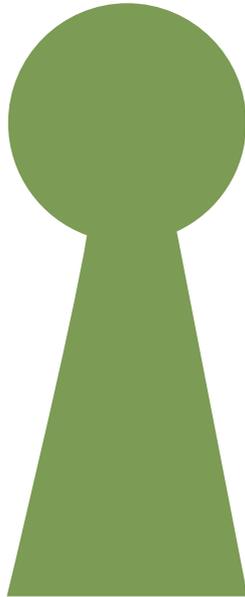




**RIGHT TO
INFORMATION
IN AFRICA**

MANUAL
FOR
JOURNALISTS



**RIGHT TO
INFORMATION
IN AFRICA** | MANUAL
FOR
JOURNALISTS

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PREFACE

Exercising one's right to information is the oxygen for democracy¹. It is fundamental to the realisation of economic, social and political rights and in facilitating people's ability to make informed decisions about their lives. Further, it is increasingly recognised as a prerequisite for democracy and accountability of governments and as a means of safeguarding citizens against mismanagement and corruption. The right to information is internationally protected in Article 19 of both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). On the African continent, it is codified in:

- Article 9 of the African Charter on Human and Peoples' Rights
- Article 19 of the African Charter on Democracy, Elections and Governance
- Articles 9 and 12(4) of the African Union Convention on Preventing and Combating Corruption
- Articles 10(3d) and 11(2i) of the African Union Youth Charter
- Article 6 of the African Charter on Values and Principles of Public Service and Administration
- Article 3 of the African Statistics Charter

As organisations which are committed to promoting good governance in Africa, the Africa Freedom of Information Centre (AFIC), Federation of African Journalists (FAJ) and fesmedia Africa of the Friedrich-Ebert-Stiftung (FES) are convinced that the right to access information in the public interest can be exercised in practice only if the public sector assumes its respective responsibilities under access to information legislation, and if civil society and journalists are active users of the system. For this reason, three training manuals directed at Public Officials, Civil Society and Journalists have been compiled into one work.

1 Article 19, preface to *The Public's Right to Know: Principles on Freedom of Information Legislation* (London: June 1999), 1.

The Right to Information in Africa - Manual for Journalists was conceived by AFIC, designed by FAJ and supported by FES. This manual was prepared by Dr. Fola Adeleke to whom we are grateful for his expertise and dedication, amongst others, in the areas of human rights, freedom of information and promoting transparency. We are grateful to FAJ members: Syndicat National des Professionnels de la Presse (SNPP) in the Democratic Republic of Congo, Nigeria Union of Journalists (NUJ) and to Sindicato dos Jornalistas Angolas (SJA) in Angola for pilot testing the draft manual with journalists to ensure its applicability throughout Africa whilst taking regional differences into consideration. The journalists who piloted the tool provided valuable inputs based on their specific country settings for which we are appreciative. Our thanks also go to the staff of AFIC, FAJ and FES who contributed their insights and support to this publication.

Our hope is that this manual will help journalists to incorporate access to information in their everyday work and to engage with governments and civil society in the common interest of development and prosperity for Africa.

Gilbert Sendugwa
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Africa Freedom of Information Centre

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Africa Director, International Federation of Journalists, and Head of Secretariat, Federation of African Journalists

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FOREWORD

I am pleased to present this Right to Information in Africa - Manual for Journalists, a collaborative effort of the Special Rapporteur on Freedom of Expression and Access to Information in Africa, the Africa Freedom of Information Centre (AFIC), the Federation of African Journalists (FAJ) and fesmedia Africa of the Friedrich-Ebert-Stiftung (FES).

Since the expansion of my mandate to include the right to information (RTI) in 2005, I have focussed a significant amount of attention on mobilising stakeholders for action to adopt RTI laws. This was necessary given that at the time only four countries – Angola, South Africa, Uganda and Zimbabwe – had adopted national laws. Under my leadership and guidance, we worked collaboratively with Member States, national human rights institutions, election management bodies and civil society to promote the adoption by the African Union of the Model Law on Access to Information for Africa and the African Platform on Access to Information (APAI) Declaration, both of which aim to promote the adoption of strong RTI laws, as well as improving the quality of existing laws.

In parallel to this, progress has been made in terms of the adoption of RTI laws, with the number of African countries having adopted such laws increasing from five in 2010 to 21 in 2017. I recognise the urgent need both to increase the number of RTI laws and to promote effective implementation and enforcement of these laws. I am pleased to collaborate with AFIC, CLD and FES in making this resource kit, comprising training manuals for civil society, journalists and public officials, available in the hope that it can help promote both of these objectives.

I hope that stakeholders across Africa will find this resource kit beneficial and use it to promote transparency and implement RTI laws to enable all African citizens to exercise their right of access to information.

Adv. Faith Pansy Tlakula
Special Rapporteur on Freedom of Expression and Access to Information in Africa
African Commission on Human and Peoples' Rights



“The truth is that the FOI Act isn’t used, for the most part, by ‘the people’. It’s used by journalists. For political leaders, it’s like saying to someone who is hitting you over the head with a stick, ‘Hey, try this instead’, and handing them a mallet. The information is neither sought because the journalist is curious to know, nor given to bestow knowledge on ‘the people’. It’s used as a weapon.”

(Former British prime minister Tony Blair in his memoirs *The Journey* 2005 p. 517)

INTRODUCTION

The right to information (RTI) is now well established globally and increasingly African governments are recognising the importance of this right and are passing laws that allow the public better access to information. As the right to information gains ground in Africa, fresh perspectives are needed on the importance and role of the media in advancing the right to information, either through their involvement in the campaign for the adoption of RTI laws or through usage of the law after implementation.

This training manual aims to:

- Increase participants' knowledge on the right to information;
- Encourage an understanding of the right to information as a tool for investigative journalism;
- Develop participants' capacity to promote the right to information;
- Reflect on the practical application of RTI laws in participants' own countries; and
- Define the role of journalists in promoting the right to information.

General note to facilitators

- *Always remember that your primary audience are journalists. As you train, provide story tips and examples of issues to be covered or uncovered. This will make the idea of access to information more relevant to their work.*
- *A list of reading materials should be provided to participants before the training so they have a basic understanding of the issues to be covered.*

GLOSSARY OF TERMS

<i>Access</i>	the process of obtaining information or records from a public or private body through a formal mechanism prescribed by law or policy.
<i>Access fees</i>	a prescribed fee payable to a public or private body for the purpose of producing, reproducing, searching or preparing a record for access.
<i>Application</i>	the process of applying to a court to obtain relief where there has been an unsuccessful request for access to a record or information.
<i>Date of submission</i>	the date on which a request for information is received by a body and the time from which an institution must count the days to respond to a request.
<i>Information</i>	includes any original or copy of documentary material irrespective of its physical characteristics, such as a record, correspondence, fact, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held, in the possession or under the control of the information holder to whom a request has been made.
<i>Internal review/appeal</i>	a process where a requester is dissatisfied with the decision on an information request and lodges an appeal to a higher authority within the institution.

<i>Person</i>	means a natural person or a juristic person.
<i>Private body</i>	in some instances, it can mean a natural person who conducts any trade or business; a body performing a public function; any institution that excludes a public body.
<i>Public body</i>	means any department of the state at a national, regional, state, provincial, municipal or local level or an institution that is performing or exercising a public power in terms of a constitution or applicable law.
<i>Record</i>	any information that is saved and is in the possession of a public or private institution regardless of the form or medium.
<i>Requester</i>	any person seeking access to a record.



TRAINING MANUAL INFORMATION

OVERVIEW

The aim of the right to information is to ensure the availability of information and the provision of equitable access to information to the general public.

Internationally, the right to information is recognised in Article 19 of the **Universal Declaration of Human Rights (UDHR)** and the **International Covenant on Civil and Political Rights (ICCPR)**.

In Africa, the right to information is recognised under Article 9 of the **African Charter on Human and Peoples' Rights (ACHPR)**, Article 19 of the **African Charter on Democracy, Elections and Governance**, Article 9 of the **African Union Convention on Preventing and Combating Corruption**, Article 10 and 11 of the **African Union Youth Charter**, Article 6 of the **African Charter on Values and Principles of Public Service and Administration** and Article 3 of the African Statistics Charter.

At a national level, 21 countries across Africa have developed access to information (ATI) laws. These are Angola, Burkina Faso, Ethiopia, Guinea, Ivory Coast, Kenya, Liberia, Malawi, Mozambique, Niger, Nigeria, Rwanda, Sierra Leone, South Africa, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda and Zimbabwe. While other African countries do not have an ATI law, there are strong direct constitutional guarantees for the right in certain countries. Other countries recognise the right through the protection of the freedom of expression and ratification of the listed regional and international laws.

Transparency is central to the full realisation of democracy in most African countries given the continent's historical context where several countries transitioned to democracy after decades of colonialism, war, one-party rule, military dictatorships and similar systems of government which hampered good governance. For the realisation of transparency, access to information is a vital mechanism through which active citizens, civil society and journalists can hold government accountable and ensure government works for the people.

In ensuring that the right to information attains its potential, it is important that the scope, methods of utilisation and the potential for realising societal change through access to information is developed. This manual, therefore, aims to develop journalists' understanding and knowledge on the right to information.

PURPOSE OF THE MANUAL

This manual provides a training framework for journalists in using RTI laws to execute their role as one of many custodians of democracy. The manual is intended to serve as a guide on exercising this right effectively and understanding the scope and extent of the right. The manual serves as a tool for training journalists in Africa and for the training of trainers (TOTs) on access to information for journalists. This manual is designed for journalists in all sectors, including print, electronic, social media, community journalists and citizen journalists.

STRUCTURE OF THE MANUAL

This manual is divided into seven chapters. Each chapter is divided into sessions and each session has a defined topic, aim and reflective exercise. Each session has a specific aim, which reflects the learning outcomes and contains information on the different methods that are recommended for use in each particular session. Each chapter has been organised to ensure the learning objectives are realised in a defined time frame with exercises to test the outcomes. Each session also provides reference notes for the trainer.

TIME FRAME

The estimated total time frame for this training is one-and-a-half days, divided into seven 90-minute sessions.

The actual time spent on each session will depend on the ability of the trainer and the speed at which the participants grasp the various learning outcomes. The pace at which the participants understand the issues will depend on various factors, including their level of education and experience as well as the group diversity of the trainees.

METHODOLOGY

The proposed training methods are participatory and can be achieved through various methods, including team work, group discussions, role plays and case studies. The methods chosen by the trainer will depend on the diversity of the participants in terms of education, experience and background as well as the numbers. The trainer should be flexible in terms of determining participants' energy levels in the training sessions and how to adapt the training to sustain their interest.

MATERIALS

It is recommended that trainers have the necessary materials at hand, such as flip charts and markers, to illustrate points, utilise Power Point presentations where necessary, distribute post cards for action points to be noted by participants and, where possible, screen video documentaries that show different case studies where the right to information has been used successfully in ensuring accountability.

It is important that all the necessary materials for the training are organised and prepared well in advance of the training.

CHAPTER ONE



ACCESS TO INFORMATION AND JOURNALISM

SESSION 1

ACCESS TO INFORMATION AND JOURNALISM



Time:
60 mins

AIM OF THE SESSION

To enable participants to identify the role that journalism plays in society; to contextualise the role that the right to information plays in the field of journalism; and to exemplify the interface between the right to information and journalism.

Content: Introduction: Access to Information and Journalism

Training Methodology: Facilitated discussions in plenary

Training Materials: Flipchart, markers, cardboard sheets, projector and laptop

Reading Materials: Ethical Code for Journalists adopted by the International Federation of Journalists (IFJ) in 1972 <http://www.ifj.org/about-ifj/ifj-code-of-principles/> and Journalists' Code of Ethics applicable in participants' countries

NOTE TO FACILITATORS:

Often in these kinds of trainings, participants will include both veteran journalists and 'green horns', as well as citizen journalists and freelancers who leverage and rely on social media for their professional activities. It is good practice to acknowledge the diversity within the profession and to encourage participants to learn from one another and to share their experiences.

To enable informed facilitation of the training, it is recommended that the trainer has some background information on the participants. In addition to carrying out a pre-assessment survey before training day, this can be achieved by asking the participants to introduce themselves, including their years of practice and their professional areas of specialisation.

This session will set the tone for the rest of the training and aims to show how the concept of access to information is embedded strongly within the journalism practice.

Journalism is regarded as the action of collecting, assessing, verifying, analysing and reporting news and information. Democratic societies are traditionally more open and journalists tend to flourish under these circumstances given the availability of more news and information. In addition, given the explosion of the internet age, there has been an increase in access to news and information on which journalists can report.

With the explosion of social media, the traditional journalism profession also needs to be dynamic in terms of responding to an age of instant delivery of information where news can also be generated by the general public. The role of journalism has become more important in an age of information technology where inaccurate news can also be easily generated and, as a result, the role of the 21st century journalist requires the provision of accurate and verified information to empower and inform the public and, where possible, to use the information in decision-making.

The commodity sold in information gathering is its accuracy, originality and timeousness. With this pressure, journalists can compromise their fact-and source-checking processes, resulting in a greater damage in a social context. Journalists therefore have to remain loyal to the public by putting the public interest first above their own personal agendas and beliefs, as well as profit-making.

As a result, journalists are expected to be all-inclusive in their news reporting to maintain credibility and social trust. While it may be a high task to expect journalists to be objective, the methods of information accumulation have to be objective. This objectivity is achievable through a process of verification of information as well as the independence of the journalist at all levels, including class, race, gender, religion and culture. Independence is different from objectivity or neutrality. Independence means respect for a traditional role that presents news and information accurately, without fear or favour. It involves the presentation of news and information that represent diverse views and interests within a clearly defined context.

The manner in which information is presented by journalists is very important. It must be presented in a way in which the context is understood and relevant to the public. To achieve this, the quality of the information presented is important. Quality of information can be measured based on the source of the information, the comprehensiveness and completeness of the information, and how verifiable or visible the information is.

All these qualities of journalism relate to the ethics and sense of responsibility to the wider public by the individual journalist. The age of information technology has removed from the journalist the decision on what the public can know. The role

of the journalist now goes deeper into helping the public understand the wealth of information now available and, more importantly, to verify the reliability of the information.

For the journalist to undertake this important role – the discipline of collecting, assessing, verifying, analysing and reporting news and information – the role of the right of access to information and ATI laws are very important.

For a long time, journalism has played a central role in disseminating information across society and has provided people with a lot of the information required to make critical decisions. The profession's prominent role in society has therefore supported the perception that RTI laws are actually media laws. Although RTI laws are not limited to the media, the media benefits considerably from the establishment of such frameworks at a national level. Although journalists have several ways of receiving information that they eventually disseminate to the public, RTI laws that are progressive and utilised properly, have the potential to advance the role of the journalist in obtaining information and, more importantly, verifying the information.

This manual, therefore, seeks to enable journalists to understand how ATI laws currently operate across Africa in order to enable them to take advantage of the RTI regime to provide knowledge through their stories. Access to information is now recognised as a human right for all and it is the role of the journalist to provide accurate and verified information to maintain public trust.

REFLECTIVE EXERCISE

Ask the participants to spend 30 minutes in groups identifying seven core principles of journalism and how better access to information can benefit news reporting and maintain an ethical responsibility to the public interest. Participants should also reflect on journalism in their countries and how important the profession is as a source of information for the general public

CHAPTER TWO



UNDERSTANDING HUMAN RIGHTS AND THE RIGHT TO INFORMATION

SESSION 1

UNDERSTANDING HUMAN RIGHTS AND THE RIGHT TO INFORMATION



Time:
90 mins

AIM OF THE SESSION

To review the concept of human rights and to identify the right to information as a human right.

Content: Access to Information within the Human Rights Framework

Training Methodology: Group exercise

Training Materials: Flipcharts, markers, cardboard sheets, projector and laptop

Reading Materials: Universal Declaration of Human Rights (UDHR), African Charter on Human and Peoples' Rights (ACHPR), African Platform on Access to Information (APAI) Declaration

PROCESS:

The participants should be divided into groups. Each group should think of a real-life scenario where information was used to stop or prevent human rights abuses or used to enforce a known human right. On the basis of these stories, how important is the right to access information?

NOTE TO FACILITATORS:

The objective here is to build participants' understanding of the meaning of the right to information within the broader framework of human rights. Open the session by asking the participants to discuss the various rights of which they are aware and their understanding of human rights.

The foundation of this training is the recognition that access to information is a human right. Understanding the underlying legal basis for human rights is central to asserting the enforcement of rights and obligations within the RTI framework.

The focus of this chapter is to develop the knowledge of participants by providing a brief background on the right to information.

The last two decades have seen the advent of constitutional democracy across most countries in Africa, which raised the hope for socially responsive governments. Constitutional democracy has different forms. While most States in Africa have supposedly elected governments, some are still regarded as undemocratic and, as a result, the process of democratisation in some African states is still ongoing.

The importance of the right to information is now well established globally with clearly articulated principles on the nature of the right in different international agreements. African States are also beginning to recognise the importance of this right in promoting transparency in government. The recent growth in the adoption of RTI legislation has in many ways been a result of advocacy campaigns in various countries which have pushed for more transparency and accountability in government, the influence of western governments in pushing agendas such as the Open Government Partnership, as well as developmental agencies and international financial institutions pushing for the adoption of this right to promote transparency and accountability as part of donor funding conditions.

It is accepted that every citizen in a democratic country has the right to information held by the State. This is seen as necessary for the principle of open government, which requires that the public be granted access to information for meaningful public debate on the conduct of government affairs.

The International Bill of Rights identically protects the right to access information under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

Over the years, the principles in support of the right to information have been debated. We now find, with the increased enactment by States of constitutional and statutory protections of this right, that the existence of this right is no longer in dispute.

Over the years, the principles in support of the right to information have been debated. We now find, with the increased enactment by States of constitutional and statutory protections of this right, that the existence of this right is no longer in dispute.

***“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”
Article 19 of the ICCPR.***

This provision has for years been the primary source of authority for RTI advocates in lobbying for the recognition of the right to information. The adoption of a broad interpretation of the phrase “right to seek and receive information” was accepted by the Inter-American Court of Human Rights (IACHR) in determining the case of *Claude Reyes v Chile* (2006) where the court interpreted Article 13 of the American Convention on Human Rights (ACHR) as protecting the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the ACHR.

Within the African human rights system, there is an express recognition of the right to information. Article 9 of the ACHPR provides that: “Every individual shall have the right to receive information and every individual shall have the right to express and disseminate his opinions within the law.”

Claude Reyes v Chile decision (2006)

Article 13 of the ACHR protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the ACHR, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.

In realising the right to information, the assumption is that human rights are important for the promotion of transparency and accountability. With regards to transparency, it is expected that having the right to information will serve as a check on government excesses and promote better service delivery. This is consistent with commitments made in African Union (AU) charters such as the African Charter on Values and Principles of Public Service Administration, which mandates States to institute national accountability and integrity systems to prevent corruption. The AU Convention on Preventing and Combating Corruption also recognises the fact

that corruption undermines accountability and transparency in the management of public affairs as well as development. Ultimately, transparency through access to information ensures that rights are safeguarded and government delivers public goods.

The right to information cuts across every sector in the public governance space. As a result, the principles that guide access to information can be found in several international, African and national instruments. The most significant of these principles have been extracted from their key documents as follows:

INTERNATIONAL PRINCIPLES ON ACCESS TO INFORMATION

In 1999, the freedom of information organisation Article 19 commissioned a set of principles upon which RTI laws should be based. These principles include:

1. **MAXIMUM DISCLOSURE:** RTI laws should be guided by the principle of maximum disclosure with a limited scope of exceptions; requiring information and public bodies to be defined widely. This principle also recommends that the wilful destruction of records should be labelled a criminal offence and prescribes minimum standards for the maintenance and preservation of records by public bodies.
2. **OBLIGATION TO PUBLISH:** Public bodies should be under an obligation to publish key information.
3. **PROMOTION OF OPEN GOVERNMENT:** Public bodies must actively promote open government, actively promote public education, and actively tackle the culture of official secrecy.
4. **LIMITED SCOPE OF EXCEPTIONS:** Exceptions should be clearly and narrowly drawn and subject to strict harm and public-interest tests. The three-part test to establish this is:
 - a. The information must relate to a legitimate aim listed in the law.
 - b. Disclosure must threaten to cause substantial harm to that aim.
 - c. The harm to the aim must be greater than the public interest in having the information. It is important that refusals for requests for information meet a substantial harm test and there should be a case for overriding public interest even if it can be shown that disclosure of the information would cause substantial harm to a legitimate aim if the benefits of disclosure outweigh the harm.
5. **PROCESSES TO FACILITATE ACCESS:** Requests for information should be processed rapidly and fairly, and an independent review of any refusals should be available. This should be at three different levels including within the public

- body, appeals to an independent administrative body and appeals to the courts.
6. COSTS: Individuals should not be deterred from making requests for information by excessive costs.
 7. OPEN MEETINGS: Meetings of public bodies should be open to the public.
 8. DISCLOSURE TAKES PRECEDENCE: Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.
 9. PROTECTION FOR WHISTLEBLOWERS: Individuals who release information on wrongdoing – whistleblowers – must be protected.

RTI PRINCIPLES IN THE AFRICAN PLATFORM ON ACCESS TO INFORMATION (APAI) DECLARATION

In addition to the principles listed earlier, the APAI Declaration also recognises some other principles, including the principle that access to information to become a fundamental right accessible to everyone and established in law with application to public bodies and private bodies. It also states that there should be clear and unambiguous processes in the preferred language and means of accessibility by the requester of the information and there should be oversight bodies to protect, promote and enforce the right. The right to information should include the right to personal data alongside a corresponding duty to collect and manage information as well as the duty to implement the declaration fully.

The declaration further provides for journalists to respect editorial independence, professional ethics and journalism standards in their provision of information; recognise the need for transparency and accountability with regard to their own output and institutions, while safeguarding the principal of protecting sources; respect and promote equality, and provide equitable representation with respect to their own information output. They should promote the widest possible access to their information output; enhance mechanisms for audience participation and response; recognise and be responsive to gender differences with regard to audience and market research; popularise the importance of, and issues around, access to information; and make optimum use of RTI laws to access information for the public interest.

GLOBAL PRINCIPLES ON NATIONAL SECURITY AND THE RIGHT TO INFORMATION (TSHWANE PRINCIPLES)

The general principles on the right to information make room for legitimate exemptions that can be used to prevent public access to information but are limited in scope. Some of these limited exemptions can be found in the national security sphere and these are relied on heavily by most States in denying access to information. To ensure that these exemptions are indeed limited, the Tshwane Principles expound on its application as follows:

- a. The restriction is prescribed by law;
- b. Is necessary in a democratic society;
- c. To protect a legitimate national security interest;
- d. And the law provides for adequate safeguards against abuse, including prompt full accessible and effective scrutiny of the validity of the restriction by an independent oversight authority and full review by the courts.
- e. The burden is on the public authority to establish legitimacy of any restriction;
- f. No blanket exemption for any public authority that is -
 - no public authority may be exempted from disclosure requirements;
 - information may not be withheld on national security grounds simply on the basis that it was generated by, or shared with, a foreign state or inter-governmental body, or a particular public authority or unit within an authority.



CASE STUDY 1
COUNTRY: KENYA

The Scope of Access to Information in Kenya
Relevant Laws: Section 35 of the Constitution of Kenya

This case study was extracted from a longer version originally written by Collis Baswony and available through www.tikenya.org.

In October 2011, Nairobi Law Monthly, a publication that carries content on topical legal issues, published an article investigating a series of transactions undertaken by the Kenya Electricity Generating Company Ltd (KenGen). In that article, Nairobi Law Monthly implicated KenGen and its managing director Edward Njoroge of corrupt dealings in awarding contracts to six companies to drill hydrothermal wells.

Immediately after publication of the article, KenGen denied those allegations and filed a defamation suit against Nairobi Law Monthly. In response, the publication wrote to KenGen demanding information on the matters arising from the article. KenGen did not provide that information, a move that prompted Nairobi Law Monthly to go to court seeking orders to compel KenGen to provide that information.

In a sworn affidavit, Njoroge argued that the company holds information for the benefit of its owners, the public, and that disclosure of such information must be based on the provisions of the Companies Act, which are consistent with the provisions of the Constitution. Njoroge said that even though a large part of KenGen is owned by the State, it is a publicly listed company, and its disclosure of information would not be made under the constitutional provisions on access to information, but as envisaged under statutory provisions governing its operations.

The court ruled that citizens have a right to access information held by the State and its agents and KenGen has an obligation, upon the request of a citizen, to provide access to information under Article 35(1)(a) of the Constitution. A natural person who is a citizen of Kenya is entitled to seek information under Article 35(1)(a) from KenGen, and KenGen, unless it can show reasons related to a legitimate aim for not disclosing such

information, is under a constitutional obligation to provide the information sought.

The court also upheld the view that the right to access information extends only to human persons who are citizens and not to corporations like Nairobi Law Monthly.

Though the court did not recognise Nairobi Law Monthly as a natural citizen, this case study is important for the illustration of the fact that even in countries where there are no RTI laws, direct reliance on the constitutional recognition of the right of access to information is enforceable and can be used to obtain access to information by natural persons. Since this case in 2011, Kenya has passed ATI legislation in 2016.

REFLECTIVE EXERCISE

Is there a stand-alone constitutional right to information in your country or a right to freedom of expression that incorporates access to information? Are there any laws outside of RTI laws like environmental, anti-corruption or procurement laws that grant access to information within a specific sector? What about the laws governing classification of information in your country?

CHAPTER THREE



THE DEVELOPMENT AND IMPORTANCE OF THE RIGHT TO INFORMATION

SESSION 1

THE DEVELOPMENT AND IMPORTANCE OF THE RIGHT TO INFORMATION



Time:
90 mins

AIM OF THE SESSION

To review, briefly, the history of RTI laws globally; to trace the development of RTI laws on the African continent; and to demonstrate the role journalism can play in the development and adoption of RTI regimes in Africa.

Content: The History and Importance of the Right to Information

Training Methodology: Lecture, group work based on case study;

Training Materials: Flipchart, markers, cardboard sheets, projector and laptop

PROCESS:

After the lecture, divide the participants into groups. Different groups should represent different media (e.g. print, TV, radio). Provide each group with a country case study. Request each group to develop a story/media output from the case study (the groups would carry this out by imagining some of the issues that may have arisen and how the press at various stages may have responded to the developments on ATI in that country). The groups should return to plenary after 30 minutes and present their findings.

NOTE TO FACILITATORS:

It is recommended that the lecture should be 30 minutes long, after which participants are divided into groups to work for another 30 minutes on developing a media output using brief case studies on RTI campaigns in a selected African country. Thereafter, participants return to plenary and present their media outputs in plenary. This could be an interview, a written story, etc.

You may allow each group the freedom to choose stages in case study on which to focus for their media report/output.

The momentum for the passage of an ATI law is gaining ground in Africa. The African Union (AU) passed its first ever Model Law on Access to Information for Africa in 2013. By the beginning of 2017, 21 countries in Africa adopted ATI legislation.

In many countries, media organisations are at the forefront of RTI campaigns. An example is Nigeria where the initial stages of the campaign, the Nigerian Union of Journalists and the Media Rights Agenda organised a coalition for the 18-year campaign on access to information in Nigeria.

A model law is typically a detailed set of provisions embodying the international, regional or sub-regional standards on a particular subject, developed for the purpose of facilitating the adoption of national legislation. As the word ‘model’ suggests, a model law need not be adopted by States in its exact form, but could be adjusted to suit the legal and other realities of each State. Thus, unlike treaties, which are binding once ratified and impose obligations on State parties, a model law is a non-binding document crafted specifically as a tool to guide law makers on translating obligations emanating from international treaties into detailed national legislation.

One trend appears to be common in the countries that have successfully adopted an RTI law or that are currently engaging in a campaign for such legislation. The organisations at the forefront of these campaigns sometimes seek to distance their RTI campaigns from the support of the media or ensure that media organisations are not very visible in the campaign. This is significant because despite the fact that the right to information is a significant tool that can make the work of the media more effective, a lot of national campaigns geared towards the adoption or implementation of RTI legislation believe the involvement of the media frustrates or hampers the success of the campaign. There are two reasons that explain this phenomenon.

Firstly, many governments in Africa perceive the media as hostile entities in search of information to antagonise the government. These governments, therefore, perceive access to information as a media right and a tool which will simply arm the enemy to be more critical of government.

Related to this is a new approach to the right to information that is being developed. This evolving theory seeks to show that access to information is a leverage right that can be used for the realisation of other tangible socio-economic rights. To sustain this theory, it is believed that the government needs to see how access to information indeed benefits the life of ordinary citizens in their daily struggle and is not simply a tool to criticise the government.

Journalism can be a frustrating profession given the manner in which government hinders the efforts of journalists in accessing information. Hence, the need for an enforceable right to information.

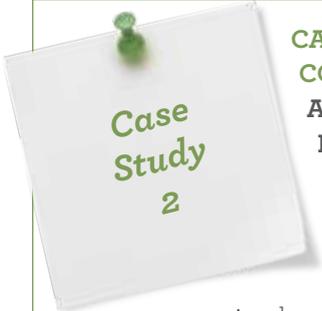
Secondly, the lack of independence and perceived bias of media entities towards particular interests have caused most RTI advocates to distance themselves from the media when advocating for the right to information.

As a result of these perceptions, it is important that journalists begin to embrace the principles of journalism in Chapter 1 and use the exercise of the right to information or the reliance on RTI laws to promote the professionalism of news reporting.

Journalists must use their profession to assert the fact that the right to information applies not only to journalists but to all citizens. And in cases where the right to information is denied, journalists should be willing to seek redress.



"Under the Freedom of Information Act, I'm requesting that you disclose what you have on me in your files."



Case
Study
2

CASE STUDY 2
COUNTRY: NIGERIA

Access to Information on Public Procurement for Public Services

Relevant Legislation: Freedom of Information Act, 2011

In 2009, the Nigerian government received a credit facility of \$200 million from the World Bank to implement the Nigeria Electricity and Gas Improvement Project (NEGIP). This is not the first of such resources committed to fixing Nigeria's electricity challenge and, in order to improve the chances of success of the project, the Project Monitoring Unit (PMU) was tasked with the procurement and implementation of the project. Through a multi-stakeholder coalition that included media organisations, the Public & Private Development Centre (PPDC) decided that it was important that it understood how these resources were being utilised by monitoring the procurement and contracting process.

Similarly, in 2011, a Park and Pay scheme charged Abuja residents for parking their cars. The coalition wanted to know where the money collected was going. What was it being used for? How did it benefit the public given that the money collected was on behalf of the government?

The challenge in both these cases was that the public bodies concerned were not willing to be open and transparent. The government institutions concerned in both cases denied access to the information requested. No one was willing to provide information on behalf of the public bodies that could verify the information being relayed to the public by the media.

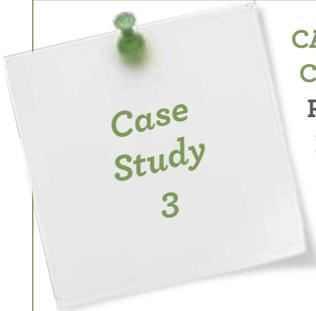
The first step taken to address the problem of access of information was to point out the provisions of the Freedom of Information Act (FOIA) of 2011 to the Power Holding Company of Nigeria (PHCN) and the Federal Capital Territory Administration (FCTA), overseeing the private parking contractor, Integrated Parking Services. This act guarantees access to information held by public institutions. Using the FOIA, the PPDC requested access to the procurement records relating to NEGIP and the parking scheme.

The responses received in both instances were to the effect that these public institutions were not obliged to provide the procurement records, as the

contract contained third-party information and was thus exempted under Section 15 of the FOIA (which provides that a request for information may be denied when it contains third-party information, the disclosure of which may cause harm to the interests of the third party).

The next step was to initiate civil proceedings under the FOIA against both institutions for an order to compel the agencies to provide the requested documents. PPDC instituted two civil suits against the PHCN and the FCTA at the Federal High Courts. Both agencies' arguments were again based on the exemption of third-party information. The court dismissed these contentions and held that since the negotiations for a contract had been completed and the contract finally awarded, the exemption under the act did not apply. Judgements were given in favour of PPDC and the institutions were ordered to release the requested documents, which they did. These judgements in effect created a space for access to public information especially on government expenditures, and this would not have been possible without the FOIA.

This case study illustrates the fact that using RTI legislation does work and, in cases where access to information is frustrated through the reliance on exemptions by public or private institutions, it is important for media organisations to stay the course and go the extra mile in going to court where necessary to enforce the obligation to provide information.



Case
Study
3

CASE STUDY 3
COUNTRY: SOUTH AFRICA

Relevant Legislation: The Promotion of Access to Information Act, 2000

Extracted with permission from a paper by Mukelani Dimba entitled 'Access to information as a tool for socio-economic justice'

Journalists do not have to go to court to seek access to information in all instances. The case study below demonstrates how, through requests for information, social change can also be achieved.

This story revolves around a group of women in KwaZulu-Natal, one of South Africa's poorest provinces. Villagers in the hamlet of Emkhandlwini noticed that people in neighbouring villages were receiving water from municipal tankers while they were not. Their water source was a dirty stream that they shared with their livestock. The villagers did not know how to seek solutions to the water problem without relying on an unresponsive local government representative who had until then failed to deal with the issue.

In 2004, with the assistance of the Open Democracy Advice Centre, the villagers used South Africa's Promotion of Access to Information Act (PAIA), to ask for the minutes of the council meetings at which the municipality had decided on water provision programmes. They also requested the municipality's integrated development plan and budget. It took a frustrating six months before the information was released, but it showed that, while there were plans to provide water, no one had thought of sharing these with the community. With these plans in hand, the women started asking the authorities difficult questions regarding the delivery of water. The media also covered the case, which may have created sufficient pressure to prompt the municipality to act. Almost a year after the initial information request, fixed water tanks, replenished a few times a week, were installed in the village and mobile water tankers began delivering water, while the municipality worked on a more permanent solution by laying down water pipes.

This case demonstrates how socio-economic rights can be realised through the use of RTI laws and public pressure rather than through litigation. Public pressure to influence resource allocation can only be applied effectively if there is sufficient transparency in the process of resource allocation. The

right to information creates the conditions in which decisions about the allocation of resources can be challenged and the media plays a crucial role in making this happen.

REFLECTIVE EXERCISE

Are you aware of any international or regional RTI instruments to which your country is party?

Spend 30 minutes discussing how the media is perceived in your country by both the government and the public.

How can the image of the media be improved in your country?

What forms of multi-stakeholder groups can be established for RTI advocacy or litigation in your country? Who will be the champions of such coalitions?

CHAPTER FOUR



AFRICAN REGIONAL INSTRUMENTS ON ACCESS TO INFORMATION

SESSION 1

AFRICAN REGIONAL INSTRUMENTS ON ACCESS TO INFORMATION



Time:
90 mins

AIM OF THE SESSION

To provide an understanding of various regional instruments that recognise the role of access to information; to illustrate the role the right to information plays in various contexts; to exemplify how journalists can use this right in their work; to understand the effect, if any, of various regional treaties on the right to information in various countries; and to stimulate thoughts on various purposes regional instruments can serve in practical journalism.

Content: Multilateral and regional instruments on the right to information

Training Methodology: Plenary discussion

Training Materials: Flipcharts, markers, cardboard sheets, projector and laptop

Reading Materials: African Charter on Human and Peoples' Rights; APAI Declaration; African Charter on Civil and Political Rights; African Charter on Democracy, Elections and Governance; African Charter on Values and Principle of Public Service and Administration; and AU Convention on Combating Corruption

This chapter discusses two important African regional instruments on the right to information and the applicable case law on these instruments in two countries. This highlights the relevance of these African regional instruments and demonstrates that, even if an African State does not recognise a right to information or does not have an RTI law, this does not mean that there are no other legally enforceable means to guarantee the right to information in those countries.

THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Article 9 of this charter states that:

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate his opinions within the law.*

The charter is legally binding on all States that are parties to it and all African States have ratified it. Provisions of the charter are enforced by the African Commission on Human and Peoples' Rights (ACHPR).

In a communication received by the commission in 2005, Scanlen & Holderness / Zimbabwe, the complainants allege that Section 79 (1) and Section 80 of Zimbabwe's Access to Information and Protection of Privacy Act (AIPPA) contravene Article 9 of the charter because these provisions are unreasonable and restrictive to freedom of expression. In reaching its decision, the ACHPR made reference to other international treaties and concluded that sections 79 and 80 of AIPPA restricted the effective enjoyment of the right to freedom of expression. The commission recommended that Zimbabwe should:

- (I) Repeal Sections 79 and 80 of the AIPPA;
- (ii) Decriminalise offences relating to accreditation and the practice of journalism;
- (iii) Adopt legislation providing a framework for self-regulation by journalists;
- (iv) Bring AIPPA in line with Article 9 of the charter and other principles and international human rights instruments; and
- (v) Report on the implementation of these recommendations within six months of notification thereof.

However, Zimbabwe did not comply with the recommendations of the ACHPR.

In the 1992 case of *Chafukwa Chihana v The Republic of Malawi*, the appellant was sentenced after a conviction for the possession of seditious materials. It was argued that certain of the appellant's fundamental rights, enshrined in the Universal Declaration of Human Rights, had been violated by the State. Counsel for the applicant argued that the applicant's rights were also protected under the charter,

to which Malawi was a party. Based on the fact that no specific legislation had been passed to incorporate the charter into domestic law, the court rejected this argument and stated that: “Malawi may well be a signatory to the charter but until Malawi takes legislative measures to adopt it, the charter is not part of the municipal law of Malawi and we doubt whether in the absence of any local statute incorporating its provisions, the charter would be enforceable in our courts.”

The Zimbabwe case illustrates how the ratification of the listed international and regional treaties can result in a State's laws being held in violation of international commitments by making these instruments enforceable in local countries. However, the Malawi case also highlights the importance of relying on the application of an international or regional instrument in a country only after confirming that the domestic legal processes for the legal recognition of these instruments have been complied with in the respective countries.

AU CONVENTION ON PREVENTING AND COMBATING CORRUPTION

This convention provides in Article 9 that “each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences”.

More importantly for journalists, Article 12 also provides that “each state must ensure that the media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial”. Most African States have ratified this convention.

The African Court on Human and Peoples’ Rights located in Arusha, Tanzania exercises jurisdiction over the convention and the charter but, unfortunately, no substantive case on the right to information has appeared in this court so far.

The AU Charter on Democracy, Elections and Governance provides in Article 2.10 that countries must “promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs” and in Article 6 that State parties must ensure “that citizens enjoy fundamental freedoms and human rights, taking into account their universality, interdependence and indivisibility”.

Article 9 of the **African Charter on Human and Peoples' Rights and the Declaration of Principles on Freedom of Expression in Africa** guarantee the right of access to information consistent with Article 19 of both the **Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights**. Other regional instruments such as Article 9 of the **African Union Convention on Preventing and Combating Corruption** require member States to adopt legislative and other means to “give effect to the right of access to any information that is required to assist in the fight against corruption”, The **African Charter on Democracy, Elections and Governance**, lists “*the establishment of the necessary conditions to foster citizen participation, transparency, access to information...*” as part of its objectives. Article 6 of the **African Charter on Values and Principles of Public Service and Administration** recognises the right of access to information, while other instruments such as the **African Youth Charter**, the African Charter on Statistics and the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** recognise the

REFLECTIVE EXERCISE

Spend 30 minutes discussing which laws, policies or practices restrict media freedom in your country. How are these being addressed? Are there court cases that seek to promote media freedom? How do journalists use their power to defend their freedom? What strategies can journalists employ to promote the application of regional instruments and the use of regional institutions?

CHAPTER FIVE



EXERCISING THE LEGAL RIGHT TO INFORMATION

SESSION 1

EXERCISING THE LEGAL RIGHT TO INFORMATION



Time:
120 mins

AIM OF THE SESSION

To understand the general principles of access to information; to identify how to make requests for information; to gain perspectives on RTI practices across Africa; and to identify the role of journalism in enabling the application of RTI laws.

Content: Applying the right to information across Africa countries

Training Methodology: Lecture presentations, group discussions and exercises

Training Materials: Flipcharts, markers, cardboard sheets, projector and laptop

Reading Materials: AU Model Law on Access to Information

PROCESS:

Writing FOI requests, writing appeals

Divide the participants into three groups. One group should write a request for information to a public institution. The second group should apply for an appeal. The third group should use one of the access to information sample letters provided to develop a story for publication or broadcast.

NOTE TO FACILITATORS:

The training is most likely to be country specific. It is essential that, while drawing examples from other countries, the discussion hones in on the practice in specific countries. The group exercise should therefore draw requests based on what is obtainable in the country of operation. Special attention should be paid to the structure of the letter (to whom it is addressed, the level of specificity of request etc). If participants come from various countries, please disregard the above.

WHAT DOES THE RIGHT TO INFORMATION MEAN?

The right to information is a right to access records and information held by the State (the government) and in some cases, non-State entities (private bodies). The right to access the records of the State is not reliant on any specific condition for the right to be exercised. This right is recognised in various international, regional and national legal instruments. It is a right that was originally seen as part of the broader right to freedom of expression but the right is now explicitly recognised as a standalone right and fundamental to the exercise of all other human rights. The right to information is not absolute and there are exemptions to the kind of information that can be accessed.

The AU Model Law on Access to Information provides that every person has the right to access information of public bodies and relevant private bodies expeditiously and inexpensively. The law, policy or practice creating the right to information must be interpreted and applied on the basis of a presumption of disclosure. Non-disclosure is permitted only in exceptionally justifiable circumstances. Any refusal to disclose information is subject to appeal.

WHY IS ACCESS TO INFORMATION IMPORTANT?

Access to information has become the buzz word of the 21st Century. Governments and private corporations are collecting data on a monumental scale and the holder of information is far more powerful in influencing and shaping national interests. Access to information is often associated with good governance and the media is seen as the key to unlocking government secrecy. In 1946, the UN General Assembly adopted Resolution 59(1), which stated that the right to information is a fundamental human right and is the touchstone of all the freedoms adopted by the UN.

WHAT IS THE LEGAL RIGHT TO INFORMATION?

There is a general right of every citizen to have access to information that is held by the State. This is recognised through various international and regional instruments as well as in the constitutions of various countries. A total of 17 African countries now also have specific RTI laws. For other countries, a limited scope of access to information can exist in sector-specific laws, such as environmental or anti-corruption laws that promote public access to information. There have also been landmark decisions that have recognised this right.

The AU Model Law provides that, to the exclusion of any provision in any other legislation or regulation that prohibits or restricts the disclosure of information of an information holder, nothing should limit or otherwise restrict any other legislative requirement for an information holder to disclose information.

The right to information is seen as necessary for the realisation of open government and requires the public to have access to records held by the State for meaningful public debate on the conduct of governmental affairs.

HOW IS THE RIGHT TO INFORMATION PROTECTED IN AFRICA?

As discussed in Chapters 3 and 4, in Africa, the right to information is explicitly recognised. Article 9 of the African Charter on Human and Peoples' Rights (ACHPR) provides that "every individual shall have the right to receive information and every individual shall have the right to express and disseminate his opinions within the law." The African Commission of Human and Peoples' Rights also confirmed in a resolution that the right of access to information is a component of the fundamental right to freedom of expression and is indeed covered by the mandate of the Special Rapporteur on Freedom of Expression.

The African Commission's Declaration of Principles on Freedom of Expression in Africa provides under Article 4 that:

Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules. The right to information shall be guaranteed by law in accordance with the following principles:

- *everyone has the right to access information held by public bodies;*
- *everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;*
- *any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;*
- *public bodies shall be required, even in the absence of a request, to actively publish important information of significant public interest;*

- *no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and*
- *secrecy laws shall be amended as necessary to comply with freedom of information principles.*
- *everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.*

Various countries guarantee the right to information within their constitutions, including South Africa, Kenya and Malawi. The South African and Kenyan constitutions have similar provisions which recognise not only the right to access information held by the State but also by other persons, provided the information is required for the exercise or protection of other rights.

Other countries have only protected this right within the context of the broader right of freedom of expression, which normally includes the right to “seek, receive and impart information”. These countries include Zambia, Swaziland, Cameroon and Tanzania.

WHO CAN MAKE A REQUEST FOR INFORMATION?

In South Africa, where there is an explicit recognition of the right to information, the scope of the right extends to a natural or juristic person, and record of, or in relation to, a public or private body, means any recorded information regardless of form or medium; in the possession or under the control of that public or private body; and whether or not it was created by that public or private body. Also, everyone (including non-citizens and legal entities) has the right to file requests for information.

In Zimbabwe and Kenya, only citizens are entitled to the right to information, so the context varies from country to country.

FROM WHAT ENTITIES CAN YOU REQUEST INFORMATION?

The right of access to information should apply to the executive branch with no bodies or classes of information excluded. Most institutions define what constitutes a public body and will include constitutional and other statutory bodies broadly but exemptions will apply to the Cabinet as in the case of South Africa, Zimbabwe and almost all other countries with an RTI law.

The right of access does not in all cases apply to the legislature and judiciary. In Liberia, Uganda and Ethiopia, the law extends to both legislative and judicial arms of government but this is not the case in Niger and South Africa.

In some instances, the right to information will apply to State-owned enterprises. This applies in Uganda, Nigeria, South Africa and Guinea.

For access to information held by private bodies, the right of access will apply to, in the case of South Africa, exclusively private institutions where the information sought is necessary for the exercise or protection of a right or in the case of other countries, private bodies that perform a public function or private bodies that receive significant public funding. Countries having such provision include Nigeria, Sierra Leone, Rwanda and Côte d'Ivoire.

Nigeria's Freedom of Information Act (FOIA) states that access to information can be requested from all public institutions and these are all authorities, whether executive, legislative or judicial agencies, ministries and extra-ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilising public funds, providing public services or performing public functions.

WHAT INFORMATION CAN YOU ASK FOR?

The right to information will apply to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it. In the case of Zimbabwe, this does not apply to computer recorded information.

As a requester, you have a right both to access information and ask for specific records/documents.

Most laws provide for access to records and the inherent right to information will be found in a constitutional provision. However, not all information requested can be granted. There are certain exceptions that can be relied on to deny access to information. Chapter 6 deals in detail with exemptions and the grounds for refusal of information.

Where an RTI law exists, a public interest disclosure test should apply which will provide that where the information requested will reveal evidence of crime or other contravention of the law, such information must be disclosed.

In certain instances, especially in jurisdictions where RTI laws exist, public authorities may have to consult with third parties before the information is released.

In these instances, the third party is only asked to give a representation on why the information may or may not be disclosed and they do not have the power to make the final decision on disclosure.

In some cases, information is subject to release once the exemption no longer applies or where the information is older than a certain period e.g. 20 years.

In terms of the AU Model Law, where the information requested contains third-party information, a requester may not be given access to that information until such time as any right of the third party to appeal the release of the information has expired or any appeal lodged by the third party has been finally determined.

AU Model Law on ATI clause

Where a request for a record has been made and such information or record falls under a legitimate exemption, where the document does not contain only exempted information, the parts that are exempted can be removed while the other parts of the record can be disclosed.

Your request for information must be responded to with a formal response and, in cases where your request is refused, the authority must state the reasons for the refusal and your legal recourse.

In terms of the AU Model Law on Access to Information:

- A person who wishes to obtain access to information of an information holder (the public or private body) must make a request in writing or orally.
- If a person makes a request orally, the official of the public body must reduce that oral request to writing and provide a copy to the requester.
- On receipt of a request, the public or private must immediately provide a written acknowledgement of the request to the requester.
- A requester does not have to provide a justification or reason for requesting any information.
- A request must provide such detail concerning the information requested as is reasonably necessary for the information to be identified.

- If the requester believes that the information is necessary to safeguard the life or liberty of a person, include a statement to that effect, including the basis for that belief.
- If the request is to a private body, provide an explanation of why the requested information may assist in the exercise or protection of any right.
- Identify the nature of the form and language in which the requester prefers access.
- If the request is made on behalf of someone else, include an authorisation from the person on whose behalf the request is made.

HOW DO YOU REQUEST INFORMATION?

- a. Requests can be submitted through a formal channel such as writing a letter and, if unable, orally, with the assistance of an employee of the relevant institution. Under an RTI law, there should be a system in place to allow you to get hold of this information. All you need to do is ask for it – you have the right to access it.
- b. In the South African case, a form has been developed to complete requests for information when making the request under the Promotion of Access to Information Act (PAIA).
- c. Ensure, through preliminary inquiries, the most appropriate institution to submit your request to. You must try and work out where the information is. If you have submitted your request to the wrong institution, the institution should independently direct or advise you on where to direct your request if the institution knows where the records you have requested are held.
- d. Once you have established where the information is held, or where you think it is probably held, then simply ask for it. When asking a public body for the information, all you need to do is say who you are and where you are, and also clearly state the information you want. You do not need to say why you want the information.
- e. Always attempt to obtain an acknowledgment of receipt when submitting a request for information.
- f. While not all countries have the duty for records to be created, in the cases of Zimbabwe and Nigeria, such duty exists.
- g. However, public authorities should comply with your preference in terms of how you want to access the information.

- h. In addition, in the case of public records:
- If the record is not a document but a recording, for example, you can ask for a transcription or copy of the recording.
 - When a record is on a computer, then you can ask for the record to be printed or you can ask for a copy of the record in a format that you can use to access it on another computer (e.g. USB).
 - If you ask for access in a particular way, then you should get access in that way unless that would interfere unreasonably with the running of the body holding the information or damage the record.

CAN I REQUEST THE RECORD IN MY PREFERRED LANGUAGE?

In the case of a public record, you should be entitled to ask for the record in your preferred language and, if the record exists in that language, be given access in that language. If it only exists in another language, then you will only be given access in that language.

The AU Model Law provides that information must be provided to a requester in such official language as the requester prefers. Where the information is not in the language the requester prefers, the information can be translated into the preferred language of the requester; and the reasonable costs associated with the translation can be recovered from the requester.

HOW LONG DOES IT TAKE TO RESPOND TO AN INFORMATION REQUEST?

Requests are to be provided within a reasonable amount of time. This varies from seven days in Nigeria to 30 days in South Africa. These time periods can be extended, depending on the relevant provisions in the various laws.

The AU Model Law provides that a decision on a request must be made within 21 days after the request is submitted subject to the payment of any applicable reproduction fee, translation fee and/or transcription fee.

In cases where the information is necessary to safeguard the life or liberty of a person, the decision has to be made within 48 hours.

HOW MUCH DOES IT COST TO ACCESS INFORMATION?

The holder of the information may be entitled to ask you for a fee depending on the country. The costs for access to information are not free in all instances. Various countries have their own guidelines on what is payable regarding access fees, reproduction fees, etc.

According to the AU Model Law, if the request is granted, the notice must state the applicable fee, the form in which access to the information will be given; and that the requester may apply for a review of the prescribed fee or form. The AU Model Law recommends the non-payment of fees except for reasonable reproduction or translation fees where necessary.

WHAT IF THE INFORMATION I REQUESTED CANNOT BE FOUND OR DOES NOT EXIST?

In terms of the AU Model Law on Access to Information, for records that cannot be found or do not exist after all reasonable steps have been taken, the relevant official is to make an affidavit or affirmation stating the substantive details of all steps taken to find the information or to determine whether the information exists, including:

- details of all locations searched for the information and the person or persons that conducted those searches; details of any communications with any person that the information officer contacted in searching for the information or attempting to establish the existence of the information; and any evidence relating to the existence of the information, including any evidence that the information was destroyed; and the location in which the information was last known to be held.

If the information is found after notice is given to a requester, the requester must be immediately notified in writing and a decision must be made on whether to grant the request, including the payable fee and form of access.

WHAT ARE THE FORMS OF ACCESS FOR REQUESTED INFORMATION?

In terms of clause 21 of the AU Model Law, access to information must be given to a requester in one or more of the following forms:

- a reasonable opportunity to inspect the information;
- a copy of the information;
- in the case of information that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear, view, record or copy those sounds or visual images;
- in the case of information by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the information holder of a written transcript;
- in the case of information which is held on a computer, or in electronic or machine-readable form, and from which the information holder concerned is capable of producing a printed copy of the information or part of it, by supplying such a copy; or
- in the case of information available or capable of being made available in computer readable form, by supplying a copy in that form.

Where the requester has requested information in a particular form, access must be given in that form.

The form of access can also be amended on the basis of notice of the payable fees.

If giving access to information in the form requested by the requester is likely to unreasonably interfere with the operations of the information holder; be detrimental to the preservation of the information; or having regard to the physical nature of the information, not be appropriate, access in that form may be refused.

In terms of the AU Model Law, where a person wishes to make a request for information or has made a request that does not comply with the relevant statutory requirements, officials of the public institution must take all necessary steps to assist the person, free of charge, to make the request in a manner that complies with the law. Where a person with a disability wishes to make a request, officials of the public body must take all necessary steps to assist the person to make the request in a manner that meets their needs.

WHAT IF MY REQUEST FOR INFORMATION IS REFUSED?

- a. Your request for information can be refused if the record does not exist or if it cannot be found or if it falls within one of the exemptions permitted by the RTI law.
- b. If your request is refused, in some countries like South Africa you have the right to an internal appeal, while in other cases you have to go to court to challenge this refusal.

In terms of the AU Model Law, if the request is refused, the notice referred to must state adequate reasons for the refusal, based on the contents and substance of the request and the information considered by the public or private body; contain a reference to specific legislative provisions and inform the requester that he or she may apply for a review of the decision.

- c. Not all laws have an internal appeal mechanism, such as in Nigeria and Zimbabwe. In South Africa, where such an internal appeal mechanism exists, an appeal can be lodged to the head of the authority from which the information has been requested.
- d. In Liberia, where there is an independent administrative body – the Information Commissioner – such an institution functions as a judicial body where the ease of access in terms of time and costs of lodging appeals are better than the courts.

Where the public or private body fails to respond to a request within the stipulated or reasonable time period, this is considered a deemed refusal.

There are instances where information will not be immediately released after a request for it has been made. This is called a deferral. Such instances can occur when:

- the information/record has been prepared for presentation to Parliament; or
- the information constitutes a report that has been prepared for the purpose of reporting to an official body or a person acting in their capacity as an officer of the State.

Severance

Where a portion of a record is exempt from release, and another portion can be released, the exempted part of the record can be severed or redacted and the rest of the record released.

A requester must be informed of the deferral of the access and the reasons for the deferral as well as the right to make representations to appeal this decision.

Despite any refusal to grant a request, most RTI laws, including the AU Model Law on Access to Information, provide that a request for information should only be refused if the harm to the interest protected under the relevant exemption that would result from the release of the information demonstrably outweighs the public interest in the release of the information. This is called a public interest override. For this to apply, it is important that journalists follow prescribed procedure for accessing information in their respective countries.

Information is not exempt from access merely on the basis of its classification status.

Information can be refused on the basis that it is manifestly vexatious, but in terms of recommended practice, an affidavit must be completed by the relevant government official stating the reasons why the request is considered manifestly vexatious.

Where an information request is refused, the burden of proof is on the public or private body to prove the exemption relied on as well as the harm to the protected interest under the relevant exemption that would result from the release of the information which outweighs the public interest in the release of the information.

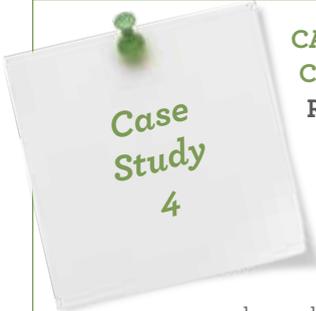
WHAT IF MY REQUEST FOR INFORMATION IS REFUSED BECAUSE THE RECORD CANNOT BE FOUND OR DOES NOT EXIST?

The AU model law as well as some RTI laws such as in Nigeria provides that an information holder has a duty to create, keep, organise and maintain its information in a manner which facilitates the right to information. A requester can therefore lodge a complaint with the oversight authority where the information holder has failed to create a record. Where access is refused because the record cannot

be found, the AU model law as well as the RTI law of South Africa provides that the information officer must after taking all reasonable steps, provide an affidavit stating the substantive details of all steps taken to find the information or determine whether the information exists. If the information is found after the requester has been informed that the information cannot be found, the requester is to be notified immediately and the information holder must comply with the procedures to grant or refuse access to the information request.

Given the various bureaucratic hurdles of using an RTI law, what are the benefits of using such legislation over other methods of information gathering by journalists?

- a. It provides journalists with the opportunity to garner information to bolster investigative journalism.
- b. Journalists can use the law to demand answers from government.
- c. Any information accessed can be reused and is not subjected to any restrictions.
- d. Where a right to information is explicitly recognised in your country or where an RTI law exists, then such right or law will usually trump any other law that aims to restrict access to information.
- e. Given the requirement in most RTI laws for public institutions to proactively disclose information, journalists can also harvest such proactively disclosed information (such as budgets) to write stories and develop news reporting.



Case
Study
4

CASE STUDY 4
COUNTRY: SOUTH AFRICA

Relevant Legislation: The Promotion of Access to Information Act, 2000

This case study was extracted from Stefaans Brummer v Minister of Social Development 2009 (6) SA 323 (CC)

Journalist Stefaans Brummer sought information through the Promotion of Access to Information Act (PAIA) of

South Africa from the Department of Social Development. The information related to a government tender that the department allegedly awarded to a consortium. The journalist alleged that he required the information in order to report accurately and properly in an article that he was writing. The journalist instituted review proceedings in the High Court under section 78(2) of PAIA after he was denied access to the information on the grounds that the information sought was the subject of civil litigation between the department and the consortium. The journalist sought an order setting aside the decision to refuse information and an order directing the Minister of Social Development to furnish him with the information sought. However, the journalist's application was brought well after the 30-day limit to appeal prescribed in section 78(2) of PAIA and, as a result, he also sought an order condoning his non-compliance with the 30 day limit.

The High Court refused to condone the late application, holding that the journalist had not provided a satisfactory explanation for the delay and that he had no prospects of success in the underlying review. It found that the minister had demonstrated that releasing the information sought would prejudice the trial or otherwise be unfair to the trial. The court, however, concluded that section 78(2) was unconstitutional because, firstly, the 30-day limit was grossly inadequate and therefore limited the right of access to court and, secondly, the limitation was unjustifiable in terms of the Constitution. It accordingly declared the provisions of section 78(2) unconstitutional and referred its order embodying that declaration to the Constitutional Court for confirmation.

In approaching the Constitutional Court, the journalist asked the court to answer two questions: firstly, whether he should have been allowed to challenge the refusal even though he did not comply with the 30-day requirement; and, secondly, whether the requirement of 30 days is unconstitutional as it does

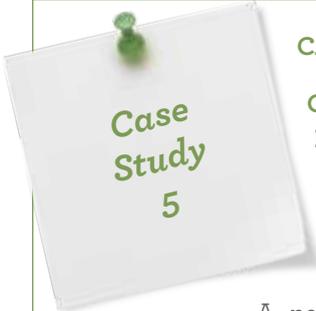
not afford people who wish to challenge the refusal adequate time to approach the court. The journalist asked the Constitutional Court to confirm the order of invalidity made by the High Court in terms of section 78(2).

The Constitutional Court, in granting the relief sought by the journalist, stated that: “The role of the media in a democratic society cannot be gainsaid. Its role includes informing the public about how our government is run, and this information may very well have a bearing on elections. The media therefore has a significant influence in a democratic state. This carries with it the responsibility to report accurately. The consequences of inaccurate reporting may be devastating. Access to information is crucial to accurate reporting and thus to imparting accurate information to the public.”

The court ordered Parliament to extend the 30-day period for appeal to 180 days. The decision on whether provide access to the documents sought by the journalist was referred to the High Court following the condonation of leave to appeal that was granted by the Constitutional Court, and access to the information was eventually granted to the journalist after several court cases.

This case study shows how, through perseverance, the media can also make a positive contribution to the development of RTI law such as in this case where a provision in PAIA was found to be unconstitutional through the litigation initiated by a journalist.

It is important to also note that South Africa’s PAIA and other RTI laws in Africa have been criticised for failing to provide cheap, accessible and timely remedies for the resolution of access to information disputes. Only Liberia currently has a law that also establishes an information commissioner who can exercise the functions of a court. These RTI laws do not take into account the economic realities of African countries where media bodies may not have the financial resources to challenge a refusal of access to information by a public body in the courts. However, this is not the end of the road for journalists. In this case study, the journalist’s litigation was only possible through pro bono legal services offered by the specialist NGO, the Open Democracy Advice Centre. Journalists can therefore team up with NGOs and other organisations to pull resources together where necessary to initiate litigation in ATI matters.



Case
Study
5

CASE STUDY 5

COUNTRY: SOUTH AFRICA

Relevant Legislation: The Promotion of Access to Information Act, 2000 (PAIA)

This case study was extracted from Mail & Guardian Ltd v 2010 FIFA World Cup Organising Committee (LOC) 09/51422

A newspaper in South Africa, the Mail and Guardian (M&G), through its editor and an investigative journalist, submitted a request in terms of PAIA to the 2010 FIFA World Cup Local Organising Committee (LOC) for access to records relating to the procurement or tender processes applied by the LOC responsible for organising the 2010 World Cup in South Africa. The request was refused on the basis that the LOC was not a public body. (In terms of PAIA and the right to information in South Africa, a request can be made to a public body without giving a reason why the information is needed. However, to access information from a private body, it needs to be shown that the information requested is necessary for the exercise or protection of a right). In order to expedite the process, the newspaper then submitted another request to the LOC on the basis that the records were required to exercise the right to media freedom and to vindicate the right of the public to receive information on matters of public interest. The private body request was also refused.

The newspaper launched a court application and the main issue the court had to decide was whether the LOC was a public or a private body. The court held that the LOC was a public body but even if it was a private body, the M&G had shown that the records were required for the exercise or protection of the right to media freedom. The court held that “the law ought to recognise the special position of journalists in this context”.

Again, in this case study, the media succeeded in contributing to the development of the RTI regime in South Africa. Despite the bureaucratic and frustrating constraints that users of PAIA face when using the law, the media have contributed significantly to the development of the law.

CHAPTER SIX



UNDERSTANDING THE EXEMPTIONS AND GROUNDS FOR REFUSALS WITHIN RTI FRAMEWORKS

SESSION 1

ENFORCING THE RIGHT TO INFORMATION



Time:
90 mins

AIM OF THE SESSION

To understand exceptions to disclosure within RTI frameworks and to understand the application of these exceptions.

Content: Understanding the exemptions and grounds for refusals within RTI frameworks

Training Methodology: Group case study

Training Materials: Flipcharts, markers, cardboard sheets, projector and laptop

Reading Materials: Tshwane Principles on National Security, Procurement Monitor Bulletin: Accessing Procurement Information where a third Party Exemption applies, Peter Rosenblum and Susan Maples: Contracts Confidential: Ending Secret Deals in the Extractive Industry, Global Witness: Dealing With Disclosure- Improving transparency in Decision Making over large scale land acquisitions, allocations and Investments.

PROCESS:

Divide participants into groups and provide each group with case studies relating to particular exemptions.

Each group should suggest story pitches to deal with how the exemptions were applied and the impact such applications would have on society.

NOTE TO FACILITATORS:

The suggested reading texts explore exemptions to the right to information that are commonly invoked by public institutions. The arguments within the text can help the journalists to think about how to use their platform to examine, critically, the application of these exemptions in various situations. Journalists should be prepared to deal with the misapplication of exemptions in real life situations.

The general rule is that there is a right to information. However, all rules are subject to qualifications. In the case of the right to information, the right can be limited or information refused in certain circumstances. Most RTI laws list the grounds under which information requests may be refused, and therefore the right to information is limited.

Exceptions to the right to information are fairly consistent across international standards, including the AU Model Law on Access to Information. Some of the internationally recognised permissible exceptions to granting access information include:

- national security;
- international relations;
- public health and safety;
- the prevention, investigation and prosecution of legal wrongs;
- privacy;
- legitimate commercial and other economic interests;
- management of the economy;
- fair administration of justice and legal advice privilege; and
- legitimate policy-making and other operations of public authorities.

The need for exemptions to disclosure within RTI frameworks is imperative given the harm or the infringement of rights that could occur when certain kinds of information are released. Knowing these exemptions and the extent of their applicability is a required skill for the journalist because a public institution that would rather not disclose information is likely to rely on an exemption to do so.

The exemptions provided in the AU Model Law are:

- personal information of a third party;
- commercial and confidential information of a public/private body or a third party;
- protection of life, health and safety of an individual;
- national security and defence;
- international relations;
- economic interests of the State;
- law enforcement;
- legally-privileged documents; and
- academic or professional examination and recruitment processes.

The following points can guide you when considering the applicability or relevance of an exemption to a certain case and determining whether an exemption has been applied correctly by an institution or not.

- 1. Is the exemption absolute or qualified?** If there is a condition attached to whether information may be exempted, then you need to examine whether it is valid in the particular situation. For example, South Africa's PAIA provides for 12 grounds under which access to information may be refused by an information officer of a public or private body, some of which are mandatory and some of which are discretionary. This is dependent on the wording of the exemption and the use of words such as "may" to indicate discretionary and "must" to indicate mandatory.

An example of a mandatory exemption that must be applied in South Africa is protection of the privacy of a third party. This exemption states that the information officer of a public or private body must not allow access to personal information of a natural person, including a deceased individual. This is in order to protect the privacy of a third party. However, not all exemptions are absolute. Taking the example of protection of the privacy of a third party, the information may still be disclosed if the third party has given consent, the information is already public or it is the personal information of an individual who is or was an official in a public or private body and where the information relates to their position as an official.

Another example is Nigeria's National Identity Management Commission (NIMC), which informed the public of a partnership it had formed with MasterCard. Two non-governmental organisations (NGOs) made an RTI request for the contract between NIMC and MasterCard and disclosure was refused on the grounds that the release of such information may be injurious to National Defence. It is not clear how a contract which involves the collection of Nigerians' personal information would be injurious to National Defence and no verifiable information has been provided to the public on the relationship between MasterCard and the NIMC in relation to the collection of personal data, nor has sufficient information been provided on the injury to National Defence. As a result, the NGOs have had to take the matter to court.

- 2. The burden of proving that such information must be exempt lies with the public body invoking the exemption:** If a public body relies on an exemption, then they need to inform the requester how that disclosure would cause harm. For example, whenever information is requested for a public procurement process, there is the likelihood that the public body would refuse disclosure on the grounds that the information requested contains commercially sensitive information, confidential information or trade secrets that may affect contract negotiations. However, if the contract has been awarded, then negotiations have been completed and so the claim by the public body is not applicable and where there is indeed commercially sensitive information, the commercially sensitive part can be severed from the rest of the record and the information can be publically released.

When commercially sensitive information is used as grounds for refusal

The competitive nature of public procurement processes demands that any contractor interested in winning a contract would need to provide reasons why he or she is most suited to the job. In demonstrating the requisite competence, interested contractors may divulge sensitive commercial information to the procuring entity. This could include trade secrets or documents that demonstrate a competitive advantage over other bidders for the contract. The public institution would therefore need to protect the confidential information of each contractor to maintain the contractor's commercial viability. It is, however, important to note the following:

1. *It is very unlikely that a bidder would provide trade secrets in the bid. It is also very unlikely that trade secrets would appear in a contract.*
2. *Once the contract is awarded, the bidder or the public institution can no longer rely on the "sensitivity of negotiations" to refuse disclosure.*
3. *In some countries, such as Nigeria, the interpretation of public institution may mean that once a contract is awarded and has commenced, for the purpose of that public service being provided by the contractor, and for the duration of the contract, the contractor is a public institution.*

4. *When a private-sector organisation is carrying out a public service on behalf of a public institution, claims around proprietary information need to be scrutinised. For example, a private company collecting revenue on behalf of the government cannot rely on proprietary information to refuse disclosure when a request is made to the organisation for details of revenue generated and remitted to the government.*

3. If an exemption has been applied incorrectly, then there are valid reasons to appeal the decision of the institution and state the reasons why the exemption would not apply in the particular case.
4. In determining whether some information that may be covered by an exemption should be disclosed, you may ask the following questions:
 - a. Is there any probable harm that would result from the disclosure of this information?
 - b. If no, make a request or follow up on a request already made.
 - c. If yes, then ask how likely is it that the harm will occur? If it is unlikely, then go ahead and make the request.
 - d. If harm is likely to occur, then ask whether such harm would be injurious to interested parties (e.g. national security, commercial interests, third party privacy etc).
 - e. Lastly, if the answer in (d) is yes, does such harm/injury override public interest or does the public interest override the injury.?

Most RTI laws provide that even though an exemption applies, there will be a public interest provision which overrides any of the grounds for refusal of access to information, should the public interest in the information be of greater concern. The extent to which exemptions can be made to apply when unchecked is likely to stifle accountability and the ability of the media to probe matters of public interest. Therefore, journalists need to take a critical look at how exemptions have been applied.

When personal information is used as grounds for refusal

The right to privacy is legally guaranteed across African countries. As a result, RTI laws exempt personal information from disclosure. In the case where the president of a country is ailing and this is affecting his ability to run the country, do the people have a right to know about the president's sickness and if he is fit to still hold office?

In the light of allegations of embezzlement and corruption across the continent, is there an overriding public interest in people being able to access the asset declaration forms of senior public officers?

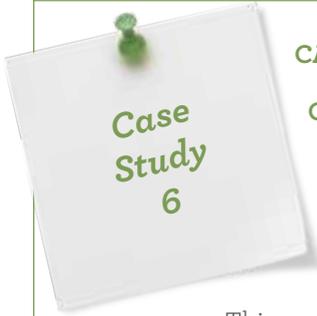
5. Use your platform to interrogate the issues of exemptions based on specific cases. By publicly interrogating issues around disclosure, the media may be able to do more than the courts in establishing a culture of disclosure.

In 2011, the Nigerian National Petroleum Corporation (NNPC), a statutory corporation, conducted a recruitment exercise. In 2012, journalists from the Daily Trust newspaper requested details of the recruitment exercise and received a response from the NNPC through its legal director to the effect that the NNPC was not bound by the country's Freedom of Information Act (FOIA).

Immediately, the press took this up and reports of the RTI response from the NNPC made headline news in most newspapers. This put a lot of pressure on the NNPC's managing director, who publicly retracted the earlier response and stated that the NNPC is bound by the FOIA and the information was partially released.

This illustrates why journalists need to ensure that the responses they receive are in line with the RTI laws applicable in their countries.

This also shows how the media can be a source for social pressure.



CASE STUDY 6

COUNTRY: SOUTH AFRICA

Relevant Legislation: South Africa's Constitution (exemption on the basis of national security)

This case study was extracted from Independent Newspapers v Minister of Intelligence Services 2008 (4) SA 31 (CC)

This case study refers not only to the right to information but also to the constitutional right of the media and the public in general to access court proceedings.

A newspaper group, Independent Newspapers, sought an order to compel the Minister of Intelligence Services to disclose discrete portions of a record of court proceedings. For reasons of national security, the minister objected to the disclosure. Some of the issues before the court were whether the right to open justice entitled Independent Newspapers to access the restricted materials in the court record and whether the minister's objection premised on national security constituted adequate justification.

The bedrock of the disclosure claim by Independent Newspapers was that the media and the public have a constitutional right of access to court proceedings. The court stated that there exists an umbrella of related constitutional rights, which include freedom of expression and the right to a public trial and which may be termed the right to open justice.

The court granted partial access to the restrictive documents and stated that there is nothing that suggests that the work of the intelligence services should automatically be regarded as secret, but that the disclosure of information would depend on the specific context.

This case study illustrates that courts will not always agree with governments when they invoke the all-powerful exemption of national security, demonstrating that parts of those records can still be subject to public disclosure.

REFLECTIVE EXERCISE

If Ashish Thakkar provides resources to the Ugandan government to establish primary health-care centres, can information be requested on how these funds are being utilised?

CHAPTER SEVEN



RECAP SESSION AND FREQUENTLY ASKED QUESTIONS ON THE RIGHT TO INFORMATION

1. *What are the aims of RTI laws?*

RTI laws enable the scrutiny of government practices, policies and the participation in decision-making by public bodies. They are an attempt to promote transparency, accountability and effective governance in the public and private spheres.

2. *To whom do RTI laws apply?*

They apply to both public bodies and private bodies in most instances.

3. *What are public bodies?*

They consist of government departments at all levels of government – administrative bodies – but usually exclude the cabinet, legislature and the judiciary.

4. *What are private bodies?*

A private body can consist of any person running a business or a juristic person, as in the case of South Africa, or private companies exercising public functions, as in the case of Nigeria.

5. *Who can request a record?*

Generally, anyone can ask for records from a public body without giving any reason. In some countries, you have to be a citizen of that country to request public information.

6. *Who will make the decision on granting or refusing access to a record?*

The head of the public or private body, or the designated information officer.

7. *How can you find out where you can get the information/record that you require?*

The AU Model Law on ATI provides that where a request is made to a public body or relevant private body requesting information which the public body or relevant private body does not hold the information but there is a reasonable presumption about which body might hold the information or the information requested is closely related to the functions of that body, the request must be transferred to the relevant body and the requester must be notified in writing.

If you apply to the wrong body, this institution should advise you on the correct institution to which you can transfer your request.

8. *What kind of information/records can you ask for?*

A person can request information that has been recorded in any way. Such information must be in the possession of the public or private body. It does not matter whether the public or private body created the record or not, and it does not matter when the records came into existence. In some cases, there is a duty to create records where the record does not exist.

9. *How should a record be requested?*

In most instances, the request must be written. There is a duty on public institutions to assist you to make the request if presenting your request orally.

10. *Which people and institutions are exempted from releasing information?*

In most countries, the executive cabinet, the legislature and judiciary are usually exempted.

11. *What are exemptions?*

This is the list of information in the various RTI laws that is not subject to release when a request is made for information. These exemptions usually relate to the personal information of another person, information relating to national security, foreign affairs, operations of public institutions, protection of intellectual property, commercially sensitive information, etc.

12. *What information must be given to you?*

Most laws stipulate the kind of information that you can access as a result of the public interest nature of such information. These include your own personal information and information that can avoid threat to safety or security.

13. *How long might a response to a request for information take?*

The time period varies. For some countries, it is 30 days which can be extended for a further 30 days; for others, it is seven days. In terms of the AU Model Law on Access to Information, it is 21 days.

14. *What can you do if an official refuses to disclose a record or information that to which you are entitled?*

If an information request is refused, in some countries an internal appeal can be lodged, while in other cases, the requester has to go directly to court. If a request is refused, the person making the decision has to give reasons for the refusal.

15. *What does it cost to get a record?*

Each country prescribe its own fees.

CHAPTER EIGHT



ANNEXURES

ANNEXURES ON SAMPLE LETTERS FOR MAKING RTI REQUESTS

EXAMPLE OF A REQUEST LETTER

YOUR ADDRESS

E.G: PO Box 1355

Naivasha 2379

Kenya

Tel: 0903 657 9898

E-mail: media@journalism.org

ADDRESS OF THE INSTITUTION

E.G: Department of Public Enterprises

Robert Mugabe Way

Harare

Zimbabwe

Date: 17th June 2015

Dear Hon. Permanent Secretary,

REQUEST FOR INFORMATION IN TERMS OF (STATE LAW WHERE APPLICABLE IN YOUR COUNTRY)

Please find attached a request for access to information pursuant to (state relevant legal provision).

Yours sincerely,

Chiedza Naivasha

Investigative Journalist

The Nation Newspaper

In attachment, simply list the information or record you want. Ensure that you are as specific as possible for the request to be understood.

LETTER OF AUTHORISATION EXAMPLE

(This applies to investigative journalists for instance who are seeking information on behalf of someone else)

Individual's Address

Public Institution's Address

Date

Dear (insert name),

This is to confirm that I authorise (insert name of media entity) and its representatives to access information on my behalf in terms of (insert relevant legal provision).

Yours truly,

(name)

Signed:

LETTER OF INTERNAL APPEAL EXAMPLE

YOUR ADDRESS

E.G: PO Box 1355

Naivasha 2379

Kenya

Tel: 0903 657 9898

E-mail: media@journalism.org

ADDRESS OF THE INSTITUTION

E.G: Department of Public Enterprises

Robert Mugabe Way

Harare

Zimbabwe

Date: 17th June 2015

Dear

APPEAL AGAINST DECISION TO DENY ACCESS TO INFORMATION

The appellant is Ms. Diallo. (State your name or name of organization)

The appeal is directed to the (state name of public or private institution). This appeal is directed to (state the head of the institution) to decide an appeal against a decision of the (state name of the official that denied the request) of the (repeat name of institution).

On (state the date of submission of your request), the appellant made a formal request for information in terms of (state relevant legal provision) to the (state name of relevant institution). The request was for records relating to (repeat your information request here).

In a response to my request, the (repeat name of institution) wrote to me/us that my/our request had been refused on (state grounds). This letter is attached.

I/we refute this ground of refusal and submit this appeal to your office in terms of (state relevant provision of the law).

The reasons for refusal given by the (repeat name of institution) are not a justifiable ground for non-disclosure for the following reasons:

(List the reasons for challenging this either summarized as stated in law such as the application of a public interest override; the information is publicly available etc)

(State other relevant facts outside the law)

I/we specifically request access to the (summarise the records requested).

I/we am/are of the opinion that the denial of the request is unreasonable and (state name of official) should not have denied the request.

The decision by (state name of institution) to deny the request for information contravenes the objectives of (state relevant legal provision).

I/We request that the (head of institution) should order the release of the requested records.

Yours truly,

Signed

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- 4) Ethiopia's Proclamation to provide for freedom of the mass media and access to information Proclamation No. 590/2008 of 2008;
- 5) Guinea's Organic Law on the right of access to public information 2010/004/CNT/ of 2010;
- 6) Ivory Coast's Loi Relative a l'accès a l'information d'interet Public of 2013;
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7. South African History Archives, PAIA Unpacked available at www.saha.org.za.
8. South African History Archives, PAIA Resource Kit available at www.saha.org.za.
9. South African Human Rights Commission, *The Guide on How to Use the Promotion of Access to Information Act 2 of 2000 (Section 10 Guide 2014)* available at www.sahrc.org.za.
10. South African Human Rights Commission, *PAIA Community Training Tool* available at www.sahrc.org.za.
11. South African Human Rights Commission, *PAIA Frontline Staff Manual* available at www.sahrc.org.za.

Online Resources

1. <https://www.americanpressinstitute.org/journalism-essentials/verification-accuracy/>
2. Tshwane Principles on National Security, available at: <http://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>
3. Procurement Monitor Bulletin: Accessing Procurement Information where a Third Party Exemption Applies, available through: <http://us5.campaign-archive1.com/?u=01684c1e72bc44a3108a6413b&id=df57259d8f>

4. Peter Rosenblum and Susan Maples: *Contracts Confidential: Ending Secret Deals in the Extractive Industry*, available through: <http://www.resourcegovernance.org/sites/default/files/RWI-Contracts-Confidential.pdf>
 5. Global Witness: *Dealing With Disclosure – Improving transparency in decision-making over large scale land acquisitions, allocations and Investments*, available at: <http://www.oaklandinstitute.org/dealing-disclosure-improving-transparency-decision-making-over-large-scale-land-acquisitions>
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[Sir Bernard Woolley:]

What's wrong with open government? I mean why shouldn't the public know more about what's going on?

[Sir Arnold:]

My dear boy, it is a contradiction in terms: you can be open or you can have government.

[Sir Bernard Woolley:]

But surely the citizens of a democracy have a right to know.

[Sir Humphrey Appleby:]

No. They have a right to be ignorant. Knowledge only means complicity in guilt; ignorance has a certain dignity.

(From the British television show *Yes Minister*)

NOTES

The right to information is fundamental to the realization of economic and social rights as well as civil and political rights. Exercise of the right to information is the oxygen for democracy, making it possible for people to make informed decisions about their own lives. The right to information is internationally affirmed under Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. On the African continent, it is codified under:

- Article 9 of the African Charter on Human and Peoples Rights
- Article 19 of the African Charter on Democracy, Elections and Governance
- Article 9 and 12(4) of the African Union Convention on Preventing and Combating Corruption
- Article 10(3d) and 11(2i) of the African Union Youth Charter
- Article 6 of the African Charter on Values and Principles of Public Service and Administration
- Article 3 of the African Statistics Charter

The real challenge remains at the national level on three fronts: 1) the adoption of right to information legislation, 2) the policy implementation of this right in public sector institutions, and 3) the application of the law. To date, a little over one fourth of African countries have adopted this law. The three manuals in the collection aim to assist the key actors, i.e. individuals working in public sector institutions, civil society organisations and the media, with the necessary knowledge and tools to transform these laws from their paper form into vibrant practice.

