Access to Information and Open Data Portals in Africa

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Event:	Choosing our Future: Open and Participatory Sustainable Development Governance
Venue:	Fundação Getúlio Vargas Praia de Botafogo, 190 Rio de Janeiro, Brazil
Organizers:	World Resources Institute(WRI) in association with: Institute of Law and Environmental Governance (Kenya) Greenwatch (Uganda) Centre for Democratic Development (Ghana) Open Democracy Advice Centre (South Africa)

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Workshop Objectives

Few African countries have a comprehensive Access to Information Act (ATI). Many environmental, natural resource and other sectoral laws however include transparency provisions. Sectoral laws can provide opportunities for civil society to access information critical to monitoring performance and improving accountability. The "Access to Information and Open Data Portals in Africa" workshop was intended to identify information for open data and proactive disclosure schemes, sharing knowledge on using transparency provisions in Uganda, Ghana and South Africa.

Summary of the presentation by Carole Excell,
Senior Associate, WRI, USA

Carole Excell introduced WRI's *Access to Information in Africa* project sponsored by the International Development Research Centre (IDRC – Canada). The project focuses on ascertaining transparency models under Access to Information acts and sectoral provisions, by considering laws and government practices with regards to information on natural resources - oil, mining, forests, environment, land and water. WRI has developed preliminary templates that list, for each of these sectors, proposed types of data and information that governments should proactively disclose without a formal request. The workshop was held to review these templates and also understand the context in Africa for the development of open government data portals.

Ten countries in Africa have passed Access to Information legislation, including South Africa, Angola, Zimbabwe, Uganda, Ethiopia, Liberia, Republic of Guinea, Nigeria, Tunisia, and Republic of Niger**.** Countries currently actively reviewing bills include Kenya, Rwanda, and Sierra Leone. However, there is often a delay between the passage of the law, and its implementation. Uganda, for example, passed its Access to Information Act in 2005, but only released an implementation plan and regulations in 2011.

It was noted that a number of countries around the world were amending or including within their ATI legislation provisions that would facilitate duties to publish open data on the internet including

- Brazil - http://freedominfo.org/documents/BRAZILIAN2011lawenglish.pdf

- Britain-http://www.v3.co.uk/v3-uk/news/2172077/freedom-information-act-amended-improve-government-s-agenda

- Bulgaria http://www.aip-bg.org/en/legislation/Text_of_the_APIA/200432/

- Norway- http://oep.no/nettsted/fad/Regelverk.html

What is open data?

There is a distinction between information and data which is important to make in assessing open data portals. Data can be seen as a collection of facts and statistics, which may be turned into information, with meaning and uses derived from them. Many Access to Information acts contain provisions which mandate government agencies to proactively disclose information. However these mandates are not sufficient to enable the creation of open data portals which require the release of data according to standards that have been developed. Guidelines developed by Access Info Europe (http://transparency.ge/en/ten-open-data-guidelines) provide details of how open data systems are to be designed. They outline a useful structure and may provide a model for the elaboration of similar principles in other countries and at an international level. These guidelines are designed to help agency heads, IT managers, and web developers create open data websites. The guidelines list the following criteria: Complete, Primary, Timely, Accessible, Machine-readable, Non-proprietary, License-free, Reviewable, Discoverable, and Permanent for open government data. Also articulated have been three fundamental laws of open data:

- If it can't be spidered or indexed, *it doesn't exist*
- If it isn't in open and machine readable formats, *it can't be used*
- If a legal framework doesn't allow it to be repurposed, *it doesn't empower*

Why open data portals?

While many African countries have passed Access to information acts, only Morocco and Kenya have open government data portals. The Kenyan Open Government Data Portal (http://opendata.go.ke/) includes (or will soon include) national census data, government expenditures, parliamentary proceedings and public service locations. Data is organized by topics such as education, energy, health, population, poverty and water and sanitation, as well as public expenditures and development indicators. But one year after its launch, the portal is yet to be well populated. Several of the categories do not have any data indexed under it, and data falling under multiple categories is not consistently cross-indexed.

The purpose of Data.gov, the United States´ open government portal (http://www.data.gov/) is to increase public access to high value, machine readable datasets generated by the U.S. Executive Branch of the Federal Government. Data can be browsed by agency and department. However, the United States Environmental Protection Agency has its own portal with more comprehensive environmental datasets than found on the US Open Government Data Portal. This site aggregates and creates visual displays for air, water, energy, land, health and community data. Moreover, its interface allows users to customize their searches, and find data relevant to their geographical location. For open data portals to be useful they will have to be useful to the individual as well as the private sector organization and academic sector.

In conclusion the workshop participants were asked to brainstorm around:
- Mandates and standards for release of environment/natural resource data and information
- Data sets as proposed by WRI

- Data Form
- Functions of open data portals to make them relevant to different audiences.

Summary of the presentation by Benson Ochieng, Executive Director, ILEG, Kenya

Kenya has a mainly rural population, and absolute poverty stands at approx. 45%. This is the context for development of open data. A majority of the population depend directly and indirectly on environmental goods and services. Kenya is still a budding democracy – from an autocracy with inherited colonial legal & administrative machinery. The word for Government in Swahili is "Serikali", closely related to the Swahili word "siri kali", which means top secret.

With these ties, secrecy is a general idea that informs governmental functions and activities, and is enforced through different legislation such as the Official Secrets Act, the Penal Code (especially provisions relating to sedition and public order), media laws and regular administrative circulars.

There is currently no single clear policy on access to information. However the new Constitution, 2010 lays strong policy foundation. The Constitution provides:

35. (1) Every citizen has the right of access to

(a) information held by the State; and

(b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

(2) Every person has **the right to the correction or deletion** of untrue or misleading information that affects the person.

(3) The State shall publish and publicise any important information affecting the nation.

Constitution 2010 – Chapter 13: Public Service

232. (1) The values and principles of public service include—

(f) transparency and provision to the public of timely, accurate information

Kenya still has no Access to Information Law despite a long struggle. The official concern has mainly focused on media law (access, type, publication). But there is information that is release publicly including Environment Impact Assessments (EIA). In general the Government has increased the amount of information it releases, but information may be just general information and statistics. Transparency varies by agencies. There is no consistency in the way information is released either in:

- Form – technicality, volume, language
- Medium – radio, internet, SMS, TV, flyers, etc.
- Timeliness – prompt response to request, prompt release after event

- Type – active or passive data/information

The Kenya Open Data Initiative seeks to: "foster an innovation eco-system around Government data and is giving developers a chance to interact with the data, be able to use it and create interesting mash up and innovative applications." It promises that every dataset hosted on the portal is now readily and uniformly accessible programmatically. The site includes national census data, government expenditure, parliamentary proceedings; public service locations.

Kenya has joined the Open Government Partnership, a global movement of countries that seek to empower their citizens to be involved in active governance, engaging Kenyans in the development of their communities. Its draft action plan has just been released.

Summary of the presentation by Peter Veit, Acting Director, Institutions and Governance Program, WRI, USA

Peter Veit explained that both Ghana and Uganda have a constitutional right of ATI. Uganda passed a comprehensive ATI Act in 2005 and issued implementing regulations in 2011. He indicated that Ghana has an ATI bill that has been before Parliament for years; a presidential campaign promise that has not been met. Both countries have environment and natural resource (ENR) laws with information provisions, although they are not comprehensive. Both countries have long, but limited experience in citizen requests and proactive information disclosure. Most ENR laws in Ghana and Uganda are silent on whether most types of information held by government should be made available to the public. ENR laws generally provide that one or two types of information must be proactively released (usually publishing in the official *Gazette*) or made available to the public upon request (often upon paying a fee). No ENR laws in Ghana and Uganda, however, call for all types of information that the government generates or collects from licensees to be proactively released or even made available to the public. The Uganda Petroleum (Exploration, Development and Production) Bill 2012 (as well as the companion downstream petroleum bill), for instance, requires only reference maps be published in the *Gazette*. The bill's confidentiality clause criminalizes release. Ghana's Petroleum Revenue Management Act is unique in Africa in that it provides for the proactive disclosure of contracts, licensee payments and government receipts.

Research shows, however, that responsible executive branch agencies often proactively release more ENR information than required by law. The information released varies by ENR and by the means the information is proactively released. WRI partners in the *ATI in Africa* project are the Center for Democratic Development (CDD-Ghana) and Greenwatch (Uganda) which piloted the proactive release templates and found that, of the information requested in the template, both governments proactively disclose a significant amount of information. Their findings include:

- Extractive industries performed the best in terms of proactive release of information and the website is the most common place to release information.

- The government of Ghana released more types of information on petroleum and mining than the government of Uganda. These results may be due to the international attention on extractive resources (e.g., Extractive Industry Transparency Initiative/EITI, the US Securities and Exchange Commission rules, etc.)

Compared with international norms, established ATI best practices, and other countries, however, Ghana and Uganda fall short. There are many types of information that are not proactively released in Ghana and Uganda that arguably should be. Some types of information fall under confidentiality clauses (*e.g.*, Uganda's petroleum bills); some are available via citizen requests (confirmed by our research) and some have been ordered released by court (power purchase agreements in Uganda).

Summary of the presentation by Gabriella Razzano, Researcher, ODAC, South Africa

The Constitution of South Africa grants a right to access information.

(1) Everyone has the right of access to

(a)   information held by the state; and

(b)   any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state" (Section 32).

This right of access to information is realized through the Promotion of Access to Information Act (PAIA). Proactive disclosure is addressed, briefly, in PAIA. This is largely governed by requirements for a PAIA manual, in sections 14 and 15. However recent statistics show that 58% of provincial departments failed to make these PAIA manuals publically available on their website. Further, the PAIA provisions provide only a minimum standard. Other standards exist which could be the basis of proactive disclosure requirements, which include the African Platform on Access to Information Declaration section 6 that provides:

"Public and relevant private bodies shall be obliged to proactively release information in a timely manner about their functions, powers, structures, officials, decisions, expenditures, budgets, and other information relating to their activities that is of public interest. The dissemination should use all reasonable means of communications, including ICTs, to maximise access to all communities and sectors of society".

The AU Model Law also promotes proactive disclosure in section 6 at http://bit.ly/Mv9tZj

As the Centre for Environmental Rights has noted:

". . . public bodies need to give proper consideration to (and ask for public input on) the **significant expansion** of records made available voluntarily through s.15 declarations, and through third parties like license-holders or industry associations. Amongst general benefits, it

would also eliminate referrals of requests to private bodies back to public bodies, and attempts to avoid disclosure by citing an instruction from a public body not to disclose. Private bodies must give proper consideration to the significant expansion of records made available voluntarily, particularly licenses".

Proactive disclosure has the benefits of reducing internal administrative burden; demonstrating public and private bodies commitment to open access; and removing the bureaucratic and implementation problems associated with the Freedom of Information law in South Africa i.e.:
- 68% deemed refusal rates
- No independent Information Commission
- Significant time delays
- Cost requirements

In terms of the work under the ATI in Africa project in South Africa, some of the more interesting highlights so far were as follows:
- *Information on Water*: the information is generally available, except for information on provision of water to the people and water quality.
- *Information on the Environment*: Most of this information was proactively available BUT information on and access to EIAs was inconsistent, in spite of requirements for such information in other laws.
- *Information on Minerals and Resources*: This was one area already identified by NGOs as problematic and it was confirmed that the department was inconsistent in its provision on resource stocks and licenses.
- *Information on Human Settlements* (land): this information was generally provided, but there was a lack of information on zoning decision criteria. This area will be increasingly controversial given expropriation of land in the South African context.

These results, however, remain somewhat problematic as – even though in most instances there is *some* information available – the provision of information is generally inconsistent and incomplete, which was not adequately accounted for in our measures.

As part of the Access Initiative's (TAI) 3 Demands Campaign, South African civil society requested: 1) the establishment of an alternative dispute resolution mechanism with oversight of PAIA; 2) the establishment of a publically accessible Integrated Environmental Management Information Portal; and 3) more effective protection of whistleblowers.

The campaign resulted in a commitment by the South African government, as part of the Open Government Partnership tabled on 20 September 2011, to: "Explore the feasibility of establishing a single agency mandated by Government to develop a comprehensive and publicly accessible portal of environmental management information".

Topics of discussion

Guiding Questions:

1) Which types of datasets and information on natural resources and the environment should be proactively released by government to ensure transparency and good governance?

2) Do the current categories of information provided in the templates naturally translate into datasets?

3) Do Open Government Data programs and proactive release of environmental information have the possibility of making an impact?

4) What are the factors to be considered to ensure these programs lead to positive development outcomes?

5) Which types of projects and activities could be developed to promote the proactive release of natural resource and environmental information in Africa?

Important key messages

Minimum standards for proactive disclosure of environment data and information on open data portals should be developed.

Open data portals can be designed with specific (1) data sets, (2) data form and (3) functionality in mind.

African governments that are currently developing open data portals should be encouraged to share interests and experiences in partnership with regional organizations.

Francophone countries in Africa have been slow in developing laws, policies and practices regarding transparency and openness, including using technology to facilitate open data programs. This may be in part due to the civil law system framework.

International and intergovernmental agencies and institutions can play a role in identifying champions in government to support the development of open data portals that include ENR information.

African countries should prioritize the proactive disclosure of ENR information as natural resources are the source of Africa's great wealth. It is important that ENR information held by private companies should also be proactively released. Active steps to implement and facilitate proactive disclosure, such as the passage of laws and the provision of open data portals can support this effort.

Open government principles are a commitment for all branches and levels of government, including the executive, the legislature, and the judiciary.

Centralisation of data on open data portals may promote the development of standards for open government data.

In addition to the other standards, open government data portals should be linked to social media and mobile platforms; include data in simplified versions and in multiple languages.

Uganda, Ghana and Tanzania have expressed interest in Open Government Data programmes but there are no clear structures, data collection guidelines and tools, or agreements on the quality of data. Workshop participants called for:

- Stronger legislation mandating the proactive disclosure of government-held ENR information.
- Minimum standards regarding the types of ENR information for proactive release.
- Establishment of how/where/when the information should be released by government.
- Building a complaint mechanism for when this obligation is not met.

The ENR proactive release templates developed under the *ATI in Africa* project should be reorganized and developed into a more complete framework for use by countries in the development of open data portals. It would be important to list the common types of data sets across all sectors first, and then include additional sector-specific information. The following issues were raised:

- The templates should include information on major stakeholders/players in the sector including relevant company information such as registration documents, and copies of company reports on environmental performance.
- The templates should define "reserves and stocks" of natural resources.
- The templates should include information on how public revenue from exploitation of natural resources is used/reinvested.
- The templates should include information on all major payment/revenue categories.
- The templates should include information on Environmental Impact Statements and Mitigation plans.
- The templates should include information on company performance audits.
- The templates should include information on procedures for approving Environmental Impact Assessments (EIAs).
- The templates should include information on arable land subsidies and agricultural land subsidies.

Annex 1: DRAFT Template of Information to be Proactively Released – Petroleum

PRO-ACTIVE RELEASE TEMPLATE

	Means of Sharing Information						
Natural Resource Pro-Active Release Template (Oil, Minerals and Forests)	Gazette	Register	Website	Newspaper	Govt report in library	Other	Comments
	Mark each box with a Y for Yes; N for No, and ? If unclear/uncertain						
Govt agency staff, departments, objectives, functions							
Laws, regulations and bills							
Policies, strategic plans, action plans							
Reserves and stocks of the natural resource							
Production of the natural resource - raw and processed							
Concession allocation process and decision criteria							
Licenses and concessions (exploration and production licenses only)							
Revenues from 2 major payment categories (e.g., income tax and royalties)							
Map and coordinates of blocks and concessions areas							
EIAs and mitigation plans							
Government monitoring/inspection results and penalties levied							
Performance audits of government offices							
Financial audits of government offices							
Impacts on local communities (displaced, relocated, compensation)							
Company Corporate Social Responsibilities (CSR)							

Access to Information and Open Government Data in Africa*

OBJECTIVE:

Share research results on the proactive release of natural resource and environmental information by African governments and define minimum datasets for open government and environmental portals in Africa.

**TUESDAY, JUNE 19
12:30PM - 3:15PM**

Fundação Getúlio Vargas
Praia de Botafogo, 190
Rio de Janeiro, Brazil

12:30 -12:45   Introduction to the workshop and ATI in Africa Project

12:45 - 1:35   <u>Panel</u>: Monitoring results of proactive release of information

Overview:
- Carole Excell of the World Resources Institute, USA

Kenya:
- Benson Ochieng of Institute for Law and Environmental Governance, Kenya
- H.E. Mr. George Olago Owuor, Amb., Diplomatic Mission of Kenya to UNON

South Africa:
- Gabriella Razzano of Open Democracy Advice Centre, South Africa
- Mr. Tlou Ramaru, Senior Policy Advisor, Dept of Environmental Affairs, S. Africa

Ghana and Uganda:
- Peter Veit of the World Resources Institute, USA

1:35 - 1:45   Questions and answers

1:45 - 3:00   <u>Working Group</u>: Proactive release templates

3:00 - 3:15   Summary and wrap up

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*This working session is part of a larger event on environmental governance called "Choosing Our Future: Open and Participatory Sustainable Development Governance"

PRELIMINARY WORKING GROUP QUESTIONS:

- ☐ Which types of datasets and information on natural resources and the environment should be proactively released by government to ensure transparency and good governance of natural resources?

- ☐ Do the current categories of information provided in the templates naturally translate into datasets?

- ☐ Do Open Government Data programs and proactive release of environmental information have the possibility of making an impact?

- ☐ What are the factors to be considered to ensure these programs lead to positive development outcomes?

- ☐ Which types of projects and activities could be developed to promote the proactive release of natural resource and environmental information in Africa?

ILEG

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