



A CALL FOR INTROSPECTION:

BOTSWANA'S ACCESS TO INFORMATION LAWS

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Botswana's Access to Information

As states trend towards undemocratic practices, it is not unheard of for principles surrounding access to information (ATI) to become threatened. Access to Information allows for citizens to access government records which then ensures that ordinary citizens can keep their governments accountable. While within sub-Saharan Africa Botswana consistently ranks high for its access to information (ATI) and anti-corruption standards, the country lacks legal frameworks and legislation to combat the issue. The Botswana Constitution gives the public the right to information (RTI) through Section 12. However, in 2009 the African Media Barometer highlighted that while RTI is guaranteed in the Constitution, it does not guarantee citizens the freedom to seek information from the government. In an African Platform study, respondents were asked to rate the state of ATI in their country on a scale of 1 to 10. Respondents ranked Botswana 3 out of 10, below both Nigeria (7/10) and Zimbabwe (6/10).

Further, when pursuing access, Botswana insists that requests for information must always be justified. This can deter people from requesting information altogether or encourages the public to hide their true purpose in seeking information. External factors have been found to influence the response to requests for ATI. It was found that factors such as political association, occupation, and nationality were “very influential” in responses to requests for ATI. For instance, ruling party members can access information more easily than those who are not affiliated with the ruling party. These factors often complicate efforts by civil society organizations and ordinary whistleblowers wishing to hold the government accountable.

ATI remains an important tool in fighting corruption and promoting good governance. With strong ATI, citizens are more equipped to hold their government accountable. The Botswana government has enacted initiatives to improve on its anti-corruptions efforts. The Directorate on Corruption and Economic Crime (DCEC), for example, “investigates allegations of corruption and economic, [and] educate[s] the public on the effects of corruption and prevents corruption.” The Competition Authority and the Financial Intelligence Agency deals with cases of money laundering. In the justice system, the High Court has a judge that specifically deals with cases of corruption. This is to expedite corruption cases as they are many times delayed because the accused appeal the case to the high court by raising constitutional issues. Botswana also uses the Public Procurement and Asset Disposal Board (PPADB) and the DPP Anti-Corruption Unit in the fight against corruption.

In 2022, Transparency International (TI) ranked Botswana 35th globally in its Corruption Perceptions Index (CPI), up from 45th in 2021. Botswana ranked second, after Seychelles, for the sub-Saharan African region. Seychelles ranked 23rd and enacted an Access to Information Act in 2018 which aims to “foster good governance through enhancing transparency, accountability, integrity in public service” and “exposing corruption” and recognition of the right of access. The vice president at the

time commented that “giving the public access to such information will help make the public bodies accountable for their actions and allow the public to be better informed, make better decisions and become more productive.”

Seychelles is not the only sub-Saharan African country with ATI laws. Uganda, Kenya, Tanzania, and South Sudan all have legal Acts relating to ATI. Uganda’s law under section 3 provides that the Act is aimed at “promoting efficient, effective, transparent, and accountable Government.” In Kenya, section 3 of the Act gives effect to article 35 of Kenya’s constitution on the right to information, including protecting those who disclose information, promoting transparency, and empowering the public to scrutinize and participate in government decisions. According to section 4 of Tanzania’s law, it requires proactive disclosure of information by information holders, includes a provision for a framework that facilitates ATI, and protects those who disclose information. Under clause 3 of South Sudan’s law, the promotion of disclosure of information of public interest is included.

African Platform has highlighted deficiencies in Botswana’s ATI laws such as lack of applicable law and no right to the access of one’s personal information. There are also no definitive legal protections for whistleblowers in the country, which could be preventing people from coming forward about bad governance. Recourse for information is also not affordable or timely, delaying government accountability. Changes to these deficiencies will help strengthen good governance practices in Botswana.

While not in direct relation to ATI, the U.N. Convention Against Corruption (UNCAC) has also put forth a set of recommendations for Botswana to improve on its governance. Recommendations such as adopting the proposed amendments to Mutual Assistance in Criminal Matters Act (MACMA) and Proceeds and Instruments of Crime Act (PICA). By adopting these amendments Botswana’s legislation will be more in line with the Convention’s requirements. This also facilitates international cooperation, which is vital in holding countries accountable in their governance practices. UNCAC also recommends the continuation of investment into capacity-building to develop the skills of prosecutors and judiciary members on mutual assistance in criminal matters and asset forfeiture and recovery. Improving upon acts such as these and bolstering international cooperation allows for greater accountability for the Botswana government and ensures that there are clear standards that the country must follow.
