

# Let the people know, and the country will be safe: FOI models in South Africa and Zimbabwe

Makutla Mojapelo

*Department of Information Science, University of South Africa,  
Pretoria, South Africa*

Received 9 January 2023  
Revised 5 March 2023  
24 May 2023  
9 July 2023  
Accepted 9 July 2023

## Abstract

**Purpose** – Democratic countries all over the world are embarking on initiatives to empower citizens through public participation. One of the tools used by countries to promote public participation is the enactment and implementation of freedom of information (FOI) legislation, as it is the case with South Africa and Zimbabwe. Despite having legislation reaffirming the need for people's right to know, practices in South Africa and Zimbabwe indicate the opposite. The purpose of this study is to explore FOI models in South Africa and Zimbabwe, with a view to recommend ways in which people's right to know can be promoted.

**Design/methodology/approach** – This qualitative study used interviews to collect the data from 12 FOI experts in South Africa and Zimbabwe, who were selected through the snowball sampling technique. Data collected through interviews were supplemented by the data collected through document analysis.

**Findings** – The study concluded that the key role players need to make efforts to ensure that the right to know, which is associated with FOI, is being realised in both countries. FOI legislation, in both countries, is imprecise and needs to be revised to ensure effective implementation.

**Originality/value** – The study demonstrates that FOI is a necessary tool for people to be involved in decision-making in government. People's rights to know can be achieved by successfully implementing FOI legislation.

**Keywords** PAIA, FIA, Public participation, Right to know, South Africa, Zimbabwe

**Paper type** Research paper

## Introduction

Democratic countries, across the globe, are developing programmes to empower citizens through public participation. There is a presumption that public participation has the potential to increase citizens' trust, because it gives people the opportunity to participate meaningfully in planning for government activities (Holum, 2022). The relationship between public participation and citizens' trust was reflected in a research project conducted by Marais *et al.* (2017), who investigated the role of access to information in enabling

© Makutla Mojapelo. Published by Emerald Publishing Limited. This article is published under the Creative Commons Attribution (CC BY 4.0) licence. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this licence may be seen at <http://creativecommons.org/licenses/by/4.0/legalcode>

The financial assistance of the National Institute for the Humanities and Social Sciences (NIHSS), in collaboration with the South African Humanities Deans Association (SAHUDA) towards this research, is hereby acknowledged. Opinions expressed and conclusions arrived at are those of the author and not necessarily to be attributed to the NIHSS and SAHUDA.

**Funding:** The study was funded by National Institute for the Humanities and Social Sciences (NIHSS)



transparency and public participation in governance. In this study, [Marais et al. \(2017\)](#) concluded that public participation plays an important role in demonstrating government's commitment to building public trust. However, [Separniene et al. \(2021\)](#) assert that there is limited research to prove the direct relationship between public participation and trust. Government institutions are sustained by public funds; therefore, it is essential that members of the public, who provide those funds, participate in decision-making, as those decisions can have an adverse impact on people's daily lives. Public participation, according to [Kgobe and Mamokhere \(2021\)](#), should be seen as a tool in a democracy to encourage people to be engaged and responsible citizens.

Freedom of information (FOI) is of growing international and regional concern. Governments have come under several internal and external pressures to adopt FOI laws. Organisations that have been influential in promoting FOI include the World Bank, United Nations, Open Government Partnership and the International Monetary Fund ([Hofman, 2020](#); [Lemieux and Trapnell, 2016](#)). Although the sharing of information has been around for quite some time, its theoretical conceptualisation started with Article 19 of the Universal Declaration of Human Rights, which provides 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 medium and regardless of frontiers. ([Lemieux and Trapnell, 2016](#))

At a continental level, Africa recognises the importance of openness and transparency. This is affirmed by the adoption of Article 9(1) and (2) of the African Charter on Human and People's Rights, which state that every individual has the right to receive information to express and disseminate their opinions within the boundaries of the law. Africa's commitment to promote FOI was also observed through adoption of Resolution 71 at the 36th Ordinary Session, held in Dakar, Senegal, which provides for the creation of a standing position of the Special Rapporteur on Freedom of Expression and Access to Information (herewith referred to as the "Special Rapporteur") in Africa ([African Commission on People and Human Rights, 2004](#)). Furthermore, in 2010, the African Commission mandated the Special Rapporteur to lead the process of developing a Model Law on Access to Information for Africa. Lastly, at the regional level, Article 4 of the South African Development Community (SADC) protocols against corruption states that, member states "undertakes to adopt measures which will create, maintain, and strengthen mechanisms to promote access to information to facilitate eradication and elimination of opportunities for corruption" ([SADC, 2001](#)). The SADC identifies access to information as one of the mechanisms that can use to dismantle acts of corruption. As a result, four countries in the SADC region have passed FOI legislation so far.

Today, South Africa and Zimbabwe are among the 120 countries, globally, that passed the FOI legislation ([Transparency International, 2019](#); [Adu, 2018](#)). In Africa, only 25 out of 54 countries have passed FOI legislation ([Network of Freedom of Information Advocates, 2017](#)). When South Africa attained democracy in 1994, the first project undertaken by the democratic government was to rectify the injustices of the past, and FOI legislation known as Promotion of Access to Information Act (PAIA, Act No. 2 of 2000) was introduced as one of the vehicles to do so ([Darch and Underwood, 2005](#)). PAIA was passed roughly seven years after the birth of democracy to give effect to constitutional rights of access to information. PAIA was complemented by the Promotion of Administrative Justice Act (Act No 2 of 2000), which was enacted on the same day as the PAIA ([Adams and Adeleke, 2016](#)). When South Africa acquired democracy, Zimbabwe was already in its third decade of democracy, yet Zimbabwe passed its FOI after South Africa ([Article 19 and MISA-](#)

Zimbabwe, 2004). South Africa's PAIA is regarded as a "golden standard", from which other countries, including Zimbabwe, might learn (Berliner, 2017; Adeleke, 2016; McKinley, 2003). Despite being passed to give effect to constitutional right of access to information, Zimbabwe's FOI was reviewed several times because Zimbabweans felt that the legislation was not in line with the constitution. The Freedom of Information Act (FIA) of Zimbabwe is the latest version of FOI legislation, repealing the much-criticised Access to Information and Protection of Privacy Act (AIPPA) of 2002. During AIPPA, Zimbabwe was never considered as a country with FOI legislation due to its stance for protection of information rather than information sharing (Ackerman and Sandoval-Ballesteros, 2006).

Although there are FOI legislation in South Africa and Zimbabwe, it has been observed that there are gaps relating to the realisation of transparency. Makhura and Ngoepe (2006) and Mutula and Wamukoya (2009) have identified records management systems as one of the contributors to poor implementation of the FOI legislation. There is no synergy between the laws that govern FOI and those that govern records management (Thurston, 2015). On the other hand, Calland and Neuman (2007) are on record suggesting that the implementation of FOI legislation is experiencing common challenges, such as changing people's prevailing culture, lack of capacity in relation to record-keeping, lack of training, lack of incentive systems and lack of clarity on who is accountable for the oversight mechanisms. According to Lowry (2013), the potential for FOI to be successfully implemented is dependent on the management of records.

Berliner (2015) believes that political competition in South Africa has the capacity to address FOI challenges because it is through the political competition where opportunities to incentivise compliance emerge. According to Berliner (2015), the ruling party must feel competition for it to strive to promote good governance with a hope for re-election. South Africa has been dominated by the ruling African National Congress (ANC) since the birth of democracy in 1994, while Zimbabwe has been dominated by Zimbabwe African National Union-Patriotic Front (ZANU-PF) since independence in 1980. While the ANC's support is gradually dwindling, which led to opposition parties such as Democratic Alliance and Economic Freedom Fighters making roads into municipalities (including the country's biggest metros) (Lewis, 2021), ZANU-PF's tactics to promote post elections violence and its ongoing effort to sponsor factions in opposition parties continues to jeopardise political competition (Freedom House, 2023).

It is worth emphasising that civil society organisations (CSOs) in South Africa have played an important role in fostering the implementation legislation. Within the first decade after the PAIA was enacted, South Africa saw substantial pressure from CSOs on government to draft the regulations for the operationalisation of the Act (Adeleke, 2013). Open Democracy Advice Centre (ODAC) and South African History Archives (Calland, 2023; Calland and Neuman, 2007) played a remarkable role by putting pressure on government through litigation and, to some extent, request information on behalf of community members (Calland, 2009). ODAC was specifically established to pursue research, training and litigation on FOI matters, something which makes it different from other CSOs (Calland, 2013). In Zimbabwe, CSOs have not done much to put pressure on government to enforce the legislation. The only notable pressure applied by CSOs in Zimbabwe was on the enactment of the FIA rather than the implementation.

### Historical context: South Africa and Zimbabwe

Both South Africa and Zimbabwe originated from a system of government founded on ideas of secrecy. It is worth mentioning that both South Africa and Zimbabwe were British colonies. In South Africa, the National Party assumed power in 1948, resulting in the

establishment of the apartheid system. Under apartheid, several pieces of legislation restricting wide range access to information were adopted (McKinley, 2013). These pieces of legislation include the Suppression of Communication Act (1950), the Internal Security Act (1950) and Protection of Information Act (1982). According to McKinley (2003), these laws, when implemented along with FOI legislation, create a conflict between information protection and information disclosure.

Zimbabwe attained democracy in 1980, but it took the country 22 years before enacting FOI legislation. In contrast, South Africa took only seven years to pass the PAIA. The length of time it takes a country to pass FOI after gaining democracy tells volumes about its desire to encourage transparency and accountability. Instead of taking advantage of the new democratic dispensation to reverse the injustices of the past, Zimbabwe was a reluctant to institute fully fledged democratic policies and practice. This was seen through the enactment of AIPPA, which was found to be incompatible with the Section 53 of the 2013 Constitution of Zimbabwe. The AIPPA was repealed by FIA, in 2020, when the government succumbed to pressure from CSOs.

One would have been expected the passage of PAIA and FIA to make an immense contribution to the socio-economic and socio-political environments of both countries; however, the literature suggests otherwise. Despite the passage of PAIA and FIA, Darch (2013), Svård (2018), Katuu (2011) and Ngoepe and Mojapelo (2022) question the ability of both countries to achieve the primary objectives of the legislation. Similarly, Allan (2009) argues that the implementation of PAIA is affected by external factors such as the relationship between private and external bodies and, to some extent, the legal system.

Several scholars believe that the common law system tend towards more transparency than other law systems. Perhaps that might be the reason for lack of systems proved to be more transparent in South Africa and Zimbabwe. Berliner (2015) believes that legal systems have implications for the success of FOI. South Africa and Zimbabwe use a mixed system of law, which combines common law and civil law. These systems of law, used by both countries, were introduced as a result of colonisation. As part of colonialism, records were created and managed according to principles and strategies developed for Western nations. According to Hofman and Katuu (2022), Zimbabwe is confronted with records management challenges due to its unique colonial history.

### Regulation of freedom of information

The importance of accountable entity that will play the supervisory role in regard to the implementation FOI legislation has been cited in various documents, including the Article 19 principles for the implementation of FOI (Article 19, 2016) and the Model Law on Access to Information for Africa (African Commission on Human and Peoples' Rights, 2013). Article 19 (2016) provides that the FOI legislation should provide for the right to appeal through an independent regulatory body. Similarly, the Model Law on Access to Information for Africa outlines the need for an independent oversight mechanism to enforce the implementation of FOI legislation. The absence of information commissioners was cited by scholars, such as Svård (2017), Calland and Bentley (2013) and Darch and Underwood (2005), as one of the reasons for failures in the implementation of FOI legislation. These scholars argue that assigning the oversight role to a government department has not yielded positive results, because government departments are preoccupied with many other obligations.

What is key in the debate around the independence of oversight bodies is the question:

*Q1. How can the oversight body's independence be strengthened?*

Holsen and Pasquier (2012) assert that, in determining the level of independence, one should look at the formal and informal independence. Very often, people tend to focus more on the formal and overlook the informal independence, which also forms the component of independence. Formal independence has to do with independence based on law, and informal independence is the autonomy an institution enjoys based on day-to-day functioning. What is even more important is to understand that legal independence does not automatically translate into day-to-day functioning independence. Table 1 provides a summary of Giraldi and Maggetti's (2010) conceptualisation of independence for regulatory bodies:

### Problem statement

The adoption of FOI legislation is associated with the mechanism for people's rights to know, meaning people are entitled to not only know but also to know all the facts about their government. Very often, people are not privy to all categories of information, which has a detrimental effect on the people's participation in government programmes and decision-making. Despite having legislation reaffirming the need for people's rights to know, practices in South Africa and Zimbabwe speak the opposite (Sipondo, 2014). McKinley (2014) blames citizens who are not taking advantage of or make significant use of their rights to know, whereas scholars such as Pozen (2017) and Harris and Merret (1994) blame the information holders for making it practically almost impossible to obtain information. For example, Pozen (2017) laments that, even though FOI is becoming an increasingly common symbol of "people's rights to know", the degree of secrecy in the name of national security or state protection continues to increase. The problem with FOI law is that, sometimes, what is stated on paper may not align with the implementation and, sometimes, that may result in protest action or litigation, as indicated earlier. In South Africa, between 2011 and 2012, when CSOs and the media tried to access information on the impact of industries and mining activities on the environment, many government and private bodies unconditionally refused to give access, arguing that such information was sensitive in nature and warranted a high level of protection as a "state secret" (McKinley, 2014).

Type	Dimension	Key questions to ask
Formal	Status of the head or management of the organisation	Who appoints the head and how long is the term of office? Is the appointment renewable? Is the independence of the organisation a requirement in terms of law?
	Relationship with elected politicians	Is the independence of the organisation formally stated? What are its formal obligations? Under which conditions can its decision be overturned?
	Financial and organisational independence	What is the source of income? Is the organisation in charge of its internal processes and does it formulate its policies?
	Competencies delegated to the authority	Is the organisation empowered to do its work without fear or favour or prejudice?
De facto	From politicians	Presence of many veto players and old age (de facto independence can be enjoyed when the agency is old and when there are many role players)
	From regulates	Participation in European network of agencies

**Table 1.**  
Determination of the independence of regulatory authority

**Source:** Modified table by the author; Giraldi and Maggetti (2010)

---

## Purpose and objectives

The purpose of the study was to explore FOI models in South Africa and Zimbabwe, with a view to recommend ways in which people's rights to know can be promoted. The specific research objectives were as follows:

- to identify the responsibilities for the implementation of FOI legislation in South Africa and Zimbabwe; and
  - to assess the independence of FOI regulatory bodies.
- 

## Research methodology

Triangulation, by means of qualitative semi-structured one-on-one online interviews and document analysis, was used for this study. To balance the views, the experts selected have a variety of field-specific expertise, including records management, information management, law, media, strategic development and governance. Document analysis was used to supplement the data obtained from interviews. According to [Natow \(2020\)](#), what someone says in the interviews may be checked against what you read in the relevant documents.

Data were collected using interviews with 12 FOI experts (six from each country) who were selected through snowball sampling. A small sample was selected to support the depth of the cases in both countries, without complicating the analysis. Most importantly, FOI is a touchy subject in Zimbabwe, and, for this reason, it would have been difficult for the researcher to ensure the availability of many experts from Zimbabwe. As a result, a limited sample was used to balance the perspectives from both countries. Due to the British colonial history of both countries, identical legal systems have been produced in both South Africa and Zimbabwe; thus, the two countries serve as the population of the study. Customary law is seldom applied the hierarchy of common law courts in Zimbabwe, even though they are theoretically capacitated to apply it ([Bennett, 1981](#)). Moreover, as highlighted earlier, the two countries are working hard to reverse the injustices inherited from the British colonial system.

In the context of the current study, the researchers searched for experts using LinkedIn and other social media platforms, such as Facebook and Twitter. The researchers also relied on referrals from colleagues, especially with regard to participants in Zimbabwe. The following criteria was used to select experts:

- someone with more than 10 years' experience working as human rights lawyer, social activist, academic or records manager;
- an author who has published several peer-reviewed research papers in the area under investigation;
- someone who has a post-graduate degree and facilitated trainings or workshops on FOI matters at both local and regional levels; and
- a scholar who has done extensive research in FOI.

Interview data were supplemented by document analysis. The documents used included legislation (PAIA and FIA), annual reports of the regulatory bodies, other guiding documents on FOI and information obtained from literature. To maintain confidentiality, symbols were used to denote a specific participant. Participants from South Africa were represented by symbol SA, while those from Zimbabwe were represented by the symbol Z.



## Reporting and discussion of the findings

The findings from the expert interviews and document analysis are presented and discussed below. As indicated, interviews were conducted with 12 experts in the area of FOI (six from each country). Relevant documents were also analysed.

## Responsibilities for the implementation

Participants were requested to identify any institution responsible for the regulation of FOI at a national level. All the participants from South Africa identified the Department of Justice and Correctional Services (DOJCS) as the department with the most authority in terms of the regulation and oversight of the PAIA implementation. The participants agreed that the IRSA exists to provide oversight and monitoring, but its powers are limited. The PAIA and the PAIA guide (2021) charge the IRSA with the responsibility of monitoring the implementation of the legislation. The participants believed that the Minister of Justice and Correctional Services is responsible for developing PAIA regulations. This is also confirmed by the PAIA and PAIA guide ([Information Regulator South Africa, 2000](#); [South Africa, 2000](#)). According to PAIA guide and Section 22(8) read in conjunction with Section 92 of the PAIA, minister of DOJCS is authorised to do the following: develop PAIA regulations (which are critical for the operationalisation of the legislation) on fee structure; exempt any person or categories of persons from paying any fee ([McKinley, 2003](#)). Participants were also asked to indicate whether the regulation of FOI is assigned correctly. All the participants agreed that the responsibility for the regulation of FOI at national level is correctly assigned.

Regarding Zimbabwe, all the participants, except Z5, indicated that the legislation is not clear in terms of who has legal authority for regulation. The legislation specifies the regulatory authority but does not specify who is in charge of the implementation at national level. Z5 states that the Ministry of Information, Publicity and Broadcasting Service (MIPBS) oversees FOI implementation at national level, as required by the legislation. Participants also indicated that the MIPBS is the appropriate minister to oversee the implementation of the legislation, because the department recognises the value of information, unlike the ZMC. According to Z5, the department would be able to aid in the implementation of the Act, under normal circumstances and in a professional government; however, they were worried that the same department contributed to the development of draconian legislation such as the AIPPA. Section 5 of the FIA gives powers to the minister responsible for information to do the following: waive fees; set a maximum fee limit; develop a formula to calculate the fee; and exempt a specific type or class of records for fees. The FIA further mandates routine consultation between the ZMC and MIPBS on legislative. Z4 states that all public entities should ensure full implementation of the FIA and, failure to do so, should result in sanctions.

A question was posed to find out if Deputy Information Officers (DIOs) or any other relevant government officials play an important role in the implementation of FOI legislation. All the participants from South Africa and Zimbabwe agreed that DIOs and government officials are critical to the implementation of FOI. Participants were of the view that the legislation clearly outlines the roles and responsibilities of the role players. SA4 indicated that the critical role of DIOs is very clear, especially as prescribed by law. SA4 indicated that information officers and DIOs are important, because they understand the law and can assist requestors.

On the other hand, Z1 claimed that, while these people are important according to the law, their actions are sometimes questionable. According to Z1, some information officers believe that their role is to protect information, and, in some cases, they use national security to deny citizens access to public information. According to Z3, the DIOs can be regarded as

---

implementing officers, because they keep the legislation intact. Z3 questioned the government's lack of interest to make an effort to designate DIOs, which has negatively affected the FOI, particularly for marginalised groups. According to the [Media Alliance of Zimbabwe \(2021\)](#), despite the legislative provision for the appointment of information officers to assist information requesters, particularly poor women in the country, Zimbabwe has made no effort to appoint the incumbents (DIOs), making access to information even more difficult for poor women from rural villages. Z4 was of the view that the failure on the part of the DIOs would jeopardise the implementation of the legislation. Z5 indicated that information officers are very important, because they are the ones who must be at the forefront of ensuring that the law is implemented successfully. Z6 stated that the law requires the designation of information officers, which indicates that the FOI law recognises the important role these officials play.

Participants were further asked about the relevant skills the DIOs should have. All the participants agreed on the following skills for DIOs: legal, leadership, research, journalism, public relations, record-keeping or records management, communication and writing skills. SA3 added that people who believe in the concept of human rights should be appointed in the position of DIO, as in her experience, working with various DIOs taught her that not all of them do. SA6 added that the DIOs must be dependable and trustworthy, because they will be dealing with a variety of people. Some of the people requesting information are likely to be illiterate or have special needs (i.e. people who are visually impaired).

### **Independence of regulatory bodies**

The second objective was to assess the independence of the regulatory bodies. To understand the difficulty in determining the independence of a regulatory body, the researcher used [Giraldi and Maggetti's \(2010\)](#) criteria, as outlined earlier. The following section provides the results with regard to the independence of the regulatory bodies.

Participants were asked to share their views on the independence of the regulatory body for FOI in their respective countries. Participants from South Africa believed that the appointment of the head of the organisation demonstrated the highest level of independence. However, participants were of the view that it might be too early to judge the operational independence. According to SA1, the funding model of the organisation needs to be reviewed, claiming that it will negatively affect the independence of the organisation in the long run. SA2 stated that the commissioners must simply carry out their duties, as prescribed by law, to maintain their independence. According to SA2: "The IRSA has the advantage of not having to start from scratch, because the SAHRC laid the groundwork".

SA4, on the other hand, stated that:

The period we are in, may be categorised as a transition period, where we are all eager to see how things unfold in terms of the independent running of the IRSA.

According to SA4, the Commission of Inquiry into State Capture (State Capture Commission) revealed the evidence of political influence on the running of the affairs of government. The State Capture Commission in South Africa was established because of the remedial action taken by the Office of the Public Protector to determine the extent of political influence on the operation of state-owned companies. Based on the political influence revealed in investigations into state capture, participants were no longer sure whether the IRSA could maintain its independence. In terms of the Protection of Personal Information Act No. 4 of 2013 (POPIA), the IRSA is only bound by the law and the Constitution of South Africa (1996).



In the case of Zimbabwe, participants believed that the FOI regulatory body is not independent and autonomous. They indicated that political influence makes it practically impossible for the regulatory body to do its work without fear, favour and prejudice. According to Z1, the regulatory body is far from independent, because politicians appoint the head of the organisation. Z1 claimed that the Parliament of Zimbabwe exists only to officiate the process, but the power lies with the president. Z1 further indicated that the head of the regulatory body would pay a heavy price if he or she disobeys the ruling party's orders. Z2 observed that the law is ambiguous because it is unclear how the regulatory body will hear appeals. Z3 stated that commissioners for ZMC are appointed through a parliamentary process by a parliamentary committee, comprising of all political parties in Parliament, and this alone determines a significant portion of independence; however, this may not necessarily translate into the day-to-day operations of the organisation. Just like the PAIA, the ZMC derives its powers from the Constitution of [Zimbabwe \(2013\)](#), as the supreme law and the Zimbabwe Media Commission Act, although the legislation makes no mention of the organisation's independence. According to Z5:

The government is trying its level best to give the impression that the ZMC is independent, but people who have dealt with the organisation directly can tell you a different story.

Z5 believed that ZMC was being manipulated because, when it came to the implementation of the law, there was clear interference from politicians, and when it came to the formulation of the law, the wider population was sidelined and not given enough opportunity to contribute. Z6 agreed with Z5 that, despite the government's effort to portray the ZMC as independent, the organisation was still far from being so.

Participants were asked about their views regarding the fee structure. Fee structures were also seen as a tool used by politicians to discourage people from making FOI Act requests. [Banisar \(2006\)](#) concurs that a fee requirement will limit the ability of the less privileged to demand information from government, as this was observed in Ireland, where the number of requests declined immediately after the government imposed fees. This sentiment was shared by [Sebina \(2009\)](#), who argued that, much as the fees are used to alleviate the financial burden experienced by government, it has the potential to discourage the use of the Act by those in need of information. In the case of Zimbabwe, all the participants indicated that fee structure needs to be reviewed, because it has the capacity to stifle access to information rights, especially given the economic conditions in the country. Z1 and Z6 believe that information should not be a commodity.

With regard to turnaround time for processing of requests, participants from South African agree that the 30-day period is excessive. Participants believe that it may be influenced by government's poor record-keeping. SA2 added that South Africa could review its legislation and provide a quick turnaround time, like the FOI in Nigeria. Although, in situations where records are poorly managed, it may not help to reduce the waiting period. Participants from Zimbabwe are happy with the turnaround time.

## Conclusion and recommendations

It was established that there is a shared responsibility for the implementation of FOI at national level. At organisational level, the DIOs are critical in ensuring full implementation of FOI legislation; but it was found that governments have not prioritised the delegation of DIOs. The decentralised model adopted by both countries could explain the lack of delegation of dedicated personnel to deal with access to information issues. Individual departments or entities have powers to use their own discretion in deciding who can be

delegated for a DIO position. DIOs are sometimes appointed at low salary levels, which limits their influence within the organisation.

It is evident that both South Africa and Zimbabwe use a decentralised model, in which individual departments or entities handle information requests on their own, and regulatory bodies can intervene, if the requesters are dissatisfied with the outcomes of the requests. The regulatory body is required to meet the criteria for legal and operational independence. The IRSA and the ZMC meet the legal independence criteria; however, the ZMC's operation raises some concerns about its independence. It is yet to be established if the IRSA would meet the operational independence. The fact that the ZMC regulates the media and FOI raises some eyebrows. The study determined that the access fee for South Africa is reasonable; however, the request fee is not reasonable and should be eliminated because it violates the spirit of the Article 19 cost principle. Fees in South Africa are centralised, as PAIA Section 10 guide clearly outlines the figures; however, individual departments and entities retain the authority to set access fees based on the resources that need to be combined to process the request. Having access fees determined by the implementing agencies are also problematic. In terms of the FIA, there may be additional costs covering the agency's time spent searching for the information. The turnaround time for both countries appears to be long. On a positive note, the provision by the FIA of a waiting period for information needed to save someone's life is commendable, largely because it clearly indicates that requests should be prioritised based on their importance. Fees in Zimbabwe are unjust because of the country's economic situation. However, it is acknowledged that fees are sometimes necessary to ensure the information holder does not bear the burden of spending more money to reproduce the requested information.

The following recommendations are made:

Given that the two countries function under distinct environments, it is, therefore, necessary to have specific recommendation for a specific country. Given the importance of DOIs in the implementation of FOI legislation, it is recommended that the PAIA and FIA must provide for the position of DOI to be a mandatory permanent appointment (as it is not the case with PAIA) and not just a delegation as provided by Section 17 of PAIA. These individuals must not carry out any duties other than those of FOI and must be appointed on senior management level to influence policy direction within the organisation. Unlike the FIA of Zimbabwe, the PAIA of South Africa provides for the delegation of DIO. However, delegation is not enough as that would mean the officials would have PAIA functions as added responsibilities.

The parliament in both countries must play its part by holding accountable the members of the executive who are interfering with the work of the regulatory body. Parliament needs to claim its powers by holding the executive accountable. FOI matters can be reported to the parliament by ZMC and IRSA for actioning by the relevant committee.

The waiting period should be limited to seven days because there should be a sense of urgency in handling the requests, especially because members of the public request information for a variety of reasons.

### **Implications of the study and further research**

The study brings insights into existing challenges and realities regarding the implementation of PAIA and FIA. The study proposed the legislative review and explained how regulatory bodies can be empowered to foster the implementation. The study showed that all role players need to do their best to ensure successful implementation of the legislation. [Khumalo \*et al.\* \(2016\)](#) compared the FOI in both countries (South Africa and Zimbabwe), whereas [Ngoepe and Mojapelo \(2022\)](#) analysed the FOI legislation against

Article 19 principles. While the study looked at the FOI models in South Africa and Zimbabwe, it is recommended that further research needs to be done to include other SADC countries with FOI legislation such as Angola and Mozambique.

## References

- Ackerman, J.M. and Sandoval-Ballesteros, I.E. (2006), "The global explosion of freedom of information laws", *Administrative Law Review*, Vol. 58, pp. 85-130.
- Adams, R. and Adeleke, F. (2016), "Assessing the potential role of open data in South African environmental management", *The African Journal of Information and Communication*, Vol. 19, pp. 79-99.
- Adeleke, F. (2013), "Constitutional domestication of the right of access to information in Africa: retrospect and prospect", in Dialo, F. and Calland, R. (Eds), *Access to information in Africa: Law, Culture and Practice*, Brill, Leiden, pp. 83-105.
- Adeleke, F. (2016), "The role of the right to information in the contestation of power in South Africa's constitutional democracy", *South African Public Law*, Vol. 31 No. 1, pp. 54-72.
- Adu, K. (2018), "The paradox of the right to information law in Africa", *Government Information Quarterly*, Vol. 35 No. 4, pp. 669-674.
- African Commission on Human and Peoples' Rights (2013), "Model law on access to information for Africa", available at: [https://achpr.org/public/Document/file/English/Model%20Law%20on%20Access%20to%20Information%20for%20Africa%202013\\_ENG.pdf](https://achpr.org/public/Document/file/English/Model%20Law%20on%20Access%20to%20Information%20for%20Africa%202013_ENG.pdf) (accessed 18 October 2022).
- African Commission on People and Human Rights (2004), "Special rapporteur on freedom of expression and access to information", available at: <https://acpr.au.int/en/mechanisms/special-rapporteur-freedom-expression-and-access-information> (accessed 10 November 2022).
- Allan, K. (2009), "Applying PAIA: legal, political and contextual issues", in Allan, K. (Ed.), *Paper Wars: Access to Information in South Africa*, Wits University Press, Johannesburg, pp. 144-200.
- Article 19 and MISA-Zimbabwe (2004), "The access to information and protection of privacy act: two years on", available at: [www.article19.org/data/files/pdfs/publications/zimbabwe-aippa-report.pdf](http://www.article19.org/data/files/pdfs/publications/zimbabwe-aippa-report.pdf) (accessed 15 February 2022).
- Article 19 (2016), "The public's right to know: principles on right to information legislation", available at: [www.article19.org/data/files/RTI\\_Principles\\_Updated\\_EN.pdf](http://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf) (accessed 15 February 2023).
- Banisar, D. (2006), "Freedom of information around the world 2006: a global survey of access to information laws", available at: [Freedominfo.org/www.freedominfo.org/wp-content/uploads/documents/global\\_survey2006.pdf](http://freedominfo.org/www.freedominfo.org/wp-content/uploads/documents/global_survey2006.pdf) (accessed 24 September 2022).
- Bennett, T.W. (1981), "Conflict of laws – the application of customary law and the common law in Zimbabwe", *International and Comparative Law Quarterly*, Vol. 30 No. 1, pp. 59-103.
- Berliner, D. (2015), "Transnational advocacy and domestic law: international NGOs and the design of freedom of information laws", *The Review of International Organizations*, Vol. 11 No. 1, pp. 121-144.
- Berliner, D. (2017), "Sunlight or window dressing? Local government compliance with South Africa's promotion of access to information act", *Governance*, Vol. 30 No. 4, pp. 641-666.
- Calland, R. (2009), "Illuminating the politics and the practice of access to information in South Africa", in Allan, K. (Ed.), *Paper Wars: Access to Information in South Africa*, Wits University Press, Johannesburg, pp. 1-6.
- Calland, R. (2013), "The right of access to information: the state of the art and the emerging theory of change", in Dialo, F. and Calland, R. (Eds), *Access to Information in Africa: Law, Culture and Practice*, Brill, Leiden, pp. 13-26.
- Calland, R. (2023), "Access to information and constitutional accountability: ruffling feathers in South Africa, law and politics in Africa", *Verfassung in Recht Und Übersee*, Vol. 50 No. 4, pp. 367-389.

- 
- Calland, R. and Bentley, K. (2013), "The impact and effectiveness of transparency and accountability initiatives: freedom of information", *Development Policy Review*, Vol. 31 No. S1, pp. S69-S89.
- Calland, R. and Neuman, L. (2007), "Making the law work: the challenges of implementation", in Florini, A. (Ed.), *The Right to Know: Transparency for an Open World*, Columbia University Press, New York, NY, pp. 179-213.
- Darch, C. (2013), "The problem of access to information in African jurisdictions: constitutionalism, citizenship, and human rights discourse", in Calland, R. and Diallo, F. (Eds), *Access to Information in Africa: Law, Culture and Practice*, Brill Publishers, Leiden, pp. 27-54.
- Darch, C. and Underwood, P.G. (2005), "Freedom of information legislation, state of compliance and the discourse of knowledge: the South African experience", *International Information and Library Review*, Vol. 37 No. 2, pp. 77-86.
- Freedom House (2023), "Freedom in the world 2023: Zimbabwe", available at: <https://freedomhouse.org/country/zimbabwe/freedom-world/2023> (accessed 11 September 2022).
- Giraldi, F. and Maggetti, M. (2010), "The independence of regulatory authorities", in Levi-Faur, D. (Ed.), *Handbook of Regulation*, Edward Elgar, Cheltenham, pp. 1-21.
- Harris, V. and Merret, C. (1994), "Towards a culture of transparency: public rights of access to official records in South Africa", *The American Archivist*, Vol. 57 No. 4, pp. 680-692.
- Hofman, D. (2020), "Between knowing and not knowing: privacy, transparency and digital records", PhD thesis, University of British Columbia, Vancouver.
- Hofman, D. and Katuu, S. (2022), "Law and recordkeeping: A tale of four African countries", in Ngoepe, M. (Ed.), *Managing Digital Records in Africa*, Routledge, Oxon, pp. 1-48.
- Holsen, S. and Pasquier, M. (2012), "Insight and oversight: the role of information commissioners in the implementation of access to information policies", *Journal of Information Policy*, Vol. 2, pp. 214-241.
- Holum, M. (2022), "Citizen participation: linking government efforts, actual participation, and trust in local politicians", *International Journal of Public Administration*, Vol. 46 No. 13, pp. 1-11, doi: [10.1080/01900692.2022.2048667](https://doi.org/10.1080/01900692.2022.2048667) (accessed 20 March 2023).
- Katuu, S. (2011), "Freedom of information legislation implementation in Africa", available at: [www.researchgate.net/profile/Shadrack-Katuu/publication/322301296\\_Freedom\\_of\\_Information\\_in\\_Africa/links/5a5231b7aca2725638c5f3cb/Freedom-of-Information-in-Africa.pdf](https://www.researchgate.net/profile/Shadrack-Katuu/publication/322301296_Freedom_of_Information_in_Africa/links/5a5231b7aca2725638c5f3cb/Freedom-of-Information-in-Africa.pdf) (accessed 18 March 2023).
- Kgobe, F. and Mamokhere, J. (2021), "The value of public participation in land-use planning for redeeming congestion in South Africa municipalities", *Technium Social Sciences Journal*, Vol. 26, pp. 17-31.
- Khumalo, N.B., Mosweu, O. and Bhebhe, S. (2016), "A comparative study of freedom of information legislation in Botswana, South Africa and Zimbabwe", *Mousaion*, Vol. 32 No. 4, pp. 108-131.
- Lemieux, V.L. and Trapnell, S. (2016), *Public Access to Information for Development: A Guide to the Effective Implementation of Right to Information Laws*, World Bank Group, Washington, DC.
- Lewis, J.S. (2021), "Signals, strongholds, and support: political party protests in South Africa", *Politics*, Vol. 41 No. 2, pp. 189-206.
- Lowry, J. (2013), "Freedom of information and government records in Kenya, Uganda and Tanzania", *Archives and Manuscripts*, Vol. 41 No. 1, pp. 23-32.
- McKinley, T.D. (2003), "The state of access to information in South Africa", *Centre for Study of Violence and Reconciliation*, July 2003, available at: [www.csvr.org.za/docs/trc/stateofaccess.pdf](https://www.csvr.org.za/docs/trc/stateofaccess.pdf) (accessed 20 May 2022).
- McKinley, T.D. (2013), "State security and civil-political rights in South Africa", *Strategic Review for Southern Africa*, Vol. 35 No. 1, pp. 118-134.
- McKinley, T.D. (2014), "Secrecy and power in South Africa", *New South African Review*, Vol. 4, pp. 150-166.

- Makhura, M. and Ngoepe, M. (2006), "Assessing the extent of compliance regard to National Archives and Records Service of South Africa Act and Promotion of Access to Information Act: implications for good governance and accountability", *ESARBICA Journal*, Vol. 25, pp. 95-103.
- Marais, D.L., Quayle, M. and Burns, J.K. (2017), "The role of access to information and public participation in governance: a case study of access to policy consultation records in South Africa", *African Journal of Public Affairs*, Vol. 9 No. 6, pp. 36-49.
- Media Alliance of Zimbabwe (2021), "Women and access to information: barriers and opportunities in Freedom of Information Act", available at: <https://mazw.org.zw/women-and-access-to-information-barriers-and-opportunities-in-freedom-of-information-act/> (accessed 17 March 2023).
- Mutula, S. and Wamukoya, J.M. (2009), "Public sector information management in east and Southern Africa: implications for FOI, democracy and integrity in government", *International Journal of Information Management*, Vol. 29 No. 5, pp. 333-341.
- Natow, R.S. (2020), "The use of triangulation in qualitative studies employing elite interviews", *Qualitative Research*, Vol. 20 No. 2, pp. 160-173.
- Network of Freedom of Information Advocates (2017), "The RTI rating: analyses the quality of the world's access to information laws", available at: [www.rti-rating.org/](http://www.rti-rating.org/) (accessed 09 April 2023).
- Ngoepe, M. and Mojapelo, M. (2022), "Are we afraid of the dark of the light? A comparative analysis of freedom of information laws in South Africa and Zimbabwe", in desafios, E. and Gerales, E. (Eds), *Dez anos da lei de acesso a informacao: limites, perspectivas*, Intercom, Sao Paulo, pp. 541-563.
- Pozen, D.E. (2017), "Freedom of information beyond the Freedom of Information Act", *University of Pennsylvania Law Review*, Vol. 165 No. 5, pp. 1097-1158.
- Sebina, P. (2009), "Freedom of information: erosion of the archive?", *Journal of the Society of Archivists*, Vol. 30 No. 2, pp. 147-165.
- Separniene, D., Reinholde, I. and Rinkeviciene, S. (2021), "Relationship between citizens' trust in local government and public participation in local governance", *Scientific Papers of the University of Pardubice. Series D; Faculty of Economics and Administration*, Vol. 29 No. 2, pp. 1-3.
- Sipondo, A.A. (2014), "Social accountability and access to information: lessons for Africa from South Africa and Zimbabwe", available at: [www.researchgate.net/profile/Nuraddeen-Miko/publication/311740513\\_Corporate\\_Governance\\_Development\\_in\\_Nigeria\\_Prospect\\_and\\_Challenges/links/58591b9008ae3852d2556767/Corporate-Governance-Development-in-Nigeria-Prospect-and-Challenges.pdf#page=721](http://www.researchgate.net/profile/Nuraddeen-Miko/publication/311740513_Corporate_Governance_Development_in_Nigeria_Prospect_and_Challenges/links/58591b9008ae3852d2556767/Corporate-Governance-Development-in-Nigeria-Prospect-and-Challenges.pdf#page=721) (accessed 20 December 2022).
- South Africa (2000), Promotion of Access to Information Act (Act No. 2 of 2000), Government of South Africa, Pretoria.
- South African Development Community (SADC) (2001), "SADC protocols against corruption", available at: [www.eods.eu/library/SADC\\_Protocol%20Against%20Corruption\\_2001\\_EN.pdf](http://www.eods.eu/library/SADC_Protocol%20Against%20Corruption_2001_EN.pdf) (accessed 09 March 2023).
- Svård, P. (2017), "Freedom of information laws and information access: the case of Sierra Leone", *Information Development*, Vol. 33 No. 2, pp. 190-198.
- Svård, P. (2018), "Access to government information: a global phenomenon but what are the challenges?", *ESARBICA Journal: Journal of the Eastern and Southern Regional Branch of the International Council on Archives*, Vol. 37, pp. 158-177.
- Thurston, A. (2015), "Access to reliable public records as evidence for freedom of information in Commonwealth Africa", *The Round Table*, Vol. 104 No. 6, pp. 703-713.
- Transparency International (2019), "Right to information: a tool for people power", available at: [www.transparency.org/en/news/right-to-information-people-power#:~:text=This%20Saturday%2C%2028%20September%20marks%20the%20fourth%20International,approximately%20120%20countries%20have%20right%20to%20information%20laws](http://www.transparency.org/en/news/right-to-information-people-power#:~:text=This%20Saturday%2C%2028%20September%20marks%20the%20fourth%20International,approximately%20120%20countries%20have%20right%20to%20information%20laws) (accessed 3 September 2022).
- Zimbabwe (2013), *Constitution of Zimbabwe, 2013*, Government of Zimbabwe, Harare.

---

**Further reading**

- Bentley, K. and Calland, R. (2013), "Access to information and socio-economic rights: a theory of change in practice", in Langford, M., Cousins, B., Dugard, J. and Madlingozi, T. (Eds), *Socio-Economic Rights in South Africa: Symbols or Substance?* Cambridge University Press, Cambridge, pp. 341-364.
- Dimba, M. and Calland, R. (2003), "Freedom of information law in South Africa: a country study", available at: [www.humanrightsinitiative.org/programs/ai/rti/international/laws\\_papers/southafrica/Calland%20&%20Dimba%20-%20FOI%20Country%20Study.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/southafrica/Calland%20&%20Dimba%20-%20FOI%20Country%20Study.pdf) (accessed 9 January 2023).
- Information Regulator South Africa (2000), "Guide on how to use the Promotion of Access to Information Act 2 of 2000, as amended", available at: [https://infoeregulator.org.za/wp-content/uploads/2020/07/PAIA-Guide-English\\_20210905.pdf](https://infoeregulator.org.za/wp-content/uploads/2020/07/PAIA-Guide-English_20210905.pdf) (accessed 11 November 2022).
- Mojapelo, M. (2017), "Contribution of selected chapter nine institutions to records management in the public sector in South Africa", Master's dissertation, University of South Africa, Pretoria.
- Mojapelo, M. (2020), "Strengthening public sector records management through the information regulator in South Africa", *Journal of the South African Society of Archivists*, Vol. 53, pp. 90-102.
- Mojapelo, M. and Ngoepe, M. (2017), "The role of the South African human rights commission to records management in the public sector in South Africa", *Journal of the South African Society of Archivists*, Vol. 50, pp. 28-55.
- Zimbabwe (2020), *Freedom of Information Act (Act No. 1 of 2020)*, Government of Zimbabwe, Harare.

**About the author**

Dr Makutla Mojapelo is currently working at the University of South Africa as a Lecturer in the Department of Information Science. His work at UNISA involves teaching and learning, community development, academic citizenship and research. He is well experienced in the area of records management, as he served on a management level in various state-owned companies in South Africa. He is in a possession of a PhD in information science. Makutla Mojapelo can be contacted at: [mojapmg@unisa.ac.za](mailto:mojapmg@unisa.ac.za)