



**Ensuring Effective Oversight Mechanisms and Processes in Freedom of Information Laws:  
A Comparative Analysis of Oversight Mechanisms in Africa**

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## Introduction

This paper is based on the examination of 9 oversight mechanisms in the respective RTI laws of South Africa, Angola, Uganda, Ethiopia, Liberia, Nigeria, Niger, Guinea and Rwanda. Analysis is mainly drawn from the Model Law on Access to Information for Africa. Comparison is also drawn from other jurisdictions and is intended to draw lessons and inform discussions on strengthening RTI implementation and oversight mechanisms in Africa.

The adoption of access to information laws in Africa started slowly with South Africa, Angola, Zimbabwe, Uganda, Ethiopia adopting respective national access to information laws in the past decade<sup>1</sup>. Since the year 2010 there has been increased pace of adoption of access to information laws in Africa with Liberia, Niger, Nigeria, Guinea, Tunisia, Rwanda, Sierra Leone and Cote d'Ivoire. The role of oversight and enforcement is critical in the implementation of any legislation because it provides a mechanism of incentives and sanctions for compliance.

The Model Law on Access to Information for Africa<sup>2</sup> 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 noncompliance; ordering compliance; entering, searching and seizing information; producing reports; promoting awareness regarding freedom of access to information as well as commenting and providing advice on strengthening legislation. Section below presents finds and observations arising from analysis of access to information oversight mechanisms in Africa.

## Key Observations and Findings

**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) among others.

Generally speaking, **powers of oversight bodies** vary from as weak as being advisory to being as strong as enforcement with promotional and capacity building activities being in the middle of the continuum. In a number of cases the role is reduced to advisory and opinion while in some cases especially Liberia oversight is empowered to play a more enforceable function expected to propel the advancement of RTI in the country.

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<sup>1</sup> <http://africafoicentre.org/index.php/resources/foi-laws>

<sup>2</sup> [http://www.achpr.org/files/news/2013/04/d84/model\\_law.pdf](http://www.achpr.org/files/news/2013/04/d84/model_law.pdf)

**Reporting** is the most common function shared by respective RTI oversight institutions in Africa. **7 of the 9 studied oversight mechanisms are required to report to respective national legislatures on RTI implementation. South Africa, Angola, Uganda, Ethiopia, Liberia, Nigeria and Niger** are required to produce and report on annual basis to respective national legislatures. It should be noted that whereas the law provides for this annual reporting, the law does not impose duty on respective legislatures to consider, debate and make declarations or sanctions that would advance the right to information in respective countries.

It has also been noted that compliance with reporting is lacking in a number of countries. In Uganda for example, an information request filed by AFIC<sup>3</sup> to the Parliament of Uganda and a parallel one to the Office of the Prime Minister in 2011 confirmed lack of compliance. The Liberian Information Commissioner was by March 2013 yet to file his first report to Parliament.

The Model law identifies **monitoring and development of key guidelines and codes** as an essential role for RTI oversight bodies. Six of the 9 oversight institutions analysed have monitoring, development of guidelines and codes of practice as one of their functions. The South African Human Rights Commission, Angola Monitoring Commission, Guinea National Independent Institution of Human Rights, Liberia Independent Information Commissioner as well as Ombudsmen of Ethiopia and Rwanda have monitoring mandates as part of respective functions. Whereas these institutions are established under the law, it is observable that in some cases they are yet to be operationalised while in other instances those that have been established are not effectively performing the monitoring function.

Four oversight bodies have mandates to **hear and make determination on access to information appeals**. Oversight bodies for Angola, Ethiopia, Liberia and that of Niger have specific mandates regarding hearing and determining appeals. It is not clear the extent to which these bodies have handled appeals as efforts to obtain information regarding number, nature and reaction to decisions was not possible. Efforts to obtain this information from other sources e.g. reports to national legislature proved futile as these records were not readily available on line.

Appeal to RTI oversight bodies would more accessible, quicker and cheap as opposed to filing appeals to formal courts.

Three of the nine studied oversight bodies have mandate to **promote access to information awareness among public officials and ordinary citizens**. The South African Human Rights Commission, Ethiopia Ombudsman's Office and Liberian Independent Information Commissioner are charged with responsibility of raising awareness of the law and rights. Knowledge of the law is essential to promote its observance and application by ordinary people

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<sup>3</sup> Africa Freedom of information Centre

and essential for public officials to implement and promote it. Among these mentioned agencies the South African High Commission has made effort to conduct community training and law clinics but awareness of the law and right to information among the population is still very limited. In most of the mentioned countries promotional functions is far from being implemented.

**Reviewing and providing appropriate recommendations** on relevant laws is another function expected of the oversight bodies of South Africa, Angola, Ethiopia and Liberia. This function is essential to ensure that the various sectoral laws and policies are consistent with requirements for transparent and accountable operations of government bodies and other agencies covered by statutory disclosure regimes. AFIC's experience is that this process needs dedicated staff who can review various bills and provide timely inputs into the process. Most oversight agencies do not have sufficient number of staff to execute this function. For example the Liberian Information Commissioner is yet to recruit staff while the South African Human Rights Commission has six staff dedicated for the entire access to information duties.

### **Big Problems**

The most critical functions for effective RTI oversight are lacking in most ATI legislations in Africa. These include among others receiving reports from agencies covered by the law, auditing compliance, imposing fines for non compliance and ordering compliance. No oversight body is mandated to impose fines for noncompliance, only the Attorney General of Nigeria is empowered to receive reports from information officers while only Nigeria and Liberia provide for auditing and ordering compliance.

**Among the oversight agencies studied only Nigeria's Attorney General is mandated by law to receive reports from agencies covered by FOIA.** Reports received from covered bodies or sectors to the relevant are essential to enable the oversight mechanism to make appropriate decisions and recommendations regarding areas that need attention for effective implementation of RTI regimes. For example, the draft study by the Carter Center of implementation of access to information by seven of the targeted public agencies revealed that at agency level very little had been done despite laws having been in place for almost a decade. Reports by respective sectors to the oversight mechanism would provide a good basis to guide such agencies on how to institutionalise transparency regimes.

Further, this analysis reveals that **none of the nine agencies studied is empowered by law to impose fines and sanctions for non compliance.** It should be recalled that African traditional societies, colonial governments and post liberation governments operated and thrived on a culture of secrecy. While organisation of societies has changed, some of their negative practices

are hard to die. Oversight bodies need statutory power for incentives and sanctions to motivate a change from this culture.

Whereas the function of **auditing and ordering compliance is important, only 2 of the nine studies oversight institutions are legally empowered to execute audits and issue orders.** Just like financial audits, RTI audit would provide a healthy check for covered bodies to aspire to be responsive in their work.

## **Recommendations**

1. **Separate functions and set up specific oversight bodies for ATI.** Institutions such assigned additional ATI oversight responsible are many times themselves overburdened by primary duties of human rights, promotion, protection and defence or indeed administrative matters. Experience has shown that in cases where RTI oversight function was added as auxiliary to the institution's existing functions, ATI oversight has not been given serious attention. In many respects such bodies are themselves already constrained by resource and capacity issues. South Africa has moved to separate RTI oversight function from the Human Rights Commission. The Scottish Information Commissioner, the RTI oversight agency in Scotland is restricted to provide oversight in respect of three related laws: The Freedom of Information (Scotland) Act 2002; The Environmental Information (Scotland) Regulations 2004 and The INSPIRE (Scotland) Regulations 2009 where the Commission is mandated with three focused functions:
  - investigates applications and issues legally enforceable decisions;
  - promotes good practice amongst public authorities; and
  - provides the public with information on their rights

This focus enables specialization and focus capacity strengthening which in turn facilitates better performance of expected functions.

2. **Review and strengthen functions and powers of oversight bodies:** An oversight body needs sufficient power and authority to perform its functions. In a number of case RTI oversight bodies on the continent have advisory power without the teeth to enforce. It is recommended that existing laws be amended to provide oversight bodies with powers to audit, order compliance, investigate, sermon respondents among other provisions. The laws should also provide for incentives for compliance and sanctions for lack of compliance.
3. Given that right to information covers various public and private bodies, **RTI laws should provide for oversight bodies to have responsibility for promoting the law within government, private sector, civil society and the general population.**

4. Two main factors that constrain implementation and oversight for transparency and accountability initiatives in Africa are lack of political will and capacity. It is recommended that training and capacity building both for the oversight agencies as well as implementing bodies should be part of the mandates of oversight bodies.
5. In a number of countries access to information implementation has a number of times being considered under unfunded priorities yet absence of transparency and accountability has often times undermined the attainment of goals which these institutions prioritise. It is recommended that a 5% of all departmental resources be dedicated for ATI implementation. In addition, oversight bodies should be adequately funded, staffed and equipped to ensure effective oversight.
6. Establish and strengthen Sub regional RTI regional frameworks, norms and standards.
7. Legislatures should on receipt of reports from oversight bodies mandatorily discuss them for decisions, declarations and sanctions.
8. CSOs under the coordination of a regional network like AFIC should prioritise monitoring RTI oversight bodies to ensure their effective functioning
9. CSOs should design and implement focused advocacy for stronger and effective RTI oversight mechanism

**Matrix of functions of RTI oversight mechanisms**

Functions (AU ATI Model Law)	Oversight Agency								
	South Africa Human Rights Commission	Angola Monitoring Commission	Parliament of Uganda	Ethiopia Ombudsman	Liberia Independent Information Commissioner	Nigeria Attorney General	Niger Ombudsman	Guinea National Independent Institution of Human Rights	Rwanda Ombudsman
monitoring and regulating public and private bodies'	monitor implementation of the Act,  develop guidelines on using the Act,	draft its internal rules  present its position on the system of classification of documents;		<ul style="list-style-type: none"> <li>• compile a guide</li> <li>• monitor the implementation</li> <li>• compile and make widely available a guides and code of practices</li> </ul>	develop access guidelines and procedures  support to Information Officers and other relevant officials  review information held by public bodies and covered private entities			guaranteeing the exercise and enjoyment of the right of access to information	Monitor enforcement
receiving annual reports from information officers						Receive reports from agencies covered by FOIA  Publish			

Functions (AU ATI Model Law)	Oversight Agency								
	South Africa Human Rights Commission	Angola Monitoring Commission	Parliament of Uganda	Ethiopia Ombudsman	Liberia Independent Information Commissioner	Nigeria Attorney General	Niger Ombudsman	Guinea National Independent Institution of Human Rights	Rwanda Ombudsman
						reports received  develop reporting and performance guidelines in connection with reports required			
hearing appeals		evaluate all complaints submitted to it by the interested persons;		decide any appeals	receive, hear and decide all complaints  compel witnesses and evidence for the purpose of deciding appeal		receive and address complaints		
auditing compliance					investigate, monitor, and promote compliance	initiate proceedings relating to a violation of the right of access to			

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						information			
imposing fines for noncompliance									
ordering compliance					<p>issue cease and desist orders and other recommendations to any or all of such public bodies and relevant private entities relative to implementation and compliance</p> <p>order any public body or private body concerned to release requested information should it find that the information or record is not</p>	ensure that all institutions to which this Bill applies comply			

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	South Africa Human Rights Commission	Angola Monitoring Commission	Parliament of Uganda	Ethiopia Ombudsman	Liberia Independent Information Commissioner	Nigeria Attorney General	Niger Ombudsman	Guinea National Independent Institution of Human Rights	Rwanda Ombudsman
					one that is exempted				
entering, searching and seizing information									
producing reports	submit reports to the National Assembly	prepare and submit annual report on the implementation to the National Assembly and then to the government for publication	Receive reports from sector ministers	submit annual report to the house of people's representatives on his performance	Report to National Legislature	Submit annual reports to House of Representatives	Submit reports to Parliament		
promoting awareness regarding freedom of access to information	train information officers, undertake promotional measures			undertake training activities for public relation officers  publicize the requirements of this part and the rights of individuals	train and build the capacity of personnel of public bodies and private entities concerned  develop public awareness strategies and information dissemination campaigns to educate the				

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					public				
commenting on relevant legislation	recommend for improvement of the Act,....	give opinions on the implementation of this law as well as drafting and implementation of the complementary laws;		recommend to the house of peoples representatives	evaluate existing laws and regulations relating to access to information, and to make recommendations for reform and harmonization of the laws				
		advise on access to personal documents		make recommendations for development, improvement, or reform both of a general nature and directed at specific public bodies					

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