoting the adoption and implementation of the right to information in Africa. The study argues that significant challenges continue despite remarkable progress in adopting and implementing the Right to Information. These challenges undermine Africa’s contribution to the Right to Information regime and prevent public participation and citizens’ contribution to democratic governance. Thus, for citizens to adequately express themselves on matters of governance, hold their leaders accountable, influence service delivery and decision-making, and promote and protect their human rights, they need access to timely and accurate information at all times. The findings of this study contribute to the debate about the challenges to RTI implementation in Africa and propose recommendations to address the same.

Keywords: Access to information, freedom of information, Africa, human rights, UNESCO, implementation, challenges

A. INTRODUCTION

1. Background

While governments developed and implemented strategies to protect health and human life at the onset of the COVID-19 pandemic, public access to information played a central role in the global response, management, and containment of the anticipated impact. Saving human life at the time depended not only on accessible health care but also on access to timely and accurate information about the nature and threats posed by the novel coronavirus. Even after the pandemic, access to information was critical in rebuilding communities and public institutions.

Whereas the COVID-19 pandemic highlighted the heightened importance of information in times of crisis, the right to access information or the right to information, or freedom of information,² has long been

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² The terms access to information, freedom of information and right to information are often used interchangeably but all refer to the right to access government information. Freedom of information is commonly referred to in English-speaking jurisdictions, however, the preferred term in international contexts is access to information and will mostly be used in this research. See: Alex Parsons, ‘Improving oversight of access to information, 2022. <https://research.mysociety.org/publications/improving-oversight>.

protected under international law as a fundamental human right. Various international human rights treaties protect this right.³

According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), the right to information is now widely recognised as a norm of customary international law.⁴ As a result, several international bodies have authoritatively recognised the fundamental and legal nature of the right to information and the need for effective legislation to secure its respect in practice. These include the United Nations, the Organization of American States, the Council of Europe and the African Union.⁵

International human rights treaty bodies have most commonly recognised the right to information as coming within the scope of the right to freedom of expression.⁶ The foundation of the argument for including the right to information under the umbrella of freedom of expression is that access to information is a precondition of exercising the right to freedom of expression.⁷

The right to information can, therefore, be said to be instrumental to the enjoyment of the right to freedom of expression or, as expressed more colourfully by Judge Bell of the Victorian Civil and Administrative Tribunal in *XYZ v Victoria Police*: 'Freedom of information is in the blood which runs in the veins of freedom of expression.'⁸

Public access to information refers to the presence of an effective system to meet citizens' rights to seek and receive information, mainly that held by or on behalf of public authorities.⁹ Access to information can also be defined as the right to seek, receive, and impart information held by public bodies.¹⁰

Access to information as a right is particularly relevant regarding official information held by public authorities. Still, in many cases, it is also interpreted as covering information held by private actors necessary to exercise human rights. As a right, access to information is closely intertwined with other rights. It is seen as an overarching guarantor of some of them, such as the right to association, political participation, and to be free of discrimination.¹¹

Access to information is crucial to achieving peaceful and inclusive societies. International and regional agreements consider the right to information the guiding principle for participatory democracies since only an informed population can effectively contribute to constructing governments and political institutions. People need information to adequately express themselves on matters of governance, holding leaders accountable, influencing service delivery and decision-making, and promoting and protecting their human

³ Article 19, International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (ICCPR); Article 13 American Convention on Human Rights 1969, 1144 UNTS 123 (ACHR); Article 10 European Convention on Human Rights and Fundamental Freedoms 1950, ETS 5 (ECHR); and Article 9 African Charter on Human and Peoples' Rights 1981, OAU CAB/LEG/67/3rev.5; 1520 UNTS 217; 21 ILM 58 (1982).

⁴ UNESCO, Access to Information: A new promise for sustainable development, p.10. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000371485>.

⁵ Ibid.

⁶ Maeve McDonagh, 'The Right to Information in International Human Rights Law' (2013) 13(1) *Human Rights Law Review* 25-55, p.26.

⁷ Beatson and Cripps (eds), *Freedom of Expression and Freedom of Information: Essays in Honour of Sir David Williams* (Oxford University Press, 2000).

⁸ [2010] VCAT 255.

⁹ UNESCO, *From Promise to Practice: Access to Information for Sustainable Development*. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000375022>.

¹⁰ UNESCO, Access to information laws. Available at: www.unesco.org/en/access-information-laws#:~:text=Access%20to%20Information%20can%20be,information%20held%20by%20public%20bodies.

¹¹ UNESCO (n.4), p.9.

rights.¹² When people have access to accurate and quality information, they can unreservedly express their opinions and actively participate in their social and economic development.¹³

Furthermore, there has been increasing recognition that access to environmental information is critical to sustainable development and effective public participation in environmental governance.¹⁴ The Rio Declaration on Environment and Development¹⁵ of 1992 addressed this issue in Principle 10 by underscoring that “environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information on hazardous materials and activities in their communities and the opportunity to participate in decision-making processes.”¹⁶

Freedom of information has been developing rapidly only recently, but its history dates back to the 18th century, the Age of Enlightenment.¹⁷ Sweden and Finland adopted the world’s first access to information law in 1766, making it the first country¹⁸ to specifically recognise the right to access information at the national level. The law established press freedom, which included the freedom to print and disseminate materials about the government, courts, and parliament. 2024 marks the 258th Anniversary of the Freedom of Information in Sweden and Finland.

The right to information began to spread with the creation of the United Nations and international standards on human rights.¹⁹ Its recognition in international law²⁰ highlighted its significance, facilitating its spread worldwide. The success of Sweden’s Freedom of the Press Act 1766 was also very instrumental in the process. It influenced agitation for enacting similar laws in other parts of the world. However, it took over two centuries for related legislation to be passed in the United States of America.²¹

It was in the year 2000 that agitation for adopting freedom of information laws gradually became a very serious issue in developing countries. This agitation gradually gathered momentum in Africa and some other developing countries.²² South Africa later became the first African country to adopt a right to information law in 2000. Its law was rooted in the move away from apartheid, with the Constitution of 1996 establishing under Article 32(1) the right of access to (a) any information held by the State and (b) any information that is held by another person and that is required for the exercise and protection of any rights. This Constitutional provision reflects the highest standards of the right to information, recognising that it is not only a right of

¹² Africa Freedom of Information Centre (AFIC), *The State of the Right to Information in Africa Report 2017*, p.19. Available in: https://foip.saha.org.za/uploads/images/StateOfATI_Africa_2017_FullReport_20170928.pdf.

¹³ Ibid, p.16.

¹⁴ Toby Mendel, *Freedom of Information: A comparative legal survey*. UNESCO (2nd edn Paris: UNESCO 2008) p.16.

¹⁵ UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992).

¹⁶ UN Environmental Programme: www.unenvironment.org/news-and-stories/story/unep-implementing-principle-10-rio-declaration.

¹⁷ Anders Chydenius Foundation, Publication 2, *The World’s First Freedom of Information Act* (Anders Chydenius Foundation 2006) p.4. www.chydenius.net/tiedostot/worlds_first_foia.pdf.

¹⁸ Sweden and contemporary Finland constituted a united country at the time.

¹⁹ Anders (n.17), p.4.

²⁰ Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide that every person shall have the right to seek and impart information.

²¹ Brendan Eze Asogwa and Ifeanyi Jonas Ezema, ‘Freedom of Access to Government Information in Africa: Trends, Status, and Challenges’ (2017) 24(3) *Records Management Journal* 318-338, p.319.

²² It is believed that the success recorded in Africa was facilitated by a pressure group called Freedom of Information Advocates Network, FOIANet (<https://foiadvocates.net>), an international information-sharing network of organisations and individuals working to promote the right of access to information. See Brendan E Asogwa and Ifeanyi J Ezema, ‘Freedom of Access to Public Records for National Transformation: The Sub-Saharan African Experience’ (2017) 27(3) *Records Management Journal* 2.

the citizen vis-à-vis government but a broader human right to information necessary for the full enjoyment of other human rights.²³

Since then, many African countries have adopted binding laws and policies giving people a right to access information held by public bodies. To date, 28 out of 55 African countries have adopted constitutional, statutory and/or policy guarantees for public access to information, with ten countries adopting such guarantees since the 2030 Agenda for Sustainable Development in 2015.²⁴ Furthermore, as seen in the next chapter, six binding African Union human rights treaties recognise the right to access information.

Following the approval of the Sustainable Development Goals (SDGs) framework by the United Nations General Assembly (UNGA) in 2015, UNESCO was designated as the custodian agency for Sustainable Development Goal Indicator 16.10.2 on public access to information.²⁵ SDG Indicator 16.10.2 looks at “the number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.”²⁶

The same year, UNESCO’s 38th General Conference declared 28th September the International Day for Universal Access to Information (IDUAL). Later on, UNESCO’s cooperation with its Member States, UN bodies, and African civil society²⁷ saw the status of the celebration being elevated when the 74th UN General Assembly in October 2019 also proclaimed the day at the UN level.²⁸ All this momentum has accompanied and reinforced concrete steps toward tracking the progress on access to information.²⁹

In line with its role, UNESCO was mandated by its Member States to monitor and report progress on SDG Indicator 16.10.2 worldwide. For this purpose, UNESCO conducts regular surveys offering Member States the chance to report national progress on access to information.

It is worth noting that progress has been made in adopting access to information laws, but implementation has not progressed at the same pace. Therefore, this study analyses UNESCO’s mandate to promote the adoption and implementation of the right to access information in Africa.

2. Problem Statement

The system of governance before the enactment of the first freedom of information laws in many African countries was restrictive, with citizens having limited or no access to public information held by governmental authorities.³⁰ Today, legislation on access to information continues to emerge and has assumed prominence in some African countries to promote transparency and accountability and enhance citizens’ participation in decisions that affect their lives. However, half of the continent lacks freedom of information laws, and even those with laws struggle with implementation.

²³ Access Info Europe Briefing Paper; *Access to Information: A Fundamental Right, A Universal Standard* (2006) 17 January 2006, p.4.

²⁴ These are: Togo, Kenya, Tanzania, Morocco, Malawi, Seychelles, Ghana, Gambia, Namibia and Zambia.

²⁵ UNESCO, *Journalism is a public Good: World trends in freedom of expression and media development, global report 2021/2022*, p.116. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000379826>.

²⁶ UN Sustainable Development Goals. <https://unstats.un.org/sdgs/metadata/files/Metadata-16-10-02.pdf>.

²⁷ African Platform on Access to Information, APAI. Available at: www.africanplatform.org/.

²⁸ UNESCO, *UN proclaims International Day for Universal Access to Information*: <https://en.unesco.org/news/proclaims-international-day-universal-access-information>

²⁹ Op. cit. n.9, p.6.

³⁰ Olugbenga Adesida, ‘Working paper 65, Governance in Africa: The Role for Information and Communication Technologies’ (2001), African Development Bank. Available at: www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/00157664-EN-ERP-65.PDF.

Consequently, many citizens are denied the relevant information to participate actively in their countries' governance. For example, the full and equal participation of persons with disability remains far from being realised, as their rights are absent from most access to information legislations. Where reference is made to persons with disability and accessibility of information, the scope of the disabilities covered and the rights secured are somewhat limited or unclear.³¹ In countries with freedom of information laws, the belief was that there would be improved access to government information to play significant roles in governance and reduction of corruption.³² However, this has not turned out to be the case.

Although dedicated freedom of information oversight institutions have been established in most countries, not all monitor the implementation of access to information guarantees and enforce compliance. Data from UNESCO shows that access to information laws frequently lack strategies for implementation or suffer from poor resourcing to the agencies responsible for oversight.³³

The quality of access to information laws also remains highly variable. Some laws do not include adequate reporting requirements. In contrast, others provide overly broad language for exemptions, such as the types of information that should not circulate in the public domain, which can give governments an excuse to deny requests from citizens and journalists for information that could be used to hold public officials to account. Information Commissioners are often not independent from the government, and there are not always alternative routes to requesting access.³⁴

Contradictory laws that restrict access to information in some cases are still valid and applicable in some countries,³⁵ and these are often given precedence. Such situations create general confusion even among government officials who eventually decide to 'protect' government information from disclosure.

The COVID-19 pandemic highlighted the weaknesses in Africa's legal protections and implementation of freedom of information laws. Activists and journalists were harassed and arrested for reporting on government statistics in Mozambique, Zimbabwe, Somalia, Nigeria, and other parts of Africa. Numerous governments relied on concerns about the purported spread of misinformation about the pandemic as a pretext to restrict access to information.³⁶

The surge of access to information laws reflects that information in the 21st century has become one of the most critical areas that impact human rights, sustainable development, democracy, and the citizen's private life. It has become more crucial in strengthening and advancing the realisation of other rights. Adopting and effectively implementing the right to information requires political will to create structures to oversee it independently. Indeed, governments that recognise its cross-cutting significance are more likely to realise the benefits of access to information, including sustainable development. To keep at the same pace with the

³¹ UNESCO, *To recovery and Beyond: UNESCO Report on Public Access to Information 2021*, p.14. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000380520>.

³² Op. cit. n.21, p.321.

³³ Op. cit. n.9.

³⁴ Op. cit. n.25, p.50.

³⁵ In Uganda for example, the Official Secrets Act of 1964 is still on the statutes. Despite advocacy efforts by civil society, the contradictory law has not been repealed. It thus remains one of the major barriers to the full implementation of the Access to Information Act 2005. For more information see the UPR submission by CSOs to the Office of the High Commissioner for Human Rights available at: www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session12/UG/JS4-JointSubmission4-eng.pdf.

³⁶ International Press Institute and KORAD ADENAUER STIFTUNG, authored by Pavi Prasad, *Press Freedom and Safety of Journalists in Africa: Challenges and Recommendations* (2021) p.9. Available at: <https://ipi.media/wp-content/uploads/2021/12/KAS-IPI-Report-on-Safety-of-Journalist-in-Africa-final-29.11.2021.pdf>. See also: CIPESA, *The State of Media Freedom and Safety of Journalists in Africa* (2022) pp.22-29, https://cipesa.org/wp-content/files/The_State_of_Media_Freedom_and_Safety_of_Journalists_in_Africa_Report_1.pdf

developed democracies in achieving the Sustainable Development Goals, African countries must strengthen the existing legal framework by ensuring implementation because implementation is as important as adopting access to information laws.

3. Aim of the Study and Research Questions

This study triggers a two-fold aim: a) to examine the present interventions by UNESCO to promote and protect the right to information in Africa and the challenges that impede its practical realisation, and b) to make propositions to address the existing problems to the right to access information in Africa.

The following questions are to be researched and answered within the study:

- What is the legal framework promoting the right to access information in Africa?
- What are the challenges affecting the adoption and implementation of the right to access information in Africa?
- What practical roles has UNESCO played in cultivating the adoption of freedom of information laws and policies in Africa?
- How can UNESCO influence the adoption and effective implementation of the right to access information in Africa?

4. Research Objectives

The study's key objective is to examine the role of UNESCO in promoting the adoption and implementation of the right to access information in Africa. The other objectives include:

- To assess the legal framework promoting the right to access information in Africa.
- To establish the state of adoption and implementation of the right to access information in Africa.
- To highlight the challenges affecting the adoption and implementation of the right to access information in Africa.

5. Research Methodology

This study has been conducted through secondary research (also known as desk research). It analyses primary, secondary, and electronic sources, including international and regional legal frameworks, reports, and academic journal articles on access to information. Literature on the concepts, principles, and practices of freedom of information laws in Africa were also reviewed.

However, the bulk of the literature focusing on UNESCO's role in promoting and protecting the right to information is contained within the UNESCO publications, such as the annual reports on the state of access to information.³⁷ The above sources are relied upon to develop a platform for knowledge generation and exchange and to facilitate arriving at the conclusions and recommendations contained in the study. Examples, including comparisons in the levels of implementation of the right to information in Africa, will be highlighted to elaborate on the differences in the levels of commitment to implementing the right to information. Although some countries' experiences will be used as case studies, this research does not analyse the situation in each country, nor does it try to rank countries. Instead, the study seeks to identify areas for improvement in effectively implementing the right to information in Africa.

³⁷ See UNESCO Publications. Available at: www.unesco.org/en/right-access-information.

6. Principles of Access to Information

The Principles of Access to Information set standards for national and international regimes implementing the right to access information. They serve as a yardstick for assessing the extent to which a country's existing legislation on freedom of information is adequate for complying with human rights standards.³⁸ Nine core Principles set the standard to measure whether domestic laws genuinely permit access to official information.³⁹

In Africa, the African Platform on Access to Information (APAI) Declaration complements the ARTICLE 19 Principles and recognises 14 Principles designed to advance the right to information in Africa. UNESCO and the UN General Assembly have long embraced the Principles as capable of promoting development and democracy.⁴⁰ For this study, four Principles of Access to Information have been adopted, including (i) maximum disclosure, (ii) obligation to publish, (iii) limited scope of exceptions and (iv) oversight bodies. Four countries with right to information laws have been selected to ensure regional representation. They include South Africa, Uganda, Nigeria and Sierra Leone.

B. LEGAL AND POLICY FRAMEWORK PROMOTING THE RIGHT TO INFORMATION IN AFRICA

1. Introduction

If public participation is the key to upholding democracy and achieving sustainable development, it follows that facilitating universal (and equitable) access to information is fundamental to realising Agenda 2063, "The Africa We Want." Similarly, access to information is crucial for achieving the UN Sustainable Development Goals.

Agenda 2063 is the African Union's master plan for the socio-economic transformation of Africa over the next 50 years.⁴¹ It is the continent's strategic framework that aims to deliver the goal of inclusive and sustainable development.⁴² Aspiration three promotes good governance, democracy, respect for human rights, justice, and the rule of law throughout Africa and anchors on the citizens' involvement in public affairs, to hold governments accountable, and to receive and access the necessary information to help make informed decisions.⁴³ The African Union's commitment to promoting the right to information as a cornerstone of people's inalienable freedoms and rights is seen in its recognition in many of its texts, all drawing inspiration from international human rights instruments. To date, six binding African Union treaties recognise and promote the right to information. These will be looked at in detail later in this section.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights reinforce the right to information under Article 19 in the terms that: "Everyone shall have the right to

³⁸ ARTICLE 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* (1999) – the 'ARTICLE 19 Principles'.

³⁹ The nine principles developed by ARTICLE 19 include Maximum disclosure, Obligation to publish, Promotion of open government, Limited scope of exceptions, Processes to facilitate access, Costs, Open meetings, Disclosure takes precedence, and Protection of whistleblowers.

⁴⁰ African Platform on Access to Information (APAI), *Pounding Pavements, Knocking on Doors: Campaign for access to information in Africa, another gift to the world*, p.2.

⁴¹ Adopted on 31 January 2015, Agenda 2063. See: <https://au.int/en/agenda2063/overview>.

⁴² See <https://au.int/en/agenda2063/overview>.

⁴³ Op. cit. (n.12), p.25.

freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers.”

Unlike in the past when States’ economic well-being and growth depended on the availability of natural resources, the 21st-century realities have demonstrated that information is the driver of economies. Various international standards recognising the right to information have led to cutting-edge legal and policy reforms at global, regional, and national levels, all of which aim to promote the right to information. Despite its recognition in almost all key international human rights instruments and adoption by many State Parties, the realisation of the right to information in Africa remains challenged.

This part of the study begins by briefly explaining the right to information as we know it today. It highlights the developments that resulted in recognising access to information as a human right. It further justifies the relevance of applying laws and policies to enhance the right to information and examines the legal and policy framework for access to information in Africa.

(a) *Historical evolution of the right to information*

The concept of the right to information is not new. Its history dates back to the 18th century when Sweden adopted the world’s first access to information law in 1766.

The Swedish law informs the standard historical narrative about the “origin” of access to information: 23 years before the French Revolution, the Freedom of the Press Act required official documents to be disclosed upon request to anyone free of charge.⁴⁴ In the 200 years that followed, until the Freedom of Information Act was enacted in the USA, little progress in the right to information was recorded. Finland later inherited the right from Sweden, making it the third country to enact a freedom of information law⁴⁵ after Colombia passed its law in 1888.⁴⁶ Today, Sweden and Finland are still considered among the top six least-corrupt countries in the world.⁴⁷

After 1966, the pace of access to information enactments increased and soared in the 1990s.⁴⁸ Overall, the number of countries with access to information laws has risen from ten in 1986 to 139 States in 2023.⁴⁹

What accounts for the global rise of access to information, especially since the 1990s? Possible answers can be gauged based on the three historical contexts in which access to information has emerged and spread:

⁴⁴ See Anders Chydenius, *His Majesty’s Gracious Ordinance Relating to Freedom of Writing and of the Press* (Peter Hogg, Trans.) (1766), in: *The World’s First Freedom of Information Act: Anders Chydenius’ Legacy Today* 8 (Juha Mustonen (ed.); Michael Riegner, ‘Access to Information as a Human Right and Constitutional Guarantee. A comparative Perspective’ (2017) 50(4) *Law and Politics in Africa, Asia and Latin America, Special Issue: The Right to Information* 332-336. Sweden is also well known as the world’s most progressive country with respect to the exercise of freedom of information.

⁴⁵ For more details, see Stephen Lambie, ‘Freedom of Information: A Finnish Clergyman’s Gift to Democracy’ (2002) 97(2) *Freedom of Information Review* 2-8.

⁴⁶ Following the innovative Swedish law in 1766, Colombia became the second country to legislatively anchor the right to obtain information in 1888. However, the Colombia law was limited to only Local Government records. For more information on the Swedish law, see: Dave Banisar, *Freedom of Information and Access to Government Record Laws around the World* (May 2004), available at www.ndi.org/sites/default/files/freeinfo_010504.pdf.

⁴⁷ The two countries have continued to be ranked for many years as among the six countries exhibiting the lowest level of corruption. See Transparency International: *Corruption Perception Index 2022*. www.transparency.org/en/cpi/2022.

⁴⁸ Roy Peled and Yoram Rabin, ‘The Constitutional Right to Information’ (2011) 42(2) *Columbia Human Rights Law Review* 357-401, p.370 ff.

⁴⁹ See: Access Info and Centre for Law and Democracy, *Global Ranking of RTI Laws*. Available at: www.rti-rating.org/country-data/.

political liberalisation, the rise of the administrative State, and the information society. Many access to information norms were adopted in phases of political transition, starting with the Swedish “age of liberty” from 1719-1772, when the monarchy lost power to the parliamentary opposition.⁵⁰ The global rise of access to information in the 1990s coincides with the third wave of democratisation and the ending of the Cold War, in which access to information laws were enacted as a response to past authoritarian experiences and present accountability problems.⁵¹ The emergence of the information society, especially since the 1990s, is believed to have also shaped the history of access to information. Technological innovations and changes in societal self-descriptions increased the availability and value of information in social, economic, and political life.⁵²

(b) *Freedom of information in the United Nations system*

The United Nations’s early engagement with freedom of information is a largely forgotten episode in international legal history but was nevertheless defining for the fledgling organisation: At its very first session in 1946, the United Nations General Assembly called for a conference on freedom of information, recognising that “freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.”⁵³ The conference, held in 1948 in Geneva, adopted no less than 43 resolutions, three conventions, and draft articles for inclusion into an international bill of rights.⁵⁴ The conference’s draft articles on freedom of information were included without significant changes in the Universal Declaration of Human Rights in 1949, whose Article 19 states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” This formulation later carried over into Article 19 of the International Covenant on Civil and Political Rights, reversed the original relationship of the two ideas in previous UN discourse: Initially, freedom of information had been the overarching concept; now, freedom of expression became the umbrella, and freedom of information its subcomponent. This relationship favoured the interpretation as a negative right in subsequent UN practice, as did a historical interpretation of freedom of information as a reaction to totalitarian propaganda that banned access to foreign news sources and “enemy” radio.⁵⁵

This interpretation started to change in the late 1990s in an exemplary process for evolutive interpretation in international human rights law. Regional and universal human rights institutions began to derive a positive right of access to State-held information from other human rights. In 1998, the Special Rapporteur on Freedom of Opinion and Expression, Abid Hussain⁵⁶ from India, declared that “the right to seek and receive information is not simply a converse of the right to freedom of opinion and expression but a freedom on its own” and asserted that this freedom “imposes a positive obligation on States to ensure access to

⁵⁰ Colin Darch and Peter G. Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness* (Oxford University Press 2010), pp.64-67.

⁵¹ Op. cit. (n.48), pp.370-372.

⁵² Ibid, p.337.

⁵³ UNGA, Res. 59(I), Calling of an International Conference on Freedom of Information, 14 December 1946, U.N. Doc. A/229, p.95.

⁵⁴ Tarlach McGonagle, ‘The development of freedom of expression and information within the UN: leaps and bounds or fits and starts’, in: Tarlach McGonagle & Yvonne Donders (eds.), *The United Nations and Freedom of Expression and Information: Critical Perspective* (Cambridge University Press 2015), pp.1, 10-19. For a historical perspective see: John Whitton, ‘The United Nations Conference on Freedom of Information and the Movement Against International Propaganda’ (1949) 43(1) *American Journal of International Law* 73-87.

⁵⁵ Jan Burgers, ‘The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century’ (1992) 14 *Human Rights Quarterly* 447.

⁵⁶ Mr Abid Hussain was appointed the first UN Special Rapporteur on freedom of opinion and expression in April 1993 until July 2002.

information, particularly with regard to information held by Government.”⁵⁷ In subsequent UN practice, other Rapporteurs and treaty bodies also derived access to information from socio-economic rights, such as the right to health or the right to food.⁵⁸ The Office of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression was established by a resolution of the UN Commission on Human Rights in 1993.⁵⁹ It was created in response to the growing recognition of the importance of freedom of expression, not just in its own right but also as an underpinning for all other rights.⁶⁰

2. Recognition of the Right to Information in International and Regional Human Rights Frameworks

By 2000, the agitation for adopting freedom of information laws became a serious issue in developing countries. This agitation gradually gathered momentum in Africa and some other developing countries.⁶¹ South Africa later became the first African country to adopt a right to information law in 2000. Its law was rooted in the move away from apartheid, with the Constitution of 1996 establishing under Article 32(1) the right of access to (a) any information held by the State and (b) any information that is held by another person and that is required for the exercise and protection of any rights.⁶² This Constitutional provision reflects the highest standards of the right to information, recognising that it is not only a right of the citizen vis-à-vis government but a broader human right to information necessary for the full enjoyment of other human rights.⁶³

Since then, many African countries have adopted binding laws and policies giving individuals a right to information held by public bodies. Furthermore, the African Union has adopted several binding human rights treaties promoting the right to information. Against this background, the discussion proceeds to consider the provisions of the legal and policy frameworks that promote the right to information in Africa.

(a) *The Universal Declaration of Human Rights*

The United Nations Universal Declaration of Human Rights⁶⁴ is generally considered the foundation of modern international human rights law. It has served directly and indirectly as a model for many domestic constitutions, laws, regulations, and policies that protect fundamental human rights. Article 19 provides that:

⁵⁷ UN on Human Rights, Promotion and protection of the right to freedom of opinion and expression - Report of the Special Rapporteur, Mr. Abid Hussain, submitted pursuant to Commission on Human Rights resolution 1997/26, UN Doc. E/CN.4/1998/40 1998, para 11, 14.

⁵⁸ Yvonne Donders, ‘The International Covenant on Economic, Social and Cultural Rights: Accessibility and the Right to Information’, in: McGonagle & Donders (n.54), p.89; See also: Committee on Economic Social and Cultural Rights, *General Comment No.14, The Right to the Highest Attainable Standard of Health*, E/C.12/2000/4, 2000, paras.3, 11, 44(d).

⁵⁹ UN Commission on Human Rights, *Resolution 1993/45*, UN Doc. E/CN.4/1993/122, 5 March 1993. See, in particular, para. 11.

⁶⁰ Toby Mendel, ‘The UN Special Rapporteur on freedom of opinion and expression: progressive development of international standards relating to freedom of expression’, in: McGonagle & Donders (n.54) pp.235-268, at p.235.

⁶¹ Op. cit. (n.21), p.319. Asogwa & Ezema further argue that the success recorded in the adoption of FOI laws in Africa may have been facilitated by a pressure group called Freedom of Information Advocates Network, FOIANet (<https://foiadvocates.net>), an international information-sharing network of organizations and individuals working to promote the right of access to information.

⁶² Op. cit. (n.23), p.4.

⁶³ Ibid.

⁶⁴ *Universal Declaration of Human Rights*. Adopted by General Assembly Resolution 217 A(III) of 10 December 1948.

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The Universal Declaration of Human Rights remains the primary source of global human rights standards, and its recognition as a source of rights and law by States worldwide distinguishes it from conventional obligations.⁶⁵ The increasing recognition the Universal Declaration of Human Rights commands has, in the opinion of most jurists, elevated it to the status of customary international law. However, the Declaration imposes no affirmative obligations upon nations but only sets out a series of aspirational standards. The International Covenant on Civil and Political Rights carries this recognition forward from aspirational to treaty status, thus imposing obligations binding in international law.⁶⁶

The formulation of freedom of information as a human right in the Universal Declaration of Human Rights is couched in wide terms, conferring a broad conceptual basis on the general principle. It is not limited to any specific types of information or any particular fora where it may be asserted. It provides a secure foundation of general international acceptance on which more specific formulations can be built.⁶⁷ The same degree of generality is evident in the formulation contained in the International Covenant on Civil and Political Rights. In addition, it is the law for those regions of the world, such as Europe and the Americas, which have enshrined it in binding regional agreements such as the European Convention on Human Rights (Article 10) and the Inter-American Convention on Human Rights (Article 13).⁶⁸

(b) The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR),⁶⁹ a legally binding treaty, reinforces the right to information in very similar terms to the Universal Declaration of Human Rights. Almost all African countries are State Parties to the ICCPR and have ratified it.⁷⁰ The Covenant guarantees freedom of expression and information, including the “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The ICCPR has influenced the development of the United Nations mechanisms and their interpretation. In 2011, for example, in a highly significant development, the UN Human Rights Committee published a new General Comment on Article 19 of the ICCPR,⁷¹ which, in contrast to its predecessor,⁷² expressly acknowledged that Article 19 embraces a general right of access to information held by public bodies. The General Comment noted, in arriving at this position, that Article 19, taken together with Article 25 of the ICCPR (the right to take part in public affairs), had previously been interpreted by the Human Rights

⁶⁵ Hannun Hurst, ‘The Status of the Universal Declaration of Human Rights in National and International Law’ (1995/6) 25 *Georgia Journal of International and Comparative Law* 287-397.

⁶⁶ W.G. Weeramantry, ‘Access to Information: A New Human Right. The Right to Know’ (1995) 4 *Asian Yearbook of International Law* 99-125, p.109. See also: Toby Mendel, (n.60) p.238; *Barcelona Traction, Light and Power Company Limited Case (Belgium v. Spain) (Second Phase)*, ICJ Reports (1970) 3; *Namibia Advisory Opinion*, ICJ Reports (1971) 16, Separate Opinion, Judge Ammoun.

⁶⁷ Ibid, W.G. Weeramantry.

⁶⁸ Ibid.

⁶⁹ *International Covenant on Civil and Political Rights*, ‘Article. 26, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force Mar. 23, 1976; [hereinafter ICCPR]

⁷⁰ For details on the ratification status, see: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en.

⁷¹ Human Rights Committee, *General Comment No 34: Freedoms of opinion and expression (art. 19)*, 12 September 2011, CCPR/C/GC/34; 19 IHRR 303 (2012).

⁷² UN Human Rights Committee, *General Comment No 10: Freedom of expression (art. 19)*, 29 June 1983, HRI/GEN/1/Rev.1; 1-2 IHRR 9 (1994).

Committee as including a right of the media to access information on public affairs⁷³ and the right of the general public to receive media output.⁷⁴

The Human Rights Committee further noted that elements of the right of access to information were addressed elsewhere in the ICCPR. It was pointed out, for example, that General Comment No.32 regarding Article 14 of the ICCPR, the right to a fair trial, sets out the various entitlements to information held by those accused of a criminal offence.⁷⁵

General Comment No.34 fleshes out the requirements necessary to give effect to the right of access to information protected under Article 19 of the ICCPR. Parties to the Covenant should proactively publish government information of public interest and ‘enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.’ Interestingly, the General Comment goes into a degree of detail, referring in particular to the need to make provision for the timely processing of requests for information, giving reasons for refusals of access to information, and putting in place an appeals system. It also states that fees for requests for information should not be such as to constitute an unreasonable impediment to access to information.⁷⁶

(c) *The United Nations Convention Against Corruption*

The United Nations Convention Against Corruption (UNCAC)⁷⁷ is the only legally binding universal anti-corruption instrument. The Convention’s far-reaching approach and the mandatory character of its provisions make it a unique tool for developing a comprehensive response to corruption.⁷⁸

The UNCAC encourages State Parties to ensure effective access to information to promote public participation and raise awareness about corruption. It further establishes that there should be specific mechanisms to ensure respect for access to information and transparency.⁷⁹

Access to information is central to enabling citizens to hold their elected representatives accountable for their decisions and how public resources are spent. Furthermore, access to information is an essential tool in the fight against corruption, as it increases democratic accountability and transparency, identifies and uncovers corrupt practices, and enables participation in developing anti-corruption policies and laws.⁸⁰ Today, more than half of the African States have ratified the UNCAC.⁸¹

3. African Regional Recognition of the Right to Information

The African Union has recognised the significance of the right to information to advance human rights, democracy, and good governance in the continent. Its six binding treaties oblige State Parties to observe and promote the right to information, and they include:

⁷³ *Gauthier v Canada* (633/1995), Merits, CCPR/C/65/D633/1995 (1999).

⁷⁴ *Mavlonov and Sa’di v Uzbekistan* (1334/2004), Merits, CCPR/C/95/D/1334/2004 (2009); 16 IHRR 650 (2009).

⁷⁵ UN Human Rights Committee, *General Comment No.32: Right to equality before courts and tribunals and to a fair trial* (art. 14), 23 August 2007, CCPR/C/GC/32; 15 IHRR 1 (2008).

⁷⁶ Op. cit. (n.6), p.31. See also General Comment No.34, pp.5-6 available at: www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and.

⁷⁷ UN General Assembly, *United Nations Convention Against Corruption*, 31 October 2003, A/58/422, available at: www.refworld.org/docid/4374b9524.html (accessed 6 August 2023).

⁷⁸ Available at: www.unodc.org/unodc/en/treaties/CAC/.

⁷⁹ Article 13 (1).

⁸⁰ UNCAC Coalition, Access to Information: Access to Information | UNCAC Coalition.

⁸¹ United Nations Office of Drugs and Crime: [Ratification status \(unodc.org\)](http://Ratification status (unodc.org)).

(a) African Charter on Human and Peoples' Rights

Article 9(1) of the African Charter on Human and Peoples' Rights (ACHPR)⁸² echoes the spirit of Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It provides that "every individual has the right to receive information."

This legally binding Convention requires State Parties to recognise the right to information and enact legislation to effect this right.

(b) African Charter on Democracy, Elections and Governance

The right of access to information is guaranteed under Article 19(2) of the African Charter on Democracy, Elections and Governance,⁸³ which holds that:

"Each State Party shall guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral observer mission."

This Charter provides in Article 2(10) that countries must "promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs" and in Article 6 that State Parties must ensure "that citizens enjoy fundamental freedoms and human rights, taking into account their universality, interdependence and indivisibility."

The Charter lists "the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs" as one of its core objectives. A society free to express itself and free to access information is a society prone to stability and one that can question and hold its government accountable.⁸⁴

(c) The African Union Convention on Preventing and Combating Corruption

The African Union Convention on Preventing and Combating Corruption⁸⁵ mandates Member States to adopt legislative and other measures to give effect to the right of access to information required to assist in the fight against corruption and related offences.⁸⁶

(d) African Youth Charter

The right of access to information is recognised in the African Youth Charter⁸⁷ under Articles 10(3) (d) and 11(2) (e) and (i) which provide that:

Article 10(3) (d)

"Provide access to information and education and training for young people to learn their rights and responsibilities, to be schooled in democratic processes, citizenship, decision-making, governance

⁸² Available at: <https://au.int/en/treaties/african-charter-human-and-peoples-rights>.

⁸³ Available at: <https://au.int/sites/default/files/treaties/36384-treaty-african-charter-on-democracy-and-governance.pdf>.

⁸⁴ Op. cit. (n.12), p.23.

⁸⁵ Available at: <https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption>.

⁸⁶ Article 9.

⁸⁷ Available at: <https://au.int/en/treaties/african-youth-charter>.

and leadership such that they develop the technical skills and confidence to participate in these processes.”

Article 11(2) (e)

“Provide access to information such that young people become aware of their rights and opportunities to participate in decision-making and civic life.”

Article 11(2) (i)

“Provide access to information and services that will empower youth to become aware of their rights and responsibilities.”

(e) *African Charter on Values and Principles of Public Service and Administration*

The African Union adopted the African Charter on Values and Principles of Public Service and Administration, which, under Article 6, seeks to break State secrecy by providing that,

Article 6:

1. Public Service and Administration shall make available to users information on procedures and formalities pertaining to public service delivery;
2. Public Service and Administration shall inform users of all decisions made concerning them, the reasons behind those decisions, as well as the mechanisms available for appeal;
3. Public Service and Administration shall establish effective communication systems and processes to inform the public about service delivery, to enhance access to information by users, as well as to receive their feedback and inputs;
4. Public Service and Administration shall ensure that administrative procedures and documents are presented in a user-friendly and simplified manner.

(f) *African Charter on Statistics*

The African Charter on Statistics,⁸⁸ in its various principles set out under Article 3, recognises access to accurate and timely information as highlighted below:

Transparency: To facilitate proper interpretation of data. Statistics authorities shall provide information on their sources, methods and procedures that have been used in line with scientific standards. The domestic law governing the operation of the statistical systems must be made available to the public.

Timeliness: African statistics shall be disseminated in good time and as far as possible, according to the pre-determined calendar.

Accessibility: African statistics shall not be made inaccessible in any way whatsoever. This concomitant right of access for all users without restriction shall be guaranteed by domestic law. Micro-data may be made available to users on condition that the pertinent laws and procedures are respected and confidentiality is maintained.

⁸⁸ Available at: https://au.int/sites/default/files/treaties/36412-treaty-african_charter_on_statistics_eng.pdf.

4. Other Non-binding Legal Instruments (Soft Law)

(a) *The Declaration of Principles on Freedom of Expression and Access to Information in Africa*

The Declaration of Principles of Freedom of Expression and Access to Information in Africa (the Declaration)⁸⁹ was adopted by the African Commission at its 65th Ordinary Session in 2019.

The Declaration affirms the principles for anchoring the rights to freedom of expression and access to information in conformance with Article 9 of the African Charter on Human and Peoples' Rights, which guarantees individuals the right to receive, express, and disseminate information. It forms part of the soft-law corpus of Article 9 norms developed by the African Commission, including the Model Law on Access to Information for Africa and the Guidelines on Access to Information and Elections in Africa, adopted by the African Commission in 2013 and 2017, respectively.⁹⁰ The Declaration replaced the 2002 Declaration of Principles of Freedom of Expression in Africa.⁹¹ Part three of the Declaration elaborates on the principles of access to information.

(b) *Model Law on Access to Information for Africa*

The African Union passed its first-ever Model Law on Access to Information for Africa⁹² in 2013, and by the beginning of 2017, 21 countries had adopted access to information legislation.⁹³

A model law is typically a detailed set of provisions embodying the international, regional, or sub-regional standards on a particular subject, developed to facilitate the adoption of national legislation.⁹⁴ As the word 'model' suggests, a Model Law needs to be adopted by states in near exact form and subject to contextual adjustments to suit each state's legal and other practical realities. Thus, unlike treaties, which are binding once ratified and impose obligations on State Parties, a model law is a non-binding document explicitly crafted to guide lawmakers in translating obligations emanating from international treaties into detailed national legislation.⁹⁵ However, many times, State Parties may be inclined to use the flexibility to avoid obligations, which is why the Model Law warns that any such adjustments must not water down the "effectiveness" of the law.

The Model Law takes into consideration factors such as poor record-keeping, a culture of secrecy, and high levels of illiteracy and poverty, which impact access to information on the continent. It includes access to information held by both public and relevant private bodies, where the latter holds information relevant to exercising or protecting any human right. It references the need to "promote transparency, accountability, good governance and development by educating people about their rights."⁹⁶

⁸⁹ *Declaration of Principles on Freedom of Expression and Access to Information in Africa*: <https://achpr.au.int/en/node/902#:~:text=The%20Declaration%20establishes%20or%20affirms,to%20express%20and%20disseminate%20information.>

⁹⁰ Ibid.

⁹¹ The revision increased the principles from 16 to 43, including principles on access to information, access to the internet, and the recognition of the rights of marginalized groups, such as children and those with disabilities.

⁹² Available at: <https://achpr.au.int/en/node/873>.

⁹³ FesMedia, *Training Manual for Journalists*, p.31. Available at: <https://library.fes.de/pdf-files/bueros/africa-media/14416.pdf>.

⁹⁴ *Model Law on Access to Information for Africa*, p.7.

⁹⁵ Ibid.

⁹⁶ Op. cit. (n.4), p.24.

Amongst its elements are the duty to create, keep, organise and maintain information records; proactive disclosure; implementation plans; designation of information officials; forms of access; and the issue of fees. It further deals with grounds for exemptions; the issue of potential public interest override of any refusal to disclose information; and the powers of an independent oversight mechanism to promote, monitor and enforce access to information.

(c) Guidelines on Access to Information and Elections in Africa

The Guidelines on Access to Information and Elections in Africa (the Guidelines),⁹⁷ adopted by the African Commission in 2017, provide direction on access to information in the electoral process to strengthen democratic governance in Africa.

There is a strong link between access to information and elections. It facilitates participation in public affairs as it empowers the electorate to be well-informed about the political processes and to hold leaders accountable. For example, in *S.P Gupta v Union of India*,⁹⁸ the Indian Supreme Court stated, “No democratic government can survive without accountability, and the basic postulate of accountability is that people should have information about the functioning of government.”

Electoral stakeholders⁹⁹ have a duty to proactively disclose electoral information to safeguard the integrity and legitimacy of the electoral process. It is thus the responsibility of State Parties to put in place domestic measures to ensure that all electoral stakeholders implement the Guidelines.

5. The Mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa

The African Commission established the mandate of the Special Rapporteur on Freedom of Expression in Africa by adopting Resolution 71 at its 36th Ordinary Session in 2004. In 2007, the African Commission renamed the mechanism as the Special Rapporteur on Freedom of Expression and Access to Information in Africa at its 42nd Ordinary Session in November 2007.

The Special Rapporteur’s mandate is, among other functions, to “analyse national media legislation, policies and practice within Member States, monitor their compliance with freedom of expression and access to information standards in general and the Declaration of Principles on Freedom of Expression in Africa in particular and advise Member States accordingly.”¹⁰⁰

6. Policy Framework on the Right to Information in Africa

Democracies are based on the presumption that citizens are empowered to participate in governance. However, without access to adequate and appropriate information related to governance, such informed

⁹⁷ Available at: <https://achpr.au.int/en/node/894>.

⁹⁸ [1982] AIR (SC) 149 at 232.

⁹⁹ The Electoral stakeholders (public and private actors) among others include, electoral management bodies, law enforcement agencies, media, media platforms and civil society organisations.

¹⁰⁰ Fesmedia Africa, *A comparison between the ACHPR Declaration of Principles on Freedom of Expression in Africa (2002) and the Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019)*, p.2. <https://library.fes.de/pdf-files/bueros/africa-media/20223.pdf>.

participation and deliberation are impossible.¹⁰¹ Information policy is the combination of laws, regulations, rules, and guidelines that steer information creation, management, and use. Information policy thus includes a range of issues related to freedom of information, privacy, secrecy, security, intellectual property, and information and communication technologies (ICTs), among other policy areas.¹⁰² Information policy also establishes what types of information can and cannot be disclosed while guiding how information may be accessed.

In 2004, UNESCO produced the Policy Guidelines for the Development and Promotion of Governmental Public Domain Information to assist governments in expanding access to and use of public domain information. On the one hand, public domain information is publicly accessible information that does not infringe on any legal right or obligation of confidentiality. On the other hand, it refers to public data and official information produced and voluntarily made available by governments or international organisations.¹⁰³

In February 2022, UNESCO released guidelines for Information Commissioners to foster access to information through the UN Universal Periodic Review (UPR).¹⁰⁴ Established in March 2006 by the UN General Assembly in resolution 60/251,¹⁰⁵ the Universal Periodic Review is a unique mechanism of the Human Rights Council that calls for each UN Member State to undergo a peer review of its human rights records every 4.5 years. The Universal Periodic Review is designed to prompt, support and expand the promotion and protection of human rights in every country.¹⁰⁶ The Guidelines targeting Information Commissioners thus aim to build their capacity to enforce the right to information.

While no specific African Union Policy on access to information exists, regional bodies like the Southern Africa Development Community (SADC) have developed Policy Guidelines promoting access to information. Its Policy Guidelines on Universal Access/Service for Telecommunications Services in SADC define universal access as “Affordable and equitable access by everyone to information and communication networks.”¹⁰⁷

Its preamble elaborates that access to information and communications has the potential to enhance community participation in social and economic development by providing learning opportunities, acquiring and sharing information and for commercial activities.

7. Conclusion

From international, regional and sub-regional recognition of the right to information, Africa has made significant strides in fostering a culture of transparency and accountability. Half of the continent enacted specific laws to promote access to information; this demonstrates the commitment to enhancing the realisation of the right to information. However, to achieve this, implementation is paramount because implementation is as important as adopting access to information laws.

¹⁰¹ Paul T. Jaeger, ‘Information Policy, information access, and democratic participation: The national and international implications of the Bush administration’s information politics’ (2007) 4(4) *Government Information Quarterly* 840-859, p.843.

¹⁰² Ibid.

¹⁰³ UNESCO, *Policy Guidelines for the Development and Promotion of Governmental Public Domain Information*, IFAP-2004/COUNCIL.III/5 PARIS, 1 March 2004. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000134082>.

¹⁰⁴ See: UNESCO, [New guidelines issued for Information Commissioners for fostering access to information through the Universal Periodic Review | UNESCO](#)

¹⁰⁵ United Nations, A/RES/60/251.

¹⁰⁶ United Nations Human Rights Council, www.ohchr.org/en/hr-bodies/upr/upr-home.

¹⁰⁷ Available at: www.itu.int/ITU-D/projects/ITU_EC_ACP/hipssa/Activities/SA/docs/SA-2.2/SADC_Guidelines_US.pdf.

C. STATE OF ADOPTION AND IMPLEMENTATION OF THE RIGHT TO INFORMATION IN AFRICA

1. Introduction

Since the 1990s, access to information has increasingly been recognised as a fundamental right in constitutional orders around the world. New democracies have enacted specific laws to guarantee the right to information.¹⁰⁸ Like in other parts of the world, African countries made spirited attempts to introduce freedom of information legislation on the continent. This resulted in South Africa adopting the continent's first national access to information legislation in 2000. Since then, the continent has embraced the right to information to enhance participatory democracy, promote peace, and drive Africa's economic development.

Several regional instruments and other frameworks on access to information, including resolutions, declarations, conventions, and guidelines, have also been adopted in the region, reinforcing the importance of the right to information as well as recognising and strengthening the guarantees of the public right to information in the AU Member States and across the continent.¹⁰⁹

The significant growth of the right to information in the region has, to date, seen 28 States adopting national access to information laws. Most significantly, three of the continent's laws are rated among the 12 best right to information laws in the world on the Global Right to Information Rating,¹¹⁰ namely Gambia's Access to Information Act of 2021 (ranked no.8), Liberia's Freedom of Information Act of 2010 (ranked no.10), and Sierra Leone's Right to Access Information Act of 2013 (ranked no.12).¹¹¹

Despite the significant development and recognition of the right to information on the continent, slow or ineffective implementation has been documented as the main challenge.¹¹² Whereas the nature of access to information laws may vary from country to country, the problems affecting access to information implementation in various African countries are similar in many ways. Some documented issues include delays in responding to requests for information, insufficient resources to support implementation, lack of technical capacity, and low awareness among the public.¹¹³ These have, therefore, rendered the right to information meaningless in many countries.

With the world witnessing a growing public appetite for timely and reliable information after the emergence of the novel coronavirus in 2019, the expectation was that countries would strengthen measures to facilitate access to information. As the Windhoek+30 Declaration noted, reliable information amid the global health crisis was often a matter of existential survival, especially given the widespread circulation of mis and false information.¹¹⁴ The challenges of accessing information continue to exist in Africa.

¹⁰⁸ Michael Riegner, 'Access to Information as a Human Right and Constitutional Guarantee: A Comparative Perspective' (2017) 50(4) *Law and Politics in Africa, Asia and Latin America, Special Issue: The Right to Information* 332-336, at p.337.

¹⁰⁹ African Platform on Access to Information (APAI), *Pounding Pavements, Knocking on Doors: Campaign for access to information in Africa, another gift to the world*, p.2.

¹¹⁰ Access Info and the Centre for Law and Democracy developed the right to information rating to measure the strength of the legal framework for the right of access to information held by public authorities. The Global rating is available at: www.rti-rating.org/country-data/.

¹¹¹ Op. cit. (n.109), p.2.

¹¹² AFIC (n.12); APAI, *State of access to information in Africa; Freedom of Access to government information in Africa: trends, status and challenges*.

¹¹³ Ibid.

¹¹⁴ Windhoek+30 Declaration (Paris, UNESCO). Available at https://en.unesco.org/sites/default/files/windhoek30declaration_wpfd_2021.pdf.

Adopting legislation and constitutional guarantees on access to information is one thing; turning it into a tool that gives citizens genuine access to information about the workings of their governments is another.¹¹⁵ Constructing an effective transparency regime should thus be seen as a three-phase process: adoption, implementation, and enforcement of the access to information law. Together, these three elements constitute the “transparency triangle.”¹¹⁶ Access to information commitment and implementation by national governments, as the primary duty bearers for progress towards the Sustainable Development Goals, must therefore be consistently reassessed to ensure implementation of legal provisions, and these must be adjusted continuously to meet the needs of those they seek to serve: the people.¹¹⁷

2. Progress in the Adoption and Implementation of the Right to Information in Africa

(a) *A campaign for access to information in Africa*

Although the African continent was a relative late-comer to the access to information campaign, with its first national law adopted only in 2000, it took on the role of a champion to the recognition of the right to access information at the UN level.

The campaign for adopting and implementing the right to information in Africa gained momentum in 2011 after adopting the African Platform on Access to Information (APAI)¹¹⁸ Declaration at a special session of the African Information and Media Summit held in Cape Town, South Africa.¹¹⁹ At the time, only six African countries, namely South Africa, Angola, Zimbabwe, Uganda, Ethiopia, and Liberia, had adopted national access to information laws.

The APAI Declaration¹²⁰ was proposed by the Pan African Conference on Access to Information, which was organised by the Windhoek+20 Campaign in partnership with UNESCO, the African Union Commission and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights.¹²¹ The Declaration lists 14 fundamental principles to guide the promotion and protection of the right to information in Africa through adopting and implementing appropriate national laws and regulations.

After the adoption of the APAI Declaration, the working group embarked on engaging the African Commission to further recognise the significance of the right to information by:

1. Expanding Article IV of the 2002 Declaration of Principles of Freedom of Expression in Africa to incorporate the principles of the APAI Declaration for more open and inclusive access to information.
2. Recognising a Right to Information Day to raise awareness about the importance of access to information.

¹¹⁵ Chidi Odinkalu and Maxwell Kadiri, *Making Progress on Freedom of Information in Africa* (August 2014). Available at: www.justiceinitiative.org/voices/making-progress-freedom-information-africa.

¹¹⁶ Laura Neuman and Richard Calland, ‘Establishing a Robust Transparency Regime: The Implementation Challenge,’ Available at: <https://doi.org/10.7916/D8DR327F>.

¹¹⁷ Op. cit. (n.31), p.31.

¹¹⁸ The APAI was formed by a group of like-minded organisations (commonly known as the APAI Working group) that are advocating for the promotion of access to information in Africa. For more information about the Platform see: <https://africanplatform.org/>.

¹¹⁹ Op. cit. (n.109), p.5.

¹²⁰ The Declaration was adopted in South Africa on 19 September 2011, upon a motion for adoption moved by Advocate Pansy Tlakula, the AU former Special Rapporteur on Freedom of Expression and Access to Information.

¹²¹ Op. cit. (n.109), p.5

As a result of this advocacy, the African Commission adopted Resolution 222.¹²² It underscored that the right to access information is “essential for the recognition and achievement of every person’s civil, political and socio-economic rights, and as a mechanism to promote democratic accountability and governance.”¹²³ The African Commission further expressed its conviction that “it is of critical importance that clear and comprehensive principles are established to guide the promotion and protection of the right of access to information in Africa through the adoption and effective implementation of appropriate national laws and regulations.”¹²⁴

The APAI working group, working in collaboration with the African Commission and other stakeholders, has played a crucial role in developing the right to information at the national, regional and international levels. Their efforts have strengthened advocacy, resulting in the adoption of freedom of information legislation across the continent. Today, half of the continent has freedom of information laws. These include South Africa, Angola, Zimbabwe, Uganda, Liberia, Ethiopia, Benin, Burkina Faso, Cote D’Ivoire, Ghana, Guinea, Ivory Coast, Kenya, Tanzania, Malawi, Morocco, Mozambique, Niger, Nigeria, Rwanda, Seychelles, Siera Leone, South Sudan, Sudan, Togo, Tunisia, Namibia, and recently, Zambia.

The most recent and significant contribution of the APAI working group in collaboration with the government of Liberia is its successful campaign that led to the UN General Assembly’s proclamation of September 28th as the International Day for Universal Access to Information.¹²⁵

(b) Tracking progress in implementation

Progress has been recorded regarding binding laws and policies giving individuals a right to access information held by public authorities.¹²⁶ However, several studies on the progress of access to information implementation recognise that implementation is the major challenge hindering the full realisation of the right to information in the continent.¹²⁷ These specific challenges will later be looked at in detail in section 3.5.

For this part of the study, four countries¹²⁸ will be used as case studies to illustrate the progress in implementing access to information in Africa. Some country-specific national law provisions will be highlighted to demonstrate whether they comply with four selected Principles of Access to Information: maximum disclosure, the obligation to publish information, the limited scope of exemptions, and the establishment of oversight bodies.¹²⁹

¹²² The Resolution to modify the Declaration of Principles of Freedom of Expression to include Access to Information and request for a Commemorative Day on Freedom of Information. Available at: <https://achpr.au.int/en/adopted-resolutions/222-resolution-modify-declaration-principles-freedom-expression>.

¹²³ Op. cit. (n.109), p.11.

¹²⁴ Ibid.

¹²⁵ On 15 October 2019, the 74th UN General Assembly unanimously adopted the resolution proclaiming September 28th as the International Day for Universal Access to Information. For more information see: <https://unesdoc.unesco.org/ark:/48223/pf0000235297>.

¹²⁶ Op. cit. (n.9), p.10

¹²⁷ Op. cit. (n.112).

¹²⁸ They include South Africa, Uganda, Nigeria, and Siera Leone. Note however that this study does not in any way attempt to rank the selected countries.

¹²⁹ The information presented here has been obtained from recent key studies conducted in the continent based on the Principles of Access to Information, namely the UNESCO’s 2021 report on public access to information (<https://unesdoc.unesco.org/ark:/48223/pf0000380520>); *Assessment of the implementation of SDG 16.10.2 on Access to Information in Four African countries* (www.freepressunlimited.org/sites/default/files/documents/AFIC_Report_Africa.pdf) and *State of access to information in Africa* (www.africanplatform.org/fileadmin/Content/PDF/Resources/State-of-ATI-in-Africa-2017.pdf).

i. International Principles of Access to Information

In 1999, a non-governmental organisation called ARTICLE 19 developed a set of principles¹³⁰ that set out best practice standards for the right to information legislation. The principles are based on international and regional law and standards, evolving State practice (as reflected, *inter alia*, in national laws and judgements of national courts), and the general principles of law recognised by the community of nations.¹³¹

The principles were endorsed by Mr Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, in his report to the 2000 session of the United Nations Commission on Human Rights (E/CN.4/2000/63) and referred to by the Commission in its 2000 resolution on freedom of expression. The principles were also endorsed by Mr. Santiago Canton, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, in his 1999 Report, Volume III of the Report of the Inter-American Commission on Human Rights to the OAS.¹³²

In addition to the Article 19 principles, the APAI Declaration also recognises 14 principles designed to advance the right to access information.¹³³ The principles of access to information have also long been embraced by UNESCO in its annual SDG progress reports.¹³⁴ Both the UNESCO General Conference and the UN General Assembly recognised the principles established in the APAI Declaration as capable of playing “a crucial role in development, democracy, equality and the delivery of public services.”¹³⁵ The four principles of access to information selected for the study include:

ii. Maximum disclosure

The principle of maximum disclosure must guide freedom of information legislation. This principle establishes a presumption that all information held by public bodies should be subject to disclosure and that the presumption may only be overcome in minimal circumstances. This principle summarises the primary rationale underlying the concept of freedom of information in international law. Ideally, it should be provided for in national constitutions to clarify that access to official information is a fundamental right.¹³⁶ The overriding goal of legislation should be to implement maximum disclosure in practice.¹³⁷

The duty to disclose information lies with public bodies, and every person has a right to receive information regardless of citizenship or residence. The exercise of the right to information should neither require anyone to demonstrate a specific interest in the information sought nor to explain why they need it. Instead, the public authority bears the burden of showing that the information it wishes to withhold comes within the scope of the limited regime of exceptions.¹³⁸

¹³⁰ Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation (The Article 19 Principles)*. Available at: www.access-info.org/wp-content/uploads/Article_19_principles_on_the_public_right_to_know.pdf.

¹³¹ Op. cit. (n.14), p.31.

¹³² Op. cit. (n.130), p.3.

¹³³ Whereas the article 19 principles were designed to apply globally, the APAI principles were developed to promote access to information in Africa. Note that the two sets of principles complement each other.

¹³⁴ UNESCO, *The International Programme for Development and Communication, Briefing Note, Unpacking indicator 16.10.2: Enhancing public access to information through agenda 2030 for sustainable development*, p.14. [unpacking_indicator16102.pdf\(unesco.org\)](http://unpacking_indicator16102.pdf(unesco.org)).

¹³⁵ Op. cit. (n.109), p.3.

¹³⁶ ARTICLE 19, *The Public's Right to Know: Principles on Freedom of Information Legislation*, p.2.

¹³⁷ Op. cit. (n.131); APAI Declaration.

¹³⁸ ARTICLE 19 (n.135).

The Principle of maximum disclosure also implies that the scope of information disclosed should be broad as it concerns the range of information and bodies covered.¹³⁹ The ARTICLE 19 Principles take a robust approach, calling for the definition of public bodies to focus on the service provided rather than formal designations. Principle 1 calls for the definition of public bodies to meet the following standards:

[The definition] should include all branches and levels of government, including local government, elected bodies, bodies which operate under a statutory mandate, nationalised industries and public corporations, non-departmental bodies or quangos (quasi non-governmental organisations), judicial bodies, and private bodies which carry out public functions (such as maintaining roads or operating rail lines). Private bodies themselves should also be included if they hold information whose disclosure is likely to diminish the risk of harm to key public interests, such as the environment and health. Inter-governmental organisations should also be subject to freedom of information regimes based on the principles set down in this document.

iii. Obligation to publish

Giving effect to the right to information goes beyond public bodies responding to requests for information. This Principle establishes that public and relevant private bodies are obliged to proactively disclose and disseminate key categories of information even in the absence of requests for information from the public.

This Principle is reflected in several international statements. The UN standards, for example, state:

Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public ...¹⁴⁰

Principle 29 of the Declaration of Principles of Freedom of Expression and Access to Information in Africa supports this, stating that “public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest.”

Similarly, the Council of Europe Recommendation¹⁴¹ also calls on public bodies to “as far as possible, make available information on the matters or activities for which they are responsible, for example, by drawing up lists or registers of the documents they hold.”

Although the scope of this obligation may depend to some extent on resource limitations, the amount of information covered should increase over time, particularly as new technologies make it easier to publish and disseminate information.¹⁴² It also encourages the utilisation of all reasonable means of communication to maximise access to all people.

iv. The limited scope of exceptions

According to this principle, all individual requests for information from public bodies should be met unless the public body can show that the information falls within the scope of the limited regime of exceptions. The limitations should be expressly provided by law, and the withholding of information should only be allowed if the body can demonstrate that there would be significant harm if the information is released and that the

¹³⁹ Ibid.

¹⁴⁰ *Report of the Special Rapporteur, Promotion and Protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 44.

¹⁴¹ The 2002 Recommendation of the Committee of Ministers of the Council of Europe

¹⁴² Toby Mendel, *Freedom of Information: A Comparative Survey* (2nd ed, 2008).

public interest in withholding the information is clearly shown to be greater than the public interest in disclosure.¹⁴³

The ARTICLE 19 Principles set out a three-part test for exceptions as follows:¹⁴⁴

- information must relate to a legitimate aim listed in the law;
- disclosure must threaten to cause substantial harm to that aim and
- the harm to the aim must be greater than the public interest in having the information.

However, assessing the legitimate scope of exceptions to the right to access information is complicated.¹⁴⁵ On the one hand, an overbroad system of exceptions can seriously undermine the right to information, meaning that otherwise very effective right to information laws are undermined by an excessively broad or open regime of exceptions. On the other hand, it is important that all legitimate secrecy interests are adequately catered to, otherwise, public bodies will legally be required to disclose information even though this may cause disproportionate harm.¹⁴⁶

The complexity and yet importance of this issue is reflected in international standards.¹⁴⁷ For example, the Inter-American Principles on Freedom of Expression note that limits to the right of access should be ‘exceptional’, previously established by law, and respond to “a real and imminent danger that threatens national security in democratic societies.”¹⁴⁸ This seems to ignore the many other interests widely recognised to warrant limitations on the right of access to information, such as personal privacy and law enforcement.

v. Oversight bodies

A right to information oversight body refers to the body responsible for ensuring oversight and, therefore, accountability for the implementation of access to information.¹⁴⁹ This principle guides countries in establishing independent right to information oversight bodies to monitor and control the implementation and enforcement of access to information laws.

Africa has mixed models for oversight under respective access to information laws. These range from National Human Rights Institutions (e.g. South Africa and Guinea), Ombudsman (e.g. Ethiopia, Niger and Rwanda), Attorney General (e.g. Nigeria), Parliament (e.g. Uganda), Monitoring Commission (e.g. Angola) and Independent Information Commissioner (e.g. Liberia).¹⁵⁰ The roles of oversight bodies range from hearing appeals for denial of access to information, mediation, publishing annual reports, and raising awareness.

¹⁴³ ARTICLE 19, *The Public’s Right to Know: Principles on Freedom of Information Legislation*, p.3.

¹⁴⁴ Op. cit. (n.130), p.5.

¹⁴⁵ Toby Mendel, *Freedom of Information: A Comparative Survey* (2nd ed, 2008).

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Principle 4.

¹⁴⁹ UNESCO, www.unesco.org/en/right-access-information/oversight-bodies.

¹⁵⁰ Gilbert Sendugwa, [Ensuring Effective Oversight Mechanisms and Processes in Freedom of Information Laws: A Comparative Analysis of Oversight Mechanisms in Africa-8](#)

3. Case Studies from Selected African Countries

(a) South Africa

South Africa has a long history of progressive access to information legislation.¹⁵¹ The Promotion of Access to Information Act,¹⁵² adopted in 2000 and came into force in 2001, was enacted to give full effect to the Constitutional right of access to information¹⁵³ and is intended to “foster a culture of transparency and accountability in public and private bodies.”

The national Constitution and the Access to Information Act guarantee the right to access information held by the State and information held by private bodies when necessary to enforce peoples’ rights.¹⁵⁴

The right to access information is set out in section 11(1) of the Act, as it provides that a requester must be given access to a record if he or she complies with the procedural requirements set out in the Law and the record is not covered by an exception. The right to access information held by private bodies is set out in section 50(1) of the Access to Information Act. It is substantially identical to the right defined for public bodies, with the important difference that it is only engaged where the information is required to exercise or protect a right.¹⁵⁵ This is also reflected in Principle IV(2) of the Declaration of Principles of Freedom of Expression and Access to Information, which states that: “everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right.”

South Africa’s Access to Information Act creates a presumption of openness as it aims to enhance transparency and accountability in both public and private bodies. It enables all people (including non-citizens) to access information. The Act further obliges proactive disclosure of information, although it gives minimal guidance on the type of records that should be disclosed.

South Africa’s Access to Information Act does not include a duty to publish as such, which has been documented as a serious shortcoming. It only requires each public body to provide an annual report to the responsible minister, who is the minister responsible for the administration of justice, detailing which categories of records are automatically available in the absence of a request, including for inspection, purchase or free of charge. The minister, in turn, must publish this information in the Gazette.¹⁵⁶

Regarding exceptions, South Africa’s Access to Information Act provides a detailed, comprehensive and narrow regime of exceptions consistent with the International Principles of Access to Information. The Act overrides any other legislation that may prohibit or restrict disclosure of information or is inconsistent with the provisions of the Act.¹⁵⁷

¹⁵¹ African Platform on Access to Information, *State of access to information in Africa*, p.36. Available at: www.africanplatform.org/fileadmin/Content/PDF/Resources/State-of-ATI-in-Africa-2017.pdf.

¹⁵² Promotion of Access to Information Act, Act 2 of 2000. Available at: www.gov.za/documents/promotion-access-information-act.

¹⁵³ Section 32 of the South African Constitution 1996 establishes the right to information.

¹⁵⁴ Section 32 of the 1966 Constitution. See also David Banisar, *Freedom of Information around the World, 2006, a global survey of access to government information laws*, p.21. Available at: www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/intl/global_foi_survey_2006.pdf; Fola Adeleke, ‘Constitutional domestication of the right of access to information in Africa: Retrospect and prospects’, in: Richard Calland & Fatima Diallo (eds), *Access to Information in Africa* (Brill Nijhoff 2013), pp.83-105.

¹⁵⁵ Op. cit. (n.142), p.94.

¹⁵⁶ Section 15.

¹⁵⁷ Section 5.

All exceptions to disclosure of information are subject to a form of public interest override. The override applies whenever the disclosure of the record would reveal evidence of a substantial contravention of, or failure to comply with, the law or an imminent and serious risk to public safety or the environment and where the public interest in disclosure “clearly outweighs” the harm.¹⁵⁸

Although South Africa has a long legacy of access to information, its implementation has come under the limelight as inconsistent and weak.¹⁵⁹ To address the challenges to access to information implementation, the Information Regulator was established in 2016 as the right to information independent oversight body, taking over from South Africa’s Human Rights Commission. The Information Regulator was given new enforcement powers, including the right to press criminal charges against a public or private body that does not comply with the Promotion of Access to Information Act.¹⁶⁰

(b) *Uganda*

Uganda’s Access to Information Act is among the first three right to information laws on the continent, having been enacted in 2005. However, it was not until 2011 that enabling regulations were enacted.¹⁶¹ Like South Africa’s Access to Information Act, Uganda’s Access to Information Act creates a presumption of openness. It aims to promote transparency and accountability in all organs of the State by providing the public with timely, accessible, and accurate information.¹⁶²

Section 5(1) of the Act recognises the right to information, echoing Article 41 of the 1995 Constitution. It provides that every citizen has a right to access information and records held by public bodies unless the release of the information is likely to prejudice security or sovereignty or an individual’s right to privacy.

Access to information is limited to citizens, and information can only be obtained from public entities, contrary to the Principles of Access to Information. Although the Access to Information Act was enacted before the adoption of the APAI Declaration, advocacy efforts by civil society for its amendment have not yielded any results.

Uganda’s Access to Information Act obliges the proactive disclosure of information by public authorities and offers guidance as to the type of information that should be disclosed.¹⁶³ In practice, however, this remains one of the least enforced provisions. Even when citizens request information, they are often faced with mute denials.¹⁶⁴

The Act contains a comprehensive regime of exceptions in Part III. Section 2(2) sets out two complete exclusions from the ambit of the Law, namely cabinet records (and records of its committees) and records of court proceedings before the conclusion of the case to which the records are related. Because of this, it has

¹⁵⁸ Section 46.

¹⁵⁹ APAI, *State of ATI in Africa, 2017; A survey by Open Democracy Advice Centre, 2002*. Although conducted at different times, both studies documented its poor and inconsistent implementation while oversight was undertaken by the South Africa Human Rights Commission.

¹⁶⁰ In the Promotion of Access to Information Amendment Act, 2019.

¹⁶¹ Access to Information Regulations, 2011.

¹⁶² Section 3.

¹⁶³ Sections 7, 8, and 9.

¹⁶⁴ See: CIPESA, *The state of access to information in Uganda, position paper* <https://cipesa.org/wp-content/files/briefs/report/Position-Paper-The-State-of-Access-to-Information-in-Uganda.pdf>; AFIC, *Shadow report on the state of access to information in Uganda*, 2020.

been argued that Uganda's Access to Information Act is also a secrecy law, as some exceptions are mandatory.¹⁶⁵

Unfortunately, Uganda's Act does not establish an independent oversight and appeal mechanism. Instead, the Act directs the courts to hear appeals on denial of access to information, a position that has instead facilitated denial of access as information holders know citizens have limited access to the expensive court systems. This has continued undermining the implementation of the right to information in Uganda.

(c) *Nigeria*

Nigeria has a Constitutional guarantee¹⁶⁶ of the right to information and a specific right to information law. Its Freedom of Information Act 2011 directs all public institutions to ensure that information is widely disseminated and made readily available to the public through various means, including print, electronic and online sources.

Section 1(1) of the Act overrides the restrictions on the disclosure of information that may be contained in any other legislation. The Act requires public bodies to respond to a request for information within seven days, with clear conditions for a possible extension of the initial seven days by another seven days. This makes the time frame among the shortest in the world.¹⁶⁷

Unfortunately, one of the notable shortcomings of the law is its failure to establish an independent oversight mechanism to enforce effective implementation of the right to information. Currently, complaints are addressed to the Attorney General, a political appointee of the president. The Act also limits access to only citizens, contrary to the principles of access to information.

(d) *Sierra Leone*

Despite not having a Constitutional guarantee for the right to information, Sierra Leone's Right to Access Information Act 2013 has been rated as the 5th strongest freedom of information law in the world according to the Global Right to Information Rating of right to information laws.¹⁶⁸ However, this impressive rating does not match the practice on the ground.

The Act seeks to achieve inclusive and open governance by promoting transparency, accountability, and good governance.¹⁶⁹ It also enables access to information for all persons, and an independent oversight mechanism is in place, the Right to Access Information Commission.¹⁷⁰

According to a 2021 study¹⁷¹ on the implementation of access to information in selected African countries, it was highlighted that despite having the 5th strongest law in the world, citizens of Sierra Leone are yet to

¹⁶⁵ Op. cit. (n.142), p.115.

¹⁶⁶ Section 39(1) of Nigeria's Constitution guarantees freedom of expression, including the right to receive and impart information.

¹⁶⁷ Op. cit. (n.12), p. 81.

¹⁶⁸ AFIC and Free Press Unlimited, *Assessment of the implementation of SDG 16.10.2 on Access to Information in Four African countries*, p.11. Available at: www.freepressunlimited.org/sites/default/files/documents/AFIC_Report_Africa.pdf.

¹⁶⁹ Section 29.

¹⁷⁰ Section 30.

¹⁷¹ Op. cit. (n.168), p.18.

benefit from the law. Institutions often hardly respond to requests for information within the stipulated timeframe.¹⁷²

Overall, according to the UNESCO 2021 report on public access to information¹⁷³ conducted at a time when the world was building back after the unprecedented impact of the global pandemic, implementing access to information remains a challenge, even in countries with constitutional and legal guarantees for public access to information.

4. Right to Information Oversight Mechanisms in Africa

(a) Regional oversight mechanisms

Regional human rights monitoring systems are essential building blocks and pillars of the international human rights system.¹⁷⁴ They strengthen the protection and enjoyment of human rights by taking into account regional considerations, such as shared regional customs, values, culture, and practices.¹⁷⁵ They also exhibit a preference for the judicial protection of human rights based on the right of individuals to complain to independent, supranational, judicial, or quasi-judicial institutions.¹⁷⁶

i. African Commission on Human and Peoples' Rights

The African Commission, established by the African Charter on Human and Peoples' Rights (African Charter) and created under the auspices of the African Union, is the continent's leading human rights oversight body.¹⁷⁷ Under Article 30 of the African Charter, the African Commission is tasked to promote and protect human and peoples' rights in the Charter and other international human rights treaties.

The African Commission has made remarkable strides in promoting and protecting the right to information in Africa. It has contributed to establishing regional standards on the right to information to guide the development of national laws and the exercise and enjoyment of the right to information in Africa. Its contribution can be seen through the following:

Its efforts to establish normative standards on access to information are evident in its adoption of the Declaration of Principles on Freedom of Expression in Africa in 2002, the Model Law on Access to Information for Africa in 2013, the Guidelines on Access to Information and Elections in Africa in 2017, and the Declaration of Principles on Freedom of Expression and Access to Information in Africa in 2019 (replacing the 2002 declaration).¹⁷⁸

Establishing the mandate of the Special Rapporteur is yet another reflection on the contribution of the African Commission towards access to information. The Special Rapporteur is charged with monitoring

¹⁷² Ibid.

¹⁷³ UNESCO, *To recovery and beyond: 2021 report on public access to information* (SDG 16.10.2).

¹⁷⁴ Victor Oluwasina Ayeni, 'Implementation of the Decisions and Judgements of the African Regional Human Rights Tribunals: Reflections on the Barriers to State Compliance and Lessons Learnt' (2022) 30(4) *African Journal of International and Comparative Law* 560; *The Role of Regional Human Rights Mechanisms*, European Parliament, 2010. Available at: www.europarl.europa.eu/activities/committees/studies.do?language=EN.

¹⁷⁵ European Parliament, *The Role of Regional Human Rights Mechanisms*, 2010. www.europarl.europa.eu/activities/committees/studies.do?language=EN.

¹⁷⁶ Daniel Moeckli, Sangeeta Shah & Sandesh Sirakuraman (eds.), *International Human Rights Law* (3rd ed, OUP 2017), p.417.

¹⁷⁷ Ibid, p.465.

¹⁷⁸ Op. cit. (n.27), p.3.

Member States' compliance regarding access to information standards and the denial of access to information, recording violations, strengthening the full enjoyment of the right to information, intervening in violation cases, issuing public statements and press releases, appealing to Member States for clarification, and issuing status reports to the African Commission.¹⁷⁹

Bearing in mind the contribution of civil society organisations (CSOs) to the development of freedom of information legislation and support towards access to information implementation, the African Commission has deliberately included CSOs/Non-governmental organisations (NGOs) in its work. It has granted Observer Status to various NGOs¹⁸⁰ and has formalised the criteria they must meet to be admitted or maintain their observer status.¹⁸¹ NGOs provide the African Commission with detailed information and statistics obtained 'on the ground.' This has been useful in its review of State reports. Rhona Smith compares the African human rights system with the European and the Americas and notes that the African system appears more forward-thinking.¹⁸² She adds that there are many practical reasons for encouraging NGO involvement in the African system, not least that NGOs may have the resources and dedication to bring cases forward.¹⁸³

Despite its mandate and achievements, one obstacle to the effective functioning of the African Commission is the lack of political determination of some Member States to cooperate and participate constructively in the regional mechanism.¹⁸⁴ For instance, States are held to bi-annually report to the African Commission on their efforts in implementing the African Charter to establish an objective dialogue on the improvements and the still-existing gaps that each State has to face regarding human rights protection. This theoretically effective mechanism suffers from the possibility of falling under malign political influence and the unwillingness of States to accept external criticism of their human rights records; as a result, the biannual report has remained a relatively ineffective instrument.¹⁸⁵

ii. *African Court on Human and Peoples' Rights*

The African Court on Human and Peoples' Rights (African Court) was established through a Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol).¹⁸⁶ The Protocol was adopted on 9 June 1998 and entered into force on 25 January 2004. The African Court was established to complement the African Commission's protective mandate. Its mission is to protect, promote and defend human rights enshrined in the African Charter, the foundation of human rights on the continent.

Whereas the African Commission can only make recommendatory decisions, the African Court's decisions are final and binding on State Parties to the Protocol. However, its jurisdiction applies only to States that have ratified the Protocol.

¹⁷⁹ Ibid.

¹⁸⁰ By May 2021, the Commission had granted observer status to 535 NGOs. Also see the list of NGOs the Commission has so far granted observer status: <https://achpr.au.int/index.php/en/network/ngos>.

¹⁸¹ 361 Resolution on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations working on Human and Peoples' Rights in Africa-ACHPR/Res.361 (LIX) 2016: www.achpr.org/sessions/resolutions?id=373.

¹⁸² Rhona K. Smith, *International Human Rights Law*, (10th ed, OUP 2022) p.142.

¹⁸³ Ibid.

¹⁸⁴ Op. cit. (n.155), p.18.

¹⁸⁵ Ibid.

¹⁸⁶ Available at: <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-establishment-african-court-human-and>.

iii. Sub-regional human rights courts in Africa

Other sub-regional human rights courts complement the African Commission's and the African Court's mandate in promoting the right to information in the continent. The Community Court of Justice of the Economic Community of West African States (ECOWAS Court) is a case in point. In *SERAP v The Federal Republic of Nigeria*,¹⁸⁷ the ECOWAS Court held that the Nigerian government violated the applicant's right to freedom of expression, access to information and the media by suspending the operation of Twitter on June 4, 2021. Briefly, in the above case, the respondent (the Federal Republic of Nigeria) suspended the micro-blogging App Twitter (now X) across Nigeria because its operations constituted threats to the stability of Nigeria. The applicants thus initiated the proceedings before the ECOWAS Court, arguing violations of Article 9 of the African Charter and Article 19 of the ICCPR.

Although it has become a trend in most African countries to block or shut down internet access,¹⁸⁸ the ECOWAS court's decision shows that there is willingness from the regional mechanisms to enforce the right to information.

(b) National oversight mechanisms

Increased access to information requires legislators and governments to ensure quality laws and effective implementation mechanisms. Establishing special bodies responsible for implementing access to information laws, capable of reacting to new challenges, and providing independent redress authority are part of the developments that have gained impetus.¹⁸⁹ Equally important is the sufficient funding of these agencies to conduct their mandates.

Access to information laws typically include an implementation infrastructure among their provisions, with at least one oversight body, such as an Information Commission. The remit of such an institution as the nodal entity for implementation typically covers the promotion, monitoring, standard-setting and capacity-building of officials. Some oversight bodies also play a range of crucial secondary roles in implementing access to information policies, which include providing support to the administration, offering their expertise to both requesters and the administration, and monitoring implementation.¹⁹⁰ The South African approach of granting powers to these agencies to press criminal charges against those who deliberately offend the law should be encouraged to give them biting teeth. Fulfilling these roles is essential to alleviating implementation problems on the part of the administration.¹⁹¹

Most Information Commissioners also fulfil additional responsibilities, such as providing guidance to administrative bodies about complying with the legislation and instructing the public on how to use the law, monitoring and assessing the administration's compliance with the legislation, and promoting the policy. The ability to carry out these functions is boosted by powers granted by law, such as the authority to access any documents called into question as part of an appeal or to issue binding (i.e., legally enforceable) decisions.¹⁹²

¹⁸⁷ *SERAP v Nigeria & UBEC*, ECW/CCJ/JUD/40/22.

¹⁸⁸ Access Now, *Report on internet shutdowns in Africa*. Available at: www.accessnow.org/wp-content/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf.

¹⁸⁹ Op. cit. (n.4), p.10.

¹⁹⁰ S. Holsen & M. Pasquier, 'Insight on oversight: the role of Information Commissioners in the implementation of access to information policies' (2012) 2 *Journal of Information Policy* 214-241.

¹⁹¹ Ibid, p.223.

¹⁹² Op. cit. (n.170), p.215

In some cases, the functions of an Information Commissioner or equivalent also include consideration of appeals against refusal to disclose. In other cases, as recommended by the UN Special Rapporteur on Freedom of Opinion and Expression (2017), decision-making authority on such issues resides in an independent actor.¹⁹³

The Model Law on Access to Information in Africa establishes functions of oversight bodies to include monitoring and regulating public and private bodies; receiving annual reports from information officers; hearing appeals; auditing compliance; imposing fines for non-compliance; entering, searching and seizing information; producing reports; promoting awareness regarding access to information as well as commenting and providing advice on strengthening legislation.

The two most common types of access to information oversight bodies are the ombudsman and the information commissioner. The ombudsman, an institution first established in Sweden in 1809, is “a special office or officer to whom people can go with their grievances about the way... large anonymous bureaucracies” have treated them.¹⁹⁴

The office of the Information Commissioner grew out of the ombudsman tradition, but commissioners play a more specialized role than their progenitors. Whereas most ombudsmen handle all complaints of illegal or unjust administration, the information commissioner’s remit is limited explicitly to access to information-related appeals or complaints.¹⁹⁵

Several access to information oversight mechanisms exist in Africa under respective access to information/freedom of information laws. These range from the Access to Information Authority (Tunisia), National Human Rights Institutions (Malawi and Guinea), Ombudsman (Ethiopia, Niger, and Rwanda), Attorney General (Nigeria), Parliament (Uganda), Monitoring Commission (Angola), and Independent Information Commissioner (Kenya, Liberia, Sierra Leone and South Sudan), Information Regulator (South Africa) among others.

Generally speaking, the powers of existing oversight bodies in Africa vary from as weak as being advisory to being as strong as enforcement, with promotional and capacity-building activities in the middle of the continuum. In several cases, the role is reduced to advisory and opinion, while in some cases, especially in South Africa and Sierra Leone, oversight is empowered to play a more enforceable function expected to propel the advancement of the right to information in the country.

Reporting is the most common function shared by respective access to information oversight institutions in Africa. Some oversight mechanisms are required to report to respective national legislatures on access to information implementation. For example, Uganda, Kenya, South Africa, South Sudan, Angola, Ethiopia, Liberia, Nigeria, and Niger are required to produce and report annually to respective national legislatures. It should be noted that, whereas the law provides for this annual reporting, it does not impose a duty on respective legislatures to consider, debate, and make declarations or sanctions that would advance the right to information in respective countries. An example in point is Uganda. Despite passing the Access to Information Act in 2005, no single Ministry has submitted an annual report to Parliament for consideration.

¹⁹³ Op. cit. (n.4), p.28.

¹⁹⁴ Gerald E. Caiden, Niall MacDermot & Ake Sandler, ‘The Institution of Ombudsman’, in: Gerald E. Caiden (ed), *International Handbook of the Ombudsman: Evolution and Present Function* (Westport, Connecticut: Greenwood Press, 1983), 3.

¹⁹⁵ Op. cit. (n.190), p.215.

The independence of the oversight institution is essential to it playing an influential role. Such independence can at least be observed from the appointment process of the head of the oversight institution, how the institution is financed, and to whom it directly reports about its activities.¹⁹⁶ One issue that arises concerning oversight bodies is whether they are specialized bodies (i.e. focusing only on access to information) or multi-purpose bodies (i.e. an ombudsman or human rights commission that also takes on the various functions). Trends show that specialisation is far more effective but slightly more expensive. When access to information is added to the functions of an existing body, the information function usually takes second place in those pre-existing functions.¹⁹⁷

5. Challenges Affecting the Implementation of the Right to Information in Africa

While many African countries have made commendable steps in enacting and implementing access to information laws, several challenges still plague the region and its constituent States. These challenges are not unique to Africa but are common across the developing countries.¹⁹⁸ They include the following:

(a) *Poor records management*

There is a correlation between records management and effective access to information. The success of any access to information law depends on the ability of the government to create and maintain accurate records. On the contrary, poor records management/the lack of effective management of government records results in denying access to information as there is no information to provide to requesters.

(b) *Insufficient administrative capacity and resources to implement access to information*

Insufficient administrative capacity encompasses two main implementation problems: a lack of resources allocated to access to information and inadequate leadership within administrative organizations on matters of compliance. These, in turn, result in inappropriate handling of requests and delays in responding to requests.¹⁹⁹ Furthermore, without the necessary resources, there will be limited or no training provided to public officials to effectively implement policies on access to information.

(c) *Bureaucracy and a deep-rooted culture of secrecy in most public institutions*

The passage of access to information legislation is often seen as a signal of a shift away from a culture of secrecy towards a culture of openness and transparency. Access laws are designed to promote accountability and transparency in government by providing citizens with a legally enforceable right to obtain complete and accurate information about the activities and decisions of their government.²⁰⁰ However, insufficient commitment to access to information compliance continues to negatively affect the implementation of policies on access to information in Africa.

¹⁹⁶ Op. cit. (n.117), p.18.

¹⁹⁷ *Global Right to Information Rating*, www.rti-rating.org/country-data.

¹⁹⁸ Kofi Koranteng Adu, *The paradox of the right to information law in Africa: Discussion Paper*. Available at: www.sciencedirect.com/science/article/abs/pii/S0740624X18302156.

¹⁹⁹ Op. cit. (n.190).

²⁰⁰ Laura Millar, 'The right to information – the right to records: The relationship between record keeping, access to information and government accountability'. Available at: www.humanrightsinitiative.org/programs/ai/rti/articles/record_keeping_ai.pdf.

(d) *Limited awareness of the right to information among the public*

The civic competency of most African citizens is still low, yet access to information performs well where the demand for information is high and where citizens know how and where to use such information if availed.

Other common challenges like variances in the quality of performance-monitoring systems, corruption, denial of access to information, and lack of transparency and accountability continue to undermine the very ideals of Right to Information Laws.²⁰¹

6. Conclusion

The significant growth of access to information in Africa has seen 28 laws adopted at the national level. This progress shows the recognition that the right to information is at the heart of Africa's transformation. Regional and national access to information oversight mechanisms, which are the pillars of the right to information, have the potential to transform and strengthen the effectiveness of the right to information and address some of its challenges.

D. THE ROLE OF UNESCO AND INTERNATIONAL OVERSIGHT MECHANISMS OF THE RIGHT TO ACCESS INFORMATION

1. Introduction

The right of access to information requires high-quality oversight. Studies of the effectiveness of access to information legislation tell a clear story that the benefits of greater transparency and access to information can only be realized when the oversight system is actively enforced at all levels.²⁰²

At the international level, the UN human rights system provides the main architecture of the international human rights protection regime.²⁰³ It has prepared itself over the years to better respond to the needs of its Member States through various reforms. One of its significant reforms has been promoting the right to information.

UNESCO is an agency within the UN responsible for promoting peace, social justice, human rights, and international security through international cooperation in educational, scientific, and cultural programmes. Its programmes are guided by five major themes, which include i) education, ii) natural sciences, iii) social and human sciences, iv) culture, and v) communication and information.²⁰⁴

As the designated custodian agency for Indicator 16.10.2, the UN Member States have mandated UNESCO to monitor and report progress on SDG 16.10.2 worldwide. UNESCO thus conducts annual surveys, giving its Member States a chance to report national progress on access to information. The objective of the survey is

²⁰¹ Kofi Koranteng Adu, *The paradox of the right to information law in Africa: Discussion Paper*. Available at: www.sciencedirect.com/science/article/abs/pii/S0740624X18302156.

²⁰² Alex Parsons, 'Improving oversight of access to information: Learning from different approaches across Europe' April 2022. Available online: <https://research.mysociety.org/publications/improving-oversight>.

²⁰³ Ibid. European Parliament, *The role of regional human rights mechanisms*, 2010, p. 26.

²⁰⁴ Briney Amanda, 'An overview and History of UNESCO' (10 April 2019). Available at: www.thoughtco.com/unesco-history-and-overview-1435440.

to collect global data on the adoption of legal guarantees on access to information and to map the main trends in their implementation.²⁰⁵

(a) *The establishment of UNESCO*

The founding of UNESCO can be traced back to an initiative originating from the multiple meetings of the Conference of Ministers shortly after the UN officially came into existence in 1945.²⁰⁶ Delegates from 44 participating countries decided to create an organisation that would promote a culture of peace, establish an “intellectual and moral solidarity of mankind,” and prevent another world war. When the conference ended in November 1945, 37 participating countries founded UNESCO with its constitution, which later came into force in 1946.²⁰⁷

UNESCO’s obligation to promote and protect human rights is seen in its constitution, which states that:

“The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science, and culture to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.”²⁰⁸

To realise its purpose, which also stands out as one of the prerequisites for the exercise of human rights, Article 1, paragraph 2 of UNESCO’s Constitution stipulates that the Organisation will: “collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image.”

Since its creation in 1945, UNESCO has promoted and advocated for access to information all over the world.²⁰⁹ Following the approval of the SDG framework in 2017 by the UN General Assembly,²¹⁰ UNESCO monitors and reports to the UN Secretary-General each year on “the number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information in accordance with Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,” giving attention to both components: “adoption” and “implementation.”²¹¹

In 2019, due to UNESCO reporting in previous years to the UN Secretary-General, indicator 16.10.2 was upgraded from Tier II to I, the highest level in the classification system developed to rank SDG indicators.²¹²

²⁰⁵ Op. cit. (n.25), p.117.

²⁰⁶ Klaus Hufner, *What can save UNESCO?* Vol 9. Frank & Timme GmbH, 2015, p.15.

²⁰⁷ H. H. Krill De Capello, ‘The Creation of the United Nations Educational, Scientific and Cultural Organization’ (1970) 24(1) *International Organization* 1-30, p.2.

²⁰⁸ Article 1 Paragraph 1 of UNESCO’s Constitution.

²⁰⁹ Op. cit. (n.4), p.5.

²¹⁰ Resolution adopted by the General Assembly on Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development: <https://undocs.org/A/RES/71/313>

²¹¹ Op. cit. (n.4).

²¹² The IAEG-SDGs developed a system of tiers, or levels, to classify each SDG indicator based on its methodological development and the availability of data at the global level. The tier-system helps monitor the quality and availability of data, allowing for better understanding and addressing the gaps in achieving the SDGs. Tier 1 indicators are those with an internationally established methodology and standards, and where data are regularly produced by countries for at least 50 per cent of countries and of the population in every region where the indicator is relevant. On the other hand, indicators in Tier 2 are those with an internationally established methodology and standards are available, but data are not regularly produced.

The Inter-agency and Expert Group agreed to this upgrade on Sustainable Development Goal Indicators (IAEG-SDGs) in October 2019. The upgrade of access to information to tier I confirms that information is continuously becoming important to ensure the success of the SDGs.²¹³ The reclassification also means that Member States now have a further reason to include Indicator 16.10.2 in their SDG monitoring strategies.²¹⁴

2. Monitoring and Reporting of SDG Indicator 16.10.2

In September 2015, 193 UN Member States adopted a historic resolution committing themselves to the 2030 Agenda for Sustainable Development. The agenda contains 17 SDGs and 169 targets, seeking to build on the Millennium Development Goals that ended in 2015. The SDGs are ambitious, universal, and transformational. The SDGs agenda is driven by the principle of leaving no one behind and is rooted in universal human rights practices and standards.²¹⁵

Briefly, the SDG Indicator 16.10.2, which focuses on “the number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information,” comprises the following:

Goal 16: promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.²¹⁶

The targets for this goal include the reduction of overall rates of violence, the promotion of the rule of law, and the reduction of corruption and bribery. Under target 10, the UN recognised the right to information.

Target 16.10: Ensure public access to information and protect fundamental freedoms in accordance with national legislation and international agreements.²¹⁷

Access to information is essential for the promotion of democracy and to promote transparency. It facilitates public participation and enables people to make informed decisions.

(a) UNESCO’s annual survey on public access to information (SDG 16.10.2)

In the decision of the Intergovernmental Council of UNESCO’s International Programme for the Development of Communication (IPDC) on Monitoring and Reporting of SDG Indicator 16.10.2,²¹⁸ the IPDC Council encouraged the IPDC Secretariat, in cooperation with UNESCO’s Information For All Programme (IFAP), to develop a mechanism that could strengthen UNESCO’s work as a custodian agency for the global monitoring of progress. The Council further urged that the mechanism involve and support countries in the data collection and reporting on SDG Indicator 16.10.2.²¹⁹

²¹³ Maltez Alberto, ‘Access to Information: A key driver to achieve Sustainable Development Goals’ (2021) 4(12) *American Research Journal of Humanities & Social Science* 25-29, p.26.

²¹⁴ Op. cit. (n.211).

²¹⁵ Op. cit. (n.4), p.27.

²¹⁶ Sustainable Development Goal 16, UN Sustainable Development Platform, 2017. Available at: <https://sustainabledevelopment.un.org/sdg16>.

²¹⁷ Ibid.

²¹⁸ Adopted by the intergovernmental council at its 31st session in November 2018: <https://en.unesco.org/news/ipdc-council-encourages-further-development-mechanism-monitor-and-report-access-information>.

²¹⁹ Op. cit. (n.31), p.10.

In response to the decision, UNESCO and its Institute for Statistics developed a methodology to help measure and report on Indicator 16.10.2. This consists of a survey developed in consultation²²⁰ with experts, concerned organisations, and the IFAP Secretariat. The survey was piloted in 2019 in 43 countries, with the findings presented the same year at a side event during the UN's High-Level Political Forum (HLPF) in 2019. The instrument was then further refined for full deployment in 2020 and was subsequently further improved for the 2021 cycle.²²¹

To date, UNESCO has conducted four annual surveys²²² to assess the implementation of SDG indicator 16.10.2 on public access to information. The 2019 survey demonstrated that while there is progress, there is a need to improve access to information laws and implementation. It pointed out that there were challenges in record keeping, which affected the tracking and processing of information requests and appeals.²²³

The prominence of access to information oversight was seen in the 2020 survey, which suggested that having specialised access to information oversight and appeal bodies is fundamental to ensure access to information law enforcement. It was also noted that good record-keeping is vital for access to information oversight and appeal bodies. Evidence and measuring progress are possible when there are adequate and reliable records.²²⁴

The 2021 survey highlighted that having specialised access to information oversight institutions is fundamental to ensuring access to information implementation and enforcement.²²⁵ Lastly, the 2022 survey, which is UNESCO's latest publication on SDG monitoring, shed light on the relevance of access to information to the attainment of the Sustainable Development Goals, as well as countering disinformation and balancing the right to information with the right to privacy.

Overall, since its pilot phase in 2019, the UNESCO survey has had an impact beyond measuring countries' progress in achieving SDG Target 16.10. Many local actors, including access to information oversight bodies and civil society actors, have been mobilised to network to collect data for the survey.²²⁶ This information has also helped countries identify areas for improvement.

The IPDC Council also acknowledged the utility of the data collection on SDG 16.10.2 at its 32nd session in November 2020 because it provides evidence-based analysis for improving access to information as a factor for sustainable development.²²⁷

3. The Roles UNESCO Plays in Promoting the Right to Information in Africa

Africa is one of UNESCO's global priorities.²²⁸ Apart from its global annual surveys on SDG indicator 16.10.2, UNESCO works across a number of areas to foster access to information in the region. These include:

²²⁰ UNESCO, <https://en.unesco.org/news/unesco-convenes-experts-advance-monitoring-and-reporting-access-information>

²²¹ Ibid

²²² 2019 (Access to information: A new promise to sustainable development); 2020 (From promise to practice: Access to information for sustainable development); 2021 (To recovery and beyond: 2021 UNESCO report on public access to information) and 2022 (A steady path forward: UNESCO 2022 report on public access to information (SDG 16.10.2)).

²²³ Op. cit. (n.4), p.50.

²²⁴ Op. cit. (n.9), p.29.

²²⁵ Op. cit. (n.31), p.35.

²²⁶ Op. cit. (n.223).

²²⁷ Op. cit. (n.31), p.16.

²²⁸ UNESCO, <https://whc.unesco.org/en/africa/>.

(a) Partnerships and collaborations

Over the years, UNESCO has supported and worked closely with African actors to promote the right to information. From the adoption of the African Platform on Access to Information (APAI Declaration in 2011 to the adoption of the International Day for Universal Access to Information (IDUAI) in 2019, UNESCO has offered support to access to information advocates in Africa.

UNESCO has partnered with networks of access to information oversight mechanisms, such as the International Conference of Information Commissioners (ICIC) and its regional associations. In Africa, UNESCO is working with the African Network of Information Commissioners (ANIC) to increase countries' participation in the access to information survey. Such outreach is essential as these networks play an important role in advocating for SDG monitoring and reporting and mobilising their members to participate in global activities related to the SDGs.²²⁹

(b) Capacity building and awareness

UNESCO conducts various initiatives to build the capacity of state and non-state actors to access information discourse. It also performs awareness-raising programmes to keep the global population up to speed about the relevance and developments in the right to information.

(c) Massive open online course on access to information

Through partnerships with the Center for Law and Democracy,²³⁰ UNESCO launched an online course on Access to Information Laws and Policies, which is delivered in English, French, Spanish and Russian and caters for individuals in both public and private sectors and over 4000 individuals, globally, have benefited from this programme.²³¹ The Course is delivered through a modular approach and contains modules such as international standards, principles of good legislation and disclosures.²³²

(d) Commemoration of International Day for Universal Access to Information

UNESCO organises commemoration events to create awareness of the importance of access to information relevance. The International Day for Universal Access to Information was proclaimed on 15 October 2019 at the 74th UN General Assembly, to be held on 28 September. Guest speakers with great expertise and deep insights are invited to present papers that are discussed in depth. Panel discussions are also held where experts share ideas on trends, insights, challenges and redress mechanisms. For 2023, the event was held at Oxford University.²³³

(e) Establishment of UNESCO regional offices

Whereas UNESCO headquarters promotes the right to information at the global level, UNESCO field/regional offices serve as the implementation arm of UNESCO. Through the regional offices, UNESCO develops

²²⁹ UNESCO, *A steady path forward: UNESCO 2022 report on public access to information (SDG 16.10.2)*, p.10.

²³⁰ Centre for Law and Democracy, www.law-democracy.org/live/unesco-and-centre-for-law-and-democracy-launch-free-online-course-on-access-to-information-laws-and-policies/.

²³¹ Available at: www.unesco.org/en/articles/empowering-leaders-through-unescos-access-information-course?hub=370

²³² UNESCO Massive Open Online Course, <https://unesco-ati-mooc.thinkific.com/courses/unesco-massive-open-online-course-access-to-information-laws-and-policies-and-their-implementation>

²³³ UNESCO, www.unesco.org/en/articles/international-day-universal-access-information-2023.

strategies, programmes, and activities in consultation with national authorities and other partners that are tailored to their respective areas of need. Currently, there are 15 UNESCO field offices in Africa.²³⁴

4. Challenges/Weaknesses of UNESCO's Mandate

Although monitoring the progress of indicator 16.10.2 provides an opportunity for countries and other stakeholders to improve the implementation of the right to information, the UNESCO annual surveys may not have yet achieved the desired result.

Firstly, whereas UNESCO's membership currently stands at 193 Member States, responsiveness to the annual survey remains low. In 2019, data was collected from 43 out of 193 countries. In 2020, which coincided with the COVID-19 pandemic, the first phase of the survey attracted responses from only 29 countries.²³⁵ The 2021 survey recorded responses from 102 countries and territories. However, only 15 out of 55 African countries responded to the survey.

In the past, access to information advocacy organisations have reported that UNESCO's survey findings do not reflect the actual implementation challenges to access to information. For example, the Centre for Law and Democracy reported in 2019 that the extremely positive results given by participating public authorities regarding the processing of requests did not correspond to the results of independent requesting exercises, suggesting that better data collection by public authorities may be needed.²³⁶

Persons with disabilities remain the most challenged in accessing information. Although the 2030 Agenda for Sustainable Development pledges to leave no one behind, little progress has been made to achieve this deliberately. According to the 2021 UNESCO report on access to information, the rights of Persons with disabilities are absent from most access to information legislation, and where reference is made, the scope of disabilities covered and the rights secured are limited.

Although UNESCO is seen to initiate collaborations with relevant institutions, such as regional courts, with access to information, this support mostly remains on paper. In contrast, institutions are left to implement recommendations on their own. In the end, little or nothing is achieved.

Unrelated to access to information, but owing to its membership nature, international politics and funding sometimes undermine UNESCO's ability to operate. UNESCO generates its funding mainly from membership contributions. There are times when these contributions are withheld due to political matters. Most of the political problems come from the work of the World Heritage Committee.²³⁷ The work of this committee sometimes angers State Parties, which causes conflict with the agency. For example, after Palestine was added as a full member in 2011, both the United States and Israel stopped paying their dues. The United States, which accounted for more than 20% of UNESCO's budget, accrued some US\$600 million in unpaid dues.²³⁸

²³⁴ UNESCO, <https://en.unesco.org/fieldoffice>.

²³⁵ UNESCO 2020 Survey. As a result, UNESCO had to initiate a second phase of the survey which focused on ATI oversight bodies as the main data holders in many countries. This helped to secure the participation of more countries bringing the total to 29.

²³⁶ CLD, UNESCO: Overview Report on SDG 16.10.2 Data Exercise (13 August 2023). www.law-democracy.org/live/wp-content/uploads/2019/09/19.08.13.UNESCO-SDG16.10.2.PR_.pdf.

²³⁷ The World Heritage Committee meets once a year and consists of representatives from 21 of the States Parties to the Convention elected by their General Assembly.

²³⁸ The Conversation, <https://theconversation.com/unesco-has-always-been-mired-in-politics-and-squabbling-but-this-shouldnt-detract-from-its-work-163353>.

5. Access to Information and Sustainable Development

The right of access to information has been a critical element for sustainable development since the 1992 Rio Declaration. In the SDGs, access to information held by public bodies has been recognised as a necessary enabling mechanism for public engagement across the goals.²³⁹

In 2015, the 2030 Agenda for Sustainable Development acknowledged access to information as a necessary enabling mechanism for transparent, accountable and participatory governance, the rule of law and peaceful societies.²⁴⁰ The SDGs commit governments to guarantee public access to information to their citizens as it empowers individuals and communities to participate in decisions that affect them.

The Human Rights Council, in its 2020 resolution on freedom of opinion and expression, also recognised that “public authorities should strive to make information available, whether the information is proactively published electronically or provided upon request.”²⁴¹ The Human Rights Council further highlighted that access to information constitutes authoritative guidance to State actors on the development of laws and policies on matters affecting its implementation.²⁴²

Within the perspective of the 2030 Agenda, access to information remains critical for empowering the public to make informed decisions, holding governments accountable, evaluating public officials in implementing and monitoring the SDGs and facilitating effective public participation.²⁴³ To achieve the SDGs by 2030, access to information remains central to its successful implementation.

6. Conclusion and Recommendations

Based on the findings of this study, the following recommendations are necessary:

- i. UNESCO needs to strengthen collaboration with African Civil Society Organizations (CSOs) to monitor and report on SDG 16.10.2. CSOs have been instrumental in the recognition and promotion of access to information in Africa. The UNESCO survey currently focuses on allowing governments to make self-assessments against their performance. However, CSO monitoring and reporting offers an alternative perspective against which actual implementation could be measured. Furthermore, CSOs have more access to grassroot levels and can thus ensure the participation of vulnerable groups like women and persons with disabilities. Right to information networks like the International Conference for Information Commissioners, the African Network of Information Commissioners and the Freedom of Information Advocates Network are critical stakeholders in addressing SDG monitoring and reporting gaps. These networks could serve as platforms for improving the SDG monitoring and reporting processes over time.
- ii. There is a need for more cooperation between the Special Rapporteurs for Freedom of Opinion and Expression of the UN and the African Union Special Rapporteur on Access to Information and Freedom of Expression, for example, by joint advocacy for continued attention to the challenging circumstances to the right to information in Africa.

²³⁹ Article 19, Open development: Access to information and the Sustainable Development Goals, 2017.

²⁴⁰ UNESCO, *A steady pathway forward: UNESCO 2022 Report on public access to information (SDG 16.10.2)*, p.9.

²⁴¹ UN Human Rights Council, Resolution ‘Freedom of Opinion and Expression,’ 16 July 2020, A/HRC/RES/44/12.

²⁴² Op. cit. (n.240).

²⁴³ Ibid.

- iii. More advocacy and awareness are needed in Africa to promote the realisation of the right to information. Despite the continent championing access to information internationally, implementation remains one of its most significant challenges. So far, only half of the continent has adopted access to information laws, with many countries still awaiting full operationalisation of their access to information legislation.

E. CONCLUSION

The study findings conclude that the right to information is a fundamental human right and is recognised under international law as an enabler for the enjoyment of other human rights. The general guarantee of the right to information under international law, noted in the above chapters, establishes a general presumption in favour of the disclosure of information held by public bodies. This implies that states should guarantee the right to information and that effective systems should be implemented to give practical effect to it. International human rights institutions like UNESCO are central to promoting this aim.

Although UNESCO plays such a pivotal role, the agency of a citizen in a given country is paramount. UNESCO is only strengthened when democratic governance is practised and respect for the rule of law is respected. Education and sensitisation of citizens are critical to assess information legislation and implementation success. UNESCO was established as a technical organisation and sometimes has difficulties raising funds to support most of its programmes. Unlike other UN agencies, such as the United Nations Development Programme, UNESCO's primary source of funding is the contributions of its members, who are state parties. Sometimes, global politics affects its resourcing, and this impacts its programmes. Nonetheless, UNESCO remains the only beacon of hope in the fight to attain parity in policy and implementation of access to information, which is crucial for human development.