



**The Importance of Access to Information in a
Democracy: The Zambian Situation**

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Foreword

This paper is an analysis of the Access to Information Law in Zambia. It looks at the main tenets of the law including its definition and what its enactment would entail for the government, media houses and the general public. The paper also considers some benefits and/or ramifications of the Bill if it was enacted. Further and beyond, it looks at the issues that led to the withdrawal of the process of enacting this Bill in 2002 and what has been done to address these issues. Besides this, the challenges that previous governments had faced with regards to legislating this Bill have been explored. The document is concluded with recommendations.

Acronyms

AIPPA	- Access to Information and Protection of Privacy Act
ATI	- Access to Information
CBOs	- Community Based Organisations
CSO	- Civil Society Organisations
FoI	- Freedom of Information
ICCPR	- International Covenant on Civil and Political Rights
IPN	- Instituto Politecnico Nacional
MKSS	- Mazdor Kisan Shakti Sangham
SADC	- Southern Africa Development Community
UDHR	- Universal Declaration on Human Rights
UN	- United Nations
UNDP	- United Nations Development Programme
USA	- United States of America

1.0. Introduction

Today democracy coupled with the principle of transparency embedded in the concept of good governance can be seen as the last form of government. Many institutions; the World Bank, United Nations; and Western powers like the United States of America are on a global campaign advocating for this form of government. In the case of Africa it has been used as one of the determining criteria for a country to qualify for financial aid. It is envisioned that countries that have a democratic and transparent atmosphere coupled with good governance have a better chance of restoring the rule of law, peoples' faith in State run institutions; and hence sustainable development and enhancing the protection of human rights¹. Closely related to democracy and the principle of transparency is Access To Information (ATI).

2.0. What is access to information?

More narrowly defined, access to information involves the right to official information from government institutions; and this requires a specific legislation. However, after reviewing an array of literature on the concept of access to information, the paper has established that the concept is very broad and its tenets encompass a lot of things. Therefore, this paper will endeavor to give an all-encompassing definition, to do this; the paper will adopt articles 19 of the United Nation Universal Declaration of Human Rights and that of the International Covenant on Civil and Political Rights. These articles state that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his/her choice”. This definition covers a broad spectrum of access to information as it deals with both concepts of information and communication. In this view, people, institutions and generally the government become generators, users and conduits of information.²

¹ African Good Governance Network (AGGN). (2010). Addressing Good Governance In Africa. Retrieved November 15, 2015, from http://aggn.org/network/images/stories/Article-AGGN_AdressingGoodGovernance.pdf

² UNDP Access to information Practice Note 2013.

2.1. What does access to information entail for:

a. The government

Access to information will inevitably help the government maintain its integrity. Since access to information has a strong correlation with accountability, it might help to act as a safeguard standard which may help to reduce the incidence of corruption when delivering government services; especially considering that the people will be empowered with information about a particular area of society. For this reason the government will maintain its integrity when delivering services.

Further, access to information is a two-way street as earlier established in the definition. This entails that in as much as the government may be a key stakeholder in the process of producing information; it also has the responsibility and thus the need to acquire information from its citizens so as to assess the impact of their policies and to adjust these accordingly³. This ultimately will lead people to have faith and trust in the government because it will be responsive and proactive to the needs of the citizens.

Access to information has also been identified as a key feature that the government must employ to ensure a proper and effective functioning of a healthy democracy. This is so because the works of select committees, the efficacy of parliamentary questions, the effectiveness of opposition parties and pressure groups, all depend on availability of and accessibility to information⁴.

b. For the media

The mass media are often referred to act as the fourth branch of government because of the power they yield and the oversight they exercise - 'Watchdogs'⁵. But without the ATI law this role cannot be adequately fulfilled; therefore, the ATI law for the media entails practicing freely; that is, to make decisions and choices about what stories to cover and follow, what audiences to reach, whom to interview and what facts, sounds and pictures to include, without pressure or fear. Where there is ATI law, the media houses will be able to do their job diligently and without

³ See fn 1

⁴ Matibini, P. (2009). The quest for freedom of information law: The Zambian experience. *Law, Democracy and Development*, 13(1), 90-105.

⁵ Talk presented to the UN Conference on Anti-Corruption Measures, Good Governance and Human Rights by Sandra Coliver in Warsaw, 2006.

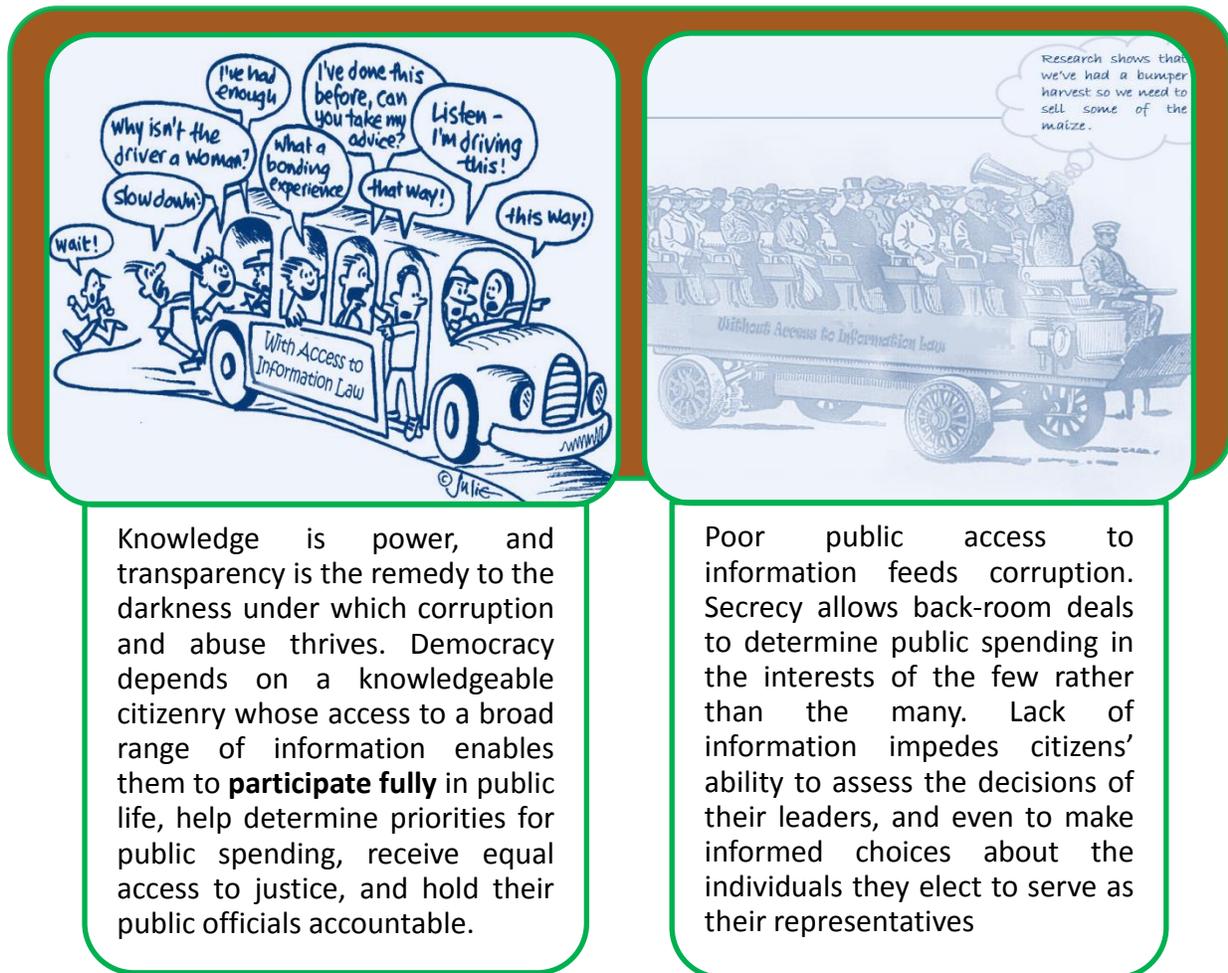
interference; because the media will be able to seek and receive information with ease from government agencies on a wide range of topics and obliging the government to publish or make available important information. Generally the ATI gives media houses a special role in society because through their works, they ensure that the general public can achieve their rights to freedom of expression and information.

c. The general public

For the public, access to information is the key to determine, influence or control their destiny. ATI will enable participation by both men and women and ATI is a key cornerstone of good governance. Participation could be either direct or through legitimate intermediate institutions or representatives. Further, participation needs to be informed and organized. This means freedom of association and expression which can only be guaranteed through access to information bill. Through participation people are able to build enough pressure to prevent restrictive pieces of legislations from becoming law as well as keeping the government in check especially in cases where there are weak oppositions or Non-Governmental Organisations. When people are empowered with information they can expose official malpractices and hold government accountable for non-fulfillment of electoral promises. The powerful role of information to the people is emphasized by the words Alvin Toffler that “the future belongs to those who have access to information and are able to use for change”.

Nonetheless, the general public also has a responsibility not to abuse the right to information. For example Article 29 of the Universal Declaration on Human Rights says that everyone has “duties to the community.” All rights, including the right to freedom of expression, are limited by these duties. The aim of these clauses is to ensure that people exercising the right of freedom of expression including the media do not infringe on any other rights; for example, the right to privacy, the right to live free from racism, the right to good reputation and freedom from crimes like libel or defamation. They also imply a duty to give information that is factual and accurate.

Figure 1: an Illustration of what it entails to have access to information for the general public



Knowledge is power, and transparency is the remedy to the darkness under which corruption and abuse thrives. Democracy depends on a knowledgeable citizenry whose access to a broad range of information enables them to **participate fully** in public life, help determine priorities for public spending, receive equal access to justice, and hold their public officials accountable.

Poor public access to information feeds corruption. Secrecy allows back-room deals to determine public spending in the interests of the few rather than the many. Lack of information impedes citizens' ability to assess the decisions of their leaders, and even to make informed choices about the individuals they elect to serve as their representatives

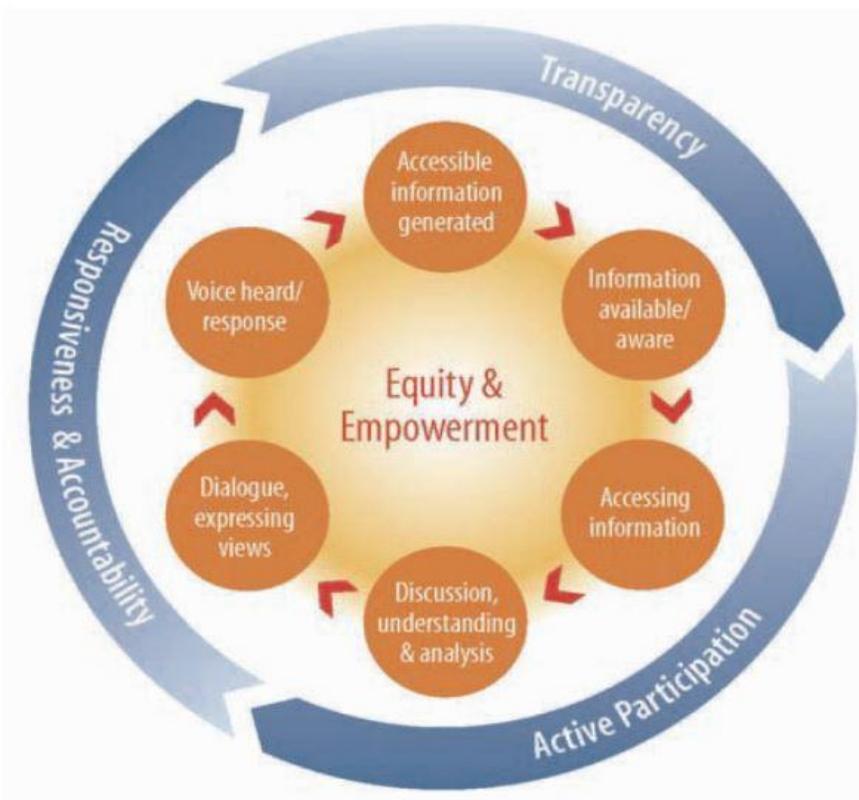
3.0. The benefits and/or ramifications for enacting the ATI law

Other than the irrational pretext of insecurity, national security and fear of becoming people's marionettes; literature review and experience from countries that have ATI laws show that the benefits of enacting an ATI law outweigh the ramifications. In fact, it is arguably viewed that there are almost no ramifications accrued to this law. The denial of access to information and the attendant widespread ignorance in society does more harm than any harm that could possibly arise from granting access to members of the public. Some works have been focused on costs and benefits associated with the introduction of Freedom of Information (FoI) legislation. Guida (1989) looked at the FoI law in United States of America (USA), Hazell (1989) looked at FoI

Act in Australia, Canada and New Zealand, and Clark (1986) studied the position in France⁶. They all concluded that the benefits far exceeded the costs. They found that the benefits were perceived to be significant by all parties affected by the legislation: ministries, civil servants, pressure groups and individual members of the public.

The benefits of the ATI are accrued to transparency, participation, responsiveness and accountability which are all key to realizing good governance. The illustration below and the subsequent notes clearly bring out the practical benefits associated with the ATI law.

Figure 1: An illustration of the benefits accrued to enacting the ATI law.



Source: UNDP's ATI practice

The principles of transparency, responsiveness/accountability and active participation apply in all areas of the circle. In this respect they are dynamic and move around the circle.

⁶ Omotayo, F. O. (2015). The Nigeria Freedom of Information Law: Progress, Implementation Challenges and Prospects. *Library Philosophy and Practice (e-Journal)*, 1-17.

Transparency: making information available is a direct example of transparency. But the mere act of making the information available means little if people are not aware it exists and how they might have access to it. Information availability also means little if the costs of accessing it are unreasonable (time and money) and if the information is not ‘user friendly’. The information needs of poor people (and other vulnerable groups) and a consideration of how poor people access information (relevancy and appropriateness of mechanisms) is critical in making transparency meaningful. Face-to-face meetings between organized groups of poor people and local government officials can be good examples of transparency.

Active Participation: the information and communication circle recognizes that for information to *empower* poor people, it must bring into focus the need to improve poor people’s capacities to analyse and understand information and to act on that information through communicating views. Public hearings, public meetings, participatory planning, committees, forums and roundtables, focus groups and citizen advisory groups, surveys, lobbying, negotiation and mediation are all examples of mechanisms for accessing, analysing and understanding information and communicating their views. It is important to make these mechanisms relevant and accessible to the poor, for example through strengthening community-based organizations (CBOs). These can facilitate collective approaches whereby vulnerable groups organize and define their common concerns. Such processes allow them to develop a voice and make demands for information that is relevant to them, for example information concerning health, education, and employment.

Responsiveness and Accountability: responsiveness implies listening to people’s views and concerns and acknowledging these in an impartial way in the design and implementation of policies and practices. Accountability implies being answerable to people and government for policies and actions. E-governance initiatives can play an important role in strengthening government responsiveness and accountability.

4.0. Best practices surrounding access to information issues in:

4.1. Other parts of the world

a. Mexico⁷

Mexico adopted its ATI law in June 2003. Among other things the law demands that all bodies under its umbrella to automatically publish information including detailed budgets. One of the many bodies that were covered by this law was the National Polytechnic Institute (Instituto Politecnico Nacional – IPN); which is a public funded institution of higher learning. In 2003, the Institute’s new Director seized the opportunity of the new law to combat the corruption and nepotism typical of the Mexican education system. He opened its payroll to the public, knowing full well the scandals that would ensue: one professor whose official salary was 60,832 Mexican pesos (around \$6,000) had received from the public purse, completely illegally, an annual compensation of 782,502 Mexican pesos (\$78,000). Another mid-ranking employee had received 567,855 pesos (\$57,000) or 10 times her official salary. The Institute’s archives revealed letters requesting bonuses which had no legal basis and often exceeded the basic salary of the employee. One budget line for “bags” came to a total of 4 million pesos (\$400,000). The clean-up operation by the Institute's new Director not only resulted in the dismissal of the worst offenders but in the savings of public funds: an estimated 400 million pesos, or \$40 million in 2003. Mexican activists also report that the pressure is now on other public education institutions to open up their accounts to similar scrutiny.

b. Japan and Canada

In Japan, private lawyers used local government level access to information laws to force the release of reports on the expense accounts of local government officials. These reports revealed huge line items for entertaining visiting bureaucrats at top restaurants. As a result of the revelations, between 1995 and 1997, Japan's 47 prefectures cut their food and beverage budgets by the equivalent of more than \$100 million. Meanwhile, in Canada, in June 2003 the head of the new gun registry office resigned under pressure after citizens groups obtained his expense records using the access to information law. The records showed that he had spent \$205,000 on 56 airplane tickets

⁷ See fn. 5.

c. India

One of the most famous cases of the use of access to information to defend the rights of the poor comes from the Indian State of Rajasthan, with a population of 57 million, where local government officers were diverting funds destined for development projects. The Non-Governmental Organisation Mazdoor Kisan Shakti Sangathan (MKSS), a workers and farmers solidarity group demanded that local administrators provide them with an account of all expenditure made in relation to development work. In the absence of a legal right to access the records, local officials refused. MKSS resorted to peaceful mobilization - they organized sit-ins, public demonstrations and hunger strikes. As the pressure continued and the media began to take notice, the administration relented and eventually provided the information requested. MKSS used the information disclosed to organize 'social audits' of the administration's books. Though many villagers were illiterate, through face-to-face public hearings they could scrutinize complex and detailed accounts, question their representatives and make them answerable on the basis of hard evidence. The campaign persisted and eventually was successful in getting local officials to admit to corruption. Some officials returned misappropriated public funds and, in one case, an arrest was made for fraud. Following this success, more and more people mobilized to hold similar hearings and this reached the state capital as a demand for an access to information law, which eventually was passed.

4.2. Africa

African countries that have adopted various forms of Freedom of Information include South Africa, Angola, Zimbabwe, Sierra Leone, Uganda, Niger, Tunisia, Côte d'Ivoire, Ethiopia, Guinea, Liberia, and Rwanda. However, the paper will look at three (3) countries only: Nigeria, South Africa and Zimbabwe – the only two SADC countries with ATI law. Though it can be argued that most countries in Africa have modeled their ATI laws with that of South Africa; the tendency towards adopting access to information legislation modeled along the lines of South Africa's Promotion of Access to Information Act eight (8) is informed largely by the perceived civil and political rights achievements of South Africa.

a. Nigeria

Major highlights of the Freedom of Information Act 2011 include the fact that any Nigerian can apply for access to public records and information and the applicant need not demonstrate any specific interest in the information being applied for, and an applicant can sue the agency that

refuses to release information. Premised on the need for more transparency in public affairs, Section two (2), for instance, directs public institutions to provide for public scrutiny a detailed description of their corporate profiles, programmes and functions of each division, lists of all classes of records under their control, and related manuals used in administering the institution's programmes. The Act also makes adequate provision for the information needs of illiterate and disabled applicants.

b. South Africa

The Constitution of the Republic of South Africa guarantees the right of access to information in Section 16(1). The general right in section 16(1)(b) is augmented by an explicit right of access to information in section 32 of the Constitution. There is a further Constitutional obligation that the State enacts enabling legislation to fully realize this right.

The apartheid period provides a good ATI practice example in South Africa. The past regime of South Africa and dictatorial government in the Sub-Sahara region thrived on government secrecy. Press freedom was habitually compromised either through censorship, banning and confiscation of publications, misinformation or manipulation of information and outright hostility to any opposing views. Information became a crucial resource for the Sub-Saharan region's liberation movements and their alliances in international solidarity as they sought to expose the brutality and blatant violations of human rights in their countries. It is actually the divulgence of information to the world that hastened the collapse of the apartheid regime in South Africa.

c. Zimbabwe

Zimbabwe is one of the two SADC countries with the ATI law and although there are almost no good practices accrued to this law, the paper has picked it as an example of what an ATI law is not. It is argued that the Act does not give effect to the right of access to information and therefore cannot be classified as access to information legislation. A misnomer about this Act that bears mention is that whilst its title refers to freedom of information and access to information, its provisions provide for the opposite. The main thrust of the Act is to give the government extensive powers to control the media by requiring the registration of journalists and prohibiting the abuse of free expression. It has been widely viewed as an instrument designed to give the government more powers for media censorship. The Zimbabwean experience

demonstrates that the mere existence of an Act does not always mean that access is possible. Access to information as provided for under Access to Information and Protection of Privacy Act is by name only.

5.0. Steps taken to address issues that warranted the withdrawal of the ATI bill in 2002

In order to address this part of the paper, it is imperative to first understand the grounds – if at all there were substantial – on which the ATI Bill was withdrawn. One explanation which is close to being substantial is that offered by the then Vice-President, Mr. Enoch Kavindele, he revealed in an interview that government was forced to withdraw the Bill because sufficient research had not been undertaken before taking the proposed law to the National Assembly. Mr. Kavindele promised that the Freedom of Information Bill would be re-introduced after completion of the research⁸. Other than this, the other reason for the withdrawal was the fact that there was need to get the right interpretation. It is for these reasons that like many other scholars and institutions that have written on this topic, this paper has established that there were no clear cut issues that led to the withdrawal of the Bill and thus shares the sentiments expressed by Mr. Matibini in his 2009 paper on this subject; were he contends that a variety of contradictory, oblique and even comical explanations have been offered for withdrawing the Bill.

Having established some of the major reasons for withdrawing the ATI Bill, it is important to appreciate the efforts made by the government in this sector; especially considering that they have already done much of the technical work. Nonetheless, the paper is of the view that since the bill was done nothing much has been done; the only concrete thing that has been done to address this issue is promises from government. But besides the eloquent talks and presentations of the Freedom of Information Bill by the government, it is important also to recognize the works of the Civil Society Organisations (CSOs) and opposition political parties' coalition on the Access to Information (ATI) Bill.

⁸ See fn. 4

6.0. The paper's position on challenges successive governments have faced with regard to legislating the ATI bill.

The main challenge that the successive governments have faced is that of anxiety and fear related with ATI bills. Among them is the possible conflict of the ATI bill with other laws in the country. There are approximately 13 laws that would come into conflict with this bill if it was to be enacted in its current state without thoroughly reviewing them. Key among them is the Constitution of the Republic of Zambia Cap 1; The Zambia Security Intelligence Service Act Number 14 of 1998; and The Official Oaths Act, to mention but a few. This is one key issue all successive governments have supposedly been working on for the past five (5) to seven (7) years. Mr. Kabinga Mpande makes similar observations; he notes that impediment in the presentation of the ATI Bill to Parliament was because it was undergoing some comparisons and checking with other Bills that might interfere with it.⁹ The current Patriotic Front (PF) government has also indicated that they are working on this possible conflict of bills. In 2013, the then Information and Broadcasting Services Minister Mr. Mwansa Kapeya, was reported saying – by MISA – that His Ministry and the Ministry of Justice had given one (1) month to legal experts to undertake a review of the laws that are in conflict with the Access to Information Bill¹⁰. Following these critical observations from the previous government of Presidents; Mr. Fredrick Chiluba, Mr. Levy P. Mwanawasa, Mr. Rupiah Banda, and Mr. Micheal C. Sata; it can be arguably said that the other challenge in implementing the ATI Bill is lack of political will.

7.0. The way forward

Considering that the main work has been done, we submit the following recommendations:

1. The Parliamentary Committee on Information and Broadcasting should be proactive and persistent in pushing for this Bill;
2. Ensure that the Bill has the explicit consent of the President and the Ministry of Finance to ensure that history does not repeat itself. Considering that in the years 2002 and 2003; when opposition members of Parliament wanted to present the Bill to the House; it was thwarted by the invocation of a constitutional provision which requires Bills with

⁹ <http://lusakavoice.com/2014/03/11/mps-urge-speedy-info-bill-enactment/>

¹⁰ <http://www.misa.org/our-work/item/2358-zambia-alert-ati-bill-not-going-to-parliament-just-yet>

financial implications to receive the consent of the President or the Minister of Finance before they are presented to the National Assembly.

3. There is need for Political will to push for the enactment of the Bill.
4. The Parliamentary Committee to facilitate a speedy process in making comparisons with other bills that might conflict with the Bill; and checking if the Bills are in harmony.
5. The Parliamentary Committee to agitate the civil society and the general public to appeal for the speedy enactment of the Access to Information law.