

There has been access to information case law precedents in three out of the six countries in which the **Right to Know, Right to Education Project** is being implemented. The number of case law precedents at the time the baseline was conducted was four each for Ghana and Uganda and one in Kenya.

Table 3: No of case law precedents that establish the right of access to information

COUNTRY	RESULTS
Ghana	4
Kenya	1
Malawi	0
Swaziland	0
Uganda	4
Zambia	0

Source: Secondary desk review data provided by country partners and secondary analysis done by the Open Democracy Centre (ODAC) in 2009.

The number of written and oral submissions was highest in Malawi with eight and Uganda with seven. Both Kenya and Zambia received two submissions. Ghana received one submission and Swaziland had none.

Table 4: Number of written and oral submissions on national budget including education budget made to Government and Parliament in 2009

COUNTRY	NO. OF SUBMISSIONS
Ghana	1
Kenya	2
Malawi	8
Swaziland	0
Uganda	7
Zambia	2

Source: Primary data provided by **Right to Know** country partners.

Table 5: Existence of access to information legislation

Stage of ATI Legislation	Ghana	Kenya	Malawi	Swaziland	Uganda	Zambia
Constitutional guarantee of the Right to Access to Information	✓	✓	✓	✓	✓	
Information Policy	✓	✓				
Draft ATI Legislation	✓	✓	✓	✓		✓
Legislation Passed					✓	

How can parliamentarians use the African Charter on Democracy, Elections and Governance to advance the right to education and the right to information?

The principles in Chapter 3, Article 3 of the AU Charter on Democracy, Elections and Governance aspire to achieve the same principles and objectives as the Right to Know, Right to Education Project.

- **Gender equality** – The **Right to Know, Right to Education** Project promotes enhanced participation and active input of female parents in School Governing Bodies (SGBs).
- **Effective participation** – The project primarily focuses on ensuring the active participation of citizens in democratic and development processes, in particular, as far as SGBs are concerned and in policy-making processes, especially the education budget.
- **Transparency and fairness** – The project highlights the importance of transparency in the management of schools but most importantly in the education budget.
- **Accountability and anti corruption** – The **Right to Know** aspect of the project also condemns corruption and also emphasizes the need for accountability in the public service, especially on education and budget matters.

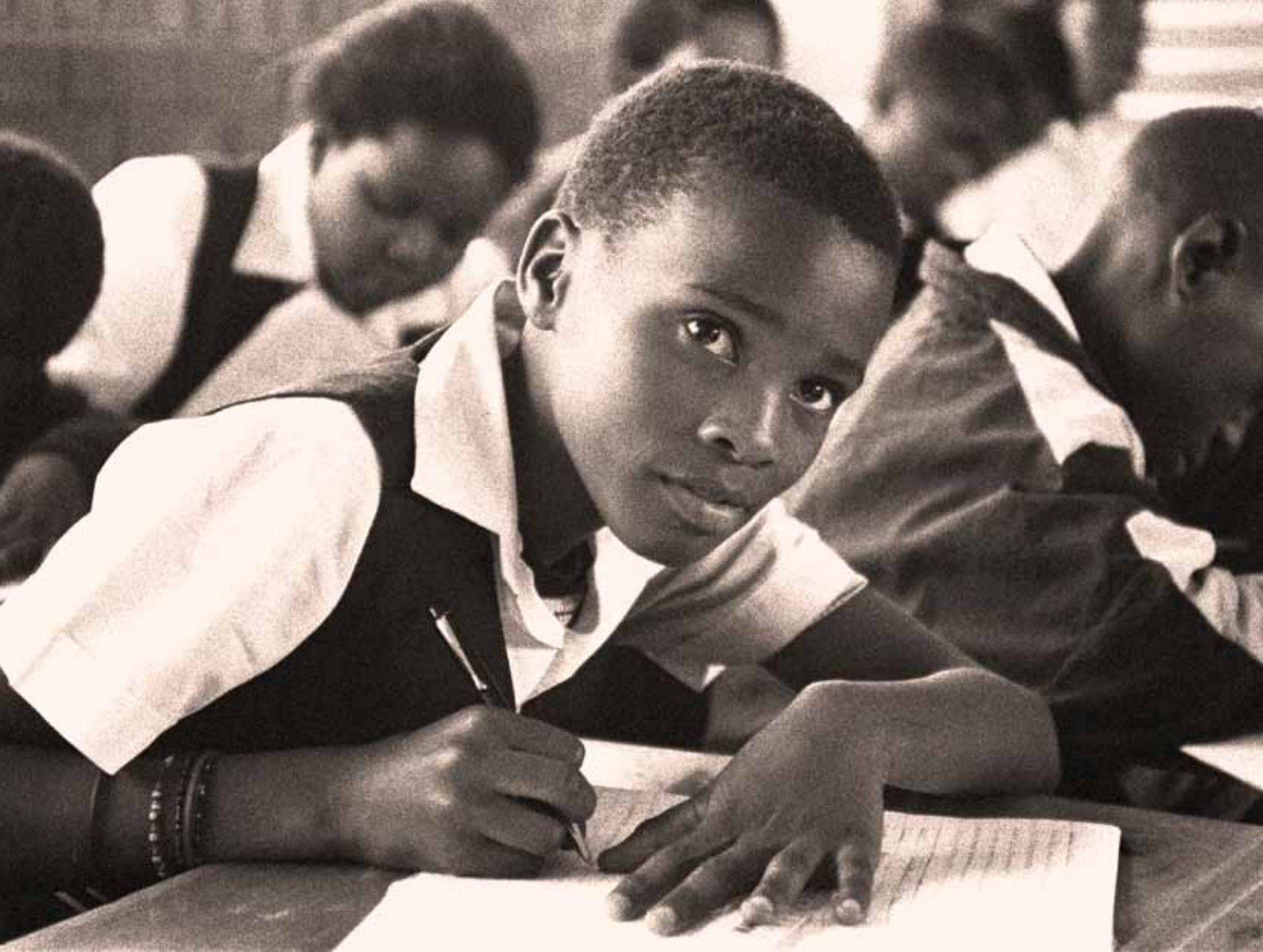
Chapter 10 of the AU Charter’s framework for cooperation with Regional Economic Communities mirrors the Right to Know, Right to Education’s regional level advocacy objectives, in particular Article 44B.

- The **Right to Know, Right to Education** Project aims to participate in and influence regional bodies on the African continent such as SADC, ECOSOC, ECOWAS, PAP and MDG country-specific education committee meetings on regional education policies.
- Further, the access to information focus of the project promotes coordination, evaluation and monitoring of implementation of commitments by member states, including the AU Charter towards massive participation of stakeholders, particularly CSOs. The project has highlighted the lack of formalized relationships and formal cooperative agreements for progressive educational policies with regional institutions as a particular challenge on the continent.

Role of AU and PAP parliamentarians and other policy-makers:

- Proactively engage in the issues as they relate to the **Right to Know** Project;
- Actively advance the aims and goals of the **Right to Know** campaign;
- Disseminate/publicize the objectives of the **Right to Know, Right to Education** Project;
- Formulation: Parliamentarians should press for wider consultations, transparency and production of comprehensive documentation to support budget allocations;
- Approval: Allow CSOs to develop position papers containing alternative budget proposals; dialogue with Parliament, introduce hearings;
- Implementation phase: Also referred to as the Budget Execution stage. Parliamentarians should advocate for education and the access to right to know issues within the context of the approved funds in the budget. It entails implementation, performance monitoring, control of projects and generation of informative reports.
- Execution: During auditing of the financial statements, parliamentarians should ensure proper accountability; for the public record the auditor should be independent. The auditor general should also interface with citizens e.g. using a whistleblower toll-free line.

For further information please contact Francina Mhundwa on: tel: +27 0(12) 392-0624 or email fmhundwa@idasa.org.za



Economic Governance Programme

The mission of the Economic Governance Programme is to democratize economic decision-making processes and resource management though citizen engagement to achieve sustainable socio-economic justice.

The **Right to Know, Right to Education** Project aims to broaden and improve access to basic education in sub-Saharan Africa by linking capacity building, training advocacy and policy dialogue. This is done through a fully fledged integrated strategy to make interventions in the following areas:

- Transparent and participatory budget processes;
- Quality basic education;
- Access to Information; and
- Parental involvement in local school governance.

The mission of Idasa

Idasa is an African democracy institute building sustainable democratic societies in collaboration with African and global partners.

Idasa is an independent public interest organization committed to promoting sustainable democracy based on active citizenship, democratic institutions and social justice.

Idasa promotes

- Accountability
- Active Citizenship
- Constitutional reform
- Democratic Elections
- Equality
- Human Rights
- Social Justice
- Peace Building & Dialogue
- Effective Political Governance

Principles of access to information

Access to information is an important component of the international guarantee of freedom of expression which includes the right to seek and receive, as well as to give, information and ideas. The 1946 United Nations General Assembly adopted Resolution 59 (1) which stated:

- Freedom of information is a fundamental human right and the touchstone of all freedoms as stressed by the UN Special Rapporteur on Freedom of Opinion and Expression Report. Freedom of information is understood as comprising the right of citizens to access information held by government ministries and local authorities.
- Second, there is an obligation that government and local authorities allow for easy access to information already in the public domain, for example by ensuring that it is available in published format, simple language or through the Internet.
- Third, freedom of information acts should not be a constraint on the civil servants and staff should not be prosecuted for disclosing information, in particular where this is in the public interest.
- Fourth, freedom of information should ensure that governments do not interfere with the flow of information to the public to journalists and from journalists to the public. This implies that journalists should not be required to disclose the identity of individuals who have provided them with confidential or sensitive information.

Right to access to information and the right to quality basic education

Government may have excellent policies providing for citizen right of access to free quality basic education, but citizens cannot enjoy this right when they do not have access to these policies or even information on how these policies practically affect them.

Similarly, where community level schools are ready and capable of delivering quality basic education, but this information and a record of the schools performance is not available to members of the community, this could prove to be a barrier to access.

It is therefore the responsibility of government, quasi government institutions and its private agents to disseminate information to citizens on their rights entitlements. This responsibility includes the duty to compile and disseminate information on the extent to which government is capable and is delivering on these rights obligations (performance reporting).

Upon assessment, there should be avenues through which government can change course where policy implementation is unsuccessful, take remedial action or compensate those who have suffered losses as a result of bad policies. There should be an open and transparent process through which citizens participate in this exercise and give feedback (possibly through public hearings).

The link between access to education and access to information

Access to information as a right is often overlooked as not being critical in bolstering basic human rights yet it can be greatly utilised in the realisation of other basic rights. Access to information has a strong role as a leverage right to bring about peoples demands to rights such as basic education. In some of the most famous right to information cases the right had been realised in order to promote socio-economic rights. Not only does the right to information offer a premise to boost education as a right but is also an effective tool to use in the evaluation of the quality of the education that is being provided.

Access to information can assert basic educational rights through a number of measures. The **Right to Know, Right to Education** project emphasizes that access to information can secure access to education in the following ways:

- Access to national, district and school budgets;
- Increase in female participation in school governance structures;
- Increase in the role and responsibilities of parents in their children's education through information on school practices;
- Increase of district officials' willingness to disseminate information that pertains to the schools;
- Encouraging a culture of seeking information and sharing lessons learnt throughout schools and districts.

Summary of the baseline survey

In its initial stage, the **Right to Education** project conducted a baseline survey in 2009 to assess the state of basic education provision in the six African countries where the project is being implemented. The findings of the baseline revealed:

Access to education

Among the **Right to Know** partner countries, only four out of six have basic education enshrined as a right in their constitutions. These are Malawi, Ghana, Swaziland and Uganda. Although the other two countries, Zambia and Kenya, do not have the privilege of having the right of access to basic education enshrined in their constitutions, Zambia is a signatory to the international policy instruments and in Kenya this right is secured through an act of law.



Provision of basic education

The extent to which basic education as a right is provided varies across different countries. It is free and compulsory in Malawi, Ghana and Uganda. According to the provisions of the Swaziland Constitution, basic education is neither compulsory nor free. Basic education is prescribed as free in the constitutions of Kenya and Zambia.

Table 1: Adherence to the principles of free and compulsory basic education

Status	Compulsory	Non-compulsory
Free	Malawi Ghana Uganda	Kenya Zambia
Not Free		Swaziland

Table 2: EFA indicators in **Right to Know, Right to Education** countries

Country	Net enrollment rate	Girl/boy enrollment ratio	Retention rate	Pupil/teacher ratio
Ghana	89	0.97	89	34
Kenya	92	0.95	83	44
Malawi	87	0.84	43	67
Swaziland	84	1.09	82	33
Uganda	89	0.98	49	57
Zambia	103	0.97	89	55

Access to information as a citizen right

The importance of access to information and its importance to socio-economic development cannot be overemphasized. It is therefore cause for concern that only Uganda has passed an access to information law. All the remaining participating countries are in the process of considering draft access to information legislation. There are various challenges that prevent effective access to information legislation, such as:

- The presence of laws that limit proposed bills (e.g. those related to public/state security);
- Operational hurdles (for example, legislation not being applicable to court records in pending cases);
- The perception that media groups would use the law for their own purposes.

Information policies and dissemination mechanisms vary in each partner country, from whistleblowers acts to ministries of information. In addition, there seems to be a low level of influence on right of access to information in determining public policies in the target countries. All participating countries, except for Ghana and Malawi, have examples of litigation directly addressing the right to basic education, but none of them have addressed the minimum content of basic education. Again, as for case law precedents in the right to information field, Malawi, Swaziland and Zambia stood out as not having had any cases on right of access to information litigation.