



Position Paper:

Comparative Analysis of Access to Information Legislation in East Africa

This paper provides a snapshot of access to information legislation in the East African Community. It is a reference point for civil society, non-government organisations, media, academia and activists working to advance citizens' right to information in the region. It provides informative aspects on what the ideal provisions of an access to information law should be, and also suggests a transformative approach towards closing current gaps within existing laws in the region.

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Introduction

The right to information (RTI) is internationally recognised as a fundamental human right and a cornerstone to the enjoyment of other human rights. The value within the RTI can be seen in the fight against corruption, citizen participation in democratic processes and the rule of law, access to and enforcement of social and economic rights such as quality social services delivery and correcting propaganda or misinformation. Over 112 countries across the world have enacted access to information (ATI) laws – Sweden having been the first in 1766. In Africa, up to 16 countries have enacted ATI legislation.¹ Within the East African Community (EAC), only Burundi lacks a specific law on ATI. Uganda was the first EAC member to pass access to information legislation in 2005, followed by Rwanda and South Sudan in 2013, and more recently Kenya and Tanzania in 2016.

Purpose of Legislation

The purpose of the ATI laws in Uganda, South Sudan, Kenya and Tanzania are quite similar - promotion of efficient, effective, transparent and accountable governance in the respective EAC member states.

Uganda's law under section 3 provides that the Act is aimed at promoting efficient, effective, transparent and accountable Government; giving effect to article 41 of the constitution on the right to information; protecting persons disclosing information; promoting transparency and accountability in all organs of the state; and empowering the public to effectively scrutinise and participate in government decisions that affect them.

Kenya's law, under section 3, states that the Act gives effect to article 35 of the constitution on the right to information; provides a framework for proactive disclosure of information by private bodies; facilitates access to information held by private bodies; promotes routine and systematic information disclosure by public entities and private bodies; provides for the protection of persons who disclose information of public interest in good faith; and provides a framework to facilitate public education on ATI.

Tanzania's law, according to section 4, is aimed at giving effect to the right to information provided for by the constitution; requiring proactive disclosure of information by information holders; provision of a framework that facilitates ATI; promotion of routine and systematic information disclosure by information holders in compliance with accountability, transparency and public participation; and protection of persons who disclose information of public interest in good faith.

The South Sudan law, under clause 3 gives effect to the constitutional right to information; promotes maximum disclosure of information in the public interest; establishes effective mechanisms to secure that right; and provides for incidental matters there to.

¹ In Africa, the countries with ATI legislation include South Africa, Angola, Zimbabwe, Uganda, Sierra Leone, Côte D'Ivoire, Nigeria, Niger, Ethiopia, Rwanda, Tunisia, Guinea, Liberia, Tanzania, Kenya and Rwanda. See, Karen Mohan, "FACTSHEET: Freedom of information in Africa",

<https://africacheck.org/factsheets/factsheet-freedom-of-information-laws-on-the-african-continent/>. Additional information available at UNESCO, "Freedom of Information in Africa",







See <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-africa/>

To the contrary, the Rwanda law, under article 1, is silent on the element of accountable and transparent governance and instead, focuses primarily on access to information by the public and journalists, and the establishment of modalities and procedures to promote the publication and dissemination of information.

Application of the Law

The scope of application of the law for citizens to access information in each of the countries is limited by types of bodies – public or private- as illustrated below. In Uganda, the law is not applicable to private entities, making Uganda the only country in the region whose scope of access is limited to public bodies. Citizens can only request for information from government ministries, departments, local governments, statutory corporations and bodies, commissions, and other government organs and agencies.

Rwanda’s law, according to article 3, is applicable to the state as well as “some” unspecified private bodies, while that of Kenya, according to section 4 (1), is applicable to the state and “another person and where that information is required for the exercise or protection of any right or fundamental freedom.” In Tanzania, Section 2 (2)(a) of the 2016 law applies to public authorities and private bodies which utilise public funds or “are in possession of information which is of significant public interest”. The South Sudan law applies to any private or public body, as per clause 6.²
















	 Kenya Section 4(1)	 Rwanda Article 3	 South Sudan Clause 6	 Tanzania Section 2 (2)(a)	 Uganda Section 2(1)	
 Bodies or organs to which information requests may be made	Public	Private	Some private bodies	Public	Private	Some private bodies
	✓	✓	✓	✓	✓	✓
	✓	✗	✓	✓	✗	✗
	✓	✓	✓	✓	✗	✗

² Clause 6 of the South Sudan law on access to information reads: “Every citizen shall have the right of access to information, including electronic records held by any Public or Private Body, subject only to the provisions of this Act”.

Who Has The Right of Access To Information?

Further to the type of entity to which the right of access to information applies, states have set limits as to who can access information in the country by citizenship. This thus limits the extent to which individuals can exercise the law in countries where they are not citizens.

Persons Entitled to Access Information in the EAC Region

	 Section 4; Article 35 of Constitution	 Article 3	 Clause 6; Article 32 of Constitution	 Section 5(1),	 Section 5 (1); Article 41 of Constitution
Citizens					
Non-Citizens					

Comparatively, the European Union which is often viewed as the most successful regional bloc guarantees access to information for all citizens in its member states.³ The EAC could follow this example so that a citizen in any member state can request information from any other EAC member state, regardless of their nationality.

Inaccessible Information

There are various limitations on the types of information that can be accessed by citizens. Information exempted from public access includes information that may infringe upon the privacy of a person or intellectual property rights, information related to ongoing legal proceedings, information related to defense and national security, among other exemptions. A shared similarity across the laws in the region is the vague nature of some descriptions of the information that cannot be accessed.

³ See for instance information on how to get information from the European Union at <https://www.asktheeu.org/en/help/about>. See also EUR-Lex, Access to European Union Law, "EU Charter: standard settings for media freedom across the EU", <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013IP0203>; Freedominfo.org, "EU HR Court Recognizes Limited Right to Information", <http://www.freedominfo.org/2016/11/eu-hr-court-recognizes-limited-right-information/>

Information Exempt From Access Across the EAC Region

● South Sudan

Clause 25–33

- Personal information
- Information privileged from production in legal proceedings
- Commercial and confidential information
- Protection of health and safety of another person
- Information related to law enforcement that would be detrimental to crime detection and trial processes
- Information related to national defence and security
- Information pertaining to public economic interest
- Information that would interfere with policy making and operations of public bodies
- Frivolous, vexatious or repetitive requests

● Kenya

Sections 6 (1)-(7)

- Information that would undermine national security of Kenya
- Information that would impede the due process of law
- Information that would endanger the safety, health or life of any person
- Information that would involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made
- Information that would substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained
- Information that would cause substantial harm to the ability of the Government to manage the economy of Kenya
- Information that would significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration
- Information that would damage a public entity's position in any actual or contemplated legal proceedings
- Information that would infringe professional confidentiality as recognised in law or by the rules of a registered association of a profession

● Uganda

Sections 23-33

- Cabinet minutes and those of its Committees
- Information relating to privacy of a person
- Commercial information of a third party
- Some confidential information especially that related to third parties
- Information related to protection of safety of persons and property
- Information related to protection of law enforcement and legal proceedings
- Records privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege
- Information related to defence, security and international relations
- Information on operations of public bodies where such information would frustrate the operations of the body

● Tanzania

Section 6

- Information that would undermine the defence, national security and international relations of the United Republic
- Information that would impede due process of law or endanger safety of life of any person
- Information that would undermine lawful investigations being conducted by a law enforcement agent
- Information that would facilitate or encourage the commission of an offence
- Information that would involve unwarranted invasion of the privacy of an individual, other than an applicant or a person on whose behalf an application has been made
- Information that would infringe lawful commercial interests, including intellectual property rights of that information holder or a third party from whom information was obtained
- Information that would hinder or cause substantial harm to the Government to manage the economy
- Information that would significantly undermine the information holder's ability to give adequate and judicious consideration to a matter of which no final decision has been taken and which remains the subject of active consideration
- Information that would damage the information holder's position in any actual or contemplated legal proceedings, or infringe professional privilege
- Information that would undermine Cabinet records and those of its committees
- Information that would distort or dramatise records or data of court proceedings before the conclusion of the case

● Rwanda


Article 4

- Information that would destabilise national security
- Information that would impede the enforcement of law or justice
- Information that would involve interference in the privacy of an individual when it is not of public interest
- Information that would violate the legitimate protection of trade secrets or other intellectual property rights protected by the laws of Rwanda
- Information that would obstruct actual or contemplated legal proceedings against the management of a public organ

It is important to note that even with the above wide exemptions on accessible information, information should be released in public interest especially where public interest outweighs the grounds for denial. This is provided for under section 34 of Uganda's law, article 6 of Rwanda's law, clause 6 of the South Sudan law and section 6 (4) of Kenya's law. Unfortunately, Tanzania's law which is one of the most recent in the EAC, does not provide for mandatory disclosure in public interest.

Mode of Requesting for Information

The laws in the different countries prescribe the mode of requesting for information. Across the region, it is only Uganda with regulations on access to information to guide the processes of applying for information and how it should be granted. The summary of mode of requesting for information is shown below.

	 Section 8	 Article 9	 Clause 9	 Section 10	 Section 11 and Reg 3 of ATIA Regulations, 2011-Form 1, schedule 2.
Writing	✓	✓	✓	✓	✓
Through a prescribed format	✓ (but no regulations to specify yet)	✗	✗	✓ (but no regulations to specify yet)	✓
Verbally/orally	✓	✓	✓	✓	✓
By telephone	✗	✓	✗	✓	✗
Through the Internet	✗	✓	✗	✓	✗

Mode and Format of Accessing Information

As with the mode of requesting, laws across the region prescribe different modes through which information may be accessed. While the variety of modes is wide, options for persons with disabilities (PWDs), for example braille and variety in language in which information can be received are absent.

Mode of Information Access	Kenya (Section 8)	Rwanda (Article 94)	South Sudan (Clause 13)	Tanzania (Section 17)	Uganda (Section 20)
Inspection of the record	✓	✓	✓	✓	if stored in this form
Listening to the record	✓	✓	✓	✓	✓
Viewing the record	✓	✓	✓	✓	✓
Copy of the record	✓	Left to choice by applicant	✓	✓	✓
Compact Disc	✓	Left to choice by applicant	✓	✓	✓
Diskette	✓	Left to choice by applicant	✓	✓	✓
USB drive	✓	Left to choice by applicant	✓	✓	✓
Transcript	✓	Left to choice by applicant	✓	✓	✓
Any other form as may be specified	✓	Left to choice by applicant	Not specifically stated	Not specifically stated	✓

Duration Between Request and Response

The laws specify the number of days within which one should expect a response to an information request, with South Sudan providing for the shortest response time and Tanzania the longest waiting period. Surprisingly, Kenya's law which is recent has a 21 days' provision.⁵ Rwanda's law does not provide for a timeline for responses to information requests.











Days within which to receive a response	Kenya (Section 9 (1))	Rwanda (Article 4)	South Sudan (Clause 10)	Tanzania (Section 11 (1))	Uganda (Section 16)
Days within which to receive a response	21	Not specified	7	30	21

⁴ Article 9 of the Rwanda law on access to information specifically provides: "Information shall be requested by an individual or a group of persons in any of the official languages provided for by the Constitution of the Republic of Rwanda verbally, in writing, by telephone, internet or any other means of communication without prejudice to the provisions of this Law. The person applying for information shall determine the means in which he/she wants to obtain information. However, if the means chosen for obtaining the information requested exceeds the capacity of the requested organ, the applicant shall bear the cost."

⁵ It is important to note that while there is no specification as to whether the days are working or calendar, in common practice counting is based on working days.

Extension of Response Period






While there are statutory requirements for information requests processing in a specified time, in some instances, information access may not be granted within the statutory time. In some circumstances, there may be an extension of the period within which access to information is granted. In other circumstances, the failure to grant information access within the statutory period is to be treated as a muted refusal especially where there has been no official communication for extension of time.

					
	Section 9 (3)	No Provision	Clause 10 (3)	Section 11 (2)	Section 17(1)
Extension Days					
Time within which to inform applicant of extension	21 days from receipt of information request	No Provision	No Provision	14 days from receipt of information request	21 days from receipt of information request

Refusal to Grant Access to Information

In principle, requests for information are supposed to be honoured by the respective information providers save for information that is expressly exempted from access as per the laws of the country. Nevertheless, circumstances arise where information requests are denied.

Time Within Which Requests for Information are Deemed Rejected

				
Section 9 (4)	Article 4	Clause 10 (4)	Section 14	Section 18
21 days elapse with no official communication	Not Specified	7 days elapse with no official communication or	Not Specified	21 days elapse with no official communication
		48 hours elapse in respect to information sought to secure the life or liberty of a person		











Costs of Accessing Information

Costs have an impact on the enjoyment of the right to information. Information should ideally be provided by public bodies at non-prohibitive costs. The costs associated with access to information in the region have only been specified in Uganda. In addition to the standard access fee of UGX 20,000 (USD 6), further fees apply by mode of access - video recording UGX 20,000 (USD 6) per hour; audio recording UGX 10,000 (USD 3) per hour, photocopying page of Braille at UGX 100 (USD 0.03) and copying page bigger than A4 on A4 (or compressing page) UGX 500 (USD 0.03).

The laws in Kenya and Tanzania provide that the costs of access should not exceed actual costs of making copies under sections 12(2) and 21 respectively. On the other hand, the Rwanda law provides under Article 10 that fees may be charged depending on the modes of providing the information. The South Sudan law has no specifications on costs for accessing information.

Transferability of the Information Request















To ensure that the intent for requesting for information is not lost, it is important that the information officer to whom the request is made transfers it to the appropriate body that is in possession of the requested information. However, in Rwanda and South Sudan, there is no legal provision for transferability of requests.

					
	Section 10			Section 13	Section 13
Transferability of a request for information from one body to another by information officers					

The Complaints and Appeal Processes

An information request may either be fully granted, partially granted, or rejected. Where an applicant is aggrieved with the decision of the information officer, the applicant should be able to appeal the decision or raise a complaint. Nevertheless, not all the laws within the EAC provide for redress mechanisms, particularly Rwanda's law.

Complaints and Appeal Processes with Regards to Access to Information in the EAC Region

					
	Section 11 (1) (f), 9 (4) (d), 23 (3)		Clause 41, 48, 42 (5), 45	Section 19	Section 16 (3) (c), 38
Existence of complaints mechanisms					
Complaints mechanisms and avenue	Appeal ⁶ to the Commission on Administrative Justices		Application ⁷ to the Information Commissioner ⁸	Application ⁹ or Appeal to the Minister responsible for legal affairs	Internal Appeal, ¹⁰ Complaint or application to Court ¹¹
Possibilities of appeal					
	to the High Court		to the Media Authority then to Court	to the High Court only if information is within the authority of an information holder working under the Minister	to the High Court

It is important to note that Uganda's complaints mechanism is criticised for being tedious and unnecessarily long.¹² Further, it has been suggested that the law should have named the responsible Minister as the first avenue for complaints.

Protection of Persons Disclosing Information

The laws of Uganda (section 44), Kenya (section 16), Tanzania (section 23) and South Sudan (Clause 40 (3)) protect persons who disclose information from legal, administrative or employment related sanctions. On the contrary, the Rwanda law does not provide a similar protection.

⁶ Appeals may be made to the Commission on Administrative Justice established by section 3 of the Commission on Administrative Justice Act, No. 23 of 2011 in respect of the amount of fees required or the form of access proposed to be provided. According to Kenya ATIA law, section 20 (1) and (2), the Commission has oversight powers over the enforcement of the Act and is guided by the national values and principles of the Constitution of the Republic of Kenya, 2010. Further, according to section 20 (3), a full time commissioner is to be dedicated to access to information.

⁷ Under the South Sudan Law on ATI, grounds for appeal include failure by the body to indicate that it has the information; failure to respond to a request; failure to provide notice in respect of the request; failure to communicate information and in the required form; charging excessive fees; failure to access information even after an appeal; and providing insufficient or inaccurate information.

⁸ Under the South Sudan Law on ATIA, 'Commissioner' means the person holding the office of Information Commissioner appointed under Chapter V of the Act. The Commissioner is appointed by the president from those nominated by the Minister responsible for information and broadcasting. The Commissioner is accordingly charged with ensuring that the ATI law is enforced.

⁹ Section 19 (1) states that an aggrieved party may apply to the head of the institution for review of a decision rejecting an information request, payment of fees or charges, failure to provide information within the statutory period or for any other matter relating to the request.

¹⁰ Under the Uganda ATI law, section 16 (2) (c), one may appeal internally in the government body where they made the request or make an application to the Court, against the access fee to be paid or the form of access granted and the procedure, including the period, for lodging the internal application or appeal. Further, under section 16 (3) (c), where a request for accesses is refused, the aggrieved "...person may lodge an internal appeal or an application with the court, as the case may be, against the refusal of the request and the procedure, including the period, for lodging the internal application or appeal..."

¹¹ According to section 4 of the ATIA, Court means the Chief Magistrates' Court or the High Court.

¹² See for instance, Edrine Wanyama, "Freedom of Information in East Africa: Lessons from Uganda", (LLM. Dissertation: University of Dar es Salaam, 2015); see also the Hub for

Offences for Non-disclosure or Disclosure of Exempt Information

It is an offence for an information officer to deliberately deny information to the applicant under section 46, section 28(3), section 22 and clause 52(1) of Uganda, Kenya, Tanzania and South Sudan RTI laws respectively. To the contrary, the Rwanda law falls short of such provision. Meanwhile, the laws also provide for various offences including obstruction, alteration and disclosure of exempt information which attract penalties.

● South Sudan

 **up to 2 years**

Clause 52 (1)

Obstruction of records, destruction of records, falsification of information

Penalties not specified

Clause 52 (2) (a)

Refusal to receive request

Clause 52 (2) (b)

Failure to respond to request within the prescribed time

Clause 52 (2) (c)

Vexatious denial of request

Clause 52 (2) (d)

Giving incorrect, incomplete or misleading information

Clause 52 (2) (e)

Obstructing access to information

● Uganda

 **UGX 4,800,000 (USD 1,335)**  **3 year or both**

Section 46 (a)

Destruction, damaging or altering a record

(b) Concealing a record

(c) Falsifying a record

● Tanzania

 **TZSHS 5,000,000 (USD 1,390)**  **up to 12 months or both**

Section 22

Altering, defacing, blocking, erasing, destroying or concealing

 **3 to 5 years**

Section 6 (6) (a)

Disclosure of exempt information other than information relating to national security

 **National Security Act, Cap 47¹³ life sentence¹⁴ or 20 years¹⁵**

Section 6 (6) (b)

Disclosure of exempt information relating to national security

● Kenya

 **KSHS 1,000,000 (USD 9,675)**  **up to 3 years or both**

Section 28 (1)

Disclosure of exempt information with knowledge

 **KSHS 50,000 (USD 484)**  **up to 3 months or both**

Section 28 (3) (a)

Refusal to assist a requester who is unable to write to reduce the oral request to writing in the prescribed form and provide a copy to the applicant in accordance with section 8(2).

Section 28 (3) (b)

Rejecting a request

Section 28 (3) (c)

Failure to respond within prescribe time

Section 28 (3) (d)

Failure to take reasonable steps to ensure that PWDs access information in the appropriate formats

 **KSHS 100,000 (USD 967)**  **up to 6 months or both**

Section 28 (4) (a)

Charging more fees than the actual amount required for making copies

Section 28 (4) (b)

Failure to respond to requests concerning exercise of rights

Section 28 (4) (c)

Failure to respond to a request to correct personal information

Section 28 (4) (d)

It having been ascertained that information held is out of date, inaccurate or incomplete, fails within the prescribed time, or within a reasonable time if no time is prescribed, to correct, destroy or delete the information, or to attach a statement to the information in accordance with section 13.

¹³ Available at http://www.nyaraka.go.tz/uploads/publications/en1473335739-NATIONAL_SECURITY_ACT_en.pdf

¹⁴ Under section 3

¹⁵ Under section 4

Conclusion and Recommendations

The laws on access to information in the EAC states offer lessons for betterment if the right to information is to be achieved in the region. For unified enjoyment of this right, Burundi should follow the other EAC states and enact a law on access to information. Burundi's law could use the existing laws of EAC member states as a blue print while remaining cognisant of the gaps that exist in those laws.

Likewise, Rwanda needs to revisit its law to ensure that the gaps - including the lack of specification of the maximum time within which an information request may be responded to and extension of period of grant of access, protection of persons disclosing information, appeal processes, transferability of requests from one body to another, and definition of scope of security information - are addressed.

On the other hand, while it is recognised that the EAC region is progressing in promoting the right to information, there are a number of issues that have bottlenecked citizens' right to information. These include: lack of access to information by non-citizens in Uganda, Kenya and South Sudan; lack of ATI regulations in Rwanda, Kenya, Tanzania and South Sudan; lack of a clear definition of security information by Uganda and Rwanda; lack of provision for transferability of requests in South Sudan and Rwanda; limited scope of bodies the law applies to in Uganda; prohibitive access fees in Uganda, as well as the lack of clear complaints mechanisms in Uganda.

Amendments to the various provisions relating to the above in Uganda, Kenya, Rwanda, Tanzania and South Sudan, and enactment of a clear and progressive law in Burundi, shall ensure that EAC member states measure up to international RTI standards. Furthermore, enhancement of the use of information and communication technologies (ICT) in promotion of the right to information will lead to greater protection, enjoyment and enforceability of all other rights.

About CIPESA



CIPESA was established in 2004 under the Catalysing Access to Information and Communications Technologies in Africa (CATIA) initiative, which was mainly funded by the UK's Department for International Development (DfID). CIPESA is a leading centre for research and the analysis of information aimed to enable policy makers in East and Southern Africa understand ICT policy issues and for various stakeholders to use ICT to improve governance and livelihoods.



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