

Ensuring Effective Oversight Mechanisms and Processes in Freedom of Information Laws

A Comparative Analysis of Oversight Mechanisms in Africa

By Gilbert Sendugwa
Head of Secretariat
Africa Freedom of Information Centre



Introduction

- Analysis based the Model Law on Access to Information for Africa.
- 9 mechanisms studies South Africa, Angola, Uganda, Ethiopia, Liberia, Nigeria, Niger, Guinea and Rwanda
- **Mixed model:** **National Human Rights Institutions** (South Africa and Guinea), **Ombudsman** (Ethiopia, Niger and Rwanda), **Attorney general** (Nigeria), **Parliament** (Uganda), **Monitoring Commission** (Angola) and **Independent Information Commissioner** (Liberia)
- Effective oversight is critical in the success of implementation of an RTI laws because they **provide incentives and sanctions.**

Oversight functions

- In the analysed countries powers of oversight bodies vary from advisory powers to enforce, promote the law.

FUNCTIONS:

- Monitor and regulate public & covered private bodies
- Receive annual reports from information officers
- Hear appeals
- Audit compliance;
- Imposing fines for noncompliance; searching and seizing information;
- produce reports;
- Promote RTI awareness
- Provide advice on strengthening legislation

Reporting

- Common function shared by respective RTI oversight institutions in Africa – **7 countries**
- Most analysed countries required to produce and report on annual basis to respective national legislatures
- **In general, the law does not impose specific duty on respective legislatures on what do with reports e.g. debate and make declarations or sanctions.**
- **Compliance with reporting is lacking in a number of countries.**
- **South Africa, Angola, Uganda, Ethiopia, Liberia, Nigeria and Niger**

Monitoring

- One of the essential roles for RTI oversight bodies is monitoring and development of key guidelines and codes for implementation.
- **6 of the 9** oversight institutions analysed have monitoring, development of guidelines and codes of practice as one of their functions.
- In some cases **oversight bodies are yet to be operationalised while in other instances those that have been established are not effectively performing the monitoring function.**
- **South Africa, Angola, Guinea, Liberia, Ethiopia and Rwanda**

Hear and determine RTI appeals

- Four Oversight bodies have specific mandates regarding hearing and determining RTI information request appeals.
- **Appeals to RTI oversight bodies would be accessible, faster and cheaper compared to courts.**
- **Angola, Ethiopia, Liberia and Niger**

Promotion

- **3 of 9** studied oversight bodies have mandate to promote access to information awareness among public officials and ordinary citizens
- Promotion of the law is essential to its implementation and strengthen of the right of access to information in Africa
- **Apart from South Africa where community training and law clinics are implemented, little is done under promotional mandate.**
- **South Africa, Ethiopia and Liberia**

Review and provide appropriate recommendations

- 4 oversight bodies are mandated to recommend improvements in laws. Essential function to ensure that the various sectoral laws and policies are consistent with requirements for transparent and accountable operations of government bodies and other agencies covered by statutory disclosure regimes. **SAHRC recommendation on Personal Information Act was adopted**
- **Most oversight agencies do not have sufficient number of staff to execute this function.**
- **South Africa, Angola, Ethiopia and Liberia**

Main problem Areas

- RTI oversight function was **added as auxiliary** to the institution's existing functions
- No requirement for covered agencies to report to respective oversight agencies- Only Nigeria Attorney General
- **Lack of power to sanction:** none of the nine agencies studied is empowered by law to impose fines and sanctions for non compliance
- Whereas the function of **auditing and ordering compliance** is important, only **2 of the nine studies oversight institutions are legally empowered to execute audits and issue orders.**
- **Culture of secrecy is hard to die:** oversight bodies need statutory power for incentives and sanctions to motivate a change from this culture.

Recommendations

- **Separate functions** and set up specific oversight bodies for ATI
- **Review and strengthen functions and powers** of oversight bodies
- RTI laws should provide for oversight bodies to have **responsibility for promoting the law within government, private sector, civil society and the general population**
- **Training and capacity building** both for the oversight agencies as well as implementing bodies should be part of the mandates of oversight bodies

...Recommendations

- **Oversight bodies should be adequately funded, staffed and equipped** to ensure effective oversight
- Establish and strengthen Sub regional RTI regional frameworks, norms and standards.
- Legislatures should on receipt of reports from oversight bodies mandatorily discuss them for decisions, declarations and sanctions.
- CSOs under the coordination of a regional network like AFIC should prioritise monitoring RTI oversight bodies to ensure their effective functioning
- CSOs should design and implement focused advocacy for stronger and effective RTI oversight mechanism.

Thank you very much !

Gilbert Sendugwa
Head of Secretariat
Africa Freedom of Information Centre



AFIC is a membership civil society organization promoting the right of access to information. We strive to become a reliable, dependable and all round freedom of information support centre on the African continent.

www.africafoicentre.org