

Challenges for advocacy and implementation of Laws

Community Agenda for Access to Information and Development
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Good afternoon. Thanks to UNESCO, the organizers of this important event for the invitation to participate. My remarks will focus on two barriers to Right to Information (RTI) in Africa -- political will and hostility to rules.

As we speak, those involved in sabotaging Kenya's national election in December are right now doing everything they can -- to destroy **information about voter logs** and to keep information about their dubious activities well hidden. But looking ahead in the spirit of Kenya's new coalition democracy, the authorities have appointed a Commission on Inquiry to investigate the election debacle -- including the role of the media in the ensuing violence, though without a freedom of information law on the books, we can well imagine how that process will go.

In Africa as elsewhere, advocacy and campaigning for freedom of information has yielded some success. There's substantial recognition of the importance and need for, Freedom of Expression including right to information (RTI), as a feature of democracy, but there's work to be done. The author, David Korten (1990)¹ defined development as "a process by which members of a society increase their personal and institutional capacities to mobilize and manage their resources to produce sustainable and justly distributed improvements in their quality of life consistent with their own aspirations." Going by that, we'd have to ask whether the African political class believe in the "mobilizing and managing of our resources," especially the abundant human resources, for the improvement of people's quality of life. Many of us here believe that adopting and implementing RTI and other transparency laws are integral to that 'mobilizing and managing of resources' My question is -- whether African governments also share that definition or whether they're working from a different playbook.

As noted, African governments recognize that social development requires greater inclusiveness and fundamental democratic principles such as FOE. Also they seem to have conceded that democracy and development are interrelated. What isn't so clear is whether they have accepted the rules of democracy and can play by it -- in relation to elections, the separation of powers, guarantee of free expression including access to information and accountable media and civil society, so that every African can increase their contribution to society and facilitate a better quality of life for ourselves. There are other questions too -- the first I just mentioned -- whether the African political class can accept and play by the rules. Second, whether African politicians see the adoption, implementation and enforcement of human rights laws, including RTI as critical to their governance approach; and third -- for all of us to think about really -- whether we need to adapt our activism for FOE/RTI to include selling the African officials on the usefulness of these laws so that we can penetrate their massive stone-walling.

¹ Author, "When Corporations Rule the World," 1990

About a month ago, the new President of Sierra Leone came through London, and we went to hear him make his pitch for development aid. There were many Sierra Leoneans in attendance including one RTI activist who asked President Bai Koroma's for his position on the adoption of an access to information law in Sierra Leone. Without missing a beat, the President said that he was all for it, and that he had campaigned for it as a member of the opposition. He went on to say that he was planning to -- and will insist on -- a review of dated laws for reauthorization and/or repeal. We didn't get a follow-up, and so we'll have to take him at his word. But one couldn't help wondering whether by "review", the President means to lump the Freedom of Information (FOI) legislation with many other laws and get it bogged down, until his tenure runs out, like Mwai Kibaki's did in Kenya, and no FOI legislation was passed. President Kibaki is on the record as wanting to pass an FOI law to fight corruption; may be he still will, and so we'll have to wait and see.

The limited success stories of FOI advocacy campaigns so far -- and the very, very slow pace of moving legislations through the processes in African parliaments -- makes one rather curious about the sort of democracy that African governments want to pursue without input from their people. The whole notion of FOI is about balance of power -- a two-way communication to facilitate interaction between government and people. Okay, maybe it presupposes supervision from below. But never mind the benefits, the African governments are kicking against this idea, subtly but systematically.

FOI laws have a checkered record so far in the continent. We have 48 countries in the Sub-Sahara, only a handful of legislations to speak of. Angola, Uganda and Zimbabwe have largely weak laws that are yet to be implemented. Kenya, Nigeria and Sierra Leone's advocacy successes have been in fits and starts with no laws fully adopted. Meanwhile Ghana and Tanzania have been in the consultation stages for what now seems like -- well, for ever. That leaves South Africa -- as the only country with a definitive right to information law, but even there too, there's work to be done on enforcement. At the risk of sounding too much like an afro-pessimist, clearly African governments aren't hiding their disdain for things like press freedom, public participation through debate, transparency and the rule of law.

Some of us here are football fans. Players and fans alike know the game in all details, and can provide reasons for -- every win or loss -- in point by point even, based on accepted rules. Footballers -- fans and players, obey and play by these rules otherwise you simply don't play. African governments embrace democracy and good governance, but they seem to find the rules problematic. Again, a skeptic might say, but democracy in Africa has been coerced -- more to do with attracting foreign direct investment (which to a certain extent is equated with development). Meanwhile CSO's would rather a democracy that is about giving citizens their due rights of participation and self-government to work towards development. But if democracy is basically skin deep -- accepted for the sake of foreign aid, investments and investors, that may explain the continued lack of tolerance for differences and dissent, the poor track record on adoption/implementation of transparency instruments such as RTI laws, and the flouting

of the rules -- for elections, the judiciary, media freedom, and subsequently the low or no regard for public opinion.

When something isn't working well, it helps to return to the basics to rediscover the core of the movement and how to do things better. The core premise in the advocacy for RTI is a progressive and interactive relationship between Africans and their governments -- a relationship between the electorate and the elected, a relationship that is valued, and that would be strengthened by laws. And so we approach advocacy for FOE/RTI as tools for facilitating and/or strengthening the rule of law. We talk up RTI, as if it were a matter of course, that it will get adopted and implemented because everyone wants and values it. However, the halting and halfway footsteps so far, indicate something different: 1) that we may need: a more direct sell to African government officials on the idea of information access 2) that we may need to promote a more utilitarian approach in our advocacy -- going directly to the people to turn up the volume of campaigns, after-all -- it's the electorate that wants the rule of law and need RTI, not the elected. And it seems that we need a larger campaign targeted to the elected for an acceptance of bottom up supervision -- democracy for the people by the people -- because clearly, the idea of rule of law hasn't sunk in, not really.

It may also be that we need to rework issues into 'RTI language' to get it to be a more mainstream campaign. Perhaps African governments would be more receptive if we recast RTI as -- an environmental protection issue, or agricultural development and food security issue, maybe as portable water and maternal health and mortality issue -- in short as part of the MDGs—indeed these issues all have right to information elements in them. Hopefully we can stir thought and change the negative perception that FOE/RTI is a tool for political activists and the media to harass and topple politicians. We can change our tone and tenor to say that -- really, FOE is a means for mobilizing and managing resources for social development. I'll stop here.

Thank you for your kind attention.