

## CHAPTER FIVE

### STATISTICS, INDICATORS, AND ACCESS TO INFORMATION IN AFRICAN COUNTRIES

Colin Darch

#### ABSTRACT

*In common with most social science disciplines and subject areas, studies of ATI remain generally unsophisticated in their use of quantitative data. This chapter critiques statistical positivism and argues for a more critical approach, using qualitative methods to contextualize and interpret available data. Two main categories of statistical data in the field are identified. These are rules-based (for example, how many countries have ATI legislation?) and outcomes-based (for example, do government departments comply with the law; are citizens and organizations satisfied with the information that they receive?). Focusing on the second of these categories, the chapter criticizes current legislation for imposing a heavy burden of data collection on government agencies—which in African jurisdictions are often simply unable to comply—and for the frequent ambiguity of definitions in such laws. Only a handful of studies have attempted to assess user satisfaction and have produced preliminary but disenchanting results. There are methodological problems with all these data collection activities, but there are also epistemological difficulties, and these need to be taken seriously. They are not unique to ATI, and work already done in fields such as transparency and human rights is likely to be of use to scholars researching ATI.*

... today's statisticians ... probe data in the search for structures and patterns, and ... peel back the layers of mystification and obscurity, revealing the truths beneath ... Modern statistics enables us to see through the mists and confusion of the world about us, *to grasp the underlying reality.*

(Hand 2008: 1–2, emphasis added)

For anyone educated in an 'advanced' technological society, it is practically impossible to imagine that our ideas of *objectivity* and *factual accuracy*, and the basic place of *numbering* or *quantification* in our world-view, are historical products rather than eternal principles of analysis.

(Young 1979: 63, emphasis in original)

## INTRODUCTION

The deployment of statistical data about ATI practices is important for various reasons.<sup>1</sup> Different data *may* give us information about the following: the extent to which state bodies are complying with their legal obligations; levels of user satisfaction with the information that is made available; service quality; and the validity of claims made for the many benefits of ATI systems. They may also provide evidence of particular outcomes to satisfy donors who are supporting governance reforms, or be used to show that the investment climate in a particular country is attractive for foreign entrepreneurs.

There is a caveat; statistical data *may* provide evidence in these circumstances, but they do not *necessarily* do so, or do so robustly. The purpose of this chapter is to raise in a preliminary fashion some of the technical and epistemological problems associated with ATI indicators and statistics in particular, and with governance and transparency indicators and statistics in general, as well as to sound a note of caution about the uses to which the data may legitimately be put.<sup>2</sup>

ATI is often regarded as an important and perhaps essential *component* of 'good governance' planning and assessment, as the government of the Philippines, for example, has explicitly recognized: "the pursuit of greater public access to information is an integral element of the ... Good Governance and Anti-Corruption Plan for 2012 to 2016" (Philippines Dept. of Budget and Management 2012). It follows that what applies to the broader area as far as indicators and statistics are concerned may well also apply to the narrower field; the problems and even the solutions may be the same or similar, in terms of what questions are asked and what is measured and quantified. For example, in Africa, as in the rest of the global South, a key question has been what effect governance policies may have on development and economic growth. It was already being argued ten years ago that there was a "strong positive correlation" between governance policies and income at a general level (Kaufmann & Kraay

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<sup>1</sup> This text was developed from a presentation entitled 'ATI Statistics: What Can They Teach Us?', presented at the joint Africa Freedom of Information Centre-African Network of Constitutional Lawyers Workshop on Research and Access to Information, Munyonyo, Uganda, 24–25 November 2010. I am grateful to Akinyinka Akinyoade and Yuko Kasuya for commenting on a draft of this chapter; remaining errors of fact and interpretation are my own responsibility.

<sup>2</sup> The term 'indicators' is used in this chapter to denote statistical data that are used in analytically significant ways, or to summarize characteristics or trends within systems.

2002: 169). What is more difficult is to link specific and often complex outcomes, such as an improvement in ‘democracy’ or even ‘freedom’, to the adoption of a particular subordinate policy, such as ATI (Kaufmann & Kraay 2008: 10). Difficult it may be, but in the absence of technically reliable statistical data, it becomes next to impossible.

The ATI literature—in common with other areas of governance—focuses essentially on two kinds of indicators (*ibid.* 2). The *first* kind are rules including constitutional provisions guaranteeing ATI, implementing legislation, matching up legislation to some ‘model law’ with a specific number of essential features (for example, provision for an independent information commissioner). At the most fundamental level, the compilations of Banisar (2006) or Vleugels (2008) measure rules-based indicators; so does the practice of the Article 19 organization in publishing a model law against which it tests the adequacy of new legislation from various jurisdictions. The reports on ATI in Ghana, Liberia, Nigeria, and Sierra Leone prepared recently by Media Rights Agenda restrict themselves almost entirely to “rules-based” indicators (2010a, 2010b, 2010c and 2010d): indeed, the methodology is described as consisting of “research to identify the laws with access and non-access to information clauses [and] compilation of the access and non-access to information clauses in those laws”, followed by “analysis of these clauses to determine their scope, purpose, subject area and applicability” (Media Rights Initiative 2010a: 3). This appears fairly unproblematic, as far as it goes. However, rules-based indicators can mask ambiguity and subjectivity, as Kaufmann & Kraay (2008: 6) have pointed out:

In Kenya in 2007, for example, a constitutional right to access to information faced being undermined or offset entirely by an official secrecy act and by pending approval and implementation of the Freedom of Information Act. In this case, codifying even the legal right to access to information requires careful judgment as to the net effect of potentially conflicting laws. Of course, this drawback of ambiguity is not unique to rules-based measures of governance: interpreting outcome-based indicators of governance can also involve ambiguity ... There has been less recognition, however, of the extent to which rules-based indicators also reflect subjective judgment.

It is the strong focus on the importance of this ‘rules-based’ data that has created the somewhat artificial problem of African ‘backwardness’ in ATI (see Chapter 2 in this volume). Only a handful of African countries have passed ATI laws, and there are some scattered campaigns at both national and continental levels, but ATI is generally not high on most political agendas on the continent (as discussed throughout this volume). Despite

the rapid spread of ATI laws elsewhere and the claims made for their influence, there is nonetheless an emerging ‘rough consensus’ in the scholarly (as opposed to activist) literature that most legislation, on its own, is fairly ineffective and that there is wide variation in uptake and compliance (McLean 2011: 1). As far as it is possible to tell, even in the developed and industrialized countries of the global North, formal ATI activity remains in absolute terms at an extremely low level, with almost certainly less than one percent of total national population making use of ATI provisions in a given year (Hazell & Worthy 2010: 354). Still, the absence of legislation is widely but questionably seen as a problem and as an example of African underdevelopment, yet another case of Africa “lagging behind” (Baglo 2009: 31–32). If ATI is indeed a ‘fundamental human right’, as is often claimed, then in many parts of Africa it is either being satisfied in non-judicial ways, or it is a right on which citizens do not routinely place high value.

The *second* kind of indicator focuses on outcomes, and the remainder of this chapter will focus mainly on this category. The most obvious example is compliance reporting, which is often required by the legislation itself. How many requests were received, how many were acceded to, and how many were refused? Compliance is important, and *properly contextualized* compliance data can tell us much about bureaucratic and political willingness and capacity. The interpretation of such apparently simple sets of data as the number of requests is more complex than it appears: in an open society, ATI may be a last resort, while in a more secretive society citizens may turn to such formal procedures more readily. In addition, it is not hard to imagine ways in which ATI rules might be complied with at a formal level, but the citizen’s needs and expectations are not met—by handing over such a quantity of documentation that the needed information is effectively hidden, for example. Consequently, more-or-less sophisticated attempts have been made—initially in India and the United Kingdom—to measure end-user satisfaction as well, and to answer such questions as, again for example, whether ATI increases public trust in government (RaaG 2009; Hazell et al. 2010). In the Indian study, nearly 40,000 people were interviewed either individually or in focus groups, creating a pool of data that is large in absolute terms although still a small sample of the total population of the country. Nevertheless, both rules-based and outcomes-based indicators share common problems, of which the most obvious are the difficulties involved in isolating the variables and establishing strong causal links between the policy adopted and the improvement measured.

There are two often quoted—and fundamentally irreconcilable—dicta regarding the trend towards the quantification of almost everything. The first states that “you can only manage what you can measure” (quoted by Arndt & Oman 2006: 21). But Albert Einstein also reminded us that “not everything that can be counted counts” (quoted by Kaufmann & Kraay 2008: 1). The trick is to find ways of distinguishing what counts, what matters, what indicates something useful, and then to focus energy on quantifying that. Before analysing the types of problems that can contaminate the data, a summary of some kinds of available ATI data that might count is presented below.

#### OUTCOMES-BASED INDICATORS: COMPLIANCE DATA

It is common, if not universal, for ATI legislation to require state structures such as ministries, departments, and municipalities to quantify levels of activity in detail. Quantification of compliance is possible in situations such as the number of requests granted and refused, the particular exemption relied upon in the case of refusals, appeals and their outcomes, and so on. These compliance data are to be regularly submitted, depending on the jurisdiction, to the ombudsman (Ethiopia), to the attorney general (Nigeria), to a human rights commission (South Africa), or to an information commissioner, and are then made available to members of the public to make sense of as they will. In some countries, such as Nigeria, there is a requirement that the disaggregated reports should also be published. These reporting requirements are formulated in the context of a generalized desire to *quantify* complex social phenomena. The question remains whether the data on ATI so painstakingly compiled can be used, in conjunction with qualitative methodology, to illustrate something meaningful about the success or failure, or less judgmentally about the impact, of ATI legislation on the behaviours and practices of the political class, the bureaucracy, and the citizenry.

What statistical data are typically required? To start at the highest level of generalization, Article 19’s well-known *Model Law* contains a Section No. 21, laying down a procedure to be followed for statistical reporting (Article 19 2006: 13). A more recent ‘draft model law’ for African countries, yet to be adopted by the African Union and so still fairly abstract in conceptualization, specifies the reporting requirements on compliance in its Section 75, in considerable—indeed staggering—detail:

- (1) The information officer of each public body and relevant private body must annually submit to the oversight mechanism a report stating in relation to the body:
  - (a) the number of requests for access received;
  - (b) the number of requests for personal information;
  - (c) the number of requests for access granted in full;
  - (d) the number of requests for access granted in terms of the public interest override in section 36;
  - (e) the number of requests for access refused
    - (i) in full; and
    - (ii) in part;
  - (f) the number of times each provision of Part IV was relied on to refuse access in full or part;
  - (g) the number of cases in which the periods stipulated in section 13 were extended in terms of section 14;
  - (h) the number of internal appeals lodged with the relevant authority;
  - (i) the number of internal appeals lodged on the ground that a request for access was regarded as having been refused in terms of section 16;
  - (j) the number of cases in which, as a result of an internal appeal, access was given to information;
  - (k) the number of appeals referred to the oversight mechanism and the outcome of those appeals;
  - (l) the number of appeals referred to the appropriate court and the outcome of those appeals;
  - (m) a description of the steps or efforts taken by the head of the body to encourage all officers of that body to comply with the provisions of this Act;
  - (n) any facts which indicate an effort by the body to administer and implement the spirit and intention of the Act according to its submitted plan;
  - (o) particulars of any penalties issued against any person under this Act;
  - (p) particulars of any disciplinary action taken against any person under this Act;
  - (q) particulars of any difficulties encountered in the administration of this Act in relation to the operations of the body including issues of staffing and costs; and

- (r) recommendations for reform, or amendment of this Act, other legislation, common law, sector regulation or practise relevant to the optimal realization of the objectives of this Act.
- (2) The oversight mechanism may impose penalties on public bodies and relevant private bodies which do not comply with the annual reporting obligation. (Centre for Human Rights 2011: 34–35)

Such a detailed reporting burden is clearly far from trivial, but in a model law this is not necessarily a fatal weakness; it remains to be seen, in the event that African Union endorsement for the model is forthcoming, how much of this translates into enforceable regulations. However, for legislation that is actually in effect, the feasibility and usefulness of such requirements may become real problems. Section 32 of South Africa's Promotion of Access to Information Act of 2000 contains nine sub-paragraphs specifying the data that the "information officer of each public body must annually submit to the Human Rights Commission" (PAIA 2000: 21). Section 84 of the same legislation then requires the Human Rights Commission in its turn to "include [all the reported data] in its annual report to the National Assembly", with each category stipulated for a second time (*ibid.* 42). This type of imprecise legislative drafting can have a range of consequences, including overlapping data, duplication of effort, and above all incomplete or incorrect statistical information in which researchers can have only a low level of confidence.

The Freedom of Information Act passed in mid-2011 in Nigeria is just as demanding in its specification of the statistical data that must be compiled by each public institution and submitted annually to the Attorney General. Given that Nigeria is a federation, and that many if not all of the country's 36 states may pass local versions of the Act, it is clear that this is another example of a heavy reporting burden. Section 30 requires that "on or before February 1 of each year, each public institution shall submit to the Attorney-General of the Federation a report which shall cover the preceding fiscal year" and then proceeds to list in eight paragraphs the detailed statistics that must be collected and compiled (Nigeria 2011).

Reference to these requirements gives a sense of their extent and the work involved. In addition, in some cases as in South Africa, the definitions are ambiguous, creating problems both for government departments and potential users of the data (Sorensen 2004: 4–5). For example, Section 32 (d) of the South African law requires that state bodies record the "number of times each provision of this Act was relied on to refuse access in full or partially". This has been interpreted by the bodies themselves and

accepted by the Human Rights Commission (which publishes the data) to mean that a single total of all refusals, whether full or partial, satisfies the requirement. Sorensen argues, however, that the intention of the drafters must have been to tabulate the number of times each *individual* permitted exemption was relied upon.

The potential importance of this apparently trivial point of interpretation is illustrated by a recent controversy in India, described by Venkatesh Nayak of the Commonwealth Human Rights Initiative (CHRI) in an e-mail alert dated 7 February 2012. The Indian government was proposing new legislation that would effectively “add a new exemption on nuclear and radiation safety matters” to the country’s RTI law, mainly for security reasons. Various organizations, including the CHRI, objected to this. By recourse to the detailed statistical record of exemptions that had previously been relied upon in refusing to release this kind of information, the CHRI was able to muster compelling evidence that security had not previously been seen as an issue. For example, India’s Atomic Energy Regulatory Board received 43 information applications in 2010–11, and rejected none. The Department of Atomic Energy received 280 applications during the same period, and rejected 33. Of these, 28 relied on the parliamentary privilege and 5 on the fiduciary relationship exemptions. None were rejected under provisions relating to strategic or defence issues (Nayak 2012). The government’s argument was thus exposed as weakly founded. Clearly, such a use of statistical evidence would be impossible in South Africa, where data about the specific use of particular exemptions is not aggregated.

#### OUTCOMES-BASED INDICATORS: USER SATISFACTION AND IMPACT SURVEYS

Usually government bodies are legally required to collect only statistics that show that their ATI practices have been in compliance with the law. This is a minimalist approach to quantification which tells us little or nothing about what citizens are getting out of ATI, either individually or collectively through civil society organizations. The collection of data on and the numerical analysis of the extent to which ATI practice has brought *satisfaction* to citizens and civil society organizations have been left largely to independent researchers, who, it must be said, have only just begun to take up the challenge. But it is worth remembering that user satisfaction is an important indicator:



The only criteria that count in evaluating service quality are defined by customers. Only customers judge quality; all other judgments are essentially irrelevant. (Zeithaml et al. 1990: 16)

Of course the relationship of the citizen to the state is not entirely equivalent to that of a customer and a service provider; but the point is nonetheless an important one. Although this type of research is still in its infancy, two important studies have been conducted in Great Britain and India respectively, both of which contain elements of satisfaction surveys, although that was not their main focus.

The British study attempted to test what it termed the “ambitious set of expectations about what FOI [i.e. ATI] can deliver” as well as the “exaggerated set of fears” about it against the reality of its functioning in the UK (Hazell et al. 2010: 3). The authors argue that there have been three fundamental types of impact study in the ATI literature. These were, first, the aggregated governance indicators approach; second, comparative surveys across jurisdictions; and third, studies using standardized ATI requests. There was also a focus on whether the legislation achieves its self-defined objectives, and whether it changes civil service behaviours. These authors used semi-structured interviews with government officials, an online survey instrument,<sup>3</sup> and media analysis, and reach the conclusion that ATI—in the UK at least—has neither realized the wilder claims made for it by its advocates, nor turned out to be the complete disaster predicted by its opponents (ibid. 2010: 252–256). Importantly, transparency and accountability in government were indeed strengthened; but decision-making did not improve, and public participation and trust remained unaffected (ibid. 253).

The second study was carried out across India by the RTI Assessment and Analysis Group (RaaG) and the National Campaign for People's Right to Information (NCPRI), together with 11 other collaborating institutions and 11 state coordinators. The study involved 18,918 individual interviews and 630 focus groups across 10 Indian states and Delhi. Researchers analysed more than 25,000 RTI applications, filed another 800 requests, and extracted 5,000 case studies of particular narratives. This makes the RaaG study the largest single research project carried out on the impact and effect of a juridical ATI regime.

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<sup>3</sup> The study collected 109 usable (from a total of 350) responses to the online survey, from a known 30,000 ATI requests in 2008. This is an exceedingly small sample (Hazell et al. 2010: 275).

The RaaG study covered a wide range of topics: public awareness of ATI, the number of applications filed, social profiling of applicants, constraints on the filing of applications, success rates, impact (i.e. was the applicant's objective satisfied?), and so on. The revised executive summary report (RaaG 2009) lists 15 major findings, mainly to do with compliance issues, with recommended corrective action steps. Some of the findings will have surprised nobody, as for example, finding I: "there is poor awareness about the RTI Act, especially in the rural areas" (ibid. 35). Others are specific to the Indian situation, for example, finding III that there are a possible 114 sets of rules in different states and territories plus branches of government. Among rural survey respondents, 40 per cent reported that getting the requested information did *not* help them to achieve a desired outcome; among city dwellers, this figure fell to 20 per cent. The report does not speculate as to what the reasons for this might be (ibid. 14). Nevertheless, the study found encouragement in the fact that its

... case studies show myriads of citizens using the Act in previously unknown ways ... there are extremely encouraging stories of RTI success by individuals or groups that are generally stonewalled by the Government ... Many people's movements, citizens' groups, and non-governmental organizations now rest their work heavily on the Right to Information Act, using it for broader societal purposes. (RaaG 2008: 14)

However, it may be that the real point of the RaaG study lies not in the details of the findings, many of which confirm already existing anecdotal evidence, nor the size of the research project, but the fact that for the first time independent researchers carried out large-scale data collection using conventional social science techniques and methodology. Although there has been some discussion of the feasibility of carrying out a similar survey in those African jurisdictions where ATI legislation is in place, this would be complicated by its cross-jurisdictional character, among other factors.

#### PROBLEMS OF METHODOLOGY AND CAPACITY

Statistical data are conventionally regarded as having two principal aspects, namely the *objects* enumerated and their *characteristics*. The *objects* of official statistics on freedom of information are typically requests for information, while the *characteristics* (or more commonly, *variables*), are whether the requests were refused partially or fully, or were met; in satisfaction studies, variables might include expectations as well as a scale of outcomes. Broadly put, the thinking behind some of the early surveys

was that by gathering data on such ATI objects and their associated variables, it would be possible to assess the extent to which state bodies are complying with the law, and hence what impact the legislation has had in promoting accountability and transparency (for example, Open Society Justice Initiative [2006]). There are two sets of problems with this process, the first of which has to do with the question of data quality (clean or messy), and the second to do with the epistemological issues already referred to above.

Data collected in South Africa in the so-called ‘Section 32’ reports that are submitted by all public bodies to the South African Human Rights Commission (SAHRC), exhibit serious difficulties. These data, which are certainly experimental rather than observational, are incomplete (not all public bodies in fact report), as well as probably incorrect (some of the definitions in the Act are ambiguous and are probably being interpreted in different ways). The SAHRC is not involved in any pre-processing of the disaggregated data, simply taking what is submitted and tabulating it.

The gathering of these figures is evidently the expression of a commendable desire to measure the degree to which state bodies are complying with the law by providing requested information to citizens. Underpinning this desire, however, is the positivist assumption that statistical data do in some sense constitute an objective representation of reality. The reports—when they are published—are seen as reflecting, however crudely, the *actual willingness* of public institutions to comply with the legislation. Indeed, the SAHRC is quite clear on this point when it complains that the total number of

... public bodies submitting ... reports continues to remain low ... the result of the Commission not obtaining a greater number of reports is that *the extent of use of PAIA by the public cannot be accurately and comprehensively ascertained*. (SAHRC 2005: 85–86, emphasis added)

This statement clearly implies that had all public bodies submitted reports, then it would be possible to ascertain “accurately and comprehensively” the extent of public use of ATI. There are both epistemological as well as technical reasons why this is unlikely. First of all, by the SAHRC’s own admission, no pre-processing or cleaning up is carried out on the data before they are published, even when it is known with certainty from independent sources that the data set is incomplete:

Resource constraints have meant that the veracity of reported statistics cannot be tested. This inability to test the accuracy of reports means that many public bodies submit reports reflecting zero returns, *despite evidence from*

*civil society organizations that requests had indeed been lodged with the specific public body.* Such limitations defeat the objectives of the legislation and the monitoring of compliance. (SAHRC 2010: 150, emphasis added)

The SAHRC has no remedy if a public body fails to return a report or returns a report that is manifestly inaccurate. It seems likely that other African countries will also face similar difficulties in collecting compliance data, especially in circumstances where poor compliance is the result of opposition to the law, making the assessment of ATI impact even more difficult. This is a matter that merits serious and urgent investigation.

### STATISTICAL POSITIVISM IN ATI

The expression statistical positivism refers to the idea, expressed in the quotation at the head of this chapter, that by quantifying things, researchers are uncovering an ‘underlying reality’ in a more or less unproblematic way. Popular cynicism towards statistics is encapsulated in such clichés as ‘lies, damned lies and statistics’ and ‘you can prove anything with statistics’. But to believe that statistical data are invariably suspect is just as naively positivist as to believe that they can always be relied upon as neutral, factual, and free from ideological taint. What is required, and especially in the field of ATI, is a systematic methodology that analyses distortions that aggregated ATI statistical data can disguise. The concern is not so much that statistical data are *never* to be relied upon, but that *even when social scientists command sufficient technical skill to adopt a critical attitude to quantification*, they too often fail to do so. As Irvine et al. have pointed out, “the complex statistical end-product is ... more in need of being explained than either being taken for granted or dismissed” (1979: 3).

This is not the place to rehearse in detail the history of the epistemological debate, first around positivism itself in the social sciences, and second about the specificities of statistical methodology within it. However, some key points of reference need to be indicated. In the late 1970s a vigorous critique of what Hindess (1973: 10) famously called “the vulgar positivism” of “orthodox methodology” in statistics began to emerge. The orthodoxy referred to consisted of two related epistemological components: the idea that the social sciences must appropriate methods from, for example, physics and chemistry (methodological naturalism); and a concept of science based on the identification of universal laws, the

ability to predict outcomes, observation through the senses, and the collection of theory-neutral data (Keat 1979: 75–78). Statistical data, quantification, numbers: all these served to support the claim that the social sciences were in reality as *scientific* as any other disciplines:

... it is easy to see how the use of statistical data and techniques in the social sciences *could come to be seen as actually demonstrating their scientificity*. (Keat 1979: 78, emphasis added)

Historically, the critique of statistics developed within the broader movement for recognition that science and technology are social products (Griffiths et al. 1979: 339–378). It has been particularly but not exclusively associated with the journal *Radical Statistics*, which is still being published, and has covered the uncritical use of statistical data not only in sociology but also in other disciplines such as geography. The points made were often of general application:

The positivist approach is suited to and often assumes a closed system and does not consider the difficulties of quantitative modelling of open systems ... [T]here are two conditions that must both be satisfied for a closed system to exist. These are that there must be no change in the object possessing the causal powers and that the relationship between the causal mechanism and those of its external conditions must also be constant. From this definition it is clear that social science research involves open systems because humans have the capacity to change and human actions have the capacity to alter the configuration of systems ... (Marshall 2006)

Locating work with ATI statistical data in the broader framework of a relatively sophisticated analysis of ways in which they are not neutral, not given, and problematic requires a level of technical statistical competence from social science practitioners. However, in countries such as the United Kingdom, it has been clear for some years that quantitative methods are often regarded with suspicion by sociology students and are inadequately taught in the social sciences generally (Williams et al. 2008). The problem can therefore be broken into two closely-linked aspects: social science analysts are frequently not critical enough *epistemologically* about their data; and second, they lack the high level of technical numeracy needed to adopt such a critical stance effectively. Given that truly *local* social sciences are some distance from being realized in African universities and research councils, it is clear that deficiencies in quantitative method that affect the metropolitan countries are likely to reproduce themselves in the peripheries.

## CONCLUSION

What does all this mean in the field of ATI statistical analysis, especially in African countries? What is to be measured, and how effectively can measurement be done? Several problems related to the definition and measurement of 'success' under an ATI regime have been recognized for some time. Indeed, an entire working group session was devoted to the theme at the International Conference on the Right to Public Information, held in the United States in 2008. Among the questions posed were the following:

Some ATI laws identify various policy objectives ... others simply refer to guaranteeing access to information ... Should we even attempt to assess how ATI laws are operating in practice and what their various impacts have been? What if we are not measuring the right impacts, or not capturing positive impacts other than those originally identified? ... [but] if we do not undertake some sort of assessment, how do we know that ATI laws are ... delivering on their promise of access to information? ... how do we counter complaints that ATI regimes are costly, resource-intensive and complicated to administer if we cannot demonstrate that the benefits justify and even outweigh the costs in a democratic society? ... can we identify a shared definition or understanding of what constitutes a 'successful' ATI regime? ... what are useful indicators and measurement techniques for assessing impact? (Horsley 2008: 1)

This goes right to the heart of the difficulty: the claims made for the effect of ATI legislation impose a responsibility on those making them to demonstrate the effect. But the responsibility is not an easy one to satisfy. ATI indicators, even relatively straightforward ones such as compliance statistics, are made up of a complex matrix of objective and subjective factors; outcomes are especially hard to measure and quantify. This is true of political rights in general (Thede 2001: 260). As we have seen, there are both methodological and theoretical problems in compiling and using statistical data on ATI, especially in African countries, and it is essential that caution be exercised before easy conclusions are drawn. The usefulness of ATI quantitative indicators lie in their deployment within contextual, qualitative analyses of conditions within specific African jurisdictions: the numbers, most assuredly, do not and cannot speak for themselves. In addition, the same "combinations and types and sources of data" cannot easily be used to construct comparative studies across, for example, Francophone and Anglophone countries: the variables in specific jurisdictions are simply too many and too complex (Thede 2001: 259). Statistics "are not *collected*, but *produced*; research results are not *findings*, but *creations*" (Irvine et al. 1979: 3, emphasis in original).

The absence of theoretical work on exactly how ATI compliance and ATI behaviours can be turned into something measurable (and hence, presumably, manageable) is partly the outcome of the often adversarial relationship between advocacy campaigns and government institutions, and partly a feature of a larger problem faced in the quantification of concepts such as democracy, transparency, accountability, and human rights. As Thede (2001: 265) has pointed out:

There appears to be no general agreement even on what an indicator is. The UN ... defines an indicator as 'a variable or measurement, conveying information which may be qualitative or quantitative, but consistently measurable'. In practice however, we find not measurable indicators at all but rather factors or phenomena that require rigorous unpacking in order to arrive at anything that could conceivably be consistently measurable.

This is a warning that researchers in the field of African ATI will do well to heed. Scholars and activists need to develop and deploy a much more sophisticated understanding of basic statistical techniques and the capacity to both read and critique numerical data before embedding it in qualitative analyses as evidence for specific theses.

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*Edited by*

Fatima Diallo  
Richard Calland



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