

COMMUNICATION SYSTEMS IN AFRICA

WEEK TWELVE: Problems of Human Rights. Public right and access to Information in Africa.

Learning Outcomes



1. Understand an overview of Human rights and access to information.
2. Explain the Role of the Media in Protecting Human Rights
3. Understand Human rights and access to information in Africa.
4. Analyze the ATI Principles found in the African Platform on Access to Information (APAI) Declaration

Overview of Human rights and access to information.

According Centre for Law and Democracy and the African Freedom of Information Centre (2015), the aim of the right to information (RTI) is to ensure the availability of information and the provision of equitable access to information to the general public.

Internationally, the RTI 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 RTI 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, sixteen countries across Africa have developed Access to Information (ATI) laws. These are South Africa, Uganda, Angola, Zimbabwe, Nigeria, Ethiopia, Tunisia, Rwanda, Mozambique, Guinea, Sierra Leone, South Sudan, Niger, Sudan, Ivory Coast and Liberia. While other African countries do not have an ATI law, there are strong direct constitutional guarantees for the right in certain countries such as Kenya and Malawi while 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 realization of democracy in most African countries given the historical context in Africa where several countries transitioned into democracy after decades of colonialism, war, one party rule, military dictatorships and similar systems of government which hampered good governance within some of these countries. For the realization 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 is attains its potential, it is important that the scope, methods of utilization and the potential for realizing societal change through ATI is developed. (Centre for Law and Democracy and the African Freedom of Information Centre, 2015).

What's the Role of the Media in Protecting Human Rights?

According to Human Rights Careers, when it comes to human rights, people know about entities like the United Nations, governments, and NGOs. The media plays a significant role, as well. How? In any form, the media can raise awareness of human rights issues, expose violations, and empower people to take action. The media can also negatively impact human rights. Whether it's making a positive or negative impact, the role of media should be understood. In this lesson, we will discuss the media's connection and responsibility to human rights, its potential as a force for harm, and what a responsible media can look like.

The media's connection (and responsibility) to human rights

Article 19 of the UN's Universal Declaration of Human Rights reads: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media [emphasis added] and regardless of frontiers." States still have the power to decide what government information should be public or protected, but it is widely understood that freedom of expression and freedom of speech are entwined with a free media/press.

So, access to media is a human right, but what is the media's responsibility to human rights? Free media is essential to human rights because, without information, people won't know what's going on locally, nationally, or internationally. Their ability to respond to laws, policies, and events – including human rights violations – is limited by ignorance. Free media has a responsibility to share information and help explain that information to the public in a clear, accessible way. The

media also has a duty to hold people in power accountable. The Catholic Archdiocese of Boston sex abuse scandal is a clear example of the media's role in protecting human rights (Human Rights Careers <https://www.humanrightscareers.com>).

The Boston Globe Spotlight Team exposes Catholic Church sex abuse

On January 6th, 2002, The Boston Globe's Spotlight Team published the first part of an investigation into sex abuse in the Catholic Church. The article revealed that while aware of a priest's record of sex abuse against children, the archdiocese moved him from parish to parish for over three decades. Since the mid-1990s, more than 130 people had come forward, but no action was taken. The Globe's coverage exploded into the national news, leading to the criminal prosecutions of five Catholic priests. Empowered, other victims came forward. The story continued to balloon as other investigations and allegations exposed a long history of abuse and cover-ups in large dioceses across the United States. It was clear that the case in Boston was not an aberration.

More survivors came forward around the world. In 2021, a report found that over 70 years, around 330,000 children were victims of sex abuse within France's Catholic Church. The report also found that these abuses were systemically covered up, and what began with the Globe led to a global reckoning. The media shone a light on decades of lies and empowered victims to tell their stories. It forced the Catholic Church to admit to violating the rights of the most vulnerable people in their care: children. As survivors continue to seek justice and healing, the media has a responsibility to support them (Human Rights Careers <https://www.humanrightscareers.com>).

How the media covers a story impacts human rights

The media must report accurate facts, but their role doesn't end there. Media also plays a huge role in what people believe about the facts. One of the most significant examples can be found in the coverage of climate change. Climate change has huge implications for rights such as the right to food, development, housing, and life itself. According to one study, at least 85% of the world is affected by human-induced climate change, while The World Health Organization estimates that from 2030 to 2050 climate changes will cause around 250,000 additional deaths each year. Historically, the media has not covered climate change with appropriate concern (Human Rights Careers <https://www.humanrightscareers.com>).

What does responsible media look like?

Media plays a significant role in human rights for better or worse. How can it work to protect – and not harm – human rights? There’s no simple solution. When it comes to news media, there are journalistic ethics and standards. The Society of Professional Journalists, an organization that represents journalists in the United States, has four principles: seek truth and report it, minimize harm, act independently, and be accountable and transparent. These principles are based on the Society’s belief that “public enlightenment is the forerunner of justice and foundation of democracy.” Many news organizations have their own codes of ethics but follow these general principles. If an organization does not state its ethics clearly or follow an ethical standard, this is a sign of an irresponsible media outlet. *What about new media?* A big question today concerns social media platforms. Just about anyone can use a platform like Twitter, Facebook, or YouTube. There’s no vetting. When someone writes something, no editor goes over it. You just hit “post.” Social media hasn’t been around that long, but its ability to harm human rights through the spread of violent rhetoric and disinformation is undeniable. Unfortunately, these new media outlets have yet to recognize – and fulfill – their responsibility to human rights. More regulation is needed, including updated laws (Human Rights Careers <https://www.humanrightscareers.com>).

The cost of protecting human rights

Because the media plays such an important role in protecting human rights, it faces opposition. According to United Nations (2022), in 2021, 55 journalists were killed. Journalists also face high rates of physical violence, intimidation, harassment, and high rates of imprisonment. Women journalists are at an increased risk because of how much online harassment they receive. The organization Reporters Without Borders (RSF) analyzes the state of press freedom around the world and in 2021, the situation was dire, and of the 180 countries and territories examined, journalism was “totally blocked or seriously impeded” in 73 countries and constrained in 59 countries. People’s access to information dropped while reporters faced more barriers to their work.

Within recent years, certain governments used the pandemic as justification for media suppression. In Egypt, the Supreme Council for Media Regulation ordered the blocking of several news outlets because of “false information.” One outlet was blocked after questioning health conditions and the

state of human rights in Egyptian prisons. In another case, an editor of a local newspaper challenged official COVID-19 data and was detained for a month before facing criminal charges. Crises like COVID only worsen conditions for a free media and human rights as a whole. To protect human rights, the world must protect the media and journalists (Freedom House, 2020).

Understanding Human Rights and Access to Information in Africa

According to Centre for Law and Democracy (CLD) and the African Freedom of Information Centre (AFIC) (2015), 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 democratizing in some African states is still ongoing.

The importance of the right of ATI 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 recognize the importance of this right in promoting transparency in government. The recent growth in the adoption of the right of ATI has in many ways been due to the advocacy and campaign in various countries pushing 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 (The CLD and the AFIC, 2015).

It is accepted that there exists a general right of every citizen to have access to information that the state holds. This is seen as a necessity for the principle of open government which requires that the public be granted access to information for meaningful public debate on the conduct of governmental affairs.

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

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):

Within the African human rights system, there is an express recognition of the right of ATI. 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 CLD and the AFIC, 2015).

In the realization of the right of access to information, the assumption is that human rights are important for the promotion of transparency and accountability. With transparency, it is expected that this will serve as a check on government excesses and promote better service delivery. This is consistent with some of the commitments made in 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 CLD and the AFIC, 2015).

The AU Convention on Preventing and Combating Corruption also recognizes the fact that corruption undermines accountability and transparency in the management of public affairs as well as development in Africa. Ultimately, transparency through access to information ensures that rights are safeguarded and government delivers public goods.

According to Centre for Law and Democracy and the African Freedom of Information Centre (2015), 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 developed by state multilateral platforms and other multi-stakeholder groups. To enable adequate reference to these within the guide, the most significant of these principles have been extracted from their key documents as follows:

International principles on Access to Information

In 1999, Article 19, commissioned a set of principles upon which ATI laws should be based and they include:

1. **MAXIMUM DISCLOSURE:** ATI 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 labeled a criminal offence and prescribes minimum standards for 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, active promotion, 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 legitimated 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 meet a substantial harm test and there should be the 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.

ATI Principles found in the African Platform on Access to Information (APAI) Declaration

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

The declaration further provides for journalists to respect editorial independence, professional ethics and journalism standards in their provision of information; recognize 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 within their information output; promote the widest possible access to their information output; enhance mechanisms for audience participation and response; recognize and be responsive to gender differences in regard to audience and market research; popularize the

importance of, and issues around, access to information; and make optimum use of ATI laws to access information for the public interest (The CLD and the AFIC, 2015).

Global Principles on National Security and the Right to Information (Tshwane Principles)

The general principles on ATI make room for legitimate exemptions that can be used to prevent public access to information but are limited in scope. Some of such limited exemptions can be found in the National security sphere and heavily relied on by most states in denying access to information.

To ensure that these exemptions are indeed limited, the Tshwane principles expounds 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:
- i. No public authority may be exempted from disclosure requirements;
- ii. 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 (The CLD and the AFIC, 2015).

The African Charter on Human and Peoples Rights

The African Charter on Human and Peoples Rights states in Article 9 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 African 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 People's 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 the Access to Information and Protection of Privacy Act of Zimbabwe (AIPPA) contravene Article 9 of the African Charter on Human and Peoples' Rights because these

provisions are unreasonable and restrictive to freedom of expression. The commission in reaching its decision, made reference to other international treaties and concluded that sections 79 and 80 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) Decriminalize 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 African Charter and other principles and international human rights instruments; and
- (v) Report on the implementation of these recommendations within six months of notification thereof.

In the 1992 case of *Chafukwa Chihana v The Republic of Malawi*, the appellant was sentenced after a conviction for the importation and 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 African 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 and making these instruments enforceable in local countries. However, the Malawi case also highlights the importance of only 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 (The CLD and the AFIC, 2015).

African Union Convention on Preventing and Combating Corruption and Related Offences

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 states have ratified the AU Convention on Preventing and Combating Corruption.

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

The AU Charter on Democracy, Elections and Governance provides in article 2.10 and article 6 respectively 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 for state parties to 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**, guarantees 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 recognizes 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 People’s Rights on the Rights of Women in Africa recognize the importance of access to information (The CLD and the AFIC, 2015).

5.1. *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 records of the state is a right that is not reliant on any condition for the right to be exercised. This right is recognized 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 recognized as a standalone right and fundamental to the exercise of all other human rights. The right to access information is not absolute and there are exemptions to the kind of information that can be accessed.

The AU model law on ATI provides that every person has the right to access information of public bodies and relevant private bodies expeditiously and inexpensively. Every person has the right to access information of private bodies that may assist in the exercise or protection of any right expeditiously and inexpensively. The law, policy or practice creating a right of access 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 (The CLD and the AFIC, 2015).

5.2. *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 United Nations 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 which the UN has adopted (The CLD and the AFIC, 2015).

5.3. *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 recognized through various international and regional instruments as well as in the constitutions of various countries. Sixteen African countries also have specific ATI 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 recognized this right. The right of access to information is seen as necessary for the realization of open government and requires that the public should have access to records of the state for meaningful public debate on the conduct of governmental affairs.

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 CLD and the AFIC, 2015).

5.4. *How is the right to information protected in Africa?*

As discussed in earlier, in Africa, the right of ATI is more explicitly recognized. 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 of access to information within their constitution and these countries include South Africa, Kenya and Malawi. The South African and Kenyan Constitutions have similar provisions which recognize 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 (The CLD and the AFIC, 2015).

5.5. *Who can make a request for information?*

In the South African case where there is an explicit recognition of the right to access 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, respectively; and whether or not it was created by that public or private body, respectively. Also, everyone (including non-citizens and legal entities) has the right to file requests for information. In Zimbabwe and Kenya, only citizens are allowed to access information so the context varies from country to country (The CLD and the AFIC, 2015).

5.6. *What entities can you request information from?*

According to Centre for Law and Democracy and the African Freedom of Information Centre (2015) 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 ATI 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 does not extend to these arms of government in Niger and South Africa. In some instances, the right of access 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 Ivory Coast.

The Nigerian 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, utilizing public funds, providing public services or performing public functions.

5.7. *What information can you ask for?*

The right of access 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 to access both 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. UNIT 6 deals with exemptions and the grounds for refusal of information in detail.

Where an ATI 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 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 certain instances, especially in jurisdictions where ATI 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 do not have the power to make the final decision on disclosure.

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.

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 (The CLD and the AFIC, 2015).

In terms of the AU Model Law on ATI:

- 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; and
- If the request is made on behalf of someone else, include an authorisation from the person on whose behalf the request is made (The CLD and the AFIC, 2015).

5.8. *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 ATI 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. Where 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 of the recording or make a copy of the record.

When a record is on a computer, then you can ask for the records to be printed or you can ask for a copy of the record in a way that you 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.

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.

i. What about language—can I see the record in my preferred language? In the case of a public record, you should be entitled to ask for the record in a 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 CLD and the AFIC, 2015).

5.9. *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 7 days in the case of Nigeria and 30 days in the case of South Africa. These time periods can be extended for additional periods 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 (The CLD and the AFIC, 2015).

5.10. *How much does it cost to access information?*

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

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 for access fee, request fee, reproduction fee, etc. (The CLD and the AFIC, 2015).

Summary



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

- 1) *What are the aims of a right of access to information or ATI laws?* It enables the scrutiny of government practices, policies and the participation in decision making by public bodies. It is an attempt to promote transparency, accountability and effective governance in the public and private spheres.
- 2) *Who does the right to ATI or ATI laws apply to?* It applies to both public bodies and private bodies in most instances.
- 3) *What are public bodies?* They consist of mostly government departments at all levels of government, administrative bodies, but usually excludes the cabinet, legislature and the judiciary in most instances.
- 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.
- 6) *Who will make the decision on granting or refusing access to a record?* It will be the head of the public or private body.
- 7) *How can you find out as to where you can get the information/record that you require?* If you apply to the wrong body, they should advice you on what the right institution to transfer your request should be. 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.
- 8) *What kinds 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, 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 ATI laws that are not subject to release when a request is made for the set of information. These exemptions usually relate to 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 contain information that you can access as a result of the public interest nature of such information. These include personal information about you, 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 can be 7 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 give you a record or information that you are entitled to?* 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?* There are various prescribed fees that different countries prescribe.

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