



Republic of Malawi

NATIONAL ACCESS TO INFORMATION POLICY

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FOREWORD

Freedom of information, including the right to access to information is widely recognised under international law as a fundamental human right that lies at the heart of democracy and respect for human rights.

Like many mature democracies, Malawi has enshrined as a human right, in Section 37 of the Constitution, the right of access to information held by public bodies, to be enjoyed by every person in the country.

Government is the custodian of most of the information that people need in order to effectively and efficiently participate in national development and governance.

The Malawi Government, has developed the National Access to Information (ATI) Policy to guide the process of wider public knowledge about governance and democracy, and the right of Malawians to make their choices and decisions freely, thus increasing the capacity to enjoy fundamental freedoms. The National ATI Policy will govern the provision of access to public information which is essential for promoting civil, political and socio-economic rights, as well as promoting accountability, transparency and participatory development and governance.

The Malawi Growth and Development Strategy (MGDS) II recognizes information as crucial for socio – economic development of the country. Popular participation of citizens in development, governance and democratic processes will increase if the population has access to timely and relevant information. This Policy, therefore, has been developed in line with MGDS II.

The success in implementing the National Access to Information Policy will mainly depend on the involvement and participation of all Government Ministries, Departments and Agencies, other public institutions, the media and many other stakeholders including Civil Society Organisations. It requires concerted and team effort from all partners, especially those identified in the Policy itself.

I wish to express my sincere gratitude to all the organisations and individuals who have been involved in the development of this ATI Policy for their immense contribution.



Brown James Mpinganjira
**MINISTER OF INFORMATION
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PREFACE

There are a number of reasons for the growing global acceptance of freedom of, and access to, information as a human right. The National Access to Information Policy is a very important mechanism for promoting and maintaining participatory democracy and an informed, enlightened society. Information empowers citizens to make informed choices and decisions about their lives and consequently their participation in national development and governance.

The legal instruments, both local and international, governing access to information are, therefore, premised on the fundamental principle of functioning democracy; that the governing hold power on behalf of the governed, that public bodies hold information on trust for the citizens of any nation.

Access to Information (ATI) is recognised internationally as a vital tool for fostering other social benefits such as access to education and health care, gender equality, children's rights, potable water, clean environment, sustainable development and the fight against corruption.

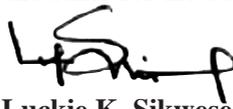
It is a fundamental human right which consists of the right to seek, access and receive information from public bodies and private institutions which deal with Government or carry out public functions; and the their duty is to provide such information.

The National ATI Policy, therefore, provides directions as to how public information should be managed and given out to the public to enhance popular participation in development. It promotes a culture of openness in Government and public bodies and all those who deal with Government. The spirit of transparency and accountability breeds good governance.

It is important that a strong partnership should exist among all Government Ministries, Departments and Agencies and other institutions that deal with Government and all major stakeholders in the implementation of this National Access to Information Policy.

I believe that this policy will give guidance on the management and disclosure of public information, in the absence of an overriding public interest in non-disclosure and on the exceptions for withholding certain information.

I trust that the National Access to Information Policy will not only help promote open government but that it will help citizens fully realise their right to access public information and enjoy the same for the development of individuals and communities in the country.



Luckie K. Sikwese
SECRETARY FOR INFORMATION
AND CIVIC EDUCATION

LIST OF ABBREVIATIONS AND ACRONYMS

ACHPR African Charter on Human and Peoples' Rights

ATI Access to Information

ICT Information and Communication Technology

MGDS Malawi Growth and Development Strategy

MITA Malawi Information Technology Agency

DEFINITIONS

In this Policy:-

“information ” means any material which communicates facts, opinions, data or any other matter regardless of its form, characteristics or when it was created;

“private institution” means any individual natural or legal person who holds information on members of the public, carries on any business that directly affects the public, or is wholly or partly funded by public funds .

“public information” means information held by public authorities and private and non-profit organization that performs public service or function

1. INTRODUCTION AND POLICY BACKGROUND

The National Access to Information Policy shall govern the provision of access to public information to enhance participatory democracy and good governance. In Malawi, the history of public access to information held by the State and its organs reflect the country's political and economic past. The colonial administration and later the one-party system of government did not provide for public access to information as a right. On the contrary, numerous policies and laws emphasized confidentiality and official secrecy which prevented the citizenry from accessing necessary and vital information crucial to making informed choices and decisions.

The 1994 Constitution radically departed from this position by expressly providing in Section 37 that public access to information held by the State and any of its organs is a human right. However, the constitutional guarantee of the right to information is not underpinned by any policy framework. Consequently, the granting of access to information by Government and other institutions is *ad hoc* and lacks consistency. This situation impedes the amount and quality of information that is made available to the public and limits the extent and quality of participatory development and governance.

LINKAGES WITH OTHER POLICIES

The National Access to Information Policy is linked with international instruments that promote people's freedoms and good governance all over the world. This policy is, therefore, linked with the United Nations Universal Declaration of Human Rights as well as the African Charter on Human and People's Rights. The two instruments specifically spell out people's access to information as a right in Article 19 and Article 9 respectively.

Locally, this National Access to Information Policy is linked with the Constitution of the Republic of Malawi, the Malawi Growth and Development Strategy (MGDS) II and the National ICT Policy.

Section 37 of the Constitution provides for access to information held by the State and its organs as a right for every citizen. The MGDS II identifies free flow of information as a mechanism for consolidating democracy. The long term goal of this policy, in tandem with the medium term expected outcome of the MGDS II, is to foster a well informed public that is able to participate in national development. Malawi has a National ICT Policy that guides and regulates information and communications technology such as telecommunications, postal and broadcasting as well as spectrum management. Through the National ICT Policy, the fundamental aim of the Malawi Government is to ensure that

a full range of modern information communications services is accessible and fully utilized by the whole population of Malawi.

Access to Information is a cross-cutting issue, as such the National ATI Policy will facilitate successful implementation of Government sectoral policies and development initiatives.

2. PROBLEM STATEMENT

Most of the information which members of the public require to access in order to participate effectively in national development is held by Government and other public bodies. However, some information relevant to community and national development is held by private and Non-Governmental Organizations. Due to prevailing weak systems of public information and obligations to publish such information, there is a perception that public officials willfully withhold information. This perception arises from a number of factors which include the following:

- The absence of policy and law on access to public information governing the process and scope of access to information including, but not limited to, institutional arrangements and costs;
- There has been no policy or statutory framework that provides guidance on the nature of the information that can be accessed or remedies in the event that access has been denied;
- Provision of information to the public by Government and other officials is so far inconsistent and is *ad hoc*. This impedes the amount and quality of information that is made available to the public, thereby limiting the extent and quality of their participation in governance and national development;
- Lack of an institutional framework and systems for management of information hamper effective and efficient dissemination of public information; and
- Public officials charged with the responsibility of giving out information do not do so because of the prevailing culture of official secrecy.

Access to information is a very effective element in promoting participatory democracy and effective decision making. It is also essential to fostering demand for accountability from public officials at all levels and in assessing the performance of Government. This policy document provides broad policy directions, key objectives and key priority areas in relation to access to public

information, implementation arrangements and the associated monitoring and evaluation plan.

RATIONALE FOR THE ACCESS TO INFORMATION POLICY

Most of the information which members of the public require to access in order to participate effectively and efficiently in national development is predominantly held by Government and other public bodies. In the absence of a policy and legal framework to govern the access to public information, millions of people would remain on the periphery, unable to democratically contribute to democracy and development, or make public servants account for their decisions and actions.

The National Access to Information Policy aims at governing the process of granting access to public information as well empowering the citizenry to demand their right to access information held by Government and its institutions.

3. BROAD POLICY DIRECTIONS

3.1. *Overall Policy Goal*

The overall goal of the National Access to Information Policy is to have a public that is well informed to participate in national development and governance.

3.2. *Policy Outcomes*

The expected outcomes of the Policy are:

- 3.2.1. Efficient and effective information administrative and management structures and systems for management and administration of information for easy access by the public.
- 3.2.2. Adherence to procedures for granting and accessing information held by public, private institutions and Non-Governmental Organisations.
- 3.2.3. Lawful and fair exercise of discretion in responding to requests for access to information held by the State and other institutions.
- 3.2.4. Clearly defined scope of State information which may not be accessed by the public.

3.3. Policy Objectives

The objectives of the Policy are:

- 3.3.1. To facilitate provision of public information by Government and other institutions;
- 3.3.2. To ensure statutory and regulatory compliance of the relevant sections of the Constitution; and
- 3.3.3. To provide a framework for developing the Access to Information Legislation.

4. POLICY PRIORITY AREAS

The problem of access to information is evidenced in a number of facets that are presented as policy priority areas. The Policy Statements associated with these priority areas contribute towards providing solutions to the problem. The policy priority areas include systematic storage of public information; institutional coordination; awareness on access to public information; and, transparency and accountability.

4.1. Systematic Storage of Public Information

Systematic storage of public information entails storing and preserving public records in a form that is easily accessible by the public. The available public information is not well organized and not properly preserved to facilitate easy access by the public. In addition, technology developments have provided opportunity for new forms of storage that make storage of information much easier. Government, public and private institutions; and Non-Governmental Organisations shall keep information in an accessible form.

Policy Statement

The Policy will promote setting up a comprehensive and modern system for organization and preservation of public information.

4.2. Institutional coordination

Institutional coordination refers to the arrangement where all Government Ministries, Departments and Agencies have a relationship for sharing information in their custody since information held by one institution may affect or be affected by another institution. Information held by a particular Government

Ministry, Department or Agency is a monopoly of that particular institution. A request for information may not be satisfied by one Ministry, Department or Agency since the requested information might be in the custody of another public institution.

There is, therefore, need for building a relationship that facilitates flow of information between or among the concerned institutions.

Policy Statement

The policy will provide for establishment of a function within the existing public institutions for management and coordination of public information.

4.3. Awareness on Access to Public Information

Awareness on Access to Information means that the people are fully aware that they have a right to demand information from public institutions as provided for in the Constitution of the Republic and that public officers have the obligation to grant information when requested. The Malawi public has the right to access public information.

Access to information as a right is relatively unknown and seldom demanded. In addition, officials in charge of such information do not feel obliged to provide the information demanded by the public.

The public, therefore, must be fully aware that they have a right to demand access to information held by the State. The principles, norms and rules that govern public access to information must be articulated and communicated to relevant public officials and institutions. These relate to the duty to grant access and the exercise of discretion in deciding on requests for access.

Policy Statements

- (i) The Policy will encourage the design and implementation of civic education programmes to create and raise awareness among members of the public and public officials on the right of access to public information.
- (ii) The Policy will promote training of custodians of public information on administration, management and dissemination of public information.

4.4. Transparency and Accountability

Transparency and Accountability entail that applications for access to information must receive efficient and effective responses. If decisions are made to deny access to public information, officials and institutions that make the decisions must give reasons for denying access.

Absence of set legal and administrative procedures for granting access to public information results in lack of transparency and impartiality in providing public information.

Public servants, as custodians of public information, have the obligation to be transparent in, and accountable for, the discharge of their duty to grant access to information in appropriate cases.

Policy Statements

1. The Policy will provide for the enactment of the Access to Information legislation which clearly provides for the establishment of an Independent Information Commission to adjudicate on matters related to access to information, including lawful and perceived unfair exemptions; and the scope of state information that may not be accessed including information relating to state, national security and defence; international relations, in particular information required to be held in confidence by international law and information that constitutes diplomatic correspondence exchanges with another state or with international organisation or official correspondence exchanges with diplomatic missions or consular posts or country, information that is likely to endanger the protection of life, health and safety of an individual and other legally-privileged documents.
2. The Policy will promote establishment and enforcement guidelines through development of Service Charters to ensure prompt, efficient and effective responses to requests for public information.
3. The Policy will promote proactive provision of objective, timely, accurate, clear and complete information to the public about Government policies, programmes, services and initiatives.

4.5. Financing Arrangements

Successful implementation of the National Access to Information Policy shall require financial resources. Presently, Government Ministries, Departments and Agencies are directing their resources towards their core functions. The danger

is that even with the policy in place, activities for implementing the policy may not be given priority.

There is therefore need for sustainable provision and allocation of resources for implementation of the National Access to Information Policy.

Policy Statement

The Policy will promote and encourage financing of the implementation of the National Access to Information Policy by Government and other Stakeholders.

5. IMPLEMENTATION ARRANGEMENTS

Information is a cross-cutting resource which facilitates functions of all organizations and individuals in both the public and private sectors. However, in this Policy only those organizations and sectors that play key roles and assume fundamental responsibilities are included in the institutional arrangements for administration and management of access to public information. This section briefly defines institutional roles and responsibilities which will facilitate efficient, effective and accountable provision of access to information.

5.1. Institutional Arrangements

5.1.1. Ministry responsible for Information and Civic Education

The Ministry will be responsible for the provision of policy direction on the management and administration of access to public information held by Government or other agencies. The Ministry will coordinate the implementation of the Policy as well as monitor and review policy implementation

5.1.2. The Independent Information Commission

The Independent Information Commission will be responsible for regulating the transparent provision or denial of access to public information.

5.1.3. *Ministry responsible for Local Government*

The Ministry responsible for Local Government shall facilitate implementation of Access to Information Policy among local authorities.

5.1.4. *Other Government Ministries, Departments and Agencies*

Government Ministries, Departments and Agencies, as well as Local Authorities shall be responsible for their roles specified in the Implementation, Monitoring and Evaluation Strategy document. Besides they will be responsible for collecting, organizing and storage of relevant public information pertaining to them.

5.1.5. *Other Implementing Agencies and Institutions*

A wide range of public and private sector actors will participate in the implementation of the National Access to Information Policy.

5.1.6. *Development Partners and International Agencies*

Development partners will assist in providing technical and financial support for the establishment of information administration and management systems which are conducive to the efficient and effective processing of requests for access to information.

5.1.7. *Malawi Information Technology Agency (MITA)*

MITA will provide technical capacity for systematic, efficient and effective storage, management and dissemination of public information.

5.2. IMPLEMENTATION PLAN

All priority areas will be implemented concurrently according to the action plans. A detailed implementation arrangement is presented in the separate Implementation, Monitoring and Evaluation Strategy document. An Access to Information Master Plan will be developed to expand and make the Implementation, Monitoring and Evaluation Strategy more comprehensive.

5.3. MONITORING AND EVALUATION

The implementation of the Policy shall be monitored and evaluated for effectiveness and responsiveness in meeting intended goals and objectives. Monitoring will be done on a regular basis as may be determined. Evaluation shall occur less frequently than monitoring and shall look at the bigger picture to assess whether and to what extent policy implementation has succeeded in making the intended impact. A Monitoring and Evaluation Plan with performance indicators will be developed.

The public shall be appraised on the decisions made by public officials and institutions to release or withhold information that they hold on its behalf. This requires a system of regular reporting by institutions that administer and enforce the Policy and the Law governing access to information. Relevant institutions must be required to regularly report to the people, either directly or through Parliament, on the quantity and quality of decisions made on specific requests and the financial and administrative costs of administering and enforcing the Policy and Law.

During the life-span of the National Access to Information Policy, necessary periodic and regular revisions shall be made in relation to its key elements to meet changing developmental objectives and priorities as well as changes in the global economy and advances in the technological environment.

Periodic policy reviews will be carried out every five years. Therefore, the implementation Plan will be adjusted according to lessons learnt during the five years under review.

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