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POLICY BRIEF

YOUR RIGHT TO KNOW: LESSONS FROM THE IMPLEMENTATION OF ACCESS TO INFORMATION POLICIES IN THE DEVELOPING WORLD

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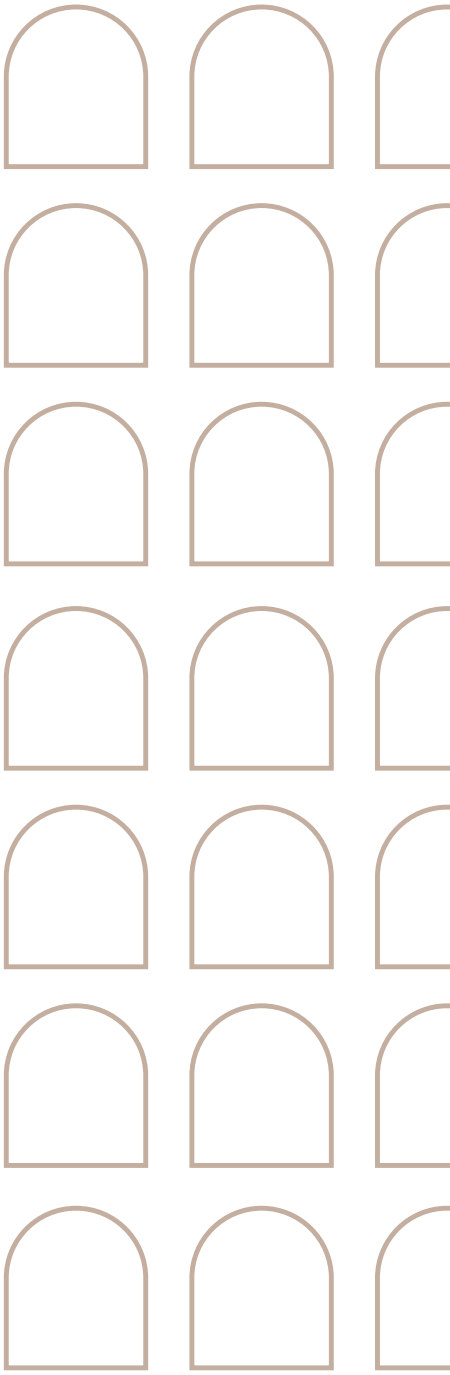
EXECUTIVE SUMMARY

Access to information from public bodies is vital to ensure transparency and accountability from governing institutions. It should be an overarching imperative in the developing world where state-citizen bonds are often frazzled by rampant corruption and erratic public services. In recent years, policy-makers have pursued this objective through a variety of open governance mechanisms, notably, Access To Information (ATI) legislations and policies. This policy brief presents the lessons from the comparative scrutiny of the ATI policy regimes of Ghana, India and South Africa – three pivotal democracies in the Global South – for signal lessons for ATI policy practitioners worldwide. Central observations include nagging concerns about policy adaptability and leadership, non-tech savvy bureaucracies, legislative design, arbitrary disenfranchisement of information seekers, and logistical logjams. Policy stakeholders are challenged to direct efforts at spreading good policy adaptation norms, fostering technological adoption, promoting legislative dexterity, curbing wanton disenfranchisements, and facilitating access to relevant logistics.



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1. OVERVIEW

Thomas Jefferson said he would be content to live in a society without a *government* if it came at the expense of one without *newspapers*. His famous bargain is a rousing endorsement of information as the lifeblood of any vibrant democracy. The deep and timeless resonance of his sentiment with governance policy thinkers is evident in Article 19 of the Universal Declaration of Human Rights, Target 10 of the Sustainable Development Goal (SDG) 16, and various contemporary efforts at mainstreaming open governance and information access tools in the canon of democratic practice.

Faced with their own needs to deepen civic engagement, cement trust with taxpayers and combat pervasive and obscene tendencies of corruption, governments in developing countries across the globe are sparing no effort in leveraging open governance instruments like Access To Information (ATI) laws and policies, to both expand corridors of dialogue between taxpayers and public duty-bearers, and reinvent insular bureaucracies.

In a truly remarkable feat of open governance activism in recent decades, about two-thirds of all member countries of the United Nations, including more than 85 non-OECD countries, currently possess an Access To Information guarantee – occurring in the form of a national law and/or constitutional guarantee. In Africa today, ATI laws have bisected the continent like an iron curtain – separating the bloc of countries with the laws from the neighbouring bloc of wistful or unfazed laggards.

Commonly similar in at least their avowed aims, ATI instruments across the developing world are not always identical in their origins and triggers (Neuman, L & Calland R, 2007). While some, like Ghana's Right To Information (RTI) Act, 2019, and India's Right To Information (RTI) Act, 2005, seem organic outgrowths of rather laboured democratic maturations across decades, others merely mushroom as fulfilments of foreign aid conditionalities by desperate governments, or sops to growling publics from embattled rulers. Not infrequently, the roots of the instruments are uncanny bellwethers of their effectiveness. While ATI tools carved in the boisterous arenas of competitive democracies translate the political bargains of their nativity into widespread legitimacy and built-in capabilities for deftly navigating interlocking policy objectives, their mischievously improvised counterparts are rarely mistaken as distracting gimmicks.

While it is difficult to affirm a causal link between ATI guarantees, especially national legislations, and governance openness, the potentially vital roles of such legal instruments as statutory buffers of the fundamental human right of access to information cannot be downplayed. Their notable resilience against political idiosyncrasies especially underlines their superiority over rival policy tools.

The complex calculus of political risks and rewards inherent in the pursuit of open governance policies in developing countries implies the dispositions of national governments towards such policies would be cued by political exigencies. Open governance champions must reckon with this reality and tactfully harness promising avenues to spark substantive policy breakthroughs.

As ATI tools become assimilated by developing countries, it is imperative for policy implementation experiences to engender cross-country reflections for the discovery and inter-jurisdictional exchange of lessons, for the purposes of policy improvements, enhanced advocacy, and the timely deflection of any anti-transparency shenanigans.

Boasting nearly a half century of combined experience in the implementation of open governance policies anchored on ATI laws, a shared common law heritage, vibrant democratic regimes, and enviable reputations as sub-regional economic powerhouses, Ghana, India and South Africa, are three impassable candidates for a multinational appraisal of ATI policy implementation experiences across the developing world. Their policy milestones and missteps are wellsprings of salutary lessons.

2. POLICY CONCERNS AND LESSONS FROM THE ACCESS TO INFORMATION (ATI) POLICY IMPLEMENTATION EXPERIENCES OF GHANA, INDIA

AND SOUTH AFRICA

Key Concerns

i. **Struggles with policy adaptability and leadership:** Neo-colonial influences on the adoption of ATI policy tools in the developing world, particularly legislations, which are often occasioned by heavy foreign assistance to domestic policy midwives, tend to imbue them with provisions and features hardly in sync with prevailing local legal and bureaucratic norms, eventually complicating policy implementation. Access To Information laws cloned from highly-regarded international model drafts tend to retain provisions that are context-blind. Infamously, the designation of Information Officers (regardless of rank) as addressees, recipients and adjudicators of original information requests by Ghana's Right To Information Act, 2019, has been a notable source of bureaucratic unease. The local bureaucratic custom required the routing of all organisational correspondence through the head of organisation, not to mention the taking of decisions on information disclosure to external agents. This normative upheaval induced by the law has been culpable for instances of slow disposals of information requests, and engendered only listless bureaucratic adaptation. Frequent and rigorous requirements on reporting and public monitoring, especially in respect of the policy's principal institutional spearhead – the Right To Information (RTI) Commission – which are also mandated by the law, have been another steep albeit laudable normative learning curve. The hobbling of policy implementation and robust leadership have been some of the unfortunate outcomes of these normative skirmishes in both Ghana and India.

ii. **Legislative defects:** Ghana's Right To Information Act, 2019, provides no ironclad indemnities to bureaucrats who adjudicate information requests. Its immunity provisions are quite incoherent and timorous. The resulting apprehension inclines bureaucrats to risk-aversion, defensive conduct and laxity in sharpening adjudication skills. The situation is not much different in India. Like both India and South Africa, Ghana's ATI law further subjugates all similar-ranked statues to itself in respect of information disclosure – a lingering source of opprobrium from many institutions impliedly deprived of opportunities for alleged information commoditization. Unlike the ATI laws of both India and South Africa however, Ghana's law omits the national legislature from the appointment process of the governing body of the Right To Information Commission – which together with its ambiguity about the terms of service of the Commission's Executive Secretary, does no favour to public scepticism about the Commission's neutrality and autonomy.

iii. **Arbitrary disenfranchisement of target policy beneficiaries:** Ghana's Right To Information Act, 2019, requires information requests to be accompanied by applicants' personal *identification* (i.e. personal government-issued identification documents) ostensibly for security and statistical purposes. This mandate invariably risks the arbitrary violation of the rights of individuals who lack such identification materials through no personal fault. In trauma-filled emergency situations, this obligation of applicants could have dire consequences. This identification requirement is also particularly tenuous considering any information (other than personal information requested directly or by proxy) that can be exclusively and directly disclosed to an applicant could alternatively be broadcast to the general public by the information holder under Ghana's ATI law. In India, reports of violent attacks of some information seekers are starkly disturbing reminders of the possible dangers that betide information seekers whose personal identification materials may land with rather unscrupulous and corrupt bureaucrats. Information request fees as charged in India and South Africa, could also pose significant barriers to the exercise of the fundamental right of access to information by poorly documented residents of developing countries ill-

equipped to demand applicable fee waivers.

iv. **Technological challenges:** Information access policies form the nexus of law enforcement, public administration, and public information management. Each arm of the tripod allies effectively with digital innovations to boost policy success. Ghana lacks a well-curated unitary/national digital platform for the filing and processing of information requests. India and South Africa are no significant improvements. Digital archival facilities in public agencies are also rare in Ghana. On the information supply side, such digital handicaps impinge information availability through poor archiving. They also imbue information exchanges between information seekers and bureaucrats with data security risks. On the demand side, these digital shortcomings perpetuate stressful information application processes marked by the physical submission of applications, manual payments, and occasional squabbles with stern bureaucrats. This modus operandi repels teeming netizens whose embrace of ATI policies is indispensable to their broad public patronage. Ghana's average daily record of less than one information request nationwide, in its opening three years of RTI law enforcement, is quite instructive.

v. **Logistical roadblocks:** Ghana's Right To Information Commission is precariously over-reliant on government budgetary allocations, imposed fines and charitable donations for institutional funding. Resource flows in such contexts are appreciably fickle. The inadequate digitalization of information request and supply processes, tardy enforcement of the Right To Information Commission's rulings, and paucity of digital-savvy public outreach by the Commission (a particular challenge not unfamiliar to India) are all hard to decouple from the Commission's financial and logistical headwinds.

3. RECOMMENDATIONS

i. **Spread policy norms:** Access To Information champions worldwide must revitalise efforts to inculcate positive policy development and implementation norms in key policy implementing agencies and bureaucrats in developing countries. Fora for exploring and exchanging efficient policy implementation norms should be reinvigorated. ATI policies must also be deliberately developed and implemented with adequate local stakeholder inputs and regular stakeholder engagement respectively, to facilitate their synchronization with appropriate domestic contexts. Ghana's RTI Act, 2019 commendably mandates civil society engagement in its enforcement, and had witnessed civil society engagement in its enactment in earlier years. Other jurisdictions should emulate Ghana's legal codification of civil society engagement.

ii. **Enact dexterous laws:** Access To Information laws should be designed with significant sophistication though in accessible languages to curb unhelpful controversies and scepticism. Provisions on information disclosure which seek to override similar provisions in peer legislations should be skilfully drafted to pre-empt mischievous and opportunistic interpretations. The laws should provide clear and sufficient indemnities to bureaucrats tasked with making occasionally high-stakes calls on information requests. Tough administrative sanctions for derelict bureaucrats may be preferred in the large majority of cases. The laws should also encourage political impartiality and maximum transparency in the selection and supervision of the leadership of Information Commissions through bipartisan legislative roles in the leadership recruitment and corporate oversight mechanisms of such bodies.

iii. **Avoid wanton obstruction of information seekers:** Personal identification requirements for information access should be discouraged or at most, confined to a narrow set of instances such as non-proxy requests for personal information. The major socio-political controversies and bureaucratic inefficiencies that

generally characterise access to personal identification documents by citizens and legal residents of developing countries underscore their obstructionist tendencies as requirements for obtaining public services. Such hindrances are grievous and unconscionable when they impede the exercise of a fundamental human right like the right of access to information. Personal identification requirements for access to information in developing countries are not only questionable from a practical viewpoint, but are also logically dubious, considering the right of access to information is a critical precondition for the exercise of many other fundamental human rights. Requests for information should also be shorn of any charges.

iv. **Go digital:** Public bureaucracies in developing countries must urgently digitalize information production, storage and transmission processes to enhance their preservation, security, and accessibility by the public. Lead implementation organisations of Access To Information policies must also spearhead efforts to expedite the development of well-curated digital platforms like websites and apps for the submission and processing of information requests (including the making of remote payments) and live public monitoring of same. This would entice digital savvy youth and cultivate critical masses of ATI policy patrons in developing countries.

v. **Consolidate funding:** ATI policy implementation bodies in developing countries must explore innovative ways of resource mobilisation to curb their overreliance on national budgets, fines and charitable offerings (as in the case of Ghana). To complement their traditional funding with a more reliable income stream, information reproduction fees can be nationally harmonised and shared between public agencies and key policy oversight bodies like the Right To Information Commission (Ghana), Central Information Commission (India) and the Information Regulator (South Africa). This could be practically facilitated by digital national platforms such as websites and apps through which information requests can be received and processed, and applicable fees paid remotely.

4. CROSS-COUNTRY ACESS TO INFORMATION (ATI) POLICY REGIME DASHBOARD

i. **Constitutional guarantee of the Right to Information:** The right of access to information (information being broadly conceived as any recorded material regardless of form) is an expressly guaranteed fundamental human right in the constitutions of Ghana and South Africa, unlike the case of India. Such unambiguous constitutional backstops fortify the right and anchor legislations regulating its exercise.

ii. **Manner of access:** Formal requests for information from bodies covered by the ATI laws of Ghana, India and South Africa must be submitted to the relevant organisations, containing descriptions of the desired information, preferred forms of access and contact particulars of information seekers. Officers must be designated by statute in all jurisdictions, to work on such requests. Reasonable support is available in all jurisdictions to information seekers incapable of making written formal requests. Information seekers may not provide any reason for original requests. Justifications are however required in Ghana for requests for exempt information, and/or an urgent treatment of a request. Identification documents are also required of all information seekers in Ghana. Applicable fees apply for information requests in all jurisdictions but Ghana, where they only apply to information reproduction. Decision time on information requests range from 14-30 days across the three jurisdictions. Information may also be proactively disclosed by relevant bodies in all three countries while unsuccessful original requests for information may be appealed through layered appellate mechanisms.

Disappointingly however, strict statutory timelines for adjudicating such appeals are absent in all three jurisdictions.

iii. **Exempt and classified information:** Some information is normally exempt from disclosure under the ATI statutes of Ghana, India and South Africa. Exempt information is ordinarily inaccessible information due to public safety and morality, national security, commercial confidentiality, and privacy and copyright, concerns. Such information can only be disclosed on grounds of demonstrable public interest, exposure of legal violations and/or after stipulated time periods (in some cases in Ghana and India).

iv. **Information commissions:** Both Ghana and India have Information Commissions which act as principal ATI law enforcement and policy-steering agencies – an organisational pillar a bit distinct from South Africa's Information Regulator (which however shares some of its functions). The Commissions must be autonomous and function concurrently as (cost-effective) appellate outlets for disgruntled information seekers, and the bureaucratic nerve centres of ATI policy implementation. The monopolisation of the process of appointing and remunerating the leadership of the Commissions in Ghana and India respectively by the executive branch of government, the ambiguity over the tenure of the Executive Secretary (principal administrator) of the Right To Information (RTI) Commission of Ghana, and executive (ministerial) discretion over some conditions of service of some members of South Africa's Information Regulator, are all distressingly fertile sources of public scepticism.

v. **Policy monitoring and reporting:** Both the RTI Commission of Ghana and all institutions covered by the RTI Act, 2019 of Ghana, are obliged to produce annual reports on their compliance with the law. The former is additionally required to produce a report on its enforcement activities every three months – a duty gasping for greater focus. The Indian Central Information Commission and public departments are also obliged to produce annual reports on the enforcement of the RTI Act, 2005. South Africa's Information Regulator and all public bodies under its ATI law are also required to generate annual reports on enforcement. In all jurisdictions, annual reports on ATI law enforcement agencies must be presented to the national legislature.

vi. **Commencement, applicability and overridng provisions:** The ATI laws of Ghana, India and South Africa, all feature provisions that subjugate all statutory provisions on information disclosure to themselves. Aimed at simplifying and accelerating the adjudication of information requests, that overriding provision has rather been a source of controversy in Ghana for prohibiting the suspected commoditization of information by some public agencies. The ATI laws of the three jurisdictions also apply to any information regardless of its time of generation, and to private bodies in varying degrees and forms. Only India restricts eligibility for making information requests to its citizens. All three jurisdictions delayed commencement for parts, or the entirety of, their legislations after their enactment.

vii. **Compliance and sanctions:** Non-compliance with India's RTI Act, 2005 by organisations may be penalised with an order to compensate affected information seekers. Derelict Information Officers may also attract fines and administrative discipline. In Ghana, non-compliance with the RTI Act 2019 by institutions may also attract fines while negligence by Information Officers and statutory appellate bodies may invite punishment such as fines and/or imprisonment. Offences under the South African Promotion of Access To Information Act, 2000 may also attract fines or imprisonment. The possible compensation of poorly served information seekers in India is a laudable remedy which provides strong encouragement to information seekers to pursue appeals. Ghana's tough sanctions are also strong deterrents when appropriately imposed. Information officers in all three countries

enjoy some indemnities.

5. CONCLUSION

The exalted hopes that commonly greet the unveiling of ATI policies in developing countries highlight their popular appreciation as critical lynchpins of responsive governance. Access To Information (ATI) policy champions in the developing world must leverage this gravitas to construct vibrant information access regimes that fulfil mass expectations. This brief should modestly assist such efforts.

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