

Access to Information as a Tool Against Corruption

9 October 2020

"A well-functioning Right to Information system is critical for exposing and deterring abuses of power, and for supporting the fight against corruption." Delia Ferreira Rubio - Chair of Transparency International

Introduction

On the 28th of September 2020, Transparency International Zimbabwe (TI Z) joined the rest of the world in commemorating the International Day of Universal Access to Information under the theme, **"Access to Information - Saving lives, building trust, bringing hope"**. The context and emphasis of this year's theme was on the importance of information in ensuring transparency and accountability especially during the public health pandemic of COVID-19. Access to information during this global pandemic is crucial, as it ensures that governments are accountable on the resources they have received or allocated as a response to COVID-19, public procurement processes are above board and resources are equitable distributed. Various stakeholders such as citizens, media, civic society organisations, private sector and international community, require information to track resources and ensure corruption is minimised. In this regard, TI Z reiterates that access to information remains an important tool to respond to the rampant levels of corruption. This week's Weekend digest provides a brief overview on the importance of access to information in the fight against corruption in Zimbabwe.

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Access to Information – international, regional, and domestic provisions

Freedom of Information laws / access to information laws allow citizens and interested stakeholders to have access to government records and processes. Various bodies such as the World Bank, the United Nations Development Programme (UNDP) and the Organisation for Economic Co-operation and Development (OECD) converge on the importance of access to information as a tool in the anti-corruption agenda. They argue that regulations and legal instruments should be developed to ensure access to information is realised. The World Bank for example, points out that access to information as a tool to address corruption potentially strengthens the reform processes in most countries and assures vertical accountability in the system.

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Similarly, the international convention against corruption to which Zimbabwe is a State Party to, the United Nations Convention Against Corruption (UNCAC) under Article 13, emphasizes access to information as a tool

for enhanced participation of society in the prevention and fight against corruption. It states that the participation of groups and individuals outside the public sector, such as civil society, non-governmental organisations and community based organisations, should be strengthened by measures such as “ensuring that the public has effective access to information (Art. 13(1)(b) and “respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption” (Art. 13(1)(d). Regional anti-corruption instruments also recognise the importance of access to information in the prevention and detection of corruption. The media is one of the important stakeholders in the anti-corruption chain. In this regard, the African Union Convention on Preventing and Combating Corruption encourages State Parties to ensure that the media has access to information in cases of corruption and related offences provided that the dissemination of such information does not negatively affect the investigation process and right to a fair trial. It is important to highlight that by becoming State Parties to these anti-corruption conventions, Zimbabwe binds itself to respect and promote the provisions thereof through domestic legislation.

Zimbabwe is a State Party to various regional and international anti-corruption conventions.

At a national level, the Constitution of Zimbabwe Amendment (No.20), 2013, is the foundational legal instrument that facilitates access to information. The constitution recognises the right to access to information as a fundamental human right and freedom, thus making it a progressive constitution that recognises access to information as an indispensable tenant to a democracy. Specifically, section 62(1) provides that every citizen or permanent resident of Zimbabwe including juristic persons and the media, have the right of access to any information held by the State or by any institution or agency of government at every level, provided that the information is required in the interests of **public accountability** (*own emphasis*). This right may only be restricted if it is in the interests of defence, public security or professional confidentiality. However, such restriction is not to be made arbitrarily, it must meet the standard set out in section 62(4), that is, the restriction must be **fair, reasonable, necessary and justifiable** in a democratic society based on openness, justice and human dignity equality and freedom (*own emphasis*). Furthermore, to give effect to this right, the constitution requires that the necessary legislation be enacted. In this regard, supportive legislation has been crafted to support this constitutional provision. Recently, the Freedom of Information Act (Chapter 10:34) was promulgated replacing the controversial Access to Information and Protection of Privacy Act (AIPPA). Some of the key provisions in the Freedom of Information Act include the following;

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- * One of the objectives of the Act is to “promote transparency, accountability and effective governance by taking any steps necessary to ensure that appropriate assistance is afforded to members of the public seeking to exercise their right of access to information in order to facilitate the exercise of the right” (sec. 3(c)(ii)).

- * Information must be provided in any of the country's official languages as requested by the applicant. In instances where the entity from whom the information is being requested, does not have the information in the requested language, such entity shall endeavour to translate such information in the requested language. However, the cost of such translation may be borne by the applicant (sec.16).
- * Feedback on the request for access to information is set at 21 days, however, an allowable extension of 14 days has been provided for (sec. 8 as read with sec.9).

The merits and demerits of this Act have been debated and discussed by various stakeholders. An analysis of this Act is outside the purview of this Weekend Digest. However, TI Z avers that access to information should not be tedious and imbedded in bureaucratic processes or be a financial burden to citizens. Therefore, the efficacy and effectiveness of this legal instrument as a tool in the fight against corruption should be tested in relation to these realities.

The role of access to information in the fight against corruption

The social contract between the state and its citizens places the citizens at the core of any democratic processes. Furthermore, the principle of stewardship requires the state to safeguard and utilise public resources in a transparent, prudent, and effective manner. As a result, it is argued that citizens have the right to information on processes that have a bearing on them. Needless to say, they are the ones who bear the brunt of mismanagement of public resources by the elite few. Evidently, corruption thrives in environs with secrecy and limited public scrutiny. Therefore, access to information advocacy has aimed at ensuring public scrutiny on government procedures and conduct. Open Data Activists for example have underlined that “information produced using tax money is owned by the tax-paying public and should be made available to them without restriction.” As public bodies share information, stakeholders can comprehend, appreciate and scrutinize the workings of the public bodies they fund. Access to information should therefore be viewed as a necessity for effective participation in public life; a tool to redress one sort of imbalance between people and the powerful institutions that govern them.

The right to information is not only a human right, but an essential tool that empowers citizens to demand accountability from governments, participate in public life and to fight corruption. However, in Zimbabwe access to information is generally inhibited by lack of citizen awareness on such rights, other laws being in conflict with the access to information laws (for example, trade agreements and non-disclosure agreements) and the administrative culture of secrecy that characterize most government institutions. The right to information laws place corresponding duties on both the public officials

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and citizens. In this regard, to ensure that access to information laws yield the desired results in the fight against corruption, it is important for civil society organisations to continue raising awareness on access to information laws. Citizens can only claim rights that they are aware of. An effective access to information law can only help to prevent corruption and improve public services and accountability if citizens know how to use it. Inadequate promotion of the right to access information, which does not reach citizens and encourage them to exercise this right, can be futile to the fight against corruption. Correspondingly, public entities and public officials must respect the provisions of the law and not deny citizens, civic society organisations and the media access to information unnecessarily.

Conclusion

The right to information is a key pillar in the broader anti-corruption agenda. It should hinge on strong legal and institutional frameworks that enable citizens and other stakeholders' access to information from public entities. Access to information laws must not be rhetoric or on paper only, there must exist 'political will' to see these provisions respected and promoted. The efficacy of Zimbabwe's access to information laws as an anti-corruption tool will be put to test as the country implements its National Anti-corruption Strategy (NACS) (2020-2024). This is one area that TI Z will continuously monitor. Strategic Objective 3 focuses on increasing public demand for transparency and accountability and the rejection of corruption in government offices, ministries, agencies and State-Owned Enterprises (SOEs)/ parastatals, public institutions, media houses and the private sector. Of importance to this digest is specific objective 3.2 which focuses on increasing institutional transparency by increasing the availability of public data made available by public authorities. In order to achieve this, several action points are set out and these include, improving access to information laws to ensure access to public information (Action 3.2.1) and developing an action plan "aimed at collecting information on beneficial ownership of all companies in the country and making this publicly available (Action 3.2.6) (own emphasis). SDG 16 is also central to this digest as it calls for the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all and the building of effective, accountable, and inclusive institutions at all levels. One of the targets is on ensuring public access to information and the protection of fundamental freedoms, in line with national legislation and international agreements. Therefore, these and other action points contained in the NACS will be instrumental in the country achieving the Sustainable Development Goals (SGDs) by 2030.

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The right to information is a key pillar in the broader anti-corruption agenda and is pivotal if Zimbabwe is to achieve its anti-corruption objectives as set out in the National Anti-corruption Strategy.

About Transparency International Zimbabwe

Transparency International Zimbabwe (TI Z) is a non-profit, non-partisan, systems-oriented local chapter of the international movement against corruption (Transparency International). The organisation was established in Zimbabwe in 1996 and exists to fight corruption and promote transparency, accountability, and integrity at all levels and across all sectors of society. TI Z currently operates from three regions in Zimbabwe, that is, Harare, Bulawayo and Mutare. However, its community presence reaches to more than ten districts across the country as a result of its vibrant community structures made up of ordinary men and women who have a passion to see Zimbabwe as a corrupt-free country (Accountability Monitoring Committees). TI Z uses a four-unit approach in carrying out its work:

Policy, Legislation, and Institutional Monitoring (PLIM) - engages policy makers and other relevant anti-corruption stakeholders in both the public and private sector. It lobbies and advocates for the development and implementation of effective national anti-corruption strategies to combat corruption in Zimbabwe.

Research and Communications (R&C) - produces knowledge that advances knowledge in the area of anti-corruption and good governance in Zimbabwe, for example the Annual State of Corruption in Zimbabwe Series and periodic researches that respond to key issues such as the 2019 Study on Corruption in the distribution and management of Humanitarian Aid (the case of cyclone idai and cholera outbreak)

Advocacy and Legal Advice Centre (ALAC) - provides free legal aid services to victims and witnesses of corruption and seeks to empower citizens to demand accountability and transparency from public and private institutions.

Community Mobilization and Advocacy (CMA) - targets ordinary citizens with the aim of ensuring maximum participation and involvement of citizens in the fight against corruption.

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