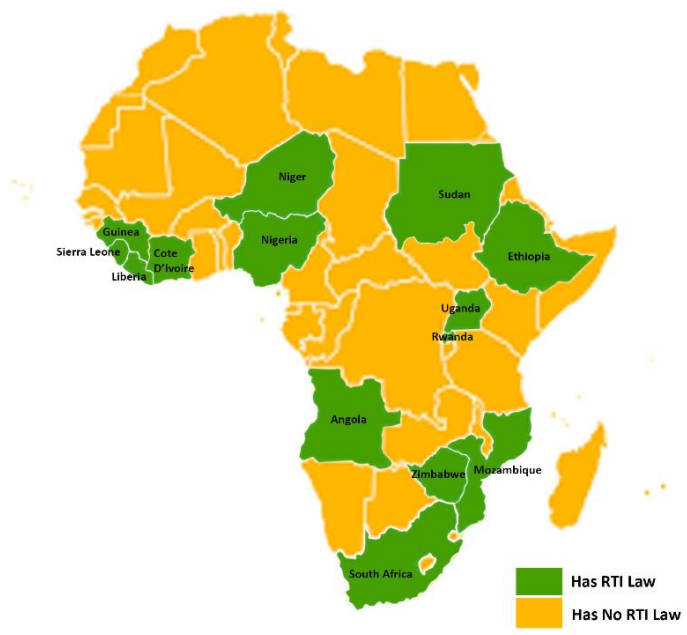


The State of Right to Information in East Africa
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The national constitutions of many African countries provide for freedom of expression, speech, association, as well as the right to seek, receive and impart information. However, under various laws and regulations, out-dated provisions which in some instances extend as far back as 50 years, place wide-ranging restrictions on the types of information that can be disclosed to the public.

Of the African continent’s 54 countries, only 13 have Right to Information (RTI) laws. But even for countries with RTI laws, there are limited efforts to enforce or implement the law.

African Countries With RTI Laws



In East Africa, Uganda was the first country to pass an RTI law back in 2005. Rwanda [followed](#) in 2013. Tanzania published an RTI draft law in 2006 and nine years later in 2015 it tabled a revised Bill before parliament. Kenya, which published an RTI Bill in 2007, is yet to pass it into law, despite civil society pressure for government to fast-track adoption of the legislation.

In this brief, we summarise the legal provisions and restrictions to citizens’ right to information in Kenya, Tanzania, and Uganda.

Kenya

Article 35 of Kenya’s Constitution grants every citizen the right of access to information held by the State, and “information held by another person and required for the exercise or protection of any right or fundamental freedom.” Furthermore, it provides that every person has the right to the correction or deletion of untrue or misleading information that affects the person. Proactive disclosures are mandated under Article 35 Section 3 which states: “the state shall publish and publicise any important information affecting the nation.”

[Kenya's Access to Information Bill \(2013\)](#) is aimed at putting into effect the provisions of Article 35 of the Constitution. Clause 4 of the Bill provides that citizens' right to access information shall not be affected by "any reason the person gives for seeking access; or the public entity's belief as to what are his reasons for seeking access." Whilst stating that access to information "shall be provided expeditiously and inexpensively," the draft law specifies a 21-day maximum response time to information requests. Retrieval and reproduction costs are also applicable, meaning that an information requester can be asked to incur the costs of reproducing the information they ask for. Part II Section 4(3) of the Bill states: "A public entity or private body shall provide access to information held by it expeditiously and at a reasonable cost." Whereas, the new government in 2013 promised to fast track the enactment of the law, no progress has been made to-date.

Access to information in Kenya is also impacted by the [Official Secrets Act \(1986\)](#). In particular, Clause 7 of this law undermines Kenyan citizens' right to information as provided for by the constitution. It states:

Any person who—

(a) allows any other person to have possession of any official document issued for his use alone, or communicates to any other person any code word so issued; or

(b) without lawful authority or excuse, has in his possession any official document or code word issued for the use alone of some person other than himself; or

(c) on obtaining possession of any official document by finding or otherwise neglects or fails to restore it to the person or authority by whom or for whose use it was issued or to a police officer, shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

Meanwhile, under Section 30F of the [2014 Security Law Amendments](#) related to the Terrorism Act (2012), "any person who, without authorisation from the National Police Service, broadcasts any information which undermines investigations or security operations relating to terrorism commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings (USD 48,400), or both."

Tanzania

The Constitution of the United Republic of Tanzania (1977)¹ states that: "Every person – (a) Has a freedom of opinion and expression of his ideas; (b) Has a right to seek, receive and/or disseminate information regardless of national boundaries; (c) Has the freedom to communicate and a freedom with protection from interference from his communication; and (d) has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society".

¹ The Tanzania Constitution is currently going through a review process. The proposed draft constitution contains more elaborate RTI provisions under articles 29 and 30. The country is expected to have a referendum on the new constitution during 2015.

[Tanzania's Access to Information Bill \(2015\)](#) applies to all public authorities and private bodies that "utilise public funds" or are in possession of information of public interest in relation to human rights, environment, public health and safety, exposure of corruption or illegal actions.

The Bill calls for proactive disclosure by requiring "routine and systematic" release of information towards accountability, transparency and public participation. Clause 9 imposes obligations on authorities to publish descriptions of their structures; functions and responsibilities; a general description of information held; and a description of all manuals or similar types of documents, among others; and from "time to time" to inform the public of any substantial changes.

Exemptions to access to information are applicable in cases where an information holder "claims" and "determines" that disclosure is not in the interest of the public. Exemptions also apply for information relating to matters of national security, due process, the safety of life, ongoing investigations, the privacy of an individual, and commercial interests including intellectual property rights and economic stability.

Article 6 of the proposed law also includes broad and undefined exemptions to information that can cause "damage to the information holder's position in any actual or contemplated legal proceedings, or infringe professional privilege" and undermine the operations of the national broadcasting corporation. However, under section 5 of Article 6, exemptions do not apply to information that has been held for a period exceeding 30 years. Unlawful disclosure of exempt information is an offence punishable by up to 15 years imprisonment.

Upon receipt of a request, the written notice period for responses (granted, denied or need further information) is within 30 days. Where the information officer requires more information to process a request, such further information must be provided by the requester within 14 days. Notifications for refusal of requests should set out the reasons for refusal "and all the material issues relating to the decision."

Persons aggrieved by an access to information decision in respect to refusals, unreasonable fees or charges and non-compliance with time limits may apply for a review before the Commission for Human Rights and Good Governance (CHRAGG). However, the RTI bill does not stipulate a time limit on when a decision will be rendered. Parties aggrieved by CHRAGG's decision may take the matter for judicial review.

Section 5 of Tanzania's [1970 National Security Act](#) states that "*any person who communicates any classified matter to a person other than a person to whom he is authorised to communicate it or to whom it is in the interests of the United Republic his duty to communicate it commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twenty years.*"

Notably, Tanzania government officials are prohibited from disclosing information unless authorised by the President. Section 18 of the [Public Service Act \(2002\)](#) partly states that no person "*shall without the written permission of the President, publish or disclose to any unauthorised person or otherwise than in*

the course of duty, the contents of any document, communication or information of any kind which has come to his knowledge in the course of the performance of duties under this Act.”

Uganda

[Uganda's Access to Information Act, 2005](#) and its [2011 regulations](#) provide for the right of access to information pursuant to Article 41 of the Constitution, which states that “every citizen has a right of access to information in the possession of the state or any other organ of the state except where the release of the information is likely to interfere with the security of the state or the right to the privacy of any other person”.

The Act prescribes the classes of information and the procedure for obtaining access to that information. It applies to information and records of government ministries, departments, local governments, statutory corporations and bodies, commissions and other government organs and agencies. However, cabinet records and those of its committees, as well as records of court proceedings before the conclusion of the case, are exempted.

The 2005 Act provides for notice and timelines within which information should be processed and responses made, that is, within 21 days. Section 7 of the regulations imposes access fees of UGX 20,000 (USD7) and the reproduction costs of the information requested are to be borne by the information requester. In addition, Section 7 outlines the procedures and forms (upto 15 different types) that information requesters may be subjected to while submitting information requests.

However, the [Official Secrets Act \(1964\)](#) restrains public officials from engaging in proactive disclosure of certain information. Article 4 outlaws the communication, use, and retention of any government “secret official code word, or password, or any sketch, plan, model, article, note, document or information” by a person holding or has held an office under the government.

Breach of the Act could earn a civil servant up to 14 years in prison. Indeed, upon appointment, civil servants swear the oath of secrecy stating that they will not “directly or indirectly communicate or reveal” any government matters in the course of their official duties except as may be required for the discharge of those duties or “specifically permitted by the president”.

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