WHAT IS ACCESS TO INFORMATION?

A briefing paper by Natasha Tibinyane for the ACTION NOW: Access to Information in Namibia project

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NMIT
Access to information (ATI) is regarded as a crucial ingredient for a society that upholds democracy and good governance. Like other democracies, Namibia is nudged towards adopting a legal and policy framework that guarantees ATI as a fundamental human right.

Although the Namibian Constitution does not unequivocally guarantee the right to access to information, Article 21(1)(a) guarantees “freedom of speech and expression, which shall include freedom of the press and other media”.

Further, under Article 144 of the Constitution, Namibia is bound to a number of international human rights instruments that endorse ATI as a fundamental human right. These include, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and People’s Rights (ACHPR).

International instruments mainly place the mandate of information sharing on governments. For example, the African Commission’s Declaration on Freedom of Expression states that public bodies do not hold information for themselves “but as custodians of the public good and everyone has the right to access information held by public bodies”.

The declaration also endorses the public’s right to access information held by private bodies when required for the exercise or protection of any right.

Although Namibia is signatory to a number of these instruments that demand the development and implementation of a legal and policy framework, it remains without an ATI law.

A 2017 research report, Access Denied, by the Institute for Public Policy Research (IPPR) shows that generally custodians of public information, be they public, private or from civil society organisations, are reluctant to provide information that has been requested by the public. Of the 100 public institutions researched, through information request letters; only 20% responded.

“The fact that 80% of organisations and institutions did not respond or could not provide the information...arguably speaks to a general and predominant Namibian institutional culture which does not prize transparency highly.”

The study asserts that Namibia’s state bureaucracy is highly secretive.

On the Open Data Barometer, produced by the World Wide Web Foundation, Namibia was ranked 77 out of 86 countries in 2015 and 98 out of 114 countries in 2016. The Open Data Barometer assesses the ease with which government data can be accessed by interested parties, including development partners.

On its statues, Namibia has secrecy laws such as the Protection of Information Act, Act 84 of 1982 and Public Service Act, Act 13 of 1995.

**ATI as an Enabling Human Right**

“Everyone has the right to freedom of opinion and expression; this right includes freedoms to hold opinions without interference and to seek, receive and impart information and ideas through media and regardless of frontiers.”

- Article 19, Universal Declaration of Human Rights
When Namibia attained independence from apartheid South Africa on 21 March 1990, it became one of the youngest constitutional democracies in Africa. Adopted on 09 February 1990, the much-lauded constitution was developed with the active involvement of the international community and thus reflects the pro-democracy, human rights agenda that dominated at the time.

Article 1(1) of the Constitution states:
“The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all.”

Article 1(2) further states:
“All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of the State.”

In practice, ATI enables the exercise of a number of rights and freedoms. For example, without ATI, an average Namibian would find it difficult to exercise a number of fundamental freedoms enshrined in Article 21: 21(1)(a) of the constitution on freedom of expression, for example.

Other fundamental freedoms are:
• freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;
• freedom to practise any religion and to manifest such practice; and
• freedom of association, which includes freedom to form and join associations or unions, including trade unions and political parties.

It is impossible to develop an informed opinion without accessing relevant information. Journalists, for instance, rely on information from the public, government, private sector, and academia, to fulfil their mandate of publishing information in the public’s interest. This includes coverage of local and international news.

In academia, the stimulation of thought, consciousness and belief cannot happen without information entering the brain and subsequently being processed to form an idea, question or conviction. For example, one cannot enter a tertiary institution without a high school qualification, which requires information shared by teachers, publications and media, whether print, electronic or online.

The world’s biggest religions derive their values, beliefs and practices from books. For instance, Christianity has the Bible while Islam applies the Quran, and the Buddhists are guided by the Tipitaka. Before joining a union or political party, an informed choice requires research on its history, vision and mission, as well as organisational culture. Undeniably, choosing one’s profession is ideally based on informed selection, which requires relevant information.

The above demonstrates how ATI is an enabling right, and how human rights and democracy are closely linked. Furthermore, both are based on the principle of equality of all human beings before the law.

Transparency and accountability are two key elements of good governance, and critical for holding public officials accountable in instances of corruption.

However, IPPR’s Access Denied report notes that the Anti-Corruption Commission’s (ACC) 2014 call for the passing of an ATI legislation to facilitate transparency and
accountability, remains unheeded. The ACC’s call is in line with the UN Convention against Corruption (UNCAC), which states:

“...there should be specific mechanisms to ensure respect for access to information and to ensure transparency. There are also provisions that require public disclosure and dissemination of specific information relating to the functioning of the administration and its anti-corruption measures.”

Within a democracy, transparency allows for insight into how government operates, while accountability provides citizens with various ways to measure government’s performance against publicised targets.

The AU Model Law on Access to Information promotes proactive disclosure by public bodies and relevant private bodies as a means to enhance good governance.

Proactive disclosure improves citizens’ ability to critically engage in public policy consultations, community or grassroots initiatives, and/or express themselves on mainstream and social media platforms on issues they deem important, or in the public’s interest.

However, the Media Institute of Southern Africa’s (MISA) 2017 Transparency Assessment notes that:

“Historically, Namibians are not very engaged in the public consultation process. This can be ascribed to the fact that there is not sufficient public notification of when and where it will take place. The level of the public’s engagement is dependent on how much awareness is raised on the issue through the media, and whether civil society has capacitated the public to understand the issue at hand.”

Namibia’s democracy is founded on the principle of representative government, and it is thus essential that political and government leaders communicate freely with citizens.

For this reason, the report suggests the creation of a transparent and frank dialogue in the form of free flowing and accurate information which is vital to ensure that citizens remain informed about what their rights are, what the government is doing to guarantee they are fully realised.

**Media, ICTs and ATI**

“Information can change the way we see the world around us, our place in it, and how to adjust our lives in order to maximise the benefits available through our local resources.”

- UNESCO

Access to diverse, plural and independent sources of information helps citizens to participate in civil and political activities, which are key for consultative and participatory democracies.

Over the past decade, Namibia’s media has consistently been rated as one of the freest in the world, and ranked number one in Africa until 2018 when it was edged
out of this spot by Ghana. In 2017, the Reporters without Borders (RSF) annual press freedom index ranked Namibia 24 out of 180 countries. This was after it was the only African country in the Top 20 at 17, in 2016.

An ACTION Coalition briefing paper on The Media and ICTs notes that: “The media acts as an important conduit of information, and fulfils an important function in ensuring that information is distributed widely, as well as ‘enhancing mechanisms for audience participation’. [...] The absence of Access to Information legislation which hinders the media’s ability to receive and consume information, hinders its ability to report accurately, and in turn negatively effects its ability to provide quality information to the public.”

Access to information is particularly important for marginalised groups, and the media has been an important role-player in providing information that can empower them.

Research on Access to information by orphans and vulnerable children in the Ohangwena Region identified radio as the most popular channel for accessing information among respondents at all levels of education.

The more educated respondents identified newspapers as a preferred channel for obtaining information, while respondents with lower levels of education preferred to consult friends, relatives and teachers as sources of information. Respondents with Grade 8 and above preferred radio, newspapers and teachers as their main sources of information.

Respondents identified financial assistance, exemption from school development funds and childcare support as their most urgent information needs. However, there was an “acute shortage of appropriate information for OVC to successfully understand and manage their survival”.

The data confirms the media’s important role with regard to information dissemination; and it demonstrates how ATI is an ‘enabling’ right. Most notably, it is a stark reflection of the lack of information on social grants and services that are provided by the public service for OVCs.

MISA’s So This Is Democracy? 2016 Report notes: “Namibia is known for reflecting a diversity of voices and opinions, freely shared on a plethora of online and offline media platforms, which do not have to struggle for their right to exist. Not an easy feat for any country, let alone one that has to deal with the unique challenges presented by our divided past and unequal present.”

The plethora of online and offline media platforms all have an ICT component, which allows for greater access to information. Namibia was one of the first SADC (Southern African Development Community) countries to migrate from traditional analogue technology to digital based networks in broadcasting. Digital signals take up less bandwidth than analogue signals and thus create space for new entries into the broadcasting sector. Digital broadcasting also improves television reception, particularly in rural areas where there usually is poor signal strength (i-network Uganda).

The profound changes brought about by ICTs are not limited to the broadcasting sector. Most of the country’s newspapers either have an online version, or
keep their readers informed through social media accounts. In addition, media practitioners use ICTs, for example, e-mail, WhatsApp and Skype to engage with sources, in addition to extensively using the internet for research.

The advent of social media has had a far-reaching impact on Namibia's socio-political fibre. It has created a ‘networked public sphere’ where ordinary citizens, whose voices are largely absent in mainstream media, are part of the national discourse and influence public opinion.

Organised groups and likeminded individuals create their own online media spaces where they share content and opinions, and in some cases, mobilise for civic action. The most prominent online campaign this far, the #NamtwitterCharityFundraiser, raised thousands for charity, and created an offline network of students and young professionals. According to Internet World Stats, there were 520,000 Facebook subscribers in June, 2017.

The International Telecommunications Union (ITU) ranked Namibia at 118 out of 176 countries in its 2017 ICT Development Index (IDI). The index combines 11 indicators into one benchmark measure, and is used to monitor and compare ICT developments between countries and over time.

Below are relevant statistics from the IDI:
- Mobile-cellular telephone subscriptions per 100 inhabitants, 109.19%
- Households with Internet access, 29.53%
- Individuals using the Internet, 31.03%
- Active mobile-broadband subscriptions per 100 inhabitants, 66.15%

When motivating his request for N$9,8 million for ICT infrastructure development in his March, 2017 budget speech, then Minister of ICT, Tjekero Tweya noted government’s commitment to “deliver high speed broadband to all corners of Namibia and enable seamless government service delivery to all the regions.”

Steps towards this include the expansion of the Internet Exchange Point for the connection of more local Internet Service Providers (ISPs); the upgrade of government’s network infrastructure; the development of e-education, e-health, e-agriculture, e-transport, and e-mining software; as well as the expansion of telecommunication and broadcasting services through the 100% Network Coverage project.

Tweya promised that the ministry would continue to deliver on its mandate of creating an enabling ICT policy and regulatory framework for socio economic development. Thus, the development and implementation of ICT policies and laws would be carried out and monitoring and evaluation would be undertaken to accommodate emerging ICT trends.

The journey towards greater transparency

“Legislation providing for the right to information ensures that there is a legally enforceable, clear, and uniform mechanism for people to request and obtain information from the government.”

- Our Rights Our Information

At the time of writing this paper, Minister Tweya had not tabled an ATI Bill in the National Assembly. Government first committed to adopting a Freedom of
Windhoek has played a leading role in Africa, and to some extent, the world’s journey towards media freedom and ATI. It is here, on 3 May 1991, that African journalists developed and adopted the seminal Windhoek Declaration. The UN subsequently declared May 03 as World Press Freedom Day.

It is also here, in 2009, that media and free expression advocates initiated, what is now known as, the campaign for the African Platform on Access to Information (APAI). The campaign’s objectives remain to incorporate key principles of the APAI Declaration, adopted in 2011 into the Declaration of Principles on Freedom of Expression in Africa and to have the UN declare September 28 as International Day for Universal Access to Information (IDUAI), the latter which was achieved in 2016.

The organisations that formed part of the APAI Working Group also assisted national campaigns aimed at realising the adoption of an ATI law, and raising awareness on ATI as an enabling human right.

In August 2012, the Towards Greater Transparency conference gathered a wide range of role-players to discuss ATI within the Namibian context. This is also where the ACTION campaign, which has since become the leading voice for the advancement of ATI in Namibia, was launched. Led by a coalition of media and civil society organisations, the campaign has over the years adopted a broader freedom of expression agenda, while maintaining ATI as its core advocacy message.

Advocacy work by the campaign includes the #MyConstitutionMyDecision Campaign which called for the withdrawal of the Third Constitution Amendment Bill, and wide public consultation on the proposed amendments, in 2014. The campaign questioned the haste in which the bill was tabled and the secrecy that preceded the bill’s tabling. The pressure emanating from civil society and the public resulted in then Prime Minister and the bill’s main protagonist, current President Hage Geingob, embarking on a mainstream and social media blitz, in addition to organising community meetings to explain and defend the proposed amendments.

The bill, containing more than 40 amendments, was subsequently passed without the broader public consultation requested by the #MyConstitutionMyDecision Campaign. Some of these allowed for the appointment of a vice-president, and head of the Namibia Central Intelligence Services. The amendments also increased the number of seats in the National Council, yet limiting its review powers.

ACTION also successfully lobbied for the removal of Clause 52(1d) dealing with a whistleblower’s protection from the Whistleblower’s Protection Bill. Had the clause remained, it would have allowed for the protection to be removed if the whistleblower’s aim was to criticise government. Thanks to civil action, the bill that was subsequently passed was an improved version because it included the explicit protection of whistleblowers of human rights violations and other acts of wrongdoing.

The Harambee Prosperity Plan (HPP) cites accountability and transparency as sub-pillars to effective governance and sets a number of goals for its achievement, yet the enacting of an ATI law is not included.

The 2016-2020 development plan is based on the overall goals of effective governance, economic advancement, social progression, infrastructure development, as well as international relations and cooperation.
In his 2017 budget speech, Tweya assured the public that the ATI Bill, Social Media Use Policy, Communications Strategic Plan and the reviewed National Information Policy “will see the light of the day before the end of 2017/18 Financial Year”.

He said the draft legislations were aimed at “encouraging the public to participate in decision-making processes and to hold government accountable” where and when they felt dissatisfied with the provision of Government services. It was also to tell Government were “(sic) we are good”.

It is important to note that the above mentioned instruments were all developed in collaboration with civil society, civil servants and the media during a five-day consultation meeting hosted by the MICT and supported by UNESCO in 2016.

Case Studies

The network and nature of ICTs allows for information to be shared with a large number of people instantly. Information can be used for the greater good of society, but there are individuals and groups that use ICTs as a tool to spread disinformation or ‘fake-news’. Named as the 2017 word of the year, the rise in fake-news is undeniable.

The impact of fake-news is evident in the public’s reaction to the false information they receive, mostly through social media networks. The rise in fake-news also foregrounds the media consumers’ inability to distinguish between credible and false information.

Case Study: Fake-news is Bad News

In November 2017, NamPol had to plead with the media to diffuse a “potentially life-threatening situation” after a caller to a local radio station claimed that occupants of a Katutura home had children’s body parts. The station did not verify or correct the information shared by the caller. False news was then accepted as fact and widely shared on social media. Soon, hundreds of people gathered at the alleged “house of horrors”. Tensions rose, people were injured and there was damage to the house and a police vehicle. Riot police had to disperse the crowd with teargas and rubber bullets. Surrounding roads were blocked which resulted in several traffic jams and further chaos.

In this information age, it is critical for media consumers to have media and information literacy skills. The public is bombarded with information from countless sources daily and they should be well-equipped to assess whether a piece of information or picture is fabricated or not. Access to information can be an empowering social process as information can be used in ways that benefit individuals, groups, or the greater good. When reliable and verified information is shared, it can benefit the receiver because they will be able to make informed choices about an issue that affects them.
Case Study: Information Empowers

A 2003 Our Rights Our Information study in Uganda shows that a lack of information on vital issues, such as how farmers can improve their seed and crop varieties, among others, was found to be the major cause for a lack of commercial productivity in the Apac District. This resulted in poor wages and unfair advantage of the predominantly female farmers in the agricultural industry.

Subsequently, the Women of Uganda Network (WOUGNET), a non-governmental organisation, established the Kubere Information Centre to provide the farming community with basic training on the use of traditional and modern communication methods, such as radios, mobile phones and the internet.

They used a number of innovative ways to communicate information on agriculture. These included, community meetings, radio programmes and public notices. All communication was translated into the local language. The centre also strengthened communication between the farmers themselves. Now, when farmers have questions, these are forwarded to agricultural experts and government officials.

The Kubere Information Centre equips women with the knowledge and skills needed to improve their working conditions, provide market competitiveness; and strengthen the farming community’s relations. The centre’s success demonstrates the power of freely accessible information to improve the lives of citizens.

Source: Our Rights Our Information

Access to information is critical in a society that aims to strengthen citizen participation to achieve socio-economic justice. When respecting peoples’ right to information, a government promotes confidence in its public policies. Proactive disclosure and systems that enable citizen participation can foster greater citizenship that takes ownership of democratic processes.

Case study: Information quenches thirst

The villagers of Emkhandidwini in rural South Africa noticed that other nearby villages were receiving Ntambanana Municipality’s water tankers while they were not. They realised that they had to fetch water from a nearby river, which they also used as a water source for their livestock.

The Open Democracy Advice Centre (ODAC) assisted them to use the Promotion of Access to Information Act of 2000 to request for the council meeting minutes where the provision of water programmes were decided, in addition to the municipality’s Integrated Development Plan and budget. The information was released after six months. The media also covered the villagers’ struggle for water, which may have influenced the municipality’s response.

Less than a year after the first request for information, the villagers received fixed water tanks, and mobile water tankers that delivered water to the community. When drivers began skipping areas, the villagers made another information request for a service-level agreement about water delivery. They discovered that there was no service level agreement, which is a legal requirement, and that the water delivery company could thus not be held accountable for non-delivery of services.

The Auditor General was notified and requested to investigate and institute corrective action.

Source: Right to Access Information Training Manual, ODAC
References:

Access Denied – IPPR:
http://www.ippr.org.na/publication/access-denied/

Constitution of the Republic of Namibia:
http://www.gov.na/documents/10181/14134/Namibia_Constitution.pdf/37b70b76-c15c-45d4-9095-b25d8b8a0fb

UNESCO:

The Universal Declaration of Human Rights:

International Covenant on Civil and Political Rights:

African Charter on Human and People’s Rights:

Declaration of Principles on Freedom of Expression in Africa:
http://hrlibrary.umn.edu/achpr/expressionfreedomdec.html

MISA 2017 Transparency Assessment:

Our Rights Our Information, Commonwealth Human Rights Initiative:

ATI, the Media & ICTs, ACTION Coalition:

So This Is Democracy? 2016, Media Institute of Southern Africa (MISA):
http://misa.org/upload/web/So%20This%20Is%20Democracy%202016.pdf

Minister Tjekero Tweya 2017 Budget Speech:
http://www.mict.gov.na/documents/32978/329831/Hon.+Tjekero+Tweya%2527s+Budge

Harambee Prosperity Plan 2016/17 – 2019/20:

About Natasha Tibinyane

Natasha Tibinyane is an Afro-Feminist human rights defender, and well-known media and communications trainer.