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A COMPARATIVE STUDY OF FREEDOM OF INFORMATION LEGISLATION IN BOTSWANA, SOUTH AFRICA AND ZIMBABWE

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ABSTRACT

This study compared and contrasted access to information in Botswana, South Africa and Zimbabwe, with the view to finding disparities and parities, and how accessible or inaccessible information is in the three countries. The study reviewed literature on information to access laws in the three countries. The study was qualitative and a case study research design was applied. Document analysis was used to analyse documents which included legislation, research articles, journal publications, PhD theses and reports, inter alia. There is an abundance of research on freedom of information (FoI) conducted by various scholars but none has made a comparative study of the three aforementioned countries. The findings of the study showed that of the three countries, South Africa has a constitution and FoI legislation which better provides for access to information; Zimbabwe has a constitution and FoI legislation which provides for access to information, but has a lot of restrictions; while Botswana has no FoI legislation and the constitution is not clear-cut on issues of access to information. The study recommends the enactment of FoI legislation in Botswana, and the amendment of FoI legislation in Zimbabwe in line with the Model Law on Access to Information for Africa and international FoI legislation. The study also recommends that South Africa should work towards implementing provisions set out in its FoI legislation and its constitution. Further, the governments of the three countries are urged to get rid of traditional

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legislation which was inherited from colonial masters aimed at depriving locals of access to information.

Keywords: access to information; Botswana; South Africa; Zimbabwe; freedom of information

1. INTRODUCTION

Information has emerged as a powerful asset, which if harnessed well, has the potential to promote development, good governance and wealth. Civil societies and non-governmental bodies, inter alia, have thus sought to find ways of making information available to citizens and such efforts have had challenges which include a culture of secrecy by some governments. Freedom of information (FoI) has been advocated for in spheres accustomed to secrecy, suppression of freedom of speech, privacy and confidentiality. However, countries around the world have been enacting FoI laws meant to make information accessible to the public. Banisar (2004) postulates that internal and external pressures have been exerted on governments to adopt FoI laws and governments have recognised them as part of the modernisation process. The World Bank (2004, 1) highlights that FoI laws are driven by the democratic notion that public bodies hold information not for themselves but for the public good, and that this information must be made accessible to the general public. The Zimbabwe Human Rights Forum (2011) points out that government openness and the accessibility of information about government activities to the public is a vital component of any democracy and a positive aspect of good governance. The World Bank (2004, 1) opines that FoI laws also provide practical benefits, such as: fostering democratic participation; controlling corruption; enhancing accountability and good governance; and promoting efficient information exchange between the government and the public, including businesses. Access to information is by no means an end in itself, rather it is a means through which communities and individuals alike obtain knowledge of the rights that accrue to them and demand their fulfilment (African Network of Constitutional Lawyers 2012, 5). However, merely having FoI laws has not translated to accessibility of information as some of these laws have sometimes hindered or limited access to information. Zimbabwe and South Africa are among some Southern African countries which have enacted FoI laws, whereas Botswana currently has no such law but a Draft FoI Bill (Saleshando 2010), which was rejected by the government. Alexander and Kaboyakgosi (2012, 4) highlight that the Botswana government seems reluctant to institute an FoI law which would support the public's right of access to information. These FoI laws and bill, respectively, have been reviewed, criticised and amended and it is through such reviews that citizens and other stakeholders can advocate for change and amendment of these laws. FoI laws must meet some of the requirements and standards which are set out below.

2. THE MODEL LAW ON ACCESS TO INFORMATION FOR AFRICA

FoI laws need to meet certain standards and models which have been drafted to serve as yardsticks of measuring conformity. However, in general terms, for an FoI law to be an effective and functioning mechanism for transparency, seven factors are key, namely: (1) scope of coverage of disclosures; (2) procedures for accessing information; (3) exemptions to disclosure requirements; (4) enforcement mechanisms; (5) specified deadlines for release of requested information; (6) sanctions for noncompliance; and (7) proactive disclosure (World Bank 2013). The World Bank (2004, 2) further postulates that FoI law should meet five international standards, namely:

i. The right to make oral requests.
ii. An obligation for public bodies to appoint information officers to assist requesters.
iii. An obligation to provide information as soon as possible and, in any case, within a set time limit.
iv. The right to specify the form of access preferred, such as inspection of the document requested, an electronic copy, or a photocopy.
v. The right to written notice, with reasons, for any refusal of access

3. THEORETICAL FRAMEWORK OF THE STUDY

The United Nations (UN 2015) recognises access to information as a fundamental human right. Article 19 of the UN Declaration of Human Rights (UN 2015, 40) says that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Similarly, the African Union (AU, previously the Organisation of African Unity) (OAU 1986, 2) African Charter on Human and Peoples Rights recognises access to information as a human right through Article 9, which says that "every individual shall have the right to receive information". These quotations highlight the importance of freedom of information at a number of different levels, such as in itself, for the fulfilment of all other rights and as an underpinning of democracy because for accountability purposes, the public should have access to information generated by public entities. The information is in the first place not generated for the benefit of officials or politicians, but for the public as a whole.

The study used the Model Law on Access to Information for Africa (hereafter the Model Law) which was developed by the African Commission on Human and Peoples' Rights (ACHPR 2013). As a theoretical lens for the study, the following provisions of the Model Law are used to compare and contrast the Draft FoI Bill in Botswana and the

access to information laws in South Africa and Zimbabwe. The following provisions of the bill and laws are used to illuminate the similarities and differences:

- placement of information officers;
- exemptions and specific records and documents exempted;
- coverage of the private sector;
- guardianship of FoI laws;
- time limits for processing requests;
- protection of whistle-blowers;
- public interest override;
- overriding of other laws on FoI issues;
- other restrictions.

4. PURPOSE AND OBJECTIVES OF THE STUDY

The purpose of the study was to compare and contrast FoI legislation in Botswana, South Africa and Zimbabwe. Through document analysis, comparisons and contrasts that stand out were highlighted in order to show where each country can learn and improve access to information. The specific objectives of the study were to:

1. determine constitutional provisions for access to information in Botswana, South Africa and Zimbabwe;
2. assess the state of affairs of access to information in Botswana, South Africa and Zimbabwe;
3. establish similarities of FoI laws or bills of Botswana, South Africa and Zimbabwe;
4. establish differences between FoI laws or bills of Botswana, South Africa and Zimbabwe.

5. STUDY METHODOLOGY

The study adopted a qualitative research methodology and a case study research design. The cases in the study were Botswana, South Africa and Zimbabwe and the unit of analysis was FoI in the three countries. A literature search was conducted online using the Scopus database and Google Scholar and the search terms included: freedom of information; Access to Information and Protection of Privacy Act (Zimbabwe); Promotion of Access to Information Act (South Africa); Draft Access to Information Bill (Botswana); and Access to Information in Southern Africa. A total of 123 documents were retrieved; however, not all of the documents had information related to the current study. The documents retrieved included: FoI legislation, reports; literature review

documents; PhD theses; newspaper articles; website articles; and books or monographs. A checklist which was derived from the Model Law was used and included: placement of information officers; exemptions and specific records and documents exempted; coverage of the private sector; guardianship of FoI laws; time limits for processing requests; protection of whistle-blowers; public interest override; overriding of other laws on FoI issues and other restrictions; as well as the state of affairs of access to information in the respective countries.

6. FINDINGS

The literature review and document analysis carried out in the study led to results which painted a picture of FoI legislation in South Africa, Zimbabwe and Botswana. These findings are presented in subsequent sections.

6.1. The constitutionality of access to information in South Africa

The right to information (RTI) has been expressed in some national constitutions and the same obtains of the national constitutions of the three countries (Banisar 2006, 17). The Constitution of the Republic of South Africa (1996, hereafter the South African Constitution) has one of the most expansive rights in the world (Banisar 2006). Section 32(1) of the South African Constitution highlights that everyone has the right of access to "any information held by the state" as well as "any information that is held by another person and that is required for the exercise or protection of any rights". Furthermore, it has a provision for the enactment of an FoI law. Section 32(2) prescribes the need to enact national legislation to give effect to the right of access to information. Milo and Stein (2014) postulate that although the Promotion of Access to Information Act (PAIA) (RSA Act No. 2 of 2000) is now the pre-eminent source of access to information law, the constitutional right may still play an important role as Section 32 of the South African Constitution can be relied upon directly to claim access to information which the PAIA does not cover, such as a record of the Cabinet and its committees.

However, in as much as the South African Constitution provides for the enactment of FoI legislation, there is a sharp contrast between the Constitution and the PAIA. The Constitution provides access to "any information held by the state", whereas the PAIA has restrictions and does not provide access to certain types of information. Van Heerden, Govindjee and Holness (2014) highlight that the PAIA has been deemed as "over-restrictive" and "under-inclusive". Its over-restrictiveness is said to be in that where the Constitution guarantees the right to access "any *information* held by the state", the PAIA waters it down to include only "a *record* held by a public body" and the PAIA is also over-restrictive with respect to the comprehensive range of exclusions (Currie and Klaaren 2002). Under-inclusiveness of the PAIA essentially refers to the fact that it does not contain the same unqualified right as provided for in the Constitution, since

certain state bodies are exempted from the provisions of the PAIA (Currie and Klaaren 2002).

6.2. The constitutionality of access to information in Zimbabwe

Section 62 of the Constitution of Zimbabwe (2013, hereafter the Zimbabwean Constitution) has clauses which provide for information to be availed to citizens. Section 62(1) prescribes that every Zimbabwean citizen or permanent resident, including the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability. Section 62(2) also highlights that every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right. Through Section 62(3), every person has a right to the correction of information, or the deletion of untrue, erroneous or misleading information, which is held by the State or any institution or agency of the government at any level, and which relates to that person. Furthermore, the Zimbabwean Constitution has a clause on access restrictions as Section 62(4) highlights that legislation must be enacted to give effect to this right, but may restrict access to information in the interests of defence, public security or professional confidentiality, to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.

Even though the Zimbabwean Constitution provides for the enactment of FoI legislation, the Zimbabwean Access to Information and Protection of Privacy Act (AIPPA) (Government of Zimbabwe 2002) is a classic example of what an FoI law should not be (African Women's Development and Communication Network 2009). Though Zimbabwe has passed the AIPPA, it is difficult to consider this legislation as a proper RTI law (African Women's Development and Communication Network 2009). The numerous and very broad exemptions on the exercise of the RTI and its draconian provisions aimed at controlling the exercise of journalism in the country (African Women's Development and Communication Network 2009). However, unlike the South African Constitution, the Zimbabwean Constitution highlights that certain information will be exempt from being accessed by the public.

6.3. The constitutionality of access to information in Botswana

The Constitution of Botswana (1966, hereafter the Botswana Constitution) gives the public the RTI through Section 12 which provides for the protection of freedom of expression. This section acknowledges that citizens have the right to access information, be able to voice it as well as the right to receive it from those who hold it. Section 12 states that:

> Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his or her correspondence.

Sebina (2004) observes that some constitutional guarantees on access to information are clear in bestowing the public's right to access government held information while for others that right is passive as it is implied access to information for purposes of formulating ideas and self-expression. The Botswana Constitution has passive provisions for access to information, a reason why Sebina (2006) prefers a standalone FoI law as the constitutional guarantee is inadequate. The African Media Barometer (2009) further highlights that although freedom to receive information is constitutionally guaranteed, the Botswana Constitution does not guarantee citizens the freedom to seek information from the government.

The Botswana Constitution is not really clear on access to information as Ndlovu (2002) also notes that a Commonwealth expert has suggested that the prospective FoI legislation in Botswana be called an access to information act instead of a freedom of information act. This suggestion makes sense since one may argue that freedom of information is already given in the Constitution, while it is access that the nation and activists are yearning for. The Constitution guarantees freedom of information in Section 12, which states that every citizen has the freedom to receive ideas and information without interference (Ndlovu 2012 in Alexander and Kaboyakgosi 2012, 79). While this may seem adequate, it falls short of guaranteeing access to information. In other words, the people of Botswana have the right to receive information, but the right of access is not explicitly assured (Ndlovu 2012 in Alexander and Kaboyakgosi 2012, 79).

7. SITUATIONAL ANALYSIS OF FREEDOM OF INFORMATION IN BOTSWANA, SOUTH AFRICA AND ZIMBABWE

Having FoI laws does not necessarily translate to information being readily and willingly being made accessible. What may be highlighted in FoI legislation may be different from what is happening on the ground. The following subsections will look at the state of affairs with regard to access to information in the three countries under study.

7.1. The Zimbabwe access to information situation

The Zimbabwe FoI legislation was enacted in 2002 and it has been heavily criticised in different circles. The Regional Conference on Freedom of Information in Africa (2010) laments the fact that "in Zimbabwe, legislation with the phrase 'access to information' in its title is used in practice only to stifle the free press and independent journalism".

Therefore, it appears that the AIPPA was not really modelled to provide access to information, but rather, to suppress access. Model FoI legislation has to be usable by the public to hold the government accountable. However, any possibility that the AIPPA might be usable as a weapon against the state can be discounted: as of 2006, "there had only been one reported instance of the access to information provision being used by the opposition party" (Regional Conference on Freedom of Information in Africa 2010). This showed the limited extent of the usability of the AIPPA in accessing information. Ngachoko (2010) further notes that greater media freedom and access was one of the new power-sharing government's guarantees. However, impediments to such freedom still exist, one of which being the failure of the government to establish an independent and impartial Media Commission.

Zimbabwe's Information and Media Panel of Inquiry (IMPI) (2015) highlights that the orientation of laws affecting the information sector in Zimbabwe has been one of control, and not one of viewing this sector anew as a growth pole in the national economy. The monopolisation of ownership of airwaves severely compromises Zimbabweans' right to freely express themselves and access information through independent and diverse media platforms (MISA Zimbabwe 2015). Furthermore, the AIPPA is only one of a battery of laws adopted by the Zimbabwean government for the control of information and the suppression of criticism (Regional Conference on Freedom of Information in Africa 2010).

The AIPPA has already been ruled by the African Commission on Human and People's Rights (ACHPR) as being contrary to the values upheld by the African Charter on Human and People's Rights, to which Zimbabwe is a signatory (Ngachoko 2010). The AIPPA grants nominal access rights to state information, as well as requiring the state to limit the uses that it can make of personal information collected about citizens (Regional Conference on Freedom of Information in Africa 2010). Ngachoko (2010) also highlights that although the new Zimbabwe Media Commission (ZMC) is mandated by law to ensure greater media freedom, it will still be subject to the same laws and institutions that have worked to repress these freedoms in the past, particularly the AIPPA.

Furthermore, MISA Zimbabwe (2015) highlights that "authorities continue to use the discredited AIPPA to license and regulate the media, the Official Secrets Act (OSA) to broadly embargo information held by public bodies, and the Broadcasting Services Act (BSA) to hinder free establishment of radio stations". Furthermore, "the Censorship and Entertainment Controls Act (CECA), also continues to be used to censor free artistic expression; the CODE to criminalise media work and citizens' right to free expression" (MISA Zimbabwe 2015). Therefore, it can be concluded that the AIPPA and other legislation fall short when it comes to providing access to information.

7.2. The South African access to information situation

The South African FoI legislation has been hailed by Loxton (2002) as a golden standard, yet despite all its glory, the state of affairs may not necessarily reflect that golden standard cliché. The National Planning Commission of South Africa (NPC 2012) highlights that the state has been poor at making information available timeously and in a form accessible to all citizens, and government officials are often reluctant to provide information when it is requested. Furthermore, the NPC (2012) highlights that requests for information are routinely ignored, despite the existence of the PAIA and there is endemic lack of compliance. One of the most pressing shortcomings remains an overwhelming lack of executive and senior management buy-in to the principles and spirit of the PAIA (Allan 2009).

Having the perfect FoI legislation amounts to nothing if citizens do not make use of it. The Regional Conference on Freedom of Information in Africa (2010) notes that South Africa's citizens simply do not seem to be making significant use of their right to know. Peekhaus (2014) further highlights that South Africans' usage of the PAIA remains low and limited mainly to civil society organisations. A number of factors may contribute to the low usage of the PAIA. Darch and Underwood (2005) argue that South Africa's introduction of the PAIA was influenced by a global constitutional imperative rather than by a popular pressure. This may suggest that FoI may not have been a concern and a necessity for the ordinary South African. Another contributing factor may be that of poor implementation as the South African Human Rights Commission (SAHRC) has bemoaned a lack of awareness of the PAIA, inadequate human and financial resources to train information officers and build and maintain information access infrastructures within public bodies (Peekhaus 2014).

Access to information can also be out of reach to many people if there are a lot of costs associated with such access. The issue of exorbitant costs of making use of the PAIA has been a cause of concern as it has long been critiqued for delegating ultimate oversight and enforcement of its provisions to the courts, which can be very expensive and time consuming (Calland in Allan 2009). Success with the PAIA comes at a price that ordinary South Africans cannot afford. There have already been instances of organisations requiring payment of fees much higher than provided in the PAIA (Dick 2007).

The NPC of South Africa (2012) further buttresses that the implementation of the PAIA suffers wilful neglect, lack of appreciation of the importance of the right, an institutional culture of risk aversion and/or secrecy and a lack of training. Furthermore, for access to information to be made possible, there is a need for information officers as stipulated in the PAIA to facilitate the process. However, the SAHRC (2009) has noted that rather than create positions designed to deal exclusively with access to information requests, most government departments at the national, provincial and municipal levels tend to assign PAIA duties to their respective personnel on an ad hoc basis in addition to main job responsibilities. Furthermore, in South Africa government officials have

indicated a lack of training and internal capacity to receive and process access requests (Peekhaus 2014). Such a scenario negatively impacts on access to information as there is inadequate attention paid to provision of access. Dedicated staff have to see to it that there are proper finding aids to facilitate access. However, the lack of dedicated resources and widespread poor records management practices have combined to hinder the development of mandated manuals/indexes by the majority of all public bodies – as low as 5 per cent compliance (SAHRC 2009). The SAHRC (2009, 158) further notes that there is clear evidence of the lack of awareness and commitment within the sector to deliver on access rights, and begs questions of service delivery, transparency and commitment … eight years after the enactment of the PAIA legislation.

One of the greatest obstacles in South Africa to the right of access to information is the problem of "mute refusals", the monitoring term for requests for information that do not receive a positive or negative response during the appropriate time frame. Nearly two-thirds (62%) of requests submitted received no response, with occasional responses after the prescribed period of 30 days (Open Democracy Advice Centre n.d.). In cases where an RTI law already exists, it passes a countervailing law, as South Africa did with the passage of the Protection of State Information Bill (2012). The Bill has the effect of diluting an otherwise good RTI law (Botlhale and Molefhe 2013). The PAIA does not repeal earlier secrecy laws restricting the right of access to information, but only overrides the earlier laws where there is an overlap (Klaaren 2002).

7.3. The Botswana access to information situation

Botswana has been deemed as a beacon of democracy in Africa, but surprisingly it has not enacted FoI legislation. The African Media Barometer (2009) highlights that there is currently no access to information legislation in Botswana that could force government officials to make public information accessible. The absence of FoI legislation in Botswana is further exacerbated by instruments, such as the Media Practitioners Act (2009), the Intelligence and Security Services Act (2007) and the National Security Act (1986) which place constraints on the free flow of information, and thus, there are transparency challenges (Botlhale 2011). The absence of FoI legislation has made it possible for the government to develop and refine art of secrecy and Fombad (2011) argues that this was reinforced by the punitive media unfriendly laws such as the National Security Act (1986), the Intelligence and Security Services Act (2007), and the Corruption and Economic Crime Act (1994).

Without FoI legislation in place, transparency and inclusion of the public in governance and decision making becomes a challenge. Most Botswana citizens contend that a lack of access to information and a general lack of transparency on the part of public institutions limit full participation in the development processes, including political life (Moatlhaping and Moletsane in Alexander and Kaboyakgosi 2012, 30). The clampdown on information has increased and Batswana are speaking out less while

information is severely restricted in both practice and by policy. The Public Service Act (2008), the National Security Act (1986) and the Corruption and Economic Crime Act (1994) contain provisions restricting access to public information (African Media Barometer 2009, 5).

The reluctance by the government of Botswana to enact FoI legislation is evident as the Minister of Communications, Science and Technology told the media that access to information legislation will not be passed because government has secrets to keep (African Media Barometer 2009). Furthermore, the National Security Act (1986) is at best seen as the most secretive and expressing authoritarian tendencies of the Botswana democracy (Good 2007). However, it may be that the appointment of public relations officers (PROs) in all government ministries in Botswana was a positive move towards providing access to information. However, the African Media Barometer (2009) argues that there is a sense that the appointment of PROs in ministries is a means to stall or even block such legislation, as the government could argue that these appointments make an access to information law redundant. Furthermore, PROs working for the various ministries can be instantly dismissed for speaking to the media or providing information without permission from the Minister or the Permanent Secretary of a particular ministry (African Media Barometer 2009, 5). The African Media Barometer (2009) also highlights that in Botswana, "MPs and ministers, even, cannot access government information as the executive 'up there' does not inform or brief them".

The Botswana government is very effective in keeping politically significant information about its operations out of the public realm (Holm 1996). Furthermore, in Botswana, the law does not provide public access to government information, and the government generally restricts such access. Information that is made public is available for a fee from the Government Printing Office (United States Department of State 2011). Botswana currently has no policy on the release of information to the public. Furthermore, the negative consequence of absence of freedom of information law is well pronounced in the well-documented incidents of grievous threats, harassment and attacks on journalists in retaliation for their reporting (Centre for Human Rights 2008). In Botswana, secrecy has led to an environment where the government can conveniently cover up its wrong doings knowing full well that access to the information it is using or generating is partial and will not reveal all the incongruities of governance (Balule and Maripe 2000).

8. COMPARISON OF THE PAIA, AIPPA AND DRAFT FOI BILL

An organisation called Article 19 considers the South African legislation as the gold standard against which accession to information laws are measured (Loxton 2002), while the provisions of the AIPPA actually restrict access to information (Zimbabwe Human Rights Forum 2011). Article 19 also considers the Draft FoI Bill as a positive

step towards the effective protection of access to information and welcomes the attempt to create a general right of access to information despite the numerous deficiencies inherent in the draft law (Loxton 2002).

The PAIA stands as the most hailed of the three FoI initiatives. To Dimba and Calland (2003), the South African approach to FoI is both innovative and, in terms of its comprehensive coverage of private information, it is revolutionary. The centrality of information to maintaining political power in Zimbabwe means that access to information is sternly restricted and the culture of secrecy prevalent in most government departments suggest that access to information is not seen as a right but a privilege that government officials dispense at will (African Network of Constitutional Lawyers 2012, 5).

8.1. Placement of information officers

FoI laws normally provide for the appointment of information officers who will see to it that requests for information are processed and that requesters are provided with the information requested. The AIPPA and the Draft FoI Bill have no clauses specifying the place or designation of information officers responsible for administrating FoI provisions. However, the PAIA provides for the appointment of information officers in Section 75 which highlights that an internal appeal must be made through the information officer to the "designated authority". Section 1 of the PAIA also has a clause on the designation of the information officer of a public and according to Section 17, each public body has to appoint sufficient deputy information officers to make its records as accessible as possible. Sebina (2006, 67) notes that the Draft FoI Bill has no provisions for information officers and an internal review body within every public authority who would be responsible for receiving requests for information and reviewing decisions to withhold information. Without information officers, access to information and timely provision of information is not guaranteed.

8.2. Exemptions and specific records and documents exempted

FoI laws do not make all kinds of information accessible, owing to national security, privacy and other concerns. The World Bank (2004, 2) states that a freedom of information law should be based on the principle of maximum disclosure, which calls for all information held by authorities to be available to the public, subject only to narrow exceptions to protect legitimate concerns. In agreement, Kirkwood (2002, 10) points out that FoI laws have a "concomitant imperative to protect legitimate needs for confidentiality and secrecy". All the FoI laws of South Africa and Zimbabwe and the Botswana Draft FoI Bill have sections highlighting documents which are exempt from the provisions. Like the AIPPA, South Africa's access to information legislation runs the risk of retaining exceptions (sections 12, 29, 37(1)(a) and 65) and exclusions to the RTI that are so comprehensive and inequitable as to effectively negate the right to access

information (Memeza 2006, 15). On the contrary, Kandji (2005) justifies the exemption provisions in the PAIA as reasonable and subject to a public interest test. The Media Institute of Southern Africa (MISA 2004, 4) notes that the AIPPA establishes a general right to access information held by public bodies (Section 5); however, the regime of exceptions is so comprehensive that it renders any RTI largely illusory. With the Botswana Draft Bill, there is a long and elaborate list of documents that are exempted from public consumption. Amongst the exceptions are the presidency, commissions of enquiry and the judiciary. The Commonwealth Human Rights Initiative (CHRI 2011) argues that an FoI law must enable the public to hold the cited offices accountable through access to information. Furthermore, these exceptions go against international best practice.

8.3. Coverage of the private sector by FoI law

Private bodies or companies do not operate in isolation and thus their business dealings and operations have to be known to the communities within which they operate. Sections 4, 8 and 50 of the PAIA highlight the application of access to information held by private bodies which are to disclose information needed for the exercise or protection of any right. Comparatively, the Draft FoI Bill in Botswana and the AIPPA in Zimbabwe have no provisions for access to information held by private bodies as their emphasis is only on public bodies (Alexander and Kaboyakgosi 2012; Government of Zimbabwe 2002; Saleshando 2010). According to Siraj (2010), the majority of FoI laws exclude the private sector and only applicable to information and records held by the state, subject to exemptions. However, Siraj (2010) is of the view that the jurisdiction of FoI laws must include private organisations largely because of two reasons. Firstly, a lot of public information is held by the private sector as the private sector is now performing many public functions that were conventionally performed by the government, due to rapid privatisation, de-regulation, and economic globalisation.

The exclusion of private organisations from FoI provisions thus denies the public the right to have access to public information held by the private sector. Secondly, the literature shows that although voluntary codes for information disclosure exists, the private sector continues to operate in a highly confidential environment (Fung 2008). This suggests that the disclosure regimes alone cannot ensure access to all information, which the individuals need for making informed choices. That is why, recent works have emphasised the need for greater transparency in the private sector (Burkart and Holzner 2006; Lewis 2001). Exclusion of private bodies from FoI legislation may promote corruption and other underhand dealings, thus undermining accountability and transparency in the private sector. It is pleasing to note that the PAIA has some of the most progressive features of any law in the world as it allows for access to records held by private bodies if individual rights are affected.

The exclusion of the private sector from Botswana's Draft FoI Bill and Zimbabwe's AIPPA means that private companies and organisations, which may include political parties and companies, will continue to be corrupt, without accountability to the citizens who are directly or indirectly affected by their activities and presence.

8.4. Guardianship of FoI laws

For information to be provided, there must be independent bodies set to ensure that governments do not rob citizens of this right and that citizens do not abuse this right. This calls for the need to have independent bodies looking into information access issues. Zimbabwe and South Africa have created commissions in form of the Zimbabwean Media Information Commission and the SAHRC. South Africa's PAIA has bodies, such as the SAHRC, as a monitoring agency for the implementation of the law and custodians of information are supposed to prepare reports and submit these to the SAHRC. However, Ncube (2004) highlights that the SAHRC has a limited oversight function. The Botswana Draft FoI Bill has no provisions for the establishment of any independent and autonomous oversight body specialised in transparency and access to information to resolve disputes under the legislation. However, the AIPPA grants powers to a Media and Information Commission, which has been criticised by MISA (2004, 1) as firmly under government control, and imposes registration/licensing requirements on both media outlets and individual journalists. It also imposes a number of strict content restrictions on the media. The independence of such a body is still a matter that has serious implications for the legitimacy of Zimbabwe's access to information regime and public trust in the efficacy of the legislation (Memeza 2006). In terms of independence and autonomy, the SAHRC seems to be more independent and autonomous than the Zimbabwean Media Information Commission. The Botswana Draft FoI Bill has no provision for establishing an oversight body, such as an Information Commissioner, and this heralds trouble as not having such independent commissions will lead to total government control and citizens' rights of access to information will be thwarted where governments are more concerned with secrecy.

8.5. Appointment of FoI commissions

The independence of commissions is based on the process of appointment of FoI commissions. According to Section 38(2) of the AIPPA, the commission shall consist of a chairperson and eight other members appointed by the president from a list of not fewer than 12 nominees submitted by the Committee on Standing Rules and Orders. MISA (2004, 4) highlights that Zimbabwe's Media and Information Commission is a body controlled by the government, rather than by an independent body. The SAHRC is an independent body, and thus the PAIA is silent on the appointment of officers into such commissions. With Botswana, there is no independent commission to look into FoI and thus the FoI Bill is silent on the appointment of commissions. The appointment of

the members of the commission by the president in Zimbabwe has loopholes in that the president may then appoint people who may be pliable and aligned towards restricting access to information to which the government may not be willing to provide access.

8.6. Protection of whistle-blowers

The World Bank (2004) and Open Government Partnership (2015) highlight that other key measures of FoI laws must include protection of whistle-blowers and good faith disclosures under the law, and sanctions for obstruction of access. The Draft FoI Bill is silent on the protection of whistle-blowers, whereas South Africa has adopted comprehensive whistle-blowing law according to Banisar (2006). Banisar (2006) highlights that the AIPPA sets strict regulations on journalists and its access provisions are all but unused probably for fear of any person brave enough to ask for information being beaten by government supporters. The PAIA has provisions which protect whistle-blowers, whereas the AIPPA and Draft FoI Bill do not have enough provisions to protect whistle-blowers.

8.7. Public interest override

FoI legislation in South Africa and Zimbabwe includes public interest which requires that withholding of information must be balanced against disclosure in the public interest – this allows for information to be released (even if harm is shown) if the public benefit in knowing the information outweighs the harm that may be caused from disclosure (Memeza 2006). According to MISA (2004), exceptions in an FoI law must be subject to a general public interest override, whereby the information must be disclosed, even where such disclosure will harm a legitimate interest, where the public interest in having the information outweighs this harm. The AIPPA does not contain a public interest override (MISA 2004, 6). On the contrary, Section 37 of the Draft FoI Bill provides for public interest override where a public authority shall give access to an exempt document where, in the circumstances, the giving of access to the document is justified in the public interest. Memeza (2004) notes that the weaknesses in South Africa's access to information legislation include circumstances under which public interest dictates that request should be refused.

8.8. Overriding of other laws on FoI issues

Access to information is a subject which can be covered by other laws in a country, and some of these laws may conflict with provisions of FoI laws. It becomes imperative, therefore, that FoI laws provide for an override of other laws on issues pertaining to access to information. Section 5 of the Draft FoI Bill states that any law to the contrary and subject to the provisions of this Act, every person shall have the right to obtain access to an official document, and this provides for that override. Furthermore, Section

3(2) of the AIPPA also highlights that "if any other law relating to access to information, protection of privacy and the mass media is in conflict or inconsistent with this Act, this Act shall prevail". The PAIA also provides for the overriding of other legislation on issues of access to information. Section 5 of the PAIA highlights that the Act applies to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of a record of a public body or private body. Therefore, from the look of things, the FoI laws and bill of the three countries make provisions for FoI laws to override other legislation on access to information issues.

8.9. Time limits for processing requests

South Africa's PAIA, Zimbabwe's AIPPA and Botswana's Draft FoI Bill provide 20 days for responding to requests for information. Therefore, it can be concluded that 30 days is the average time stipulated for responding to requests for information in the three countries.

8.10. Other restrictions to FoI in the three countries

In Botswana, there are other pieces of legislation which have a bearing on access to information and they have been deemed as negatively impacting on accessibility of information. Alexander and Kaboyakgosi (2012, 4) state that in Botswana, instruments such as the Media Practitioners Act (2009), the Intelligence and Security Act (2007) and the National Security Act (1986) place constraints on the free flow of information, and there are transparency challenges. However, there are other pieces of legislation that promote access to information in Botswana. For example, the National Archives and Records Services Act (1978) makes archival information freely available to the public. In Zimbabwe, the Broadcasting Services Act (BSA) (2001) gives the government extensive control over any future private broadcasters should licences be issued; while the Public Order and Security Act (POSA) (2009) grants virtually unlimited discretionary powers to the executive to restrict the flow of official information. These laws contribute to the generally negative political culture necessary for access to information. To maintain secrecy, legislation such as the POSA, effectively controls the dissemination of any information to the public by restricting public gatherings (African Network of Constitutional Lawyers 2012, 5).

9. CONCLUSION

The study sought to compare and contrast provisions of FoI legislation in Botswana, South Africa and Zimbabwe. Strengths and weaknesses of these laws were highlighted in a bid to show areas which need to either be improved or strengthened. The South African Constitution was considered as far-reaching on issues of access to information as it does not have restrictions as compared to the Zimbabwean Constitution which has

restrictions in cases of national security, among other things. The Botswana Constitution is not clear on access to information as it does not specifically have provisions for access to information. Therefore, the South African Constitution is the basis for FoI legislation which seeks to provide access to both public and private records. Although he Zimbabwean Constitution provides access to information, it has restrictions which somehow set the tone FoI which restricts access to information. Furthermore, the Botswana Constitution lacks clarity on access to information and hence the government's reluctance to enact FoI legislation. The situational analysis revealed that even though South Africa's FoI legislation was hailed as being extensive as that of Zimbabwe and the Botswana Draft Bill, there were challenges associated with implementation as some government departments had not appointed information officers and citizens were not adequately making use of the Act. This pointed to the fact that even the best of FoI legislation can be poorly implemented leading to citizens not making use of it and not knowing their right to know. The study also established that there was other legislation in all three countries which hindered access to certain types of information and this negatively affected access to information which would help citizens fight corruption and bring governments to account and be transparent. Thus, the study concluded that the AIPPA does not provide for the access to information, as it appears to deter citizens from accessing information. Furthermore, the study concluded that the PAIA stands as the best of the three pieces of legislation as it provides access to private records; allows for the establishment of an independent body to oversee access to information issues; and highlights the appointment of information officers, whereas these terms are lacking in the AIPPA and Draft FoI Bill. By virtue of not enacting FoI legislation, Botswana has shown a lack of commitment to providing access to information to its citizens. The study also concluded that Botswana is the most secretive country, followed by Zimbabwe, with South Africa being the least secretive.

Some of these limitations include: too many restrictions on access to information; lack of independent bodies to oversee access to information; exemptions of some key officers and departments from FoI legislation; and lack of clauses on the protection of whistle-blowers. Zimbabwe and South Africa were also hailed for enacting FoI laws, whereas Botswana has made some effort in drawing up a Draft Bill. However, Botswana is encouraged to enact an FoI law in order to make information accessible and to promote democracy, good governance and accountability.

10. RECOMMENDATIONS

The study recommends the enactment of FoI legislation in Botswana; the amendment of FoI legislation in Zimbabwe in line with the Model Law and international FoI legislation in order to provide access to information. The World Bank (2005, 25) adds that the adoption of FoI legislation as part of the national ideals "would be key to encourage more open and accountable government by establishing a statutory right of access to

official records and information". The study also recommends that South Africa works towards implementing the provisions set out in its FoI legislation and its constitution as having a good FoI legislation amounts to nothing if the provisions set out therein are not implemented. The governments of the three countries are urged to get rid of traditional legislation which was inherited from colonial masters aimed at depriving locals of access to information. The study further recommend that in all three countries, there be minimal interference from government and this calls for the appointment of independent bodies to look into FoI legislation. The study also recommends that in all three countries, mechanisms be set up to create public awareness and use of FoI legislation. Finally, the study recommends that the governments of the three countries should be in a position to provide access to information to their citizens in order to foster transparency, good governance and development, and to empower citizens and in the process uproot corruption.

REFERENCES

ACHPR (African Commission on Human and Peoples' Rights). 2013. "Model Law on Access to Information for Africa." http://www.achpr.org/files/news/2013/04/d84/model_law.pdf (accessed June 26, 2016).

African Media Barometer. 2009. "Botswana 2009." www.fesmediaafrica.org/uploads/media/AMB_Botswana_2009_English.pdf (accessed September 10, 2016).

African Network of Constitutional Lawyers. 2012. "National Study on Access to Information in Zimbabwe." www.right2info.org/.../national-study-on-access-to-information-in-zimbabwe-2012 (accessed September 12, 2016).

African Union. 1981. "African Charter on Human and Peoples' Rights." http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf (accessed October 10, 2016).

African Women's Development and Communication Network. 2009. "Freedom of Information (FoI) and Women's Rights in Africa: A Collection of Case Studies from Cameroon, Ghana, Kenya, South Africa and Zambia." www.unesco.org/ci/en/files/29376/12605246833foi_africa_en.../foi_africa_en.pdf (accessed October 13, 2016).

Alexander, K., and G. Kaboyakgosi. 2012. "A Fine Balance: Assessing the Quality of Governance in Botswana." www.bidpa.bw/img_upload/pubdoc_59.pdf (accessed June 12, 2016).

Allan, K., ed. 2009. "Paper Wars: Access to Information in South Africa." https://books.google.co.zw/books?isbn=9004251898 (accessed August 14, 2016).

Balule, B. T., and B. Maripe. 2000. "A Quick Guide to Laws and Practices That Inhibit Freedom of Expression in Botswana: A Report." www.ricksnell.com.au/resources/sebina_thesis.pdf (accessed June 15, 2016).

Banisar, D. 2004. "The Freedominfo.org Global Survey." www.freedominfo.org/documents/global_survey2004.pdf (accessed June 19, 2016).

Banisar, D. 2006. "Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws." www.freedominfo.org/documents/global_survey2006.pdf (accessed July 10, 2016).

Botlhale, E. K. 2010. "Getting into the Blackbox: Fiscal Decentralisation, Popular Participation and Local Government Performance in Botswana." www.bidpa.bw/img_upload/pubdoc_59.pdf (accessed June 10, 2016).

Botlhale, E. K., and K. Molefhe. 2013. "The Death of the Right to Information Bill in Botswana." *International Federation of Library Associations and Institutions* 39 (3): 204–213. www.citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.1969&rep=rep1 (accessed June 12, 2016).

Botswana Gazette. 2012. "Botswana: Expect the Freedom of Information Bill to be Killed." *The Botswana Gazette*, 11 March.

Botswana Press Agency. 2012. "Legislators Reject Info Bill." *Daily News*, 20 August: 2.

Brink, A. 2010. "A Long Way from Mandela's Kitchen." *New York Times*, 11 September. www.query.nytimes.com/gst/abstract.html?res (accessed May 12, 2016).

Burkart, H., and H. Leslie. 2006. *Transparency in Global Change: The Vanguard of the Open Society*. Pittsburgh: University of Pittsburgh Press.

Calland, R. 2009. "Illuminating the Politics and the Practice of Access to Information in South Africa." In *Paper Wars: Access to Information in South Africa*, edited by K. Allan, 1–16. www.witspress.co.za/wp-content/uploads/2011/03/WUPcatalogue2009_2010.pdf (accessed July 15, 2016).

Calland, R., and B. Kristina. 2013. "The Impact and Effectiveness of Transparency and Accountability Initiatives: Freedom of Information." *Development Policy Review* 31 (S1): s69–87. https://assets.publishing.service.gov.uk/media/.../60827_DPRCallandBentley_preprint (accessed June 12, 2016).

Centre for Human Rights. 2008. "Stakeholders' Information on Botswana." www.lib.ohchr.org/.../CHR_BWA_UPR_S3_2008_TheCentreforHumanRightsoftheUniversi (accessed June 12, 2016).

CHRI (Commonwealth Human Rights Initiative). 2011. "Annual Report – Headquarters India 2011–2012." http://www.humanrightsinitiative.org/publications/areport/2012/CHRIAnnualReport2011-12.pdf

Currie, I., and J. Klaaren. 2002. *The Promotion of Access to Information Commentary*. Cape Town: Siber Ink.

Daniels, G. 2011. "Botswana: Southern Africa's Most Secretive State." *Mail and Guardian*, 11 November.

Darch, C., and P. G. Underwood. 2005. "Freedom of Information Legislation, State Compliance and the Discourse of Knowledge: The South African Experience." *International Information and Library Review* 37 (2): 77–86.

Dick, A. L. 2007. "From Censorship to Freedom of Access to Information and Freedom of Expression in South Africa." In *Access to Libraries and Information: Towards a Fairer World*, edited by T. J. D. Bothma. www.ifla.org/files/assets/faife/ifla-faife_world_report_series_vii.pdf (accessed June 17, 2016).

Dimba, M. 2002. "No Pain for Those with Nothing to Hide." *Business Day*, 20 August. www.humanrightsinitiative.org/.../Calland%20&%20Dimba%20-20FoI%20Country (accessed August 18, 2016).

Dimba, M., and R. Calland. 2003. "Freedom of Information Law in South Africa: A Country Study." http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/southafrica/Calland%20&%20Dimba%20-%20FoI%20Country%20Study.pdf (accessed July 30, 2016).

Fombad, C. M. 2011. *Media Law in Botswana*. Alphen aan den Rijn: Kluwer Law International.

Fung, A. 2008. *Full Disclosure: The Perils and Promise of Transparency*. New York: Cambridge University Press.

Glower, M., S. Holsen, C. MacDonald, M. Rahman, and D. Simpson. 2006. *Freedom of Information: History, Experience and Records and Information Management Implications in the USA, Canada and the United Kingdom*. Pittsburgh: Archives and Records Management Association International Educational Foundation.

Good, K. 2007. "Enduring Elite Democracy in Botswana." *Democratization* 6 (1): 50–66. www.fletcher.tufts.edu/~/media/fletcher/news%20images/sarkin2.pdf (accessed July 13, 2016).

Government of Zimbabwe. 2002. *Access to Information and Protection of Privacy Act (2002)*. Harare: Government of Zimbabwe.

Holm, J. D. 1996. "Development, Democracy and Civil Society in Botswana." In *Democracy and Development: Theory and Practice*, edited by A. Leftwich, 104. Oxford: Polity Press.

IMPI (Information and Media Panel of Inquiry) Zimbabwe. 2015. http://www.zimbabwesituation.com/news/zimsit-m-impi-media-and-information-inquiry-report-released/ (accessed September 14, 2016).

Kandji, K. 2005. "Media and Corruption: Raising the Bar". Paper presented at a workshop, Park Plaza Hotel, Sandton, May 29–June 3.

Kirkwood, C. 2002. "The Promotion of Access to Information Act (PAIA) and the National Archives of South Africa Act: A Comparative Analysis of the Previous and Present Statutes Governing Access to Archives and Public Records, with Special Focus on the Implications of PAIA for Public Archives Services." *ESARBICA Journal* 21: 2–16.

Klaaren, J. 2002. "National Information Insecurity? Constitutional Issues Regarding the Protection and Disclosure of Information by Public Officials." *South African Law Journal* 721: 729–731.

Lewis, N. D. 2001. *Law and Governance*. London: Cavendish.

Loxton, L. 2002. "Flow of Information Follows Rocky Path." In *Freedom of Information Law in South Africa: A Country Study*, edited by M. Dimba and R. Calland. http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/southafrica/Calland%20&%20Dimba%20-%20FoI%20Country%20Study.pdf (accessed July 30, 2016).

Makgapha, S. 2012. "Freedom of Info Bill Back." *The Botswana Gazette*, 8 August: 1.

Memeza, M. 2004. "Baseline Report on Access to Information in the SADC Region." http://www.fxi.org.za/PDFs/ATIP/Access%20to%20Info%20BASELINE%20FINAL%20REPORT1.pdf (accessed July 20, 2016).

Memeza, M. 2006. "An Analysis of Weaknesses in Access to Information Laws in SADC and the Developing Countries." http://www.fxi.org.za/PDFs/ATIP/ATI%20weaknesses%20analysis%20sadc1.pdf (accessed July 25, 2016).

Milo, D., and P. Stein. 2014. *A Practical Guide to Media Law.* Durban: LexisNexis.

MISA (Media Institute of Southern Africa). 2004. *Access to Information and Protection of Privacy Act: Two Years On*. Harare: MISA.

MISA (Media Institute of Southern Africa) Zimbabwe. 2015. *State of the Media Report 2015*. Harare: MISA.

Moatlhaping, S. O., and K. Moletsane. 2012. "Participation in Democracy." In *A fine Balance: Assessing the Quality of Governance in Botswana*, edited by K. Alexander and G. Kaboyakgosi. Pretoria: IDASA.

Ncube, C. 2004. "A Comparative Analysis of Zimbabwean and South African Data Protection Systems." *Journal of Information, Law and Technology* 18(4). http://www2.warwick.ac.uk/fac/soc/law2/elj/jilt/2004_2/ncube (accessed June 22, 2016).

Ndlovu, T. 2012. "Political Freedoms and Democracy." In *A Fine Balance: Assessing the Quality of Governance in Botswana*, edited by K. Alexander and G. Kaboyakgosi. Pretoria: IDASA.

Ngachoko, B. 2010. "Media Restrictions in Zimbabwe: The Path to Free and Fair Access." www.iijd.org/news/entry/media-restrictions-in-zimbabwe-the-path-to-free-and-fair-access (accessed July 19, 2016).

NPC (National Planning Commission). 2012. "National Development Plan 2030: Our Future – Make It Work Report." www.poa.gov.za/.../NPC%20National%20Development%20Plan%20Vision%202030 (accessed July 17, 2016).

Open Democracy Advice Centre. n.d. "The State of Whistleblowing and Access to Information in South Africa: A Submission to the African Peer-Review Mechanism Process of South Africa." www.opendemocracy.org.za/ (accessed August 15, 2016).

Open Government Partnership. 2015. "How It works: Eligibility Criteria." http://www.opengovpartnership.org/how-it-works/eligibility-criteria (accessed June 22, 2016).

Open Society Justice Initiative. 2004. "Results of the Open Society Justice Initiative Access to Information Monitoring Tool." www.pdc.ceu.hu/archive/00002352/01/Access_to_Inform.pdf (accessed September 28, 2016).

Open Society Justice Initiative. 2006. "Transparency and Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries." https://www.opensocietyfoundations.org/sites/default/files/transparency_20060928.pdf (accessed September 26, 2016).

Peekhaus, W. 2014. "South Africa's Promotion of Access to Information Act: An Analysis of Relevant Jurisprudence." *Journal of Information Policy* 4: 570–596.

Pinto, J. 2009. "Transparency Policy Initiatives in Latin America: Understanding Policy Outcomes from an Institutional Perspective." *Communication Law and Policy* 14 (1): 41–71.

Regional Conference on Freedom of Information in Africa. 2010. "Struggles for Freedom of Information in Africa." http://www.africafiles.org/article.asp?ID=22968

RSA (Republic of South Africa). 2000. *Promotion of Access to Information Act (No. 2 of 2000)*. Pretoria: Department of Justice.

SAHRC (South African Human Rights Commission). 2003. "Annual Report, April 2003–March 2004." www.gov.za/sites/www.gov.za/files/sahrc_annualreport_2004-2005.pdf (accessed September 23, 2016).

SAHRC (South African Human Rights Commission). 2009. "Annual Report 2008/2009." www.gov.za/sites/www.gov.za/files/13th%20Annual_report2008_09.pdf (accessed July 24, 2016).

Saleshando, D. 2010. *Freedom of Information Bill*. Gaborone: Government Printer.

Sebina, P. M. 2004. "Freedom of Information, Records Management and Good Governance: Any Symbolic Relationship?" *ESARBICA Journal* 23: 45–50.

Sebina, P. M. 2006. *Records Management and Freedom of Information; A Learning Curve for Botswana*. http://www.ricksnell.com.au/resources/sebina_thesis.pdf (accessed June 20, 2016).

Shepherd, E. J. 2007. "Freedom of Information and Records Management in the UK: What Has Been the Impact?" *Journal of the Society of Archivists* 28 (2): 125–138.

Siraj, M. 2010. "Exclusion of the Private Sector from Freedom of Information Laws: Implications from a Human Rights Perspective." *Journal of Alternative Perspectives in Social Sciences* 2 (1): 211–226.

Sorensen, R. 2003. "The Impact of South Africa's Promotion of Access to Information Act After Three and a Half Years: A Perspective." *ESARBICA Journal* 22: 50–63.

Svard, P. 2016. "Freedom of Information Laws and Information Access: The Case of Sierra Leone." *Information Development* March: 1–9. www.journals.sagepub.com/doi/pdf/10.1177/0266666916642829 (accessed June 21, 2016).

Tilley, A., and V. Mayer. 2002. "Access to Information Law and the Challenge of Effective Implementation: The South African Case." In *The Right to Know, the Right to Live: Access to Information and Socio-Economic Justice*, edited by R. Calland and A. Tilley. http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/southafrica/Calland%20&%20Dimba%20-%20FoI%20Country%20Study.pdf (accessed August 13, 2016).

United Nations. 2015. *Universal Declaration on Human Rights*. http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf (accessed October 3, 2016).

United States Department of State. 2011. "Country Reports on Human Rights Practices for 2011." https://www.state.gov/j/drl/rls/hrrpt/2011/

Van Heerden, A., A. Govindjee, and D. Holness. 2014. "The Constitutionality of Statutory Limitation to the Right of Access to Information Held by the State in South Africa." *Speculum Juris* 1: 27–54.

World Bank. 2004. *Legislation on Freedom of Information: Trends and Standards*. Washington: World Bank.

World Bank. 2005. "Botswana: Towards Prosperity for All: A Comprehensive Development Framework Profile". http://siteresources.worldbank.org/CDFINTRANET/Resources/webBotswanafinal.pdf (accessed September 14, 2016).

World Bank. 2013. *Freedom of Information Systems: A Background Primer. Public Sector and Governance Group, Public Accountability Mechanisms Initiative*. Washington: World Bank.

World Bank. 2016. *Public Access to Information for Development: A Guide to the Effective Implementation of Right to Information Laws.* Washington: World Bank.

Zimbabwe Human Rights Forum. 2011. "The Right of Access to Information in Zimbabwe." http://www.hrforumzim.org/wp-content/uploads/2012/03/The-right-of-Access-information-61-SPOT.pdf (accessed July 3, 2016).

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