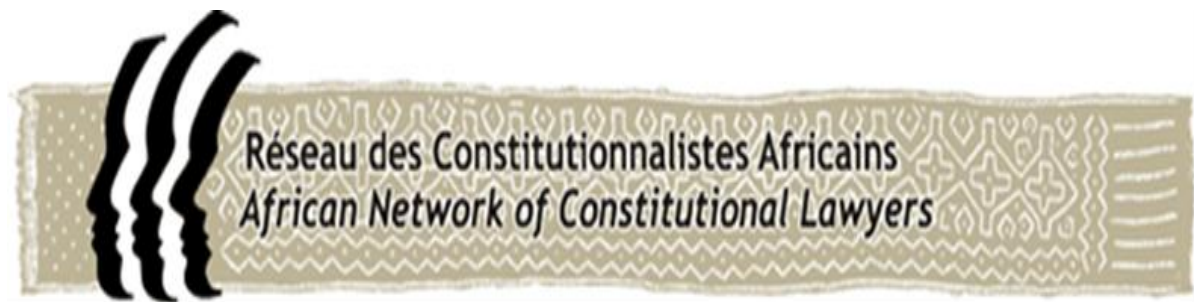




NATIONAL STUDY ON ACCESS TO INFORMATION IN ZIMBABWE

September 2012

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ACRONYMS AND ABBREVIATIONS

AIPPA	- Access to Information and Protection of Privacy Act
ACDEG	- The African Charter on Democracy, Elections and Good Governance
ACHPR	- The African Charter on Human and People's Rights
APAI	- African Platform on Access to Information Declaration
ATI	- Access to Information
BAZ	- Broadcasting Authority in Zimbabwe
CIO	- Central Intelligence Organisation
COPAC	- The Select Committee of Parliament on the New Constitution
EOI	- Expert Opinion Interview
FGD	- Focus Group Discussions
GNU	- Government of National Unity
GPA	- Global Political Agreement
ICT	- Information Communication Technology
MDC-N	- Movement for Democratic Change led by Welshman Ncube
MDC-T	- Movement for Democratic Change led by Morgan Tsvangirayi
NASCOH	- National Association of Societies for the Care of the Handicapped
NGO	- Non-Governmental Organisation
POSA	- Public Order and Security Act
SADC	- Southern African Development Community
SAHRC	- South African Human Rights Commission
SME	- Small and Medium Enterprise
UN	- United Nations
UNDP	- United Nations Development Programme
ZANU-PF	- Zimbabwe African National Union – Patriotic Front
ZEC	- Zimbabwe Electoral Commission
ZHRC	- Zimbabwe Human Rights Commission
ZMC	- Zimbabwe Media Commission

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EXECUTIVE SUMMARY

Access to Information is by no means an end in itself, rather it is a means through which communities and individuals alike obtain knowledge of the rights that accrue to them and demand their fulfilment. Further, it is a tool for enhancing citizen engagement and participation in their governance, attaining mass-based empowerment and local level poverty reduction as well as building the organisational capacity of local communities by building a critical mass for the demand of accountability and realisation of other fundamental human rights.

Yet, the centrality of information to maintaining political power in countries such as Zimbabwe mean that access to information is sternly restricted. The culture of secrecy prevalent in most government departments suggest that access to information is not seen as a right but a privilege that government officials dispense at will. To maintain that secrecy, legislation such as the Access to Information and Privacy Protection Act widely limit the information accessible to the public while other legislation like the Public Order and Security Act effectively control dissemination of any information to the public by restricting public gatherings.

Based on focus group discussions and interviews conducted, it was noted that people in Zimbabwe are generally unaware of their right to access information and the procedure of requesting information from government departments; on the other hand, it was revealed that the media has dominated the campaign for access to information thereby erroneously sending a message that access to information is only for media practitioners. The effect has been the lack of nationalisation of the access to information campaign. As a result, it has been recommended that civic education to raise the public's awareness of the right of access to information is essential while at the same time the government is lobbied to implement a proactive information disclosure policy for all its departments. Meanwhile, the current legislative framework could be transformed through the current constitution-making process which provides an indelible opportunity for reform of access to information laws and a constitutionally guaranteed right of access to information.

INTRODUCTION

In its book: *Empowerment and Poverty Reduction: A Sourcebook*, the World Bank opined that access to information is a critical component of the four key elements of empowerment and poverty reduction - because it enables the citizenry to effectively participate in their governance and development, ensure accountability of the State and its leaders as well as enhance their local organisational capacity. Similarly, the United Nations Development Programme's (UNDP) *Human Development Report 1997* reasoned "that with access to information poor people can begin to organise themselves for collective action to influence the decisions affecting their lives."¹ In that respect, unless citizens have access to information, their ability to hold public actors to account, participate in policy processes and their capacity for local organisation is incessantly hindered; effectively impeding public participation in the governance and democratisation of their often developing and transitional countries. This signifies the pre-eminence of access to information "that is relevant, timely, and presented in forms that can be understood"² to governance, development and democratisation.

Because access to information is not an end in itself, it can only be fully effective when taken as part of the wider process of democratization and promotion of good governance; this is premised on the notion that the right of access to information enhances the interaction between the State and its citizenry by allowing the latter to make informed choices of their representatives and critic government policies. Additionally, it enables the citizenry to realize and enforce their other fundamental human rights as enshrined in national, regional and international instruments. To that effect, the connection between an informed and knowledgeable citizenry able to actively participate in its development, governance and democracy consolidation cannot be over-emphasized.

Yet, oftentimes, in transitional societies like Zimbabwe the nexus between access to information and political power means that information is the determinant factor in power politics - explaining why governments are often secretive and their people the least developed. Laws that limit citizen engagement and local organisation such as the Public Order and Security Act [Chapter 11:17] (POSA); those that provide for arbitrary classification of public interest information (Official Secrets Act [Chapter 11:09]) and a culture of secrecy within the bureaucracy make a case for the need to enhance accessibility of public information. Challenges abound though. The majority of the country's citizenry remains unaware of their right to know; political polarisation, intolerance and violence instilled fear in the citizenry and created a chasm between the ruling elite and the masses. Regardless, the constitution-making process presents an indelible opportunity for legal reforms that could promote and enhance access to information; the accompanying institutional reforms are very much vital for the replacement of the obtaining culture of secrecy within government departments

¹ UNDP, 1997. *Human Development Report 1997* at pg. 116

² World Bank, 2002. *Empowerment and Poverty Reduction: A Sourcebook*. The World Bank: Washington

with transparency, accountability and proactivity in publicising state-held information. A national study investigating the gaps within the country's access to information regime as well as to assist in building a pro-poor and sustainable democratic polity is therefore in order.

Undertaken within the country's broader political and socio-economic context; going beyond the legal provisions of international and national legal instruments to examining the effects of systemic and structural socio-political issues within the country's transitional period, this study seeks to assess the opportunities and constraints that underpin the realization of a comprehensive right of access to information in Zimbabwe.

OBJECTIVES

This national study on access to information in Zimbabwe seeks to achieve the following objectives:

- Identify the existing legal framework for access to information in Zimbabwe.
- Analyze current practices in respect to the supply/ provision of information by various (selected) government departments.
- Determine the level of and factors influencing demand for information by the population.
- Assess government responsiveness to access to information practices (whether proactive or otherwise).
- Identify major opportunities and constraints for the promotion of access to information in Zimbabwe.
- Provide recommendations for advancing access to information agenda in Zimbabwe.

METHODOLOGY AND CHALLENGES

To intensively interrogate citizens' right to information in Zimbabwe, the study employed a three pronged methodology comprising desk review of existing constitutional; national, regional and international legal frameworks on access to information as well as studies and reports focusing on the socio-economic and political problems that Zimbabwe finds itself in and how it affects access to information in the country. The researchers made use of existing research on access to information in Zimbabwe and within the Southern African Development Community (SADC), media information, government gazettes, the current constitution and other publications derived from online databases and the internet to gain a deeper understanding of the issues.

Furthermore, the desk review assessed the constitutional and legislative framework of other countries such as South Africa in order to provide a benchmark in reviewing Zimbabwe's own legal framework. This was useful in the formulation of an Expert Opinion Interview (EOI) guide and provided background information for the Focus Group Discussions (FGDs) that were conducted in Domboshawa (peri-urban), Kwekwe (urban), Chipinge (rural) and Harare (urban), these areas were selected because they represented different socio-economic classes, guaranteeing divergent but

more representative views. Also they were regarded as less politically volatile making it easier to organise focus group discussions without attracting the suspicion of State Security Agents. At the same time a survey of randomly selected websites of the Ministry of Constitutional and Parliamentary Affairs, Ministry of Justice and the Ministry of Health and Child Welfare, was also made to further assist in the determination of how much these are used as mediums of disseminating information.

Some of the challenges that were faced during the research were the reluctance of some state media players to be interviewed. The operating environment obtaining in the country was tense and somewhat risky to conduct this research openly, more so in light of the arrest and detention of two NGO workers in December 2011 who were conducting a public meeting of a similar project³. The researchers also faced a challenge in getting some FGD and interview participants as some exhibited fear that such researches are more often than not misconstrued as being politically motivated, hence they did not fully express their views.

Another challenge encountered during the research, was that most of the government officials and Members of Parliament that were approached were either unwilling to be interviewed on the topic or just did not prioritise it. At the end of the research, 11 government and quasi-government officials were interviewed, the number constituted half of the total interviews that had been planned at the beginning of the research. The majority kept postponing interview appointments while the rest asked for written questions which they never responded to – giving the excuse that requests for information and interviews have to be directed to the Permanent Secretary of the respective government department. As a result of these challenges, fewer than expected interviews were conducted with Members of Parliament and government officials who also spoke on condition of anonymity.

EXPERT OPINION INTERVIEWS (EOIs)

Expert Opinion Interviews (EOIs) are qualitative in-depth interviews with knowledgeable people from wide ranging sectors that includes civic society, policy makers, the media and the legislature. The aim of these interviews was to interrogate the state of access to information in Zimbabwe from the varying sectors' perspectives. Expert Opinion Interviews were conducted with the directors and programme officers within the civil society and the donor community. Due to political intimidation and heightened political tension in Zimbabwe, except for a few of the interviewees, the majority strongly requested anonymity. Although the donor community was not willing to get into the specifics of their operations in the country regarding the right to know, they gave insightful

³ Article 19 (2011), *Zimbabwe: Unlawful detention and harassment of human rights defender*. Available at <http://www.article19.org/resources.php/resource/2889/en/zimbabwe:-unlawful-detention-and-harassment-of-human-rights-defenders>

information on the lack of donor interest in long term projects such as the accessibility of information that could be resolved through far-reaching institutional and political reforms. Access to Information and freedom of expression campaigns have been dominated by the media sector in Zimbabwe, requests for some interviews to both the independent and state-controlled media were granted and much of the information presented in this study came from interviewees in the media sector.

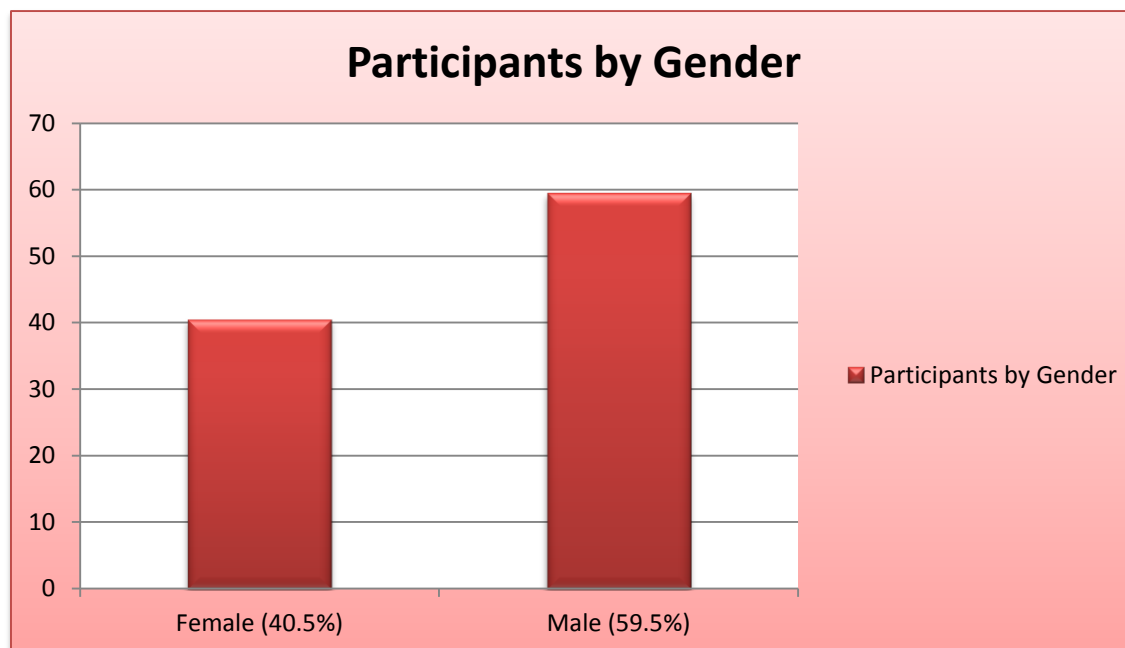
The government and its departments are the major stakeholders in any discussion on access to information; however, and as highlighted above, researchers were not able to interview some of the government officials and Members of Parliament that they had targeted, with the government departments being the most problematic. This arguably reveals the secretive nature of government departments in Zimbabwe. In contrast, academics from the University of Zimbabwe gave detailed information on the state and nature of access to information in the country; however, since some of them are involved in the current constitution-making process their names have been withheld at their request.

FIELD RESEARCH-COMMUNITY OUTREACH FOCUS GROUP DISCUSSIONS (FGDs)

The ATI challenges in Zimbabwe can hardly be addressed without public participation and obtaining the views of the general citizens who are usually affected by lack of access to information. In the research project, FGDs with randomly selected participants were conducted in Domboshawa (peri-urban), Kwekwe (urban), Chipinge (rural) and Harare (urban). Besides focus group discussions, questionnaires were administered in cases where individuals could not physically participate in the focus group discussions. Apart from financial reasons, the four areas were selected because of the relatively lower levels of political violence in the areas. Due to budget constraints and the political situation in the country, including the arrest of Media Monitoring Project of Zimbabwe programme officers who were conducting public opinion surveys, the reach and size of the research was limited such that each FGD comprised of about ten people. The numbers were kept at a minimal to avoid the political risk associated with meetings that can be perceived as political and might require police clearance in terms of the Public Order and Security Act.

Diagram 1 below, shows the gender-disaggregated number of participants in the four FGDs conducted in Domboshawa, Kwekwe, Chipinge and Harare.

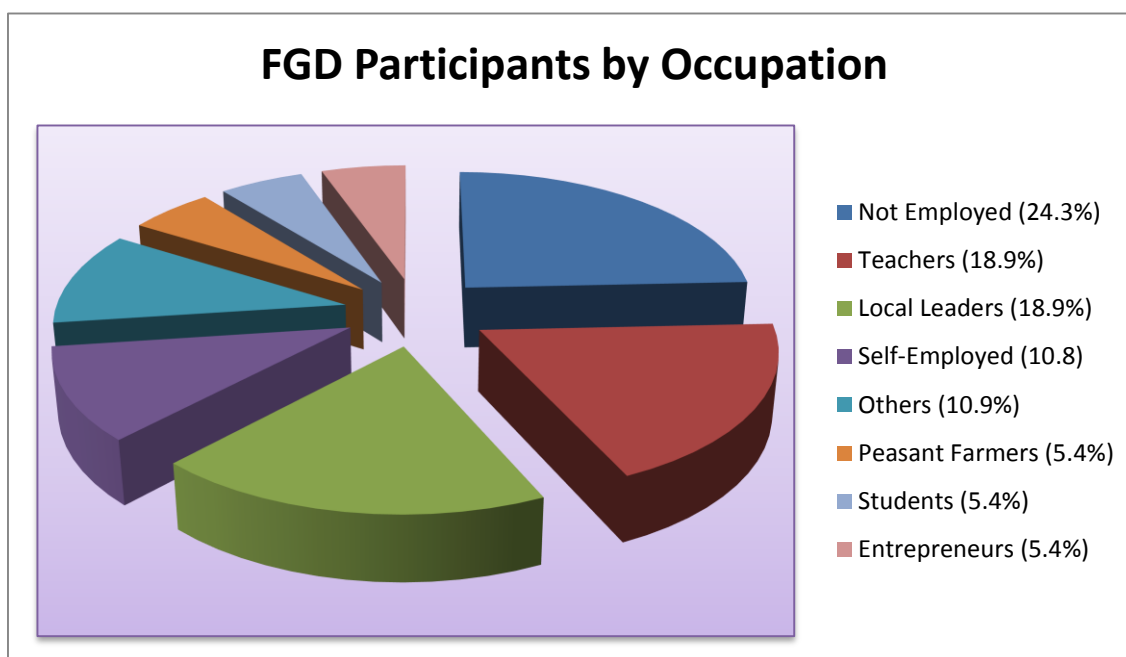
Diagram 1: Participants by Gender



Of the 37 participants, 22 were male while 15 were female. The low participation by women can be interpreted in the context of the volatile political situation in the country that has been characterised by widespread political violence and disruption of meetings by political party militias or the police. This is because in 2008, sexual violence was perpetrated against perceived female opponents of the Zimbabwe National African Union –Patriotic Front (ZANU-PF) by state security agents as a means of re-establishing its political dominance.⁴ At the Chipinge FGD, two female participants excused left the meeting just after the facilitator had introduced the topic for discussion. A male participant, 'Peter', explained that people around the area, especially women were somehow timid to express their views to NGOs because a previous meeting that had been conducted by the Zimbabwe Lawyers for Human Rights was disrupted by youth militias and the police.

⁴ Reeler, Tony (2008): Subliminal Terror: Human Rights Violations And Torture In Zimbabwe 2008. Braamfontein: Centre for the Study of Violence and Reconciliation, pp. 31

Diagram 2: Participants by Occupation



The FGD participants ranged from teachers to the unemployed, representing the socio-economic demography of the participants. The single major group were the unemployed who formed the majority in the peri-urban and rural areas of Domboshawa and Chipinge respectively. Local leaders including traditional leaders, local councillors and local-level political party leaders attended and comprised of 18.9% of the participants while other occupations such as nurses, artisans and security guards were clustered together as others and constituted 10.9% of the total participants. The effects of the socio-economic status of the participants on their understanding of access to information will be addressed later on in this study.

FACTORS INFLUENCING DEMAND FOR INFORMATION IN ZIMBABWE

From the information that was gathered during the study, there are various factors that influence demand for information in Zimbabwe, which on the other hand, vary with places. Overall however, there are a few common factors that are influenced by the socio-economic and political situation that Zimbabwe finds itself in. Based on the FGDs conducted in the above stated four areas, some of the generic factors that push people to seek information are as follows:

- (i) **The Inclusive Government** - according to 'Tafadzwa', who participated in the FGD in Harare, the advent of the inclusive government, brought an increased demand for information from citizens and the independent media alike. With the introduction of other political parties in government as well as key national processes such as the constitution-making process and

the status of service delivery at local government level she noted that “people required more information about the state of the constitution and service delivery; but there has been contradicting reports in the media and from government.” She added that due to so much contestation within this unity government and a lot that has been said by the principals regarding its lifespan, people are generally interested to know anything on its progress as the future of the country is hinged upon the inclusive government. However, their enquiries are not in any way formalised or systematic.

(ii) **Mobile Phones and Internet Accessibility**– According to the Internet World Stats website, there were approximately 1,445,717 Internet users as of December 31, 2011 in Zimbabwe. That constituted 12.0% of the country’s population⁵. Statistics published by the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) in March 2012 suggested that “Zimbabwe’s mobile penetration rate (a percentage measure of active mobile phone subscriptions out of the country’s total population) had risen to 75.9% from just 72% in December 2011.”⁶ The accessibility of the internet and mobile phones have increased the demand for information. According to ‘John’ a youth interviewed in Chipinge have become increasingly affordable even for the youth and has greatly increased demand for information through social networks such as Twitter and Facebook. Because of the relatively cheap rates of accessing the internet and wider network coverage across the country, youths access to social networking sites is one factor that urges them to demand and or access information which under normal circumstances, they would not have even prioritised, through befriending government ministers such as David Coltart, the Minister of Education and Walter Mzembi, the minister responsible for tourism who are active facebook users and frequently post information on government policies and activities on their profile pages.

(iii) **Agricultural Support Programs** - this is mostly due to the agro-based nature of Zimbabwe’s economy and livelihood of many. As has become tradition, the government has yearly programs through which it disburses farming implements on a loan-basis as well as for free under various schemes. Community farmers in rural areas mostly depend on these agricultural inputs and are therefore frequent requesters of related information from their local village leaders and ward councillors.

(iv) **Service Delivery Enquiries** – Zimbabwe, has experienced persistent water and electricity cuts leading to deterioration of services offered by municipalities and the electricity supply company. As noted from an FGD participant, ‘Tinashe’ in Harare, in the suburb of Tynwald

⁵ Internet World Stats (2012), *Africa*. Available at <http://www.internetworldstats.com/africa.htm>

⁶ TechZim (2012), *Zimbabwe’s March 2012 mobile phone penetration rate (Telecel adjusted)*. Available at <http://www.techzim.co.zw/2012/06/zimbabwes-march-2012-mobile-phone-penetration-rate-telecel-adjusted/>

“there was no electricity from December 2011 to January 2012 but the Zimbabwe Electricity Supply Authority did not respond to request for information from the residents of that area.” This was echoed by other participants who complained that they frequently demand information on rationing timetables and service delivery from the Zimbabwe Electricity Supply Authority that is responsible for national electricity supply and the City of Harare which is responsible for water supply and sewer reticulation, but no adequate information is given. Despite demand for the information *en masse*⁷ it was noted in the Harare FDG that there has neither been improvement in the service delivery nor provision of reliable information from the relevant authorities; frequently, requests for information went without response.

- (v) **Development Projects (Ethanol plant)** – The ethanol plant in Chisumbanje close to Chipinge has been a subject of considerable discord between the entrepreneurs and the villagers in that area who have been relocated to accommodate sugarcane fields for the plant. Issues around compensation of the dispossessed influence demand for information from a number of people in Chisumbanje whose livelihoods are largely dependent on the lands that they are allegedly being made to vacate. But there has been a general lack of adequate information from neither the plant operators nor the government despite widespread demands for information from the affected villagers.

⁷ Administrator. 2012. *Kuwadzana Residents Mull Demonstrations*. Community Radio Harare. Available at: <http://www.corah.org.zw/index.php/component/content/article/42-general/73-kuwadzana-residents-mull-demonstrations>

SOCIO-POLITICAL ANALYSIS – ACCESS TO INFORMATION

Obligated to undertake all appropriate legislative and administrative measures to implement the access to information rights recognized in international and continental instruments; in 2002, Zimbabwe became one of the first African countries to adopt an 'access to information' law. However, the effectiveness of the law could only be determined through its implementation. Since the passing of the Access to Information and Protection of Privacy Act [Chapter. 10:27] (AIPPA) in 2002, whose objective is 'seemingly' to provide members of the public with a right of access to records and information held by public bodies as per the Act's preamble, there have emerged enormous gaps between having the law in place, its implementation and the actual experiences of the citizenry in exercising that right. As noted by Article 19 and the Media Institute of Southern Africa-Zimbabwe (MISA), *"AIPPA does formally establish a right to access information held by public bodies. However, this right is so limited by exclusions and exceptions that its practical impact has been extremely limited."* Notably, the provisions of AIPPA, its limited scope and the over 'classification' of information in terms of other legislation such as the **Official Secrets Act** and the **Constitution of Zimbabwe** belie its intended purpose; exposing the ineffectiveness of the law in the absence of supporting democratic national institutions.

Before becoming the Prime Minister of Canada, Stephen Joseph Harper retorted that, *"Information is the lifeblood of a democracy. Without adequate access to key information about government policies and programs, citizens and parliamentarians cannot make informed decisions and incompetent or corrupt governments can be hidden under a cloak of secrecy"*⁸. This is somewhat reflective of Zimbabwe where the propensity of national institutions to suppress the public's access to information has restricted democratic space⁹, hiding corruption and proscribing citizen engagement. By becoming increasingly enigmatic, the Mugabe-led regime strutted *"the stage, tolerating neither opposition nor dissent, emasculating the courts, cowing the press, stifling the universities, [and] demanding abject servility"*¹⁰. The closure of alternative independent sources of information such as the Daily News and the Daily Mirror in 2003 and the refusal to license private electronic media left the state-controlled media with a monolithic monopoly of information on government policies and programs. As state institutions progressively became subservient to the Zimbabwe African National Union – Patriotic Front (ZANU-PF) and protectors of its political hegemony¹¹, the judiciary squandered opportunities to provide recourse to those denied information by the government holding that where the executive declines to publish information on the basis of the interest of the state and safety of other persons, it cannot be compelled to publish

⁸ Lawrence Martin, *Harperland: The Politics of Control*. Toronto: Penguin, 2010

⁹ Interview with a University of Zimbabwe lecturer, 12 January 2012 .

¹⁰ Meredith, Martin (2006). *The State of Africa: A History of Fifty Years of Independence*. London: Free Press, page 378

¹¹ Interview, Professor John Makumbe, University of Zimbabwe, , 12 January 2012

them because the release of state-held information to the public is a matter of government policy that cannot be adjudicated by the courts¹².

THE GOVERNMENT OF NATIONAL UNITY (GNU)

In breaking the 29 year political dominance of the Zimbabwe African National Union-Patriotic Front, the Government of National Unity entered into between the Movement for Democratic Change led by Morgan Tsvangirayi (MDC-T), the Movement for Democratic Change led by Welshman Ncube (MDC-N) and ZANU-PF in February of 2009 promised sweeping democratic and constitutional reforms. Article XIII of the Global Political Agreement (GPA) entered into by the three political parties on 15 September 2008 even provided that “State organs and institutions do not belong to any political party and should be impartial in the discharge of their duties.”¹³ More so, the coalition recognised the importance of the right to freedom of expression and the role of the media in a multi-party democracy¹⁴ and undertook to open up the airwaves. While opening up of the airwaves would provide alternative sources of information for the citizenry, experiences drawn from the licensing of independent newspapers show that the increase of players in itself does not guarantee the right of access to state-held information. In an interview, an assistant editor of a daily independent newspaper commended that despite the licensing of several independent newspapers, the independent press still struggles to access information held by government departments¹⁵. Wholesome reforms are evidently required to ensure a conducive operating environment for access to information in the country.

By undertaking to liberalise the print and electronic media, the Global Political Agreement provided an indelible opportunity to enhance the campaign for an explicit recognition of the right of access to information. However, except for piecemeal reforms, such as the licensing of independent newspapers and radio stations there have been no major changes to the country’s legal framework and operating environment. On the other hand, the constitution-making process now at drafting stage has been mired by political bickering stalling efforts to expedite the democratic reform process. Hence as noted by Professor John Makumbe, a political analyst at the University of Zimbabwe, the GNU is hand-in-glove with the previous ZANU-PF regime and lacks the capacity and political will to institute reforms that could enhance access to information¹⁶.

Not surprisingly, the Southern African Development Community’s (SADC) Troika on Politics, Defence and Security summit held in Livingstone, Zambia in March 2011, two years after the establishment of

¹² Zimbabwe Lawyers for Human Rights and The Legal Resources Foundation versus The President of the Republic of Zimbabwe and the Attorney-General, SC 12/03

¹³ Global Political Agreement, Article XIII

¹⁴ Global Political Agreement, Article XIX

¹⁵ Interview, Assistant Editor of an independent daily newspaper, 16 January 2012.

¹⁶ Interview with Professor John Makumbe, University of Zimbabwe, 12 January 2012.

the government of national unity, described the political situation in Zimbabwe as polarised and characterised by the resurgence of violence, arrests and intimidation. Media practitioners on the other hand are still arrested for a diversity of reasons such as writing articles or reports that are considered to be critical of the president, the uniformed forces and/or perceived to be advocating the western 'regime change' agenda; effectively, this has entrenched self-censorship in the media fraternity. For example, in the case of the *State versus Chimakure and Kahiya*, two independent journalists were arrested for contravening Section 31(b) (ii) C of **The Criminal Law Codification and Reform Act**, which criminalises the publication of any statements that undermine public confidence in the law enforcement agencies, the prison service or the defence forces of Zimbabwe. Their arrest in 2009, followed the publication of an article in the *Zimbabwe Independent* of 8th-14th May 2009 titled "**CIO, police role in activists' abduction revealed**" written by Constantine Chimakure and Vincent Kahiya who was the newspaper's editor at that time. The article covered an impending criminal trial in the High Court which was set to begin on 29th June 2009, involving a group of MDC-T activists who had been reported missing in late 2008 but were later brought to court on criminal charges. The article purported to rely for its facts on public documents – indictments and State case summaries already served on the accused activists, revealing that the activists were either in the custody of the Central Intelligence Organisation (CIO) or police during the period they were reported missing and referring, with names, to the roles played by police and intelligence agents in their abduction, unlawful detention and mistreatment. At a remand hearing on 30th July 2009 the magistrate granted a defence application to refer the constitutionality of section 31(1) (b) of the Criminal Law Code to the Supreme Court for a definitive ruling.

As the country gears for a possible constitutional referendum and general elections in either 2012 or 2013, the coalition government has been rocked by discord and dis-functionality as political parties sacrifice transparency and accountability for political expediency. Media freedom remains at threat amidst the thinking that *"the media are very powerful in shaping the opinions of the voting public, and so whoever has control of the media is firmly positioned to determine the psyche of the public and therefore sway them to their side in the event of the public having to make a political decision on who should be in or out of government"*¹⁷. Political struggles for control of the media have aggravated political polarisation, leaving the general citizenry without independent sources of information. Resultantly, *"people are denied the right to know about public affairs, and the press is only able to speculate and subsist on rumours... [Impeding] 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."*¹⁸ Especially, considering that the general populace whose rights are seriously

¹⁷ Mawarire, J. 2010. *National Overview: Zimbabwe*. Page 1

¹⁸ Neuman, L. 2002. 'Introduction' in *Access to Information: A Key to Democracy*, The Carter Centre, Page 5. Available at:

http://www.cartercenter.org/resources/pdfs/peace/americas/ati_key_to_democracy.pdf

threatened have generally been rendered too powerless to face the state machinery and obtain the information they need, leaving them disenfranchised and lacking the capacity to exercise their right of access. As such, in a country where the majority of the people rely on the radio, television and newspapers for information, the control of the media by political parties translates to control of the public's access to state-held information.

In that respect, Article XIX of the Global Political Agreement noted that although the Broadcasting Services Act [Chapter 12:06] provided for the issuance of licences, the Broadcasting Authority in Zimbabwe (BAZ) had not issued any licences to private broadcasters; it therefore sought to open up the airwaves and ensure the registration of as many media houses as possible. However, to this date it has only issued two radio licences to the state-owned Zimbabwe Newspapers' Star FM and ZiFM Stereo owned by an alleged ZANU-PF apologist. Meanwhile, the government has been criticised by members of the Zimbabwe Association of Community Radio Stations for politicising the licensing of community radio station and "for allegedly side-lining them in fear of the people's voice."¹⁹ The licensing of radio station would have enhanced the capacity of local communities to demand and access State-held information which is timely and relevant to their communities.

Further, contrary to Article 19(1)(d) of the Global Political Agreement which provides that "steps be taken to ensure that the public media provides balanced and fair coverage to all political parties of their legitimate political activities" the public media in Zimbabwe remain ZANU-PF propaganda tools channelling abusive language and inciting hostilities and political intolerance²⁰. Intrinsically, the media environment has remained unchanged even under the Government of National Unity, which has retained the same oppressive laws such as the Criminal Law (Codification and Reform) Act that criminalises criticism of the president and security personnel; and despite amendments, AIPPA "still insulates access to information held by public bodies and state departments".²¹ As such, the Broadcasting Services Act remains protective of the state's monopoly of electronic media and other legislation such as the Official Secrets Act protect and provide for arbitrary classification of government-held information.

More so, the institutional framework of the Government of National Unity by its very nature has also side-lined public participation, insulating itself from public scrutiny. In determining all reforms, except for public consultations on the constitution-making process, "there have been no other opportunities for citizen engagement; state-held information remains elusive to the general populace and government departments are increasingly reticent and reactive rather than

¹⁹ The Daily News, *Community radios demand licences*. The Daily News, 19 August 2012. Available at <http://www.dailynews.co.zw/newsarticle.aspx?q=1da0f4ea-0e93-4c11-8754-873b49076e05>

²⁰ Interview with University of Zimbabwe Lecturer, 12 January 2012

²¹ Mawarire, J. 2010. *National Overview: Zimbabwe* page 5

proactive”²². In all this, the government of Zimbabwe even under the power-sharing arrangement has grown even more secretive²³ amidst deliberate government attempts to mystify the right of access to information by keeping the procedure for requesting information hidden to public knowledge.²⁴

Among some government departments and ministries there is a general belief that requests for information in their possession should be directed to the Ministry of Information, Media and Publicity. One Deputy Minister declined to be interviewed on the state of access to information in his Ministry citing that it was within the Ministry of Information, Media and Publicity’s portfolio. Similarly, a Director in the Law Development Commission refused to answer questions on the subject matter stating that “he was not at liberty to release any information.”²⁵ Several other Directors of Ministries such as the Ministry of Health and Child Welfare and the Ministry of Justice either ignored pleas for interviews or clearly refused to be interviewed or discuss the subject of access to information in their respective ministries. To some extent, the attitude of these government ministry directors arguably represents the attitude of government to requests for information by the general public. Hence, the challenge is not just within the stringent legal framework but with the culture of secrecy within the country’s bureaucracy. It is therefore within this broad socio-political context that the study on access to information in Zimbabwe was conducted.

EXISTING LEGAL FRAMEWORK FOR ACCESS TO INFORMATION IN ZIMBABWE

REGIONAL AND INTERNATIONAL LEGAL FRAMEWORK

Several regional and international instruments that provide for the right of access to information have been ratified by Zimbabwe, creating significant obligations for the country. For instance, Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, and Article 9 of the African Charter on Human and People’s Rights (the Charter) provide that: “*Every individual shall have the right to receive information*”²⁶. The Declaration on Principles of Freedom of Expression in Africa, which the African Commission on Human and People’s Rights adopted, further expands the right of access to information within the African continent.

However, in a May 2007 *Shadow Report to the African Charter on Human and People’s Rights*, Article 19 observed that: “*While the government of Zimbabwe’s state party report to the African Commission correctly cites Article 9 of the African Charter as the basis of the right to freedom of*

²² Prof. John Makumbe, Interview on 12 January 2012

²³ Prof. John Makumbe, Interview on 12 January 2012

²⁴ 62 per centum of the four Focus Group Discussions’ participants professed ignorance of the laws that provide for the right of access to information and the procedure for requesting information from public bodies.

²⁵ Conversation with a Director at the Law Development Commission.

²⁶ Article 9(1) of the African Charter on Human and People’s Rights (ACHPR)

expression, it fails to cite also the African Commission's Declaration of Principles on Freedom of Expression in Africa, which was adopted by resolution by the African Commission in 2002."²⁷ Being a party to the African Charter, Zimbabwe has an obligation in terms of Article 9 of the African Charter on Human and People's Rights (ACHPR), which places a responsibility on member States to ensure the implementation of the Charter's provisions. However, Article 9 of the Charter provides for a right to receive information and the right to express and disseminate opinions within the law; making the right to information and freedom of expression limited rights subject to other national legislation. Taking advantage of that provision, the legislation in Zimbabwe has imposed considerable limitations on the freedom of information. Notably, legislation such as the Public Order and Security Act has been used to stifle opportunities for civil society organisations to disseminate state-held information or any other information that may be considered subversive to government interests. A case in point is the arrest of Media Monitoring Project Zimbabwe's employees who were charged for contravening "Section 25(1)(b) of the Criminal Law (Codification and Reform) Act for allegedly, "participating in a gathering without seeking authority from the regulating authority" and for contravening section 37(1)(b) of the Criminal Law (Codification and Reform) Act, for allegedly "participating in a gathering with intent to promote public violence, breaches of the peace or bigotry."²⁸ The employees had facilitated a meeting at which they distributed a promotional film calling on the media to promote peaceful electoral processes. This shows that even were the government has failed to control access to information, it could still control the public dissemination of such information.

AIPPA came into force in 2002, the same year that the 32nd Ordinary Session of the African Commission on Human and People's Rights held in Banjul, The Gambia, led to the adoption by African countries of the Declaration of Principles on Freedom of Expression in Africa (hereinafter referred to as the 'Declaration'). Among other things, the Declaration of Principles of Freedom of Expression in Africa states that:

"Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law."

Additionally, Principle I of the Declaration states that freedom of expression and information forms a "fundamental and inalienable right and an indispensable component of democracy" thus "Everyone shall have an equal opportunity to exercise the right of freedom of expression and to access

²⁷ Zimbabwe: Human Rights In Crisis: Shadow Report to the African Commission on Human and People's Rights, May 2007

²⁸ Article 19 (2011), Zimbabwe: Unlawful detention and harassment of human rights defender. Available at <http://www.article19.org/resources.php/resource/2889/en/zimbabwe:-unlawful-detention-and-harassment-of-human-rights-defenders>

information without discrimination.”²⁹ Similarly, the African Charter on Democracy, Elections and Good Governance (ACDEG) which shall enter into force on 15 February 2012 seeks to “*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*”³⁰ Although it was adopted on 30 January 2007 in Addis Ababa, Ethiopia, the 15th country to deposit its instrument of ratification was Cameroon on 16 January 2012, almost five years after it was adopted. Unfortunately, Zimbabwe has not signed both the Declaration and the ACDEG; given ACDEG focus on democracy, elections and good governance and the inaccessibility of electoral information in Zimbabwe, it is essential that Zimbabwe be lobbied to be party thereof.

At an international level, Zimbabwe is also a party to several instruments that provide for the right of access to information. For instance, the 1946 Resolution 59(1) of the United Nations General Assembly stated that: “*Freedom of Information is a fundamental human right and is the touchstone of all the freedoms to which the UN is consecrated.*” Further, the United Nations General Assembly’s Resolution 217A (III) on the Universal Declaration of Human Rights also stated that: “*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.*” Furthermore, Resolution 2200A (XXI) of the United Nations General Assembly on the International Covenant on Civil and Political Rights of 1966 provides 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 choice.*” Being party to these international instruments, Zimbabwe not only has an obligation to the international community but more-so to Zimbabweans to implement national laws that conform to international best practices, regulations and frameworks and that best promotes the rights enshrined therein.

Until Zimbabwe terminated its membership with the Commonwealth of Nations on 7 December 2003, it was expected to abide by Commonwealth resolutions by virtue of its membership to the organisation. In 1980, the Commonwealth’s Council of Law Ministries reckoned that “*public participation in the democratic and government process was at its most significant when citizens had adequate access to information.*” In 1999, the Commonwealth convened an Expert Group on Freedom of Information which reiterated that: “*Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.*” But, despite being encouraged to

²⁹ Principle I, II of the Declaration of Principles on Freedom of Expression in Africa.

³⁰ African Charter on Democracy, Elections and Good Governance, Article 2(10)

regard right of access to information as a fundamental right, by imposing a myriad of exceptions to the right, the right was rendered unactionable in terms of AIPPA.

As argued by Honourable Musika (not his real name) who is a member of the Parliamentary Portfolio Committee on Media Information and Technology, “there seem to be no government urgency in ensuring that national laws in Zimbabwe comply with regional and international legal instruments.”³¹ He added that Zimbabwe remains one of the secretive states. In effect, most of its repressive legislation such as AIPPA is at tangent with the international and regional obligations that the country has as a member to the above regional and international instruments.

CURRENT ATI LEGAL FRAMEWORK IN ZIMBABWE

Legislation providing for the right of access to information is often the preliminary stage for operationalization of the right of access to information. However, it is not just the regulatory infrastructure but institutions that are responsible for the implementation of the regulation that gives effective meaning to the right to information. Thus, in order for access to information to be regarded as a legal and enforceable right, it is not enough that international instruments provide for that, but that national laws recognise and operationalize it as an enforceable right; and that those laws are in conformity with international, continental and regional standards and principles. The Constitution of Zimbabwe and AIPPA are the primary laws that provide for a semblance of the right of access to information. However, laws such as, the Official Secrets Act [Chapter 11:09], Broadcasting Services Act [Chapter 2:06], Public Order and Security Act [Chapter 11:17], the Criminal Law (Codification and Reform) Act [Chapter 9:23], and the Commissions of Enquiry Act [Chapter 10:07] also secondarily affect the right of access to information.

THE CONSTITUTION OF ZIMBABWE AND CASE-LAW

The Constitution of Zimbabwe does not impose an obligation on the government to make information available to the public.³² The Right2Info argues that, Zimbabwe “protected the right to information within the context of the broader right to freedom of expression, which includes the right to ‘seek, receive and impart information’³³ as provided for in terms of Section 20(1) of the Constitution of Zimbabwe, which states that:

Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions

³¹ Interview with Hon. Musika, Member of Parliament and a member of the Parliamentary Portfolio Committee on Media Information and Technology, 10 January 2012.

³² Right2Info, 2011. “Constitutional Protections of the Right to Information” Available at: <http://right2info.org/constitutional-protections-of-the-right-to>

³³ Right2Info, 2011. “Constitutional Protections of the Right to Information” Available at: <http://right2info.org/constitutional-protections-of-the-right-to>

and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

Even so, unless case-law and general practice supports the inclusion of a general right of access to information within the freedom of expression, Section 20 of the Constitution of Zimbabwe cannot be counted as explicitly guaranteeing the right of access to information. Although the said Section provide for the right “to receive and impart ideas and information without interference” - case law proves that it does not sufficiently and explicitly guarantee and protect the right of access to information.

In the 2003 Supreme Court case: ***Matabeleland Zambezi Water Trust versus Zimbabwe Newspapers (1980) Limited and The Editor of The Chronicle, SC3/03***, in upholding the ruling by the High Court that Section 20(1) of the Constitution of Zimbabwe did not create a right of access to information, Justice Cheda ruled that *“the section does not, in my view, cover a situation where one can approach and demand information from another party.”*³⁴ Based on the above Supreme Court ruling, it can be argued that Section 20(1) does not provide for the right of access to information held by a third party, and that where there is *“a right to receive certain information, it is that right which should not be interfered with. The one who claims under the section should first of all establish such right, and then show that such right is being interfered with.”*³⁵ It is therefore the duty of the claimant to establish that he/she has a right to receive information from the holder of such information before access can be granted.

After establishing that one has a right to receive information from a third party; in the case of the ***Zimbabwe Lawyers for Human Rights and The Legal Resources Foundation versus The President of the Republic of Zimbabwe and the Attorney-General, SC 12/03***, the Supreme Court reasoned that although rights created by the Constitution of Zimbabwe are protected and guaranteed, they are not absolute and are subject to limitations that are *“designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the public interest or the rights and freedoms of other persons.”*³⁶ Thus to qualify the rights expressed in Section 20(1) of the Constitution, Section 20(2) provides for broadly ranging limitations to the freedom of expression and effectively on the right of access to information. The limitations include: any other legislation that limits the constitutional right; interests of defence, public safety, public order, the economic interests of the State, public morality or public health; protection of individual reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings and where the

³⁴ *Matabeleland Zambezi Water Trust versus Zimbabwe Newspapers (1980) Limited and The Editor of The Chronicle, SC3/03*, page 4.

³⁵ *Ibid*, page 4.

³⁶ Preamble of the Constitution of Zimbabwe.

information in question was received in confidence.³⁷ In essence, “these provisions make it clear that even where the right of access to information has been established, it can only be exercised subject to observation of, and respect for, other people’s rights, or those rights stipulated in subs (2)(a) of s 20.”³⁸

In denying public access to the Dumbutshena Commission Report on the Matabeleland massacres of the early 1980s, the government of Zimbabwe argued that the **Commissions of Enquiry Act** does not impose any obligation on the President to publish the Report. “The findings and recommendations were solely for use by the Government and the Government had no legal duty to divulge the findings to the general public”³⁹ Also in buttressing its argument, the government argued that in terms of Section 31K of the Constitution of Zimbabwe “where the President is required or permitted by this Constitution or any other law to act on his own deliberate judgement, a court shall not, in any case, inquire into any of the following questions or matters -... [such as] (d) the manner in which the President exercised his discretion.”⁴⁰ In its ruling the Supreme Court of Zimbabwe therefore reasoned that the release of the Report or any other documents held by the Government was a policy decision that could only be made by politicians or parliament but not by the Courts; therefore, where the President “declines to publish the Reports on the basis of the interest of the State and safety of other persons, he cannot be compelled to publish the Reports.”⁴¹

Furthermore, the restricted interpretation of Section 20 of the current Constitution of Zimbabwe coupled with restrictive media regulation through AIPPA has in many respects restricted media freedoms, its access to public information and in turn the information accessed by the public through the media. The closure of independent radio stations such as Capitol Radio⁴² meant that the “monopoly granted the Zimbabwe Broadcasting Corporation was an infringement of the right to freedom of expression guaranteed under section 20(1) of the Constitution.”⁴³ Despite the closure of independent radio stations, recently, the Zimbabwe Media Commission announced that it was considering banning foreign printed newspapers being distributed in Zimbabwe citing that they were

³⁷ The Constitution of Zimbabwe, Section 20(2).

³⁸ Zimbabwe Lawyers for Human Rights and The Legal Resources Foundation versus The President of the Republic of Zimbabwe and the Attorney-General, SC 12/03, page 7.

³⁹ Ibid, page 9-10.

⁴⁰ The Constitution of Zimbabwe, Section 31K (1)(d).

⁴¹ Zimbabwe Lawyers for Human Rights and The Legal Resources Foundation versus The President of the Republic of Zimbabwe and the Attorney-General, SC 12/03, page 11

⁴² Blair, D. 2000. *Armed Zimbabwe Police Shut Independent Radio Station*. The Telegraph. Available at: <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/zimbabwe/1369207/Armed-Zimbabwe-police-shut-independent-radio-station.html>

⁴³ Capital Radio (Private) Limited V (1) The Broadcasting Authority Of Zimbabwe (2) The Minister of State For Information And Publicity (3) The Attorney-General Of Zimbabwe, SC. 128/02

not duly registered according to AIPPA⁴⁴. If the ban is effected newspapers such as the Sunday Times, The Mail and Guardian and Business Day which are published in South Africa will not be distributed in Zimbabwe leaving the citizenry with limited independent media alternatives thus affecting the quality of information they can access, especially considering that the majority of the population are not able to access the information directly from government departments.

By erroneously exonerating itself, the judiciary effectively incapacitated the public from accessing information from the government while simultaneously bestowing the Executive with unquestionable power to decide on information that can be divulged to the public. Furthermore, it reasoned that unless an applicant for information held by the Government shows that non-disclosure of the information will cause prejudice to any person, the Government is justified in denying access to that information, showing that there is an inherent presumption against disclosure; giving the requester the onus to prove why the information has to be disclosed. This is in direct conflict of the provisions of the Declaration adopted by the African Commission on Human and People's Rights, which provides that public institutions "hold information not for themselves but as custodians of the public good and everyone has a right to access this information"⁴⁵; thus allowing the government of Zimbabwe to "exploit power imbalances between itself and citizens in order to actively and passively resist openness and transparency."⁴⁶

OPPORTUNITIES WITHIN THE CURRENT CONSTITUTION-MAKING PROCESS

The current constitution-making process within the GNU framework has provided opportunities for a constitutional provision for the right of access to information. According to a proposed draft constitution released by The Select Committee of Parliament on the New Constitution (COPAC) July 2012, Article 4:12 of the draft provide that:

4.12 Access to Information

(1) Everyone, including the press and other media of communication, has the right of access to –

a) Any information, held by the State; and

⁴⁴ Gumbo, T. 2012. *Zimbabwe's Media Commission Moves to Ban Foreign Newspapers*. Voice of America. Available at: <http://www.voanews.com/zimbabwe/news/Zimbabwe-Media-Commission-Moves-to-Ban-Foreign-Unregistered-Newspapers-138656354.html>

⁴⁵ African Commission on Human and Peoples' Rights. 2002. Declaration of Principles on Freedom of Expression in Africa. Available online at: <http://www1.umn.edu/humanrts/achpr/expressionfreedomdec.html>, accessed on 26 December 2011. See also the Banjul Charter

⁴⁶ Brobbey V et al. *Active and Passive Resistance to Openness: The Transparency Model for Freedom of Information Acts in Africa – Three Case Studies*. Access to Information in Africa Project. Page 1

- b) *Information held by anyone else in so far as that information is required for the exercise or protection of any person's rights under this constitution or any other law.*
- c) *Legislation must be enacted to give effect to this right, but may provide for reasonable measures to alleviate the administrative and financial burden on the State.*

4.38 Limitations of rights and freedoms

(1) the fundamental rights and freedoms set out in this chapter may be limited only in terms of a law of general application and to the extent that the limitation is reasonable and is necessary and justifiable in an open, just and democratic society, taking into account all relevant factors, including –

- a) the nature of the right or freedom;*
- b) the purpose of the limitation;*
- c) the nature and extent of the limitation;*
- d) the need to ensure that the enjoyment of rights and freedoms by any person does not prejudice the rights and freedoms of others;*
- e) the relationship between the limitation and its purpose; and*
- f) whether there are any less restrictive means of achieving the purpose of the limitation.*

If the draft provision is incorporated into the final draft of the constitution, and subsequently promulgated into law after the referendum, this Section will be comparable to the South African and Kenyan constitutions that explicitly provide for the right of access to information because in terms of the Constitution of South Africa, apart from Section 16, which provides for the right to freedom of expression, it also provides for the right of access to information in Section 32 thereof. Section 32(2) of the said Constitution further provides that national legislation must be enacted to give effect to the right of access to information. Comparatively, the draft constitution provides an opportunity for not just the constitutionally guaranteed right of access to information but also for the reform of the current access to information laws to conform to international instruments and best practices.

Beyond establishment of a new access to information legislative framework, the proposed draft constitution presents an opportunity for a transformation of the culture of secrecy within government departments through inevitable institutional reforms in the key state institutions such as the defence, police, judiciary and legislature. If passed this provision would also extend the right of access to information beyond government departments as is the case obtaining. All legislation would have to conform to these new standards, which on the other hand would enhance transparency, not only government but in the so called 'private' sphere. However, it should be cautioned that without accompanying institutional reforms such as vetting of senior civil servants

and establishment of civilian oversight of key state institutions, in itself Section 4(12) of the draft constitution will not transform the predominant secrecy culture within government departments and public institutions, nor will it enhance the much needed transparency in government.

CONSTRAINTS TO ACCESS TO INFORMATION IN ZIMBABWE: ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT

Ideally, freedom of information legislation is designed to allow administration of the right to information found under the constitution.⁴⁷ Apart from Section 20 of the Constitution of Zimbabwe which provides for the freedom of expression and assumed to provide for access to information, several laws provide for access to state-held information in the country; major among those laws is AIPPA. The analysis below reveals the opportunities and constraints in AIPPA and other legislation that affect the accessibility of state information in Zimbabwe. Analysis of other laws relating to access to information shall be limited to the extent to which they conform to AIPPA because Section 3(2) of AIPPA provides that “if any other law relating to access to information... is in conflict or inconsistent with this Act, this Act shall prevail.”

(i) AIPPA FOCUSES MORE ON REGULATION OF THE MEDIA THAN THE PROMOTION OF ATI

The provisions of AIPPA, are two-pronged, that is on the one hand, it provides for media regulation and on the other, access to information. Over the past decade due to persistent suppression of the independent media by the ZANU-PF government, the sections on media regulation have received more attention than the sections that provide for access to information. Further, the general understanding of access to information as being the preserve of the media also contributed in enhancing the predominance of media regulatory sections of AIPPA over the access to information ones. Because of that dominance, there has been an absence of a multi-sectorial campaign for reform of the access to information sections of AIPPA beyond its impact on the media sector⁴⁸.

In July 2011, the Secretary for Media, Information and Publicity, George Charamba told the Parliamentary Portfolio Committee on Media Information and Communication Technology that a meeting between journalists and the government resolved to divide AIPPA into the Media Practitioners Bill that regulates the conduct, registration and accreditation of journalists and the remainder that deals with access of information from public bodies. He also argued that proposed amendments to AIPPA had been shelved until the constitution-making process had been completed.⁴⁹ In October 2011, in a Universal Periodic Review report to the working group of the

⁴⁷ Brobbey V et al. *Active and Passive Resistance to Openness: The Transparency Model for Freedom of Information Acts in Africa – Three Case Studies*. Access to Information in Africa Project. Page 5

⁴⁸ The effect of the dominance of media sections over access to information sections in AIPPA will be discussed in greater detail under the sub-topic: ‘*mediafication*’ of the right to information below.

⁴⁹ Chimakure, C. 2011. *Editor’s Memo: Media reforms now without preamble! The Independent*. Available at: <http://www.theindependent.co.zw/opinion/31806-editorsmemo-media-reforms-now-without-preamble.html>

Human Rights Council, the Minister of Justice, Patrick Chinamasa argued that “there was too much reference to POSA and AIPPA, especially from the Western Group. These pieces of legislation... do not violate any fundamental freedoms as long as their letter and spirit is followed.”⁵⁰

(ii) EXEMPTIONS TO DISCLOSURE OF INFORMATION

Like all rights, the right to information is not absolute and is subject to exemptions, however the right is so restricted through wide ranging exemptions contained in Part III of AIPPA under protected information such that any category of information ends up falling under the exempted or protected information. Section 9(4) of AIPPA gives three reasons upon which the head of a public body can refuse to grant a request for information. These are (1) if the request contravenes AIPPA; (2) were disclosure will result in exposing personal information protected under Part III of AIPPA; and (3) if it is not in the public interest to grant disclosure of such requested information. The Act does not define what public interest is or entails, thereby giving the head of a public body sole determination of what the public interest is; a loophole that can be used to deny the public access to state-held information.

An officer at MISA-Zimbabwe was of the view that, AIPPA includes a number of provisions that restrict freedom of information far beyond what is legitimate under international law⁵¹. Part III of AIPPA protects cabinet and local government and their respective committees’ deliberations from disclosure. But, if the deliberations have been made in the presence of the members of public⁵² in the case of local government; or cabinet deliberations in a record that has been in existence of twenty-five years or more⁵³ in the case of cabinet deliberations then a request for access can be granted.

Apart from protecting information relating to intergovernmental relations or negotiations⁵⁴, information relating to the financial and economic interests of a public body or state⁵⁵, as well as information that is detrimental to national security⁵⁶, Section 28(1)(b) of AIPPA provides for the disclosure of information that is in public interest if it concerns:-

(i) the risk of significant harm to the health or safety of members of the public; or

(ii) the risk of significant harm to the environment; or

⁵⁰ Honourable Patrick Chinamasa, *Concluding Remarks On The Occasion Of The Adoption Of Zimbabwe's UPR Report By The Working Group Of The Human Rights Council (HRC) On 12 October 2011*, Available at: http://www.crisiszimbabwe.org/index.php?option=com_content&view=article&id=467%3Aconcluding-remarks-on-the-occasion-of-the-adoption-of-zimbabwes-upr-report&Itemid=205

⁵¹ Interview with MISA-Zimbabwe Legal Officer, 18 January 2012

⁵² Section 14(5) of AIPPA

⁵³ Section 14(3) of AIPPA

⁵⁴ Section 18 of AIPPA

⁵⁵ Section 19 of AIPPA

⁵⁶ Section 17 of AIPPA

(iii) any matter that threatens national security; or

(iv) any matter that is in the interest of public security or public order, including any threat to public security or public order: Provided that information concerning any threat to public security or public order shall only be disclosed to the relevant law enforcement authorities; or

(v) any matter that assists in the prevention, detection or suppression of crime.

In sum, the Section provides an opportunity for accessing information relating to environmental, health and security information. As stated above, this has not been tested to measure its effectiveness and the willingness of government departments to release such information. Further, the absence of a 'public interest' definition may result in the information listed in Section 28(1) (b) being classified as not being in public interest, especially considering that release of information and access thereto is also released on patronage grounds. A journalist with a state-owned broadcaster said that although she was not expected to request information from public bodies on the basis of AIPPA - due to editorial policy the public media only gets information that the government wants them to get⁵⁷. Thus, the overall impact of these widely couched exemptions is that AIPPA limits the capacities of journalists and the general populace alike in accessing information.

(iii) AIPPA MAKES NO PROVISION FOR ACCESS TO INFORMATION HELD BY PRIVATE BODIES

In a country where a number of formerly public entities such as the Cotton Company of Zimbabwe (COTTCO) and the Dairy Marketing Board of Zimbabwe (DAIRIBORD) were privatised, AIPPA makes no provisions for access to information held by non-state entities contrary to the South African Promotion of Access to Information Act, which provides on Section 50 that:

"A requester must be given access to any record of a private body if—

(a) that record is required for the exercise or protection of any rights;

(b) that person complies with the procedural requirements in this Act relating

to a request for access to that record; and....."

In the same light, The Declaration on Principles on Freedom of Expression in Africa clearly stipulates that in Part IV (2): "...everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right." Similarly, the A.U Draft law actually provides for ATI from public, private as well as relevant private bodies. in terms of Section 1(1) of the draft law, the latter is defined as:

"...any body: owned, controlled or substantially financed directly or indirectly by funds provided by government, but only to the extent of that financing; or carrying out a statutory or public function, but only to the extent of that statutory or public function."

⁵⁷ Interview with State Media Journalist

Considering the centrality of these entities in service delivery and production of commodities which they normally have a monopoly over, it is essential that there be a provision for access to information that is held by these private entities in order to ensure transparency and accountability in their management and operation. On the other hand, whilst this is necessary, one cannot overlook the fact that such an inclusion as suggested above requires balance in order to avoid overburdening such ‘private’ entities as well as infringing their rights to privacy. In his comments on the A.U’s Draft Model Law on Access to Information, Toby Mendel noted that whilst observing that private bodies have a significant influence on public life and individuals, he argued that it is imperative that a balance be struck. Mendel points out that;

“At the same time, care needs to be taken to not to place unreasonably onerous obligations on private actors. Many of these actors exist to make profits, while others serve various social goals. It would be counter-productive if an access to information regime obstructed their ability to achieve their (legitimate) primary objectives.”⁵⁸

Media stakeholders expressed some degree of enthusiasm and hope regarding the provision on access to information as provided for in the draft of the COPAC constitution. A provision modelled along the lines of section 4.13 (b) of the first draft constitution, would address the current gaps regarding access to information from non-public bodies. Section 4.13 of the draft constitution reads as follows:

“(1) everyone, including the press and other media of communication, has the right of access to—

- (a) any information held by all institutions and agencies of the State and Government at all levels, in so far as the information is required for the exercise or protection of a right or in the interests of public accountability; and*
- (b) Information held by any other person, in so far as the information is required for the exercise or protection of a right.....”⁵⁹*

(iv) THE ZIMBABWE MEDIA COMMISSION AND ATI IN AIPPA

One of the greatest constraints to ATI in Zimbabwe is the very limited role that the Zimbabwe Media Commission (ZMC) mandated to oversee this right plays. Its functions as outlined in Section 100 (0)

⁵⁸ See, for example, Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, 2nd Edition (2008, Paris, UNESCO), available in English, Spanish and other languages at: http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html and Toby Mendel, *The Right to Information in Latin America: A Comparative Legal Survey* (2009, Quito, UNESCO), available in English and Spanish at: http://portal.unesco.org/ci/en/ev.php-URL_ID=28958&URL_DO=DO_TOPIC&URL_SECTION=201.html

of Constitutional Amendment No. 19, include ensuring "... that the people of Zimbabwe have equitable and wide access to information..." whilst those conferred by Section 38 of AIPPA, as amended in 2007, outlines in detail the functions of this body. However, there is very little said in both provisions regarding the ZMC's role and mandate on protection of access to information, as compared to its mandate in the regulation of the media despite its name.

If the right of ATI is to be fully recognised, the ZMC's statutory mandate should ensure wider promotion and protection of this right, such as the one played by the South African Human Rights Commission (SAHRC) as provided for in terms of Section 83 of South Africa's Promotion of Access to Information Act. Some of the duties conferred on SAHRC include developing and conducting ".....educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Act and of how to exercise the rights contemplated in this Act" as provided for in Section 83(2) (a) of the Act.

(v) LACK OF CLEAR APPLICATION/REQUEST AND APPEALS PROCEDURE.

In order to request for information, the law has to provide for an adequate and clear request procedure. In terms of South Africa's Promotion of Access to Information Act, 2000 Chapter 3 thereof provides for the manner of access. Section 17(1) provides that:

For the purposes of this Act, each public body must, subject to legislation governing the employment of personnel of the public body concerned, designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records.

In comparison, AIPPA places no obligation on public bodies to appoint an information officer or anyone to handle information requests. Instead Section 8(1) of AIPPA states that, the head of a public body shall take every reasonable step to assist an applicant for information within the stipulated 30 days of the application for information request being lodged.

The Second Schedule of the Act lists the heads of government departments as the permanent secretary; and that of a statutory body as the chairperson, chief executive officer, director-general or general manager; the Office of the Registrar General as the Registrar-General, although it gives them power to delegate, it is not clear who they can delegate to. According to several civil society organisations interviewed, who requested anonymity for security reasons, requests for information are transferred from one office to the other; in the end no information is released. The centralisation of handling information requests in the head of the public body is the major stumbling block to the public's ability to access information in Zimbabwe. This can be interpreted as a strategic ploy by government authorities to control information accessibility and retain secrecy on

government information and policies. Yet “despite its name, the AIPPA is not [entirely] concerned with the promotion of publicly-held information”⁶⁰ but “has been used more to suppress information in the name of privacy than to make information available and accordingly is sometimes not included in counts of RTI laws.”⁶¹ The import of the Act is to restrict freedom of information and freedom of expression rather than enhance access to information; neither does it meet international standards such as on the “promotion of proactive disclosure, limited exceptions to the right, and clear, low cost procedures for access.”⁶²

Related to the above, unless there is a statutory obligation on government departments to develop and make available to the public a manual on how to process requests for information from each respective department and/or private institution, the requests will be processed chaotically, without any accountability and monitoring mechanisms. AIPPA simply provides that the head of a public institution shall process the requests within thirty days without any mechanisms to ensure transparency of the request handling procedure. The Promotion of Access to Information Act, 2000 provides that the information officer of each public body should compile a manual in at least three different languages which among other things provides “sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject.”⁶³ What has been apparent from the Focus Group Discussions conducted in Zimbabwe is that the majority of the participants were unaware of the government departments to approach and the procedure that has to be followed in order to request information from a public body.

The diagram below shows that only 27 *per centum* of the participants in FGDs conducted in Domboshawa, Kwekwe, Chipinge and Harare are aware of the procedure of requesting information from government departments.

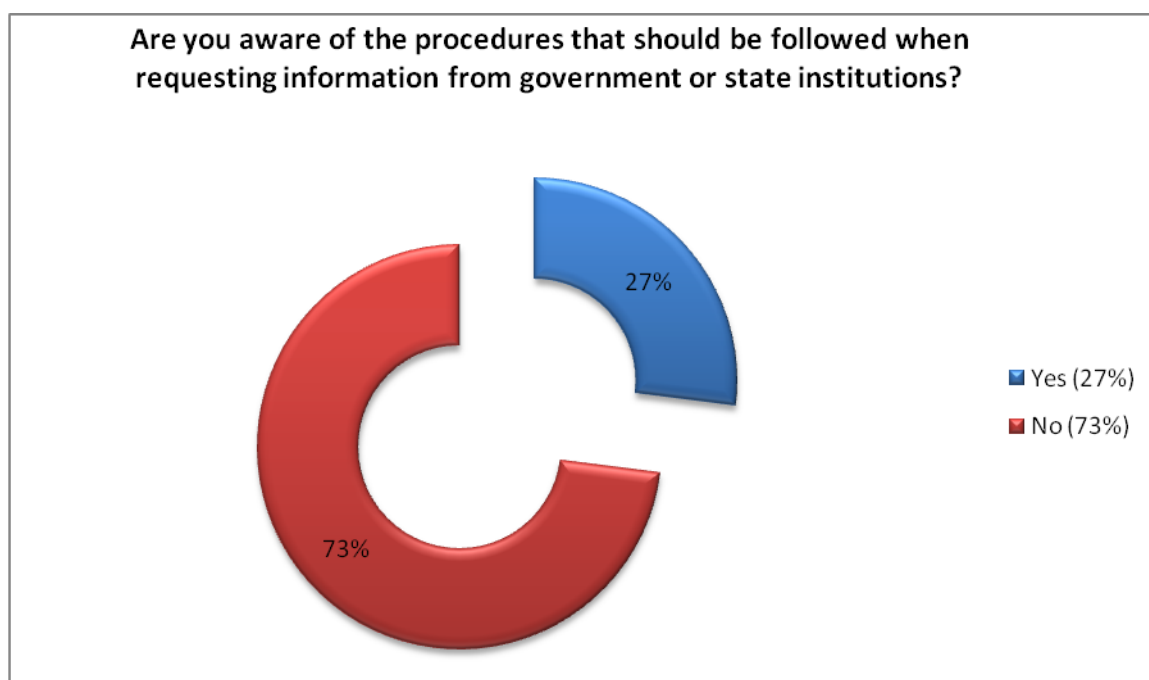
⁶⁰ Article 19. Zimbabwe: Human Rights In Crisis: Shadow Report to the African Commission on Human and People’s Rights, May 2007

⁶¹ Right2Info, 2011. “Access to Information Laws: Overview and Statutory Goals” Available at: <http://right2info.org/access-to-information-laws>

⁶² Brobbey V et al. *Active and Passive Resistance to Openness: The Transparency Model for Freedom of Information Acts in Africa – Three Case Studies*. Access to Information in Africa Project. Page 2

⁶³ Section 14(1)(d), Promotion of Access to Information Act, 2000 South Africa.

Diagram 3: Awareness of Information Request Procedures



Apparent from the above diagram is that the majority of the respondents (73%) is unaware of information request procedures suggesting that there has been insufficient public education on both the right of access to information and the procedure for accessing that information as provided for in terms of AIPPA. Additionally, most people seemed unaware of formal sources of information in government ministries and are mostly uncertain of the information that they can request from the government or any other public bodies.

An appeals procedure is imperative to building accountability and transparency in the operationalization of the right of access to information. In terms of AIPPA, appeals where a request for information has been refused by the head of a public body lie in the first instance with the Zimbabwe Media Commission (ZMC), which has to review the public body's decision.⁶⁴ With information on how to lodge an appeal and the appeal's procedure not easily accessible to the public, applicants whose requests have been refused, face a daunting task, especially considering that the Zimbabwe Media Commission has largely been preoccupied with registration and de-registration of journalists and media houses more than with access to information; Furthermore, the ruling in the *Zimbabwe Lawyers for Human Rights* case that the decision to disclose or not to disclose information held by public bodies is a policy decision made by politicians and not by the courts, set a wrong precedent to those that might consider appealing against refusals by heads of public bodies to disclose information.⁶⁵ This is in contrast to the key principles in the African Platform on Access to Information Declaration (APAI Declaration) adopted on 19 September 2011 by

⁶⁴ Section 9(3) of Access to Information and Protection of Privacy Act, Zimbabwe

⁶⁵ *Zimbabwe Lawyers for Human Rights and The Legal Resources Foundation versus The President of the Republic of Zimbabwe and the Attorney-General*, SC 12/03, page 11

the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and People's Rights that everyone has a right to appeal against any "action that hinders or denies access to information or any failure to proactively disclose information. They have a right to further appeal to an independent body and to finally seek judicial review of all limits of their right of access to information."⁶⁶

As in Section 20(2) of the Constitution of Zimbabwe, the exemptions in AIPPA are rather too broad to an extent that hinders the accessibility of public information. Article 19(3) (a) and (b) of the International Covenant for Civil and Political Rights states that the exercise of the right of access to information may only be subject to certain restrictions as are provided for by the law for the protection of national security, public order and public health. The APAI Declaration holds that "those exemptions should be strictly defined and the withholding of information should only be allowed if the body can demonstrate that there would be a significant harm if the information is released and that the public interest in withholding the information is clearly shown to be greater than the public interest in disclosure."⁶⁷

As argued by Professor Makumbe, there is instead a presumption of non-disclosure until the applicant proves otherwise; further Part III of AIPPA protects deliberations of cabinet and local government bodies⁶⁸; advice relating to policy⁶⁹; information whose disclosure may be harmful to law enforcement process and national security⁷⁰; financial or economic interests of a public body or the State⁷¹; information relating to inter-governmental relations or negotiations⁷²; protection of research information.⁷³ Combined with the exemptions provided for in terms of the Commissions of Enquiry Act and the 'classification' of information in terms of the Official Secrets Act, the legislative framework in Zimbabwe imposes a myriad of exemptions that render the right of access to information unattainable. Thus the current laws do not comply with international best practices.

THE ZIMBABWE MEDIA COMMISSION

The Zimbabwe Media Commission (ZMC) is a constitutional body established in terms of Article 100N of the Constitution of Zimbabwe. It comprises of a Chairperson and eight other members appointed by the President from a list of no fewer than twelve nominees submitted by the Committee on Standing Rules and Orders. The current commissioners were appointed on 31 March 2010. Except for ensuring that "the people of Zimbabwe have equitable and wide access to

⁶⁶ Campaign For An African Platform on Access to Information Declaration, page 16

⁶⁷ Campaign For An African Platform on Access to Information Declaration, page 15

⁶⁸ Section 14, AIPPA

⁶⁹ Section 15, AIPPA

⁷⁰ Section 17, AIPPA

⁷¹ Section 19, AIPPA

⁷² Section 18, AIPPA

⁷³ Section 20, AIPPA

information”⁷⁴ the majority of its functions are aimed at promoting and regulating the media as noted above in section N (IV). Section 100Q of the Constitution of Zimbabwe gives reference to an Act of Parliament that may confer powers on the ZMC; however, although there was no further legislation was passed, the ZMC operates in terms of AIPPA provisions assuming both the powers and responsibilities conferred upon its predecessor, the Media and Information Commission.

In terms of AIPPA provisions, an applicant whose request for information has been refused by the head of a public body may request the ZMC to review the public body’s decision⁷⁵; the ZMC can also grant permission for the extension of the time within which requests can be processed for any period longer than the specified thirty days.⁷⁶ Furthermore, before disclosing any information prescribed in Section 28(1) (b) of AIPPA, the head of a public body is obliged to notify the ZMC, it is however not clear if the ZMC can prohibit the release of such information.

Apart from these functions, the duty to inform the public about AIPPA lies with the ZMC as well as the duty to “comment on the implications of the proposed legislation or programme of public bodies on access to information”⁷⁷ ... and “engage in or commission research into anything affecting the achievement of the purpose of this Act”⁷⁸. Based on the above, it bears the duty of bringing “to the attention of the head of a public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants”⁷⁹ yet at the same time it can “authorise a public body, at the request of its head, to disregard requests that would unreasonably interfere with the operations of the public body”⁸⁰.

Despite the regulatory and oversight functions over access to information and media, the ZMC has since its inception, like its predecessor, focused more on media regulation than on access to information. Regardless, it has failed to play its civic education role of proactively making the public aware of the existence of the AIPPA more so the provisions relating to access to information, probably due to the lack of specific provisions that mandate the promotional role of this body as noted above. Like AIPPA, the effectiveness of ZMC remains largely untested although it presents an opportunity for reforming the access to information regulations in government departments.

FREEDOM OF ASSOCIATION AND EXPRESSION

By regulating the freedom of association and expression, POSA has a direct impact on the dissemination of information through prohibition of public gathering without police clearance. Over the past decade, the law has been used to disrupt public gathering organised by civil society

⁷⁴ Section 100Q(1)(c) of the Constitution of Zimbabwe

⁷⁵ Section 9(3) of AIPPA

⁷⁶ Section 11(1) of AIPPA

⁷⁷ Section 39(1)(c) of AIPPA

⁷⁸ Section 39(1)(f) of AIPPA

⁷⁹ Section 39(1)(l) of AIPPA

⁸⁰ Section 39(1)(m) of AIPPA

organisations and other political parties like the MDC-T that would otherwise have provided platforms for dissemination of public information. FGD participants in Chipinge argued that these restrictions on the freedom of assembly have severely impacted the dissemination of public information in their area. Similarly, the criminalisation of defamation and publication of any statements deemed derogatory to the person of the president and the security sector⁸¹ have imposed self-censorship on the country's journalists for fear of being arrested under several provisions of the Criminal Law (Codification and Reform) Act (mostly known as the Criminal Code), which criminalise the publishing or communication of 'false' statements prejudicial to the State⁸² ; undermining the authority of or insulting the president⁸³ . The effect of this is that the media has had to operate in fear and clearly unable to freely disseminate vital information in public interest.⁸⁴ To summarise, it can be argued that the legal framework in Zimbabwe falls short of international and regional standards regarding the implementation of the right of access to information.

ELECTIONS

In determining the nature and scope of election observation the SADC Principles and Guidelines Governing Democratic Elections stipulate that there should be an updated and accessible voter's roll⁸⁵ in each of the SADC Member States and every Member State holding elections should "safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media of all stakeholders, during electoral processes."⁸⁶ In respect of that, the Electoral Act states that the voters roll is a public document, open to inspection by the public for free of charge. The condition is that it should be inspected at the office of the Commission or the constituency registrar where the roll is kept, with the right to make any written notes of anything contained therein during office hours.⁸⁷ Yet past elections in Zimbabwe have shown widespread media bias and inaccessibility of the voter's roll by the country's populace and denial of the right to inspect the voters roll by election officers⁸⁸ . The Registrar-General has also repeatedly hindered people trying to inspect the voters' rolls⁸⁹ . "This obstructionist attitude has been abetted by supine Electoral Commissions which have done nothing to curb the Registrar-General's behaviour and by successive changes to the Electoral Act designed to

⁸¹ Section 16 of POSA makes it an offence punishable by a fine not exceeding level six or imprisonment for a period not exceeding one year or both the custodial sentence and the fine.

⁸² Section 31 of the Criminal Law (Codification and Reform) Act

⁸³ Section 33 of the Criminal Law (Codification and Reform) Act

⁸⁴ Interview with Guthrie Munyuki, Assistant Editor, The Daily News.

⁸⁵ Article 4.1.4 of the SADC Principles and Guidelines Governing Democratic Elections

⁸⁶ Article 7.4 of the SADC Principles and Guidelines Governing Democratic Elections

⁸⁷ Section 21(1) of the Electoral Act

⁸⁸ Veritas, 2008. *Nominees Barred from Inspecting Voters Roll*, The Zimbabwean. Available at: <http://www.thezimbabwean.co.uk/news/11244/-nominees-barred-from-inspecting-voters-roll.html>

⁸⁹ EISA Election Mission Report No 28 p 33 which reported on the 2008 "harmonised" elections and presidential run-off (the EISA Report).

reverse the small victories in the courts which facilitated access.”⁹⁰ Further, due to restrictions on voter education, there seem to be a general public awareness of their right to inspect the voters roll; it is therefore essential that civic education be conducted to ensure full maximisation of the right to inspect the voters roll beyond electoral periods.

EXTRACTIVE MINING INDUSTRY

The extractive industry in Zimbabwe has received global attention since the discovery of diamonds in the Manicaland Province. Labelled as ‘blood diamond’ by human rights activists, who among other things have argued that revenue from the diamonds have been used to finance human rights abuses. The transparency of diamond mining and revenue as well as the accessibility of information related thereto is critical to building accountability and transparency in the industry and government treasury. It is not just the revenue from the mining of diamonds in Manicaland but also the awarding of contracts and tenders to mining entrepreneurs and investors that has been shrouded in secrecy. According to the Zimbabwe Environmental Law Association, this information has not been made public to “ensure that the people know the revenue and expenditure streams as well as the obligations of the parties and whether the mining concessions are in favour of the country. There is need for people to be aware of the shareholding structures of the mining companies to see where the profits eventually go and what each investor or shareholder has brought to some of the mining partnerships. Restrictive access to information laws and practices by government is promoting the decay in the mining sector that resulted in the mining sector contributing a mere US \$ 4 million in royalties to government in 2009.”⁹¹

Information relating to business interests of a third party may not be disclosed to by the head of a public body in custody of the requested information.⁹² As the law stands AIPPA provides for the right of access to information from public bodies, leaving the public at the mercy of all other institutions that are not a part of this bracket, which is a gap in the ATI regime in Zimbabwe. This is contrary to regional practice in countries such as South Africa where Section 50 of the Promotion of Access to Information provides that:

“A requester must be given access to any record of a private body if—

(a) that record is required for the exercise or protection of any rights;

⁹⁰ Matyszak, D. 2013 Vision – Seeing Double and the Dead a Preliminary Audit of Zimbabwe’s Voters’ Roll. Research and Advocacy Unit. Available at:

http://www.sokwanele.com/system/files/Rau%20Report_votersroll.pdf

⁹¹ Zimbabwe Environmental Law Association. 2010. *The Extractive Industry Transparency Initiative (Eiti) May Promote Transparency And Accountability In Zimbabwean Mining Sector*. Available at: <http://www.zela.org/news/Press%20Statements/Zimbabwe%20Should%20Join%20the%20Extractive%20Industry%20Transparency%20Initiative%20%28EITI%29.pdf>

⁹² Section 24 of AIPPA

(b) that person complies with the procedural requirements in this Act relating to a request for access to that record”

The Declaration on Principles on Freedom of Expression in Africa also stipulate that “everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right” and the African Union Draft law provides for ATI from public, private as well as relevant private bodies. The latter is defined as:

“...owned, controlled or substantially financed directly or indirectly by funds provided by government, but only to the extent of that financing; or carrying out a statutory or public function, but only to the extent of that statutory or public function.”

The non-disclosure of information on the extractive industry in Zimbabwe mean that the citizenry cannot access information relating to the diamond revenue and its contribution to the national treasury, resultantly there has been continuous accusations and counter-accusations over alleged misuse of diamond revenue and selection of investors in the industry. Accordingly, civil society organisations have urged the government of Zimbabwe to consider joining the Extractive Industry Transparency Initiative, an initiative whose key principle is that natural resource wealth should benefit the country’s populace, economic growth and for poverty reduction. As such the initiative will enhance accessibility of information and obliging the government and companies in the mining sector to publish mining agreements, revenue generated its distribution and management.

CONFIDENTIAL STATE INFORMATION

Transparency is a tenet of good governance that is critical to the building and consolidation of democracy. Built on the assumption that governments do not hold information for themselves but for the benefit of the citizenry, it is essential that there be clarity on the classification of state information. In that respect, the Official Secrets Act provides for the classification of state information and punishments afforded to those that contravene the Act. However Section 4(1) (a) of the Official Secrets Act states that:

For the avoidance of doubt it is declared that subsection (1) shall not apply to the disclosure in accordance with the Access to Information and Protection of Privacy Act [Chapter 10:27] of any document or information by a person who, being the head of a public body as defined in that Act, has lawful access to the document or information.

It therefore follows that information that is otherwise classified can be requested for in terms of AIPPA, upon which access may be granted. However, exemptions in AIPPA discussed above would apply, thus AIPPA remains a challenge to accessing state information.

LEGISLATION AND PARLIAMENTARY DEBATES

Parliamentary debates are essential to the formulation of government policies and legislations that have a direct impact on the governance of any country. Public access to parliamentary debates is therefore critical to the consolidation of representative democracy and building accountability measures. In a proactive manner, the Parliament of Zimbabwe publishes parliamentary debates in a booklet called the Hansard – which is an official report of parliamentary debates, speeches and questions and answers verbatim recorded. Both the “Senate and House of Assembly Hansards are available on the internet 3 hours after adjournment of the House(s) every sitting day.”⁹³ The printed version of the Hansard is done by Government Printers and available the morning after the recorded session. On the other hand, new government regulations and legislation and amendments thereto are published in a weekly Government Gazette which is published every Thursday of each week and made available at Government Printers outlets. Although the Hansard is not sold, government regulations and legislation are sold and are only available in English with distribution centralised in Harare. Brian Crozier a law lecturer at the University of Zimbabwe urged that they should be distributed widely across the country and made available in vernacular languages for ease of understanding by the majority of the country’s population.

CURRENT PRACTICES IN THE PROVISION OF INFORMATION

Democratic governance mean that accountability and transparency are indispensable to building, consolidating and sustaining liberal democracy that is based on the observance of the rule of law and the respect for human rights. Access to Information therefore ensembles the overarching principles of accountability and transparency; in that regard, the Commonwealth Human Rights Initiative declared that there are two key concepts to the right to information:

- a) *The right of the public to request access to information and the corresponding duty on the government to meet the request, unless specific, defined exemptions apply;*
- b) *The duty of the government to proactively provide certain key information, even in the absence of a request.*⁹⁴

But, considering the centrality of information to political power, most governments in transitional societies such as Zimbabwe are not usually keen on disclosing public information even where requests are made. Reasons abound. As argued above, information is often withdrawn from the public while disseminators of information such as the media are stifled in order to avoid public scrutiny of government policies and activities. Further, the decision to release or withhold information is usually made in the interest of gaining political advantage, thus information that

⁹³ Parliament of Zimbabwe Website:

http://www.parlzim.gov.zw/index.php?option=com_content&view=article&id=4&Itemid=5

⁹⁴ Commonwealth Human Rights Initiative, *The Right to Information: Strengthening Democracy and Development*

portrays the incumbent government or political leaders in good light is proactively disseminated while that which is considered negative is withheld. A lecturer at the University of Zimbabwe concurred that political polarisation in Zimbabwe has many a time influenced the release or withholding of information. He observed the independent media disseminate information that show the negative aspects of ZANU-PF while elaborating the positive effect of the MDC-T in the government of national unity. The vice versa is true for the state-controlled media.

The institutional culture and practices plays a significant role in defining the government's response to requests for information and/or whether it will disclose information proactively. Civil servants in Zimbabwe are obliged to maintain confidentiality and secrecy in the discharge of their duties; while this is common practice for most public and private employees, when coupled with the complexities caused by legislation such as AIPPA, the effect is an inherent secretive culture and fear of disclosing information without authorisation of the Permanent Secretary of head of the public body; leading to the presumption against disclosure.⁹⁵

On the one hand, there is a general lack of capacities and mechanisms that will increase demand for information while on the other hand there are no mechanisms and capacity for the supply of such information. "Effective implementation requires a genuine commitment to opening up to scrutiny from all levels of government, adequate resourcing, improved records systems and infrastructure and education for the public and bureaucracy on their rights and obligations under the ... law."⁹⁶ Thus without defined structural mechanisms for management of demand and supply of information; the right of access to information remains in theory.

Over the past decades, the government of Zimbabwe on the pretext of enhancing national security adopted the policy of secrecy and non-disclosure of information as a strategy of suppression and oppression of government opposition. Using the provisions of AIPPA and the Official Secrets Act, the government of Zimbabwe has protected information classified as dealing with national security or public interest. These terms have not been adequately defined thus they are used to arbitrarily classify information as confidential state secrets. Furthermore the protection of information regarding policy advice and blanket classification of cabinet deliberations has often been interpreted by government departments to mean that any government information is classified until proven otherwise⁹⁷; effectively the presumption is that government information is not public and cannot be disclosed unless the applicant has shown that it does not jeopardise state security.

⁹⁵ Interview with Professor John Makumbe, University of Zimbabwe

⁹⁶ Commonwealth Human Rights Initiative, *The Right to Information: Strengthening Democracy and Development*

⁹⁷ Interview with director of a government ministry

Related to that is the blurred divide between state information and political party information, due to the erroneous belief that ZANU-PF is synonymous with the state, any information that would portray ZANU-PF in bad light is classified; hence regime protection has been a major contribution to building the culture of secrecy within government departments. Thus, the effect of the political and economic crises in Zimbabwe has been widespread polarisation of the country along political lines; the resultant effect is that depending on the political party that one is aligned to, “some people became more supportive of secrecy and others became more supportive of openness”⁹⁸ and it appears that the current regime is more receptive to those that favour increased secrecy over disclosure and access to information

As stated earlier, there are no information officers charged with the custodianship of government information and processing of information requests. The effects are manifold. First there is no record of information or inventory of records that each government department has; secondly, most government departments assume that it is the responsibility of the Ministry of Information, Media and Publicity to keep government records for each government department and attend to information requests; thirdly, records are not properly preserved and finally applicants for state-held information are left clueless as to whom to approach and direct their requests for information. Effectively no one in government ministries can be held accountable for not processing information requests. A gender activist and information officer in one of the gender-focusing NGOs in Zimbabwe recalled that when she requested for information from the Ministry of Small and Medium Enterprises about the number of Small and Medium Enterprises (SMEs) in Zimbabwe, she was moved from one office to the other, until she was told that the information they had was not a true representation of the actual number of SMEs in the country because it was not updated⁹⁹.

The absence of updated information can be attributed to the absence of information officers in government departments, but majorly to the inability of government departments to preserve records either due to negligence of duty or to lack of resources. In the case of SMEs in Zimbabwe, it was argued that the ministry did not have enough resources to dispatch officers to collect data each week as they were supposed to. Over the past decade, the loss of revenue due to misguided economic policies and isolation of the country by traditional financiers mean that there are just not enough resources for information gathering and preservation. Brian Crozier, a law lecturer at the University of Zimbabwe also said recent pieces of legislation and case reports are usually not available at the Government Printers which is supposed to keep them in stock¹⁰⁰. However, the Parliament of Zimbabwe was singled out by Brian Crozier as one of the institutions with an impressive maintenance and preservation of updated records and information.

⁹⁸ Cuillier et al, 2009:6

⁹⁹ Interview, 30 January 2012

¹⁰⁰ Interview with Brian Crozier, Law Lecturer at the University of Zimbabwe, 14 January 2012

A snap survey of government websites showed that apart from the Parliament of Zimbabwe's website; and the website of the Ministry of Constitutional and Parliamentary Affairs which contains detailed but out-dated information the majority of the websites had no updated information and contained little or no information on current and past policies. Although according to the Internet World Stats, only 11.8% of the country's population has access to internet, the need for the use of information and communications technologies cannot be over-emphasised. Participants in the Chipinge FGD viewed the internet as the fastest growing means of accessing information from media institutions. In terms of the APAI Declaration, "governments have an obligation to (i) use ICTs and other media to ensure maximum disclosure and dissemination of information, (ii) promote and facilitate unhindered public access to such technologies for all citizens and especially for disadvantaged minority groups."¹⁰¹ However, as stated earlier, the government through the Broadcasting Authority of Zimbabwe has reluctantly licensed independent electronic media institutions such as radio stations and community radios. On the other hand, although the past few years have been inundated with new print media houses such as the Daily News and the Newsday being licensed to operate, the newspapers are too expensive for the majority of Zimbabweans and the newspapers have been elitist in the way they package their information leaving out rural and peri-urban dwellers who are also left out due to distribution policies of these newspapers¹⁰². The majority of the rural dwellers rely on radio for information hence the absence of community and independent radio broadcasters mean that they cannot access public information.

Zimbabwe has often boasted of its high literacy rates, however, the focus group discussion held in Chipinge, Kwekwe, Norton, Bindura and Harare revealed that the majority of the participants were ignorant of their right of access to information. This is attributable to insufficient public education on the rights provided for under the Constitution of Zimbabwe and to a lesser extent in AIPPA on access to information and the use of those rights. Additionally, most people are unaware of the availability of information and are mostly uncertain of the information that they can request from the government or any other public bodies. Civil Society that supposedly focus on civic education have often neglected this area favouring to focus on other aspects of civil and political rights that can easily attract funding¹⁰³. Notably, demand for information is dependent on the awareness and capacity of potential end-users to access the information and apply it to their needs; but since the majority are not aware there has been few demands for information from the general public.

Political polarisation and intolerance in Zimbabwe often mean that national laws are applied selectively depending on the political affiliation, perceived or real of the applicant for information. A journalist in one of the state-controlled electronic broadcaster recounted that journalist in the state

¹⁰¹ Campaign For An African Platform on Access to Information Declaration Page 21

¹⁰² Interview, Assistant Editor of an independent daily newspaper.

¹⁰³ Interview, Resident Director of an international non-governmental organisation. 17 January 2012.

media could not request for information on the basis of AIPPA and could not force government departments to release any information¹⁰⁴ – they relied on the goodwill of government officials to release the information to them due to their editorial policy. Meanwhile, their counterparts in independent media houses had to use other means such as unofficial sources and informal networks to obtain information from government departments. The same applies to NGOs particularly those in the governance and human rights sector which are usually perceived as advancing the western agenda of ‘regime change’ thus their requests for information were not attended to. As the country gears for possible constitutional referendum and general elections, the crackdown on civil society has intensified instilling fear and hostility that has affected the impartial and non-partisan application of the right of access to information.

The focus on regime security more than human security has also affected that demand and supply of public information in Zimbabwe. For instance, information perceived to be detrimental to the political interests of ZANU-PF is not released. Information on the victims and perpetrators of the 2008 political violence; the extent of the Cholera outbreak during the same period and the current outbreak of typhoid in Harare as well as the auditor’s reports on diamond revenue and ghost workers have not been released despite numerals calls for their release¹⁰⁵. The victimisation of persistent requesters means that the demand and supply of information is dictated by regime security rather than the respect of fundamental human rights and human security.

FINDINGS AND RECOMMENDATIONS

i. IGNORANCE OF THE RIGHT OF ACCESS TO INFORMATION

The major challenge to operationalization of the right of access to information in Zimbabwe is the general ignorance of the right and the laws that provide for it. When participants of the focus group discussions were asked to explain what access to information is, the majority of them could neither explain what access to information is nor the kind of information they would want to receive from public bodies. Asked if they knew any laws that provided for access to information in Zimbabwe, 62% of the respondents did not know. Accordingly it can be assumed, there have not been many requests for information from the general populace of the country due to ignorance of the law and what public information is.

This can be attributed to several factors that may include:

- the absence of civic education on the importance of information and the right to know at community level;
- elitist perceptions of knowing and being aware of public information;

¹⁰⁴ Interview, Journalist in state-controlled media. 18 January 2012

¹⁰⁵ Interview with an advisor in a government ministry. 20 January 2012

- the increased chasm between the ordinary people and the state, which has perpetuated the notion among ordinary citizens that unless the government reveals it, it is not important to know it and they don't not have a right to ask.

Additionally, it can be argued that government officials find it convenient for the people to remain ignorant of their right of access to information because it enables them manage what sort of information cascades to the people and to manipulate the information for political advantage.

Civic education on the importance of the right to know and the laws that provide for such should be incorporated in the country's education curriculum and also made compulsory for public bodies to disclose the information they hold and the procedures for accessing that information. Community based organisations should also be capacitated to create the right-to-know awareness campaigns in communities that they operate in.

ii. 'MEDIAFICATION' OF THE RIGHT OF ACCESS TO INFORMATION

Related to the ignorance of the right to information among Zimbabweans is the '*mediafication*' of the right to information; which has precluded many civil society organisations from advocating more transparency and proactive release of information by public bodies. In interviews conducted with media institutions and donor organisations funding access to information projects in the country, it was revealed that journalists view access to information as for their exclusive benefit. To a greater extent, the campaigns against AIPPA as a tool for muzzling press freedom and the government's crackdown on media institutions overshadowed the aspects of the law that provided for access to information for all Zimbabweans. Accordingly, civil society organisations advocating media freedoms have been at the forefront of the right-to-know campaign, but only to the extent that it enhances media freedom. Without a campaign to make the right to information 'tangible' to the ordinary people¹⁰⁶ and expand it beyond the media, the right to information will remain a media-exclusive right and the campaign for proactive release of information will falter without the support of the general masses.

Campaigns for the right of access to information should therefore focus on making it a national issue that affects all sectors of society and not just the media. This can be done through encouraging and building the capacity of the citizenry and various social groups such as farmers' groups, the handicapped, people living with HIV/AIDS, etc. to appreciate the need of accessing public information that enhances their cause. Additionally, strategic partnerships between media institutions, civil society organisation and community based organisation on access to information campaigns will go a long way in demystifying the right to know and building awareness that the right is for the benefit of everyone not just the media.

¹⁰⁶ Interview with a Country Representative of an international organisation in Zimbabwe.

iii. ENGRAFTED CULTURE OF SECRECY IN GOVERNMENT DEPARTMENTS

From the FGD and expert opinion interviews, it can be deduced that there is an inherent culture of secrecy within the government departments even after the establishment of the government of national unity. One director of a private shortwave station observed that it is not easy to access information from private institutions. He state that;

“The government has now become polarised. Seeking for any information becomes an offence, particularly at the Ministry of Information”¹⁰⁷

On the other hand, an acting director ‘Rudo’ in one of the government ministries on being interviewed about whether government ministries have put in place proactive measures for disclosure of public interest information, she conceded that not enough was being done but went on to indicate that the gap lies within the law, suggesting that ;

“As a minimum, the law should make provision for public education and the dissemination of information regarding the right to access information, the scope of information available and the manner in which such rights may be exercised.”¹⁰⁸

Whilst this particular acting director was willing to share her views on this issue, three other government ministries that were approached were however not forthcoming to attend to requests for information by the researchers who were advised on more than one occasion that any requests for information had to be written directly to either the permanent secretary of the particular ministry or to the ministry of information and publicity. As noted above, this can be attributed to the confidentiality and secrecy contractual agreements that civil servants and government officials enter into upon taking up public office; the exaggerated need for regime protection and the need to keep the general citizenry in the dark as a way of avoiding public scrutiny of government policies. This has also been exacerbated by the use of informal networks by media practitioners and other stakeholders to access public information and the general lack of public awareness on the channels to use in trying to obtain state-held information.

This can be addressed through building the capacity of both potential requesters of information and the government on the advantages of transparency and accountability; but also on lobbying the government to reform the act to enhance the right of access to information as well as adopt proactive information release policies for all government departments. This will be useful in reducing the costs of processing request for information.

Through the Government Gazette, which is produced once every week, the government proactively releases information on new regulations and legal amendments and new laws. This can be expanded to include any other information that the public will likely request. Furthermore, instead of it being available in major cities and in English, there is a need to publish it in vernacular languages and distributed widely across the country.

¹⁰⁷ Interview with the director of a private shortwave radio station. 14 January 2012.

¹⁰⁸ Interview with ‘Rudo’ Acting Director of a government ministry. 14 January 2012

iv. CURRENT CONSTITUTIONAL REFORM PRESENT AN OPPORTUNITY FOR ENHANCING ATI

The constitutional reform process currently underway in Zimbabwe presents an opportunity for a constitutional provision for the right of access to information and reform of legislation governing access to information. Excerpts of the first draft of the constitution published in the state-owned local daily provided for a constitutional right of access to information that is similar to the one provided for by the South African Constitution. The challenge is that the constitution will have to go through a referendum before it is promulgated into law. However, it provides for an opportunity to lobby government for a new access to information legislative framework.

On the other hand, it should be noted that unless the secretive culture in government departments is changed and there are institutional reforms that promote transparency and proactive release of information, constitutional reforms on their own may not cause behavioural change within government institutions.

v. LIMITED PROMOTION OF AIPPA

Due to limited promotion of AIPPA and the ATI rights contained therein, there is little knowledge as highlighted above regarding the use of this law to and how to obtain information in terms of this Act. Although the public occasionally approach government departments, for information, they take it as a matter of chance and not of right. One of the participants in the Chipinge FGD went on to suggest that the reason why public officials are rude with the public when they need information, is because they will be acting in a disorganised manner, which in turn irks the public officials. It was very clear that this participant was unaware of her right to request such information but instead thought that to obtain information from a public institution one has to “behave” accordingly.

The Act should have provisions for active promotion of the Act and its provisions by each public body that falls within its jurisdiction. The government should also through relevant ministries, put in place mechanisms and programs that increase awareness and knowledge on the Act and on the right to state held information.

vi. INADEQUATE CONSTITUTIONAL PROTECTION OF THE RIGHT OF ACCESS TO INFORMATION

Whilst Section 20(1) of the Constitution of Zimbabwe does mention the right to “receive and impart” information and ideas, such mention is inadequate in providing for the right of access to information. As long as Section 20(1) remains as restricted as it is regarding the right of ATI, the right will not be fully enjoyed.

There is therefore need for a separate constitutional provision on ATI as is the case with Section 32 of the Constitution of South Africa or at the very least a comprehensive provision that ensures full implementation of this right at all levels

vii. ATI REMAINS CONSTRAINED DUE TO NON-DIVERSIFICATION OF THE BROADCASTING SECTOR

Whilst the opening up of the print media is a welcome development in creating alternative media outlets, the limited reach of print media as well as the prohibitive costs cannot be overlooked and mean that the distribution is limited to urban and peri-urban areas. But on their own, the print media have limited distribution and only appeal to the literate who can read the English language – the electronic media can therefore play a complementary role to information dissemination at nationwide level. As stated earlier, the Broadcasting Authority of Zimbabwe has only licensed two radio stations which have not as yet started operating. It can be noted that the country can enhance information accessibility by fully opening up the airwaves and allow broadcasting in order to increase mediums of information dissemination.

There is therefore need for wholesome broadcasting reforms as well as an increase in all forms of electronic media outlets to complement the various print media institutions, now available. Such a move would ensure that the airwaves are fully opened to allow a three-tier broadcasting system comprising of public, commercial and community broadcasting. One of the recommendations that featured in almost all the FGD's that were held, was that there is great need for community radios to complement ongoing initiatives such as community newsletters. The interviewees considered community radios as one way in which access to and wide dissemination of information could be enhanced at the community level.

viii. PROCEDURES OUTLINED IN AIPPA MAKES IT DIFFICULT TO ACCESS INFORMATION

In as much as entities like media houses may be aware of the procedures under AIPPA, it is their contention that they are however too tedious to the extent that they do not guarantee one that they will receive the information they seek, let alone timeously. With timeframes of disclosure of information within a 30- day period that can be further extended for an undefined period with the media commission's approval as stated in Section 11(1) of the Act, media houses have resorted to improvising to get information as soon as possible to ensure timeous dissemination of such information to their audience.

It is therefore recommended that AIPPA or any act that replaces it, needs to have provision for urgent disclosure of information in given circumstances, to ensure that requests for information are dealt with and prioritised according to the urgency of the matter as exemplified by Section 13(2) of the A.U draft law which provides for requests to be dealt with within a 48 hour period in instances where the information can safeguard the life or liberty of a person.

ix. AIPPA REMAINS LARGELY UNTESTED BY THE PUBLIC

Whilst a number of loopholes have been identified above, regarding the nature of the right to access information that is provided in AIPPA - its limitations and shortcomings, what also emerged from the

research is that the Act largely remains untested, especially by the ordinary people in the communities. What was clear from interviews and discussions with people in the communities is that when they seek for information, they are hardly cognisant that they have such a right and that the right is in terms of AIPPA, even though a few did indicate that there were aware that there is a law governing access to information.

For the few that are aware, e.g. civic society and the media, personal experiences as well as the publicised experiences of others who attempted to use this law, has led to a resigned attitude regarding the usefulness of AIPPA in accessing state-held information. For some in the media, AIPPA makes it difficult to obtain information timeously for the public institutions they would have requested the information from. As a result, they have resorted to improvising to the extent that they use informal sources of information, in order to be able to deliver timely and relevant information to the public.¹⁰⁹

This has emboldened government's opinion that AIPPA is good as it is and requires no urgent amendments. In responding to this, it is imperative that efforts are increased on raising awareness on the existence of this law, so that requests for information are made in terms of AIPPA procedures. An increase in the use of this law to obtain information would inevitably expose the deficiencies within that law and build cases for evidence-based lobbying for its reform and subsequent compliance with international best practices. As a result, AIPPA largely remains untested. Civil Society Organisations and media practitioners have often dismissed AIPPA as not meeting international standards to the extent that they use informal connections and networks to access state-held information.

X. LACK OF LEGAL/POLICY MECHANISMS TO ENSURE ATI FOR PEOPLE LIVING WITH VARIOUS FORMS OF DISABILITIES

There are no legal/policy mechanisms to ensure meaningful ATI for vulnerable groups such as the disabled. Very few platforms for example, ensure that there is sign language to cater for those with hearing impediments. Very few places also accommodate people who are physically disabled so that they are able to reach places where critical information can be obtained.

According to Lovemore Rambiyawo, of the National Association of Societies for the Care of the Handicapped (NASCOH), the government has to make deliberate policy moves such as removing tax on import duty on assistive devices such as computers with talking technology, which can assist the visually impaired or brail machines, which need to penetrate all schools and cater for all visually disabled. The government of Zimbabwe also, has to consider ratifying the U.N Convention on the Rights of People Living with Disabilities, which move would go a long way to inform policy measures

¹⁰⁹ Interview with an Assistant Editor of a daily independent newspaper.

that can enhance ATI for this sector, amongst other advantages. NGOs on the other hand need to also obtain understanding of the above convention as it will assist them to mainstream concerns and limitations of people living with disabilities vis-a-vis access to information.

CONCLUSION

Whilst the research was conducted at a limited scale, its outcomes are a clear indication of the experiences that Zimbabweans face regarding access to information in the country. Even as it is also commendable that Zimbabwe was one of the first few countries to have an access to information law, what has been made clear in this research is that, having the law in place is on its own is not enough. It is hoped that the policy makers and legislators can take a leaf from some of the law's loopholes and challenges highlighted in this report as a way of building on to the ATI regime already set. As noted above, the ongoing constitution making process presents one of the biggest opportunities for reform of not only the constitution, but all other legislation which impact on ATI. On the other hand, what is also clear is that legal reforms on their own will not be enough to enhance the enjoyment of this right but also a lot of effort will need to be taken to change the operating environment as well as towards a change of mindsets for the citizens themselves.

ANNEXURE 1 – LIST OF ORGANISATIONS INTERVIEWED

Government Ministries and departments

Ministry of Constitutional and Parliamentary Affairs - Director

Ministry of Health - Director

Ministry of Media Information and Publicity

Law Development Commission - Director

Zimbabwe Media Commission - Commissioner

Zimbabwe Human Rights Commission - Commissioner

Zimbabwe Electoral Commission - Commissioner

The Select Committee of Parliament on the New Constitution (COPAC) - Chairperson

Media

The Daily News – Assistant Editor

Radio VOP - Director

Spot-FM Zimbabwe

Academics

University of Zimbabwe – Professor of Political Science

University of Zimbabwe – Faculty of Law Lecturer

National University of Science and Technology – Media Law Lecturer

Members of Parliament

Three Members of the Parliamentary Portfolio Committee on Media and Information

NGOs and Donor Organisations

International Media Support –Africa Program Manager

International Crisis Group – Southern Africa Program Director

Friedrich-Ebert Stiftung – Regional Director

Transparency International Zimbabwe – Director

National Association of Societies for the Care of the Handicapped –Information Officer

Media Alliance of Zimbabwe – Coordinator

Women’s Coalition – Information Officer

Media Institute of Southern Africa – Zimbabwe – Advocacy Officer and Legal Officer

Focus Group Discussions

Domboshawa (peri-urban)

Chipinge (rural)

Kwekwe (urban)

Harare (urban)

ANNEXURE 2 – INTERVIEW GUIDES

Community Participants Questionnaire and Interview Guide

1. Do you know the laws governing access to information? If yes, which ones?

2. a) What is the importance of accessing information? For yourself? For your community?

b) How do you access information in your community?

3. a) What channels of accessing information exists in your community?

b) How can they be improved?

c) Are there any advantages in the way you access information and what are these?

d) What are the disadvantages?

4. Who are the custodians/dispensers of information in your community?

5. Have you ever requested information from a government department or a state?

institution? If the answer is NO, explain why?

6. If yes, what was the response?

7. How long did the response take and in what form was the response.

8. Are you aware of the procedures that should be followed when requesting information from government or state institutions? If yes, what are these?

9. For those whose requests for information were refused, were any reasons given? And did you take the matter up on appeal/review, to who or what and with what results?

10. For those who obtained information, was the information you received clear and understandable?

11. What have been your experiences in seeking information from private entities?

12. What recommendations do you have for the following in ensuring that your community has access to information?

- Fellow community members?

- Traditional leaders?

- Councillors and MPs?

- Current constitutional making process?

Focus Group Discussion Guide for Community Participants

1. Which laws regulate access to information in Zimbabwe?
2. Why do people need access to information?

3. How do you access information in your community?
4. How good or bad are the methods of accessing information which you mentioned?
5. What are your sources of information?
6. How easily accessible are they?
7. How can the flow of information be improved?
8. How do you rate the policies and responsiveness of institutions like government in providing citizens with information?
9. What do you think needs to be done to enhance ATI in Zimbabwe by
 - media institutions
 - communities
 - traditional leadership structures
 - political entities
 - Government
 - Constitutional making process
 - Civic society organisations?

Interview Guide for Legislators

1. Has Zimbabwe ratified all continental and international instruments that guarantee the right of access to information?

2. To what extent does current legislation guarantee access to information?

3. To what extent does such legislation comply with international best practices?

AIPPA has been criticised for not having much to do with access to information but more to do with registration and regulation of journalists and the media, to what extent is it true?

4. Why is there reluctance to reform AIPPA?

5. What are the opportunities and constraints for progressive access to information laws in Zimbabwe?

6. How do you assess the current legislation in terms of?

- Proactiveness and progressiveness

- User friendliness

- Creating a balance between protection of national security and adequate disclosure by government and state institutions.

- Appreciation by the ordinary person

- Implementability

- Promotion of the right to information

7. Recommended areas of improvement for;

- Citizens

- Private media institutions

- State media institutions

- Current legal reform processes such as the constitutional making process

Interview Guide for CSOs

1. What constraints are imposed by the current legal framework on ATI in Zimbabwe?
2. What factors influence demand for information by the public?

3. To what extent has the socio-economic and political crises in Zimbabwe influenced the demand for information by the citizenry?
4. What is the role of the civil society in promoting and raising awareness on the right of access to information in Zimbabwe, and what role has it played so far?
5. What essential steps can be taken to advance the access to information in Zimbabwe?
6. What opportunities or challenges are presented by the Government of National Unity on Access to information?
7. How successful have the judiciary been in enforcing the right to access of information?
8. To what extent do you hold government accountable for promises regarding access to information and its international obligations?
9. What limitations do Zimbabwe's laws, policies and constitution pose on ATI in the country?
10. What opportunities and constraints are presented by the constitutional and political reforms with the current Global Political Agreement on access to information in Zimbabwe?

Interview Guide for Government and State Institutions

1. Are there clear procedures/ a standardized format for accessing information from this department/ministry? If so, what are these?
2. What measures has the institution/ministry put in place to inform the public about the procedures of accessing information and about the operations of the institution/ministry?

3. What measures has the institution/ministry taken to educate the citizens e.g. about their rights and the programs the institution/ministry has planned for the year.
4. How can one access the institution's calendar of activities for the year?
5. What factors influence the ministry's responsiveness to providing information?
6. What is their policy on disclosure of information?
7. Do they have any proactive measures for disclosure of information to the citizens?
8. Are there specific officials designated to take and respond to information requests?
9. On average, how long do responds to requests take?
10. What steps can be taken to moderate the cost of administering an access to information law?
11. Under what circumstances are government departments justified in withholding information from the public?
12. Have there been incidences where the institution/department has been taken to task regarding non-disclosure of information?

Interview Guide for Donor Organisations

1. What are their perceptions of the right for access to information in Zimbabwe?
2. Since the coming into force of AIPPA in 2002, how many initiatives have you supported which work towards adequate guarantee for the right of access to information?
3. What kind of organisations request for assistance with regards to ATI?
4. What factors are undermining progress and the legitimacy of ATI campaigns in Zimbabwe?
5. What essential steps can be taken to advance the access to information in Zimbabwe?
6. What opportunities and constraints are presented by the constitutional and political reforms with the current Global Political Agreement?

Interview Guide for Media Institutions

1. What are your perceptions regarding access to information vis-à-vis the media business
2. To what extent has the media campaigned for adequate provision of the access to information in Zimbabwe?
3. What kind of information and from which government departments do they seek information as a media institution?

4. How often has the institution used AIPPA to request information from government departments?
5. How do they rate the various institutions on their responsiveness to requests of information generally?
6. What constraints has the institution faced in accessing information in Zimbabwe?
7. What have been their experiences in trying to access information from private bodies?
8. How do they consider the legal system on ATI in Zimbabwe and how does it impact on freedom of the press and the operations of the media.
9. What changes would they like to see in the ATI regime in Zimbabwe vis-a-vis their operations as the media?

Interview Guide for Academics

1. To what extent do Zimbabwean laws that regulate and impact on access to information comply with international best practices?
2. To what extent does current legislation guarantee access to information?
3. What steps can be taken to moderate the cost of administering an access to Information law In Zimbabwe?
4. Has the government's responsiveness to access to information been proactive or reactive?
5. What factors influence the government's responsiveness to access to information in Zimbabwe?
6. What opportunities and constraints are presented by the constitutional and political reforms with the current Global Political Agreement on access to information in Zimbabwe?
7. How often academics request information in terms of AIPPA? And what have been the experiences in doing so?
8. What role have academics played in advocating for the right of access to information?
9. What role can academics play in informing ATI campaigns?