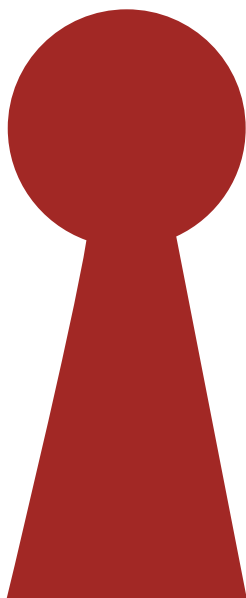


**RIGHT TO  
INFORMATION  
IN AFRICA**

MANUAL  
FOR CIVIL  
SOCIETY



**RIGHT TO  
INFORMATION  
IN AFRICA** | MANUAL  
FOR CIVIL  
SOCIETY

*2017*

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## ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
AHRS	African Human Rights System
CBO	Community based organisation
CESCR	Convention on Economic, Social and Cultural Rights
CSO	Civil society organisation
EAC	East African Community
ECOWAS	Economic Community of West African States
ICCPR	International Covenant on Civil and Political Rights
MDGs	Millennium Development Goals
NGO	Non-governmental organisation
REC	Regional Economic Community
RTI	Right to information
SADC	Southern African Development Community
SMART	Simple, measurable, achievable, realistic and time-bound
TOTs	Training of trainers
UDHR	Universal Declaration of Human Rights
UN	United Nations

# PREFACE

Exercising one's right to information is the oxygen for democracy<sup>1</sup>. 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) and fesmedia Africa of the Friedrich-Ebert-Stiftung (FES) are convinced that the right to access information of 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.

We express appreciation and gratitude for the insights, work and support of the staff, members and partners of AFIC, to the

---

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

consultants, lawyer Dorah Caroline Mafabi and economic and social rights specialist Isaac Arinaitwe, and to FES Uganda for the elaboration of the first edition of the Right to Information in Africa - Manual for Civil Society produced in 2013. We also recognise the useful contributions made by the Centre for Law and Democracy for this revised edition.

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

Gilbert Sendugwa  
Coordinator and Head of Secretariat  
Africa Freedom of Information Centre

Sara-Nathalie Brombart  
Director, *fesmedia* Africa  
Friedrich-Ebert-Stiftung

# FOREWORD

I am pleased to present this Right to Information in Africa - Manual for Civil Society, a collaborative effort of the Special Rapporteur on Freedom of Expression and Access to Information in Africa, the Africa Freedom of Information Centre (AFIC) 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. Pansy Tlakula

Special Rapporteur on Freedom of Expression and Access to Information in Africa  
African Commission on Human and Peoples' Rights







# INTRODUCTION

## INTRODUCTION

The right to information (RTI) is internationally recognised as a human right which is critical to democratic and accountable government. Among other benefits, an effective right to information promotes citizen participation and an informed populace; it builds trust in government by preventing false rumours from spreading through the dissemination of true information; and it can help to combat corruption and promote effective and efficient governance.

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, the right to information has been 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; and Article 16, 17 and 25(3) of the African Union Convention on Cyber Security and Personal Data Protection.

Around the world, some 100 countries, covering approximately 80 percent of the global population, have passed RTI legislation. Although Africa remains behind in terms of the extent of coverage of the continent, that is beginning to change. The number of African countries which have adopted access to information legislation has increased from five in 2010 to 21 in 2017. 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.

However, the passage of an RTI law does not mark the end of a country's push to provide the right to information. Rather, it signals the beginning of a new and challenging phase of implementation. The transition can be difficult for public officials, who are expected to shift from a system where information is withheld by default to one where a system is open by default. However, strong implementation is critical to the overall success of the system, particularly in its early stages. Requesters who face official resistance or other negative feedback in their first engagement with the RTI system, such as a refusal by a public authority to accept an access request, a refusal to comply with proper procedures in processing the request

or long delays in responding, will be unlikely to use the system again. Conversely, if public authorities respond promptly, courteously and positively to receiving access requests, this will encourage further use of the system, generating the sort of positive dialogue that improves relationships with the public, builds trust and enhances public engagement.

Along the same lines, civil society organisations and media professionals have to promote or exercise their right to information by filing information requests, creating awareness or conducting training programmes for various stakeholders. These actions are important to make the law useful in assisting to hold leaders and officials to account, streamlining decision-making and creating a conducive atmosphere for transparency and public accountability.

This toolkit seeks to empower civil society organisations (CSOs) to contribute to the promotion of the right to information in Africa. It provides useful and comprehensive comparative resources that can be adapted to different national contexts.

By making use of these resources, civil society will be in a better position to complete the cycle of free flow of information, which in turn will create an atmosphere of accountability and trust. In addition, the kit provides opportunities for collaboration and complementarity as different stakeholders have different capacities and opportunities, which together can be used to ensure the effective implementation of RTI regimes in Africa.

## **PURPOSE OF THE MANUAL**

This manual is intended to provide a training framework for CSOs engaged in advocacy work on the promotion and protection of human rights. The manual sets a normative standard on the training content for CSOs in Africa on the right to information. The manual also serves as:

- i. A reference/ information tool for training CSOs in Africa on the right to information;
- ii. A tool for the training of trainers (TOTs) on the right to information; and
- iii. A guide for TOTs on training methodologies and approaches.

This manual is designed for civil society actors working to promote issues of transparency and accountability, good governance, human rights, rule of law and service delivery, among others. The manual can also be used by community based organisations (CBOs), farmers' groups and all organisations and individuals that

might or should require information from any public body or private body holding public information.

## **TRAINING OBJECTIVES**

The objectives of this training are to:

- i. Increase participants' knowledge of the right to information;
- ii. Encourage an understanding of the 'right to know' as a leverage right;
- iii. Develop participants' capacity to promote the right to information;
- iv. Reflect on the practicability of the right to information in participants' own country; and
- v. Define the role of civil society in promoting the right to information.

## **STRUCTURE OF THE MANUAL**

This manual is divided into eight chapters. Each chapter is divided into sessions and each session has a defined topic, aim and activities. Each chapter serves as a guide to the trainer when conducting the sessions and provides the trainees/participants with information on what they are expected to cover and grasp during the training.

Each session has a specified aim, which reflects the scope of knowledge to be imparted, skills to be acquired or attitudes to be changed. The sessions also contain information on the different training methodologies that are recommended for use in each particular session. The aims of each training have been structured to ensure that they are SMART: simple, measurable, achievable and realistic to both the trainers and participants within the set time frame of the training. The manual provides reference notes for the trainer at the end of each session. The reference notes can also be extracted as handouts for the benefit of participants for further reading. The trainer's notes are intended primarily to guide the trainer in planning the sessions and during the actual training.

The estimated time for each session, depending on the content and training methodology, has also been provided. The manual provides a guide on the amount of time that should be spent on each session. This serves as a guide for the trainers during the session. The actual time spent per session in reality depends on the knowledge and experience of the trainer, the time available for discussion, and the

participants' ability to grasp and understand the issues. The participants' ability to understand issues depends on their level of education, experience, interest in the training content, exposure as well as the methods used by the trainer to impart the knowledge. In some cases there may be constraints on resources and time, which may hinder the course from being carried out continuously. In such circumstances, it is recommended that the course is phased.

The content shows the topics/ subjects that will be covered in each session. It is important for the trainer to handle the topics in a manner that provides a natural flow from one subject to another, preferably beginning with the simpler topics and moving on to those that are more complex. Handouts can be provided as reference materials. The detailed content of each chapter is provided in handouts/reference notes at the end of each chapter and labelled as, for example, 'Trainer and Participant Notes 3.1', depending on the number of sub-topics in the chapter.

## **TRAINING METHODOLOGY**

The methods to be used in each session have also been suggested. The proposed training methods are intended to involve the participants in the training process as much as possible. Adult learners usually have a lot of experience and knowledge to share. They should therefore be given a chance not only to learn but to be fully involved in the learning process by keeping them active and allowing them to share their experiences and exchange views. The proposed methods indicated in the manual are not standard and it is recommended that the trainer adopts training methodologies that might work for each particular context. The training method adopted should be relevant to the topic being discussed. A range of methodologies has been used, including experience sharing, free-thinking (brain storming), group discussions, lecture methods, Power Point presentations, role plays and case studies.

The suitability of the training methods will also depend on the number of participants at a training session. For example, roles plays may not be ideal for very large groups. Lecture methods might not be effective after a heavy lunch. The trainer should be able to adopt the most suitable training method. In some sessions, options have been provided to guide the trainers on the different methodologies but also to provide the trainer with the requisite flexibility depending on the nature of the participants. It is important, however, for the trainer to use a participatory approach as much as possible to ensure effective adult learning using discussions, activities and demonstrations. Equally significant is the need for the trainer to balance the information provided to participants depending on their level of education

and exposure. It is counterproductive to overload the participants with too much information in a short time as this would defeat the purpose of the training, which is to learn.

## **TRAINING MATERIALS**

For any effective training session to be conducted, it is important for the trainer to have materials that will aid his/her training. Recommended materials will include markers, flipcharts, a flipchart stand, manila paper, yarn balls and visual aids such as posters, pictures, video/audio recordings among others. The required materials depend on the training methodology chosen by the trainer, the available financial resources and existing facilities since certain materials and facilities, such as audio machines and electricity, may not be readily available everywhere.

When preparing for the training, the trainer must organise the training materials well in advance. The following are some critical points to remember:

- i. Identify the training materials and equipment required for the training and organise them in advance.
- ii. Prepare excerpts, case studies, role-play information, pictures, posters, handouts and other reference materials.
- iii. Procure and organise the required stationery.
- iv. Arrange in advance all materials for demonstration, such as games, posters etc
- v. Assemble and test any electronic equipment needed to ensure that it is in proper working condition prior to the training.

# CHAPTER ONE



## INTRODUCTION TO THE TRAINING

This chapter serves as an introduction to the training. The chapter lays down recommended procedures for breaking and debunking myths and expectations that participants may have about the training, as well as building a relationship of trust between the trainer and the participants. This chapter comprises two sessions: session I focuses on climate setting; while session II covers content, including participants' expectations, workshop objectives and sets the ground rules to be observed by all participants during the training.



# SESSION 1

## BREAKING THE ICE – GETTING TO KNOW ONE ANOTHER



Time:  
**30-40 mins**

### AIM OF THE SESSION

To build a relationship of trust between the trainer and participants.

---

**Content:** Introduction

---

**Training methodology:** Discussion games

---

**Training materials:** Coloured paper, flipchart, markers

---

### PROCEDURE:

→ **Activity One: Introduction by the trainer**

**Step One:** The trainer welcomes the participants to the training workshop.

**Step Two:** The trainer informs the participants about the session topics and lists the objectives of the workshop on a flipchart.

**Step Three:** The trainer provides background to the topic.

**Step Four:** The trainer asks the participants to pair up in groups of two.

**Step Five:** Each participant should learn as much as possible about his/her pair and in particular what they do, what they enjoy about training sessions, any item in their bucket list and their biggest fear or what they would be doing if they were not doing their present work.

**Step Six:** The participants introduce each other in the plenary session.

# SESSION 2

## TRAINEES' EXPECTATIONS, WORKSHOP OBJECTIVES AND MUTUAL TEAM AGREEMENT



Time:  
**40-60 mins**

### AIM OF THE SESSION

To harmonise the training expectations with the objectives of the training. The session will also seek to understand the general expectations of the participants with regard to the training. This session will also enable participants to agree on rules/guidelines, by which they will abide during the training.

**Content:** Hopes and fears – expectations, training objectives, agreed rules of conduct during the training

**Training methodology:** Paired discussion, group discussion

**Training materials:** Flipchart, colours and shapes and Trainer and Participant Notes 2.1

### PROCEDURE:

#### → **Activity One: Workshop objectives and participants' expectations**

**Step One:** The trainer shares the objectives of the workshop with the participants and writes them on a flipchart.

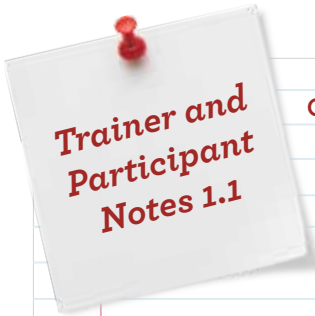
**Step Two:** The trainer distributes coloured manila paper to the participants and asks them to write down what expectations they have from the training workshop.

**Step Three:** The trainer pins up the expectations and facilitates a gallery walk with the participants, discussing the expectations and fears from the training workshop.

**Step Four:** The trainer guides the participants to reconcile their expectations with the workshop objectives

→ **Activity Two: Mutual agreement**

- Step One:** The trainer asks participants to share principles, guidelines and rules that will guide the training workshop.
- Step Two:** The trainer writes the principles, guidelines and rules on a flipchart.
- Step Three:** The trainer also asks participants to elect or nominate a chief whip for the training session or the training workshop.
- Step Four:** The trainer writes name of candidate on flipchart for all to see.



**OBJECTIVES OF THE TRAINING**

The objectives of this training session are to:

1. Increase participants' knowledge of the right to information.
2. Encourage understanding of the 'right to know' as a leverage right.
3. Develop participants' capacity to promote the right to information.
4. Reflect on the practicability of the right to information in participants' own country.
5. Define the role of civil society in promoting the right to information

**GROUND RULES SHOULD INCLUDE ISSUES OF:**

1. Time keeping
2. Receiving and making telephone calls
3. Speaking in turns
4. Giving others a chance to participate
5. Every answer being relevant
6. Commitment to completing the course
7. Commitment to disseminating information at the end of the training

# CHAPTER TWO



## UNDERSTANDING HUMAN RIGHTS

Human rights are the cornerstone of any civilised and democratic society.

Understanding the human rights discourse is critical to the promotion and protection of human rights.

This chapter focuses on equipping participants with knowledge on the concept of human rights generally and the fundamental principles of human rights. The chapter will also provide the participants with a brief distinction between the terms 'human rights' and 'fundamental freedoms'.

The chapter is divided into two sessions: session I defines human rights and fundamental principles of human rights, while session II discusses the importance of human rights and makes the distinction between rights and freedoms.

## SESSION

# 1

## HUMAN RIGHTS



Time:  
**30-40 mins**

### AIM OF THE SESSION

To explore participants' understanding of the meaning of human rights. The session will also equip the participants with knowledge on the fundamental principles of human rights.

---

**Content:** Understanding human rights, basic principles of human rights

---

**Training Methodology:** Buzz groups, discussion groups, free-thinking, experience sharing

---

**Training Materials:** Flipcharts, markers, masking tape, excerpts from the Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights and Trainer and Participant Notes 2.1

---

### PROCEDURE:

→ **Activity One: Human rights**

**Step One:** The trainer asks the participants to share different rights of which they are aware.

**Step Two:** The trainer asks the participants in buzz groups of three to discuss what human rights means to them.

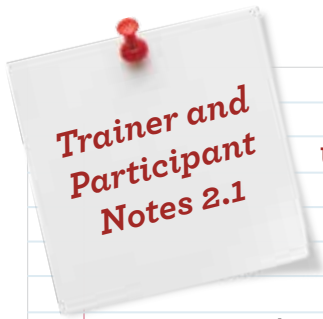
**Step Three:** The participants explain what human rights mean to them.

**Step Four:** The trainer writes the feedback from the participants on a flipchart.

**Step Five:** The trainer can provide participants with links or copies of the Universal Declaration on Human Rights, African Charter on Human and Peoples' Rights, African Charter on Democracy, Elections and Governance and the Bill of Rights of local constitutions.

**Step Six:** The trainer supplements the feedback from the participants by discussing human rights and giving examples of key rights using any of the above instruments.

**Step Seven:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 2.1**

### **UNDERSTANDING HUMAN RIGHTS**

Human rights are an inalienable fundamental rights which a person is inherently entitled to simply because she/he is a human being. Human rights are inalienable because people's rights can never be taken away. They are indivisible and interdependent because all rights – political, civil, social, cultural and economic – are equal in importance and none can be fully enjoyed without the others. Human rights are universal (they are applicable everywhere) and the same for everyone.

Human rights are rights inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. All human beings are equal and entitled to the enjoyment of human rights without discrimination. Human rights apply to all equally and all human beings have the right to participate in decisions that affect their lives. Human rights are upheld by the rule of law and strengthened through legitimate claims for duty bearers to be accountable to international standards. Human rights may exist as natural rights or as legal rights in local regional, national and international law. Natural rights bestowed on human beings are universal and inalienable. Legal rights are those rights granted to a person by a legal system.

The human rights movement started after World War II and the atrocities of the Holocaust, culminating into the development of the **Universal Declaration of Human Rights (UDHR)** of 1948. Human rights cover virtually every area of human life and activity. They include civil and political rights (these attempt to protect the individual from the misuse of political power and recognise a person's right to participate in their country's political process), such as freedom from slavery, torture and arbitrary arrest, freedom of speech and freedom of thought,

	opinion and religion, the right to a fair trial and equality before the law. There are also economic, social and cultural rights (these require a government to ensure that its people share in the economic wealth of the country and participate in its social and cultural life), such as the rights to health and education, social support and a clean environment and the development of people's full potential. There are also rights that apply to groups of people, such as women, children and persons with disabilities - these are called collective rights.
	The UDHR was the first codification of human rights into an internationally recognised instrument. In 1986, the Organisation of African States (presently the African Union) codified the <b>African Charter on Human and Peoples' Rights (ACHPR)</b> . The ACHPR reaffirms the adherence to the principles of human and peoples' rights and freedoms within an African context.

### → **Activity Two: Principles of Human Rights**

**Step One:** Divide the participants into five groups.

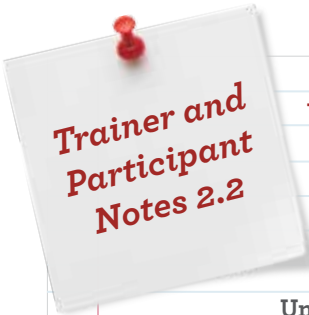
**Step Two:** Ask the participants in their groups to discuss the different principles of human rights.

**Step Three:** Once in groups, the participants select a group representative to present their findings to the plenary.

**Step Four:** The group representatives present their findings in plenary.

**Step Five:** The trainer supplements feedback of the participants and wraps up the session by discussing the principles of human rights.

**Step Six:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



## Trainer and Participant Notes 2.2

### WHAT ARE THE PRINCIPLES OF HUMAN RIGHTS?

The core principles of human rights first set out in the **Universal Declaration of Human Rights** established the basic standards for promoting and protecting human rights. These principles include:

**Universality and inalienability:** Human rights are universal and inalienable. This means that all people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights: *“All human beings are born free and equal in dignity and rights.”*

**Indivisibility:** Human rights are indivisible. This means that whether they relate to civil, political, cultural, economic or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.

**Interdependence and interrelatedness:** Human rights are interdependent and interrelated. This means that one contributes to the realisation of a person’s human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, education or information.

**Equality and non-discrimination:** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.



	<b>Participation and inclusion:</b> All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.
	<b>Accountability and rule of Law:</b> States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. Individuals, the media, civil society and the international community play important roles in holding governments accountable for their obligation to uphold human rights. <sup>1</sup>

# SESSION 2

## THE IMPORTANCE OF HUMAN RIGHTS



**Time:**  
*30-40 mins*

### AIM OF THE SESSION

To equip participants with an understanding on the importance of the term ‘human rights’. The session will also generate an understanding on the distinction between rights and freedoms.

**Content:** Understanding human rights, basic principles of human rights

**Training Methodology:** Buzz groups, discussion groups, free-thinking, experience sharing

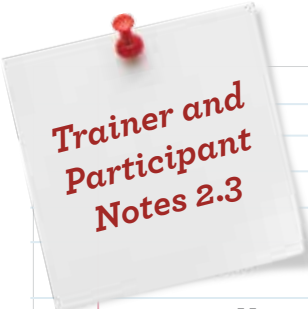
<sup>1</sup> [www.unfpa.org/rights/principles.thm](http://www.unfpa.org/rights/principles.thm)

**Training Materials:** Flipcharts, markers, masking tape, excerpts from the Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights and Trainer and Participant Notes 2.1

## PROCEDURE:

### → Activity One: Human rights

- Step One:** Divide the participants into six groups
- Step Two:** The trainer distributes excerpts from the African Charter on Human and Peoples' Rights, African Charter on Democracy, Elections and Governance, African Union Convention on Prevention and Combating Corruption, African Youth Charter, African Charter on Values and Principles of Public Service and Administration and African Charter on Statistics.
- Step Three:** The trainer asks the groups to discuss the importance of the human rights contained in the excerpts.
- Step Four:** The participants present their findings in the plenary session.
- Step Five:** The trainer supplements and discusses the importance of human rights.
- Step Six:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



### Trainer and Participant Notes 2.3

#### WHY ARE HUMAN RIGHTS IMPORTANT?

Human rights are important for a number of reasons. Below are some thematic contexts, which demonstrate the importance of human rights:

##### 1. Liberty and Equality

Human rights are important for promoting and protecting personal liberty and equality of all before the law. For example, Article 3 of the **African Charter on Human and Peoples' Rights (ACHPR)** provides that: "1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law." This means

that no one should be discriminated against arbitrarily based on race, sex, age, gender, religion, colour, social and economic standing, among others, when interacting with the justice, law and order institutions. Articles 4 and 5 of the ACHPR promote respect for the right to life, dignity and integrity of person of every human being. Inherent in the promotion and protection of the right to life and dignity is the important principle that no person shall be arbitrarily denied of personal liberty or their life. Article 2 of the African Youth Charter further emphasises the principle of non-discrimination based on age. It provides that every young person shall be entitled to enjoyment of rights and freedoms irrespective of their birth, sex, race, colour, language, religion, political or other opinion, national and social origin and fortune.

## 2. Peace, Security and Well being

Human rights are important because they promote peace, security and well being of citizens. Article 23 of the **ACHPR** provides that: *“all peoples shall have the right to national peace and security”*. This means that the State has a responsibility to ensure peace within its territory in order to protect the security of its people, as well as the responsibility to protect its citizens from external aggression by external actors.

Article 29 (3) of the **ACHPR** further provides that every individual has a responsibility not to compromise the security of the State whose national or resident he/she is. This means that citizens too have a responsibility to respect the human rights of fellow citizens by not engaging in actions that might threaten the peace and security of others.

Articles 15, 16 and 17 of the **ACHPR** provide for the promotion and protection of individual well being under different circumstances, such as labour/working conditions, health services and housing conditions, among others. Under Article 15, every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work. This means the State has a responsibility to provide an environment where people are able to exercise their right to work under conditions that promote their dignity and right to life and which are non-discriminatory.

Article 17 of the **African Youth Charter** emphasises the role of youth in promoting peace and condemning armed conflict as well as their role in post-conflict situations. The State is required to strengthen the capacity of youth in peace-building processes and conflict prevention, as well as institute a culture of peace and tolerance among young people. This provision means that youth as a special group should not be discriminated against and alienated during conflict, post-conflict and peaceful situations.

### 3. Accountability and Transparency

Transparency and accountability are key principles for the promotion of human rights because they provide check mechanisms and ensure effective use of public affairs and better service delivery. Article 2 of the **African Charter on Values, Principles of Public Service Administration** mandates States to institute national accountability and integrity systems to promote value-based societal behaviour and attitudes as a means of preventing corruption.

The African Union Convention on Preventing and Combating Corruption recognises that in order to better respect human dignity and foster the promotion of economic, social and political rights in conformity with the provisions of the **ACHPR** and other relevant human rights instruments, States need to establish mechanisms to fight corruption. This convention also acknowledges that corruption undermines accountability and transparency in the management of public affairs as well as the socio-economic development on the continent. Without transparency and accountability, some of the rights, such as the right to life, dignity and integrity of person, will be threatened. For example, without accountability, poor service provision in the health or labour sector would continue unabated, threatening people's lives.

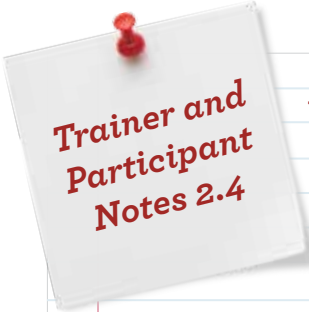
### 4. Good Governance and Development

Human rights are important for the promotion of good governance and development. Scholars consider the right to development as a third-generation right. Good governance will thrive in an environment promoting and respecting popular participation, democracy, rule of law and human rights. Good governance also contributes to promoting peace, security and the development of States and its citizens. Article

	<p>24 of the <b>ACHPR</b> recognises that good governance will promote the right to a generally satisfactory environment favourable to development.</p>
	<p>The <b>African Charter on Democracy, Elections and Governance</b> recognises that in order to promote good governance there is a need for the promotion of a democratic culture, building and/or strengthening strong institutions as well as inculcating political pluralism and tolerance.</p>
	<p>Under Article 3 of the <b>African Union Convention on Preventing and Combating Corruption</b>, State parties agree to promote good governance as one of the underlying principles in combating corruption.</p>
	<p><b>Note:</b> The promotion and protection of human rights is critical to their effective realisation. The importance and enjoyment of human rights might be undermined due to a lack of access to information. For example, without information on prescribed issues, exercising one’s right to participate in promoting transparency and accountability might be difficult. It might also be difficult to hold government accountable for arbitrary arrests and detentions without access to sufficient information.</p>

→ **Activity Two: The Distinction between Rights and Freedoms**

- Step One:** Participants share their understanding of the difference between a ‘right’ and a ‘freedom’.
- Step Two:** The trainer supplements and discusses these distinctions.
- Step Three:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 2.4**

### **WHAT IS THE DISTINCTION BETWEEN RIGHTS AND FREEDOMS?**

A right is a common privilege given to all citizens; it is a legal, moral or social claim to which people are entitled, primarily from their government. A legal right is something that cannot be given to a person at one time and then denied another time. If a person (rights' holder) has a legal right, then someone else (duty bearer) has a legal duty to protect and enforce that right. Where the rights of the rights holder are not protected by the duty bearer, the rights holder can seek protection from the law to enforce that right.

A freedom is the right to conduct one's affairs without governmental interference. Exercising one's freedom means having no constraints on one's actions. Unlike a right, no one has a duty to oversee or enforce a freedom. Freedom itself is a fundamental human right. The government has an obligation not to unduly limit individual freedoms. For example, having a chance to vote in the national elections means exercising one's right to vote, while having a chance to vote freely for a particular candidate means exercising one's freedom.



# CHAPTER THREE



## UNDERSTANDING THE RIGHT TO INFORMATION

The right to information is increasingly being recognised as a fundamental human right. Regionally, the right to information has been codified in different instruments, including the African Charter on Human and Peoples' Rights, the African Union Convention on Preventing and Combating Corruption and the African Charter on Democracy, among others. This chapter focuses on equipping participants with knowledge on the right to information and its importance. It is divided into three sessions: session I explores the definition of information; session II discusses the right to information as a human right; session III examines the importance of the right to information; and session IV discusses the principles of the right to information.



# SESSION 1

## WHAT IS INFORMATION?



Time:  
**30-40 mins**

### AIM OF THE SESSION

To equip participants with knowledge about information.

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**Content:** What is Information?

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**Training Methodology:** Buzz groups, lecture method

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**Training Materials:** Flipcharts, markers, masking tape, and Trainer and Participant Notes 3.1

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### PROCEDURE:

→ **Activity One: What is Information?**

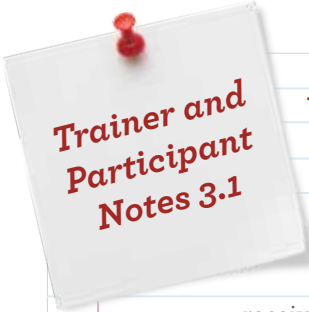
**Step One:** The trainer asks the participants in buzz groups of three to discuss that they understand by the term 'information'.

**Step Two:** In plenary, the participants share their understanding of the term 'information'.

**Step Three:** The trainer writes the feedback on a flipchart.

**Step Four:** The trainer supplements the feedback from the participants by explaining the meaning of the term 'information'.

**Step Five:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 3.1**

### WHAT IS INFORMATION?

**Webster's Dictionary** defines information as knowledge that you get about someone or something; facts or details about a subject; knowledge derived from study, experience or instruction; knowledge of specific events or situations that has been gathered or received by communication; intelligence or news. Information can also be a collection of facts, data or statistical information.

**Black's Law Dictionary** defines information as an accusation exhibited against a person for some criminal offence, without an indictment.

Information, in its most restricted technical sense, is a sequence of symbols that can be interpreted as a message. Information can be recorded as signs or transmitted as signals. Information means any material in any form, including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data or material held in any electronic form and information relating to any public or relevant private body which can be accessed by the public under the law.

The definition of the term 'information' that we are interested in is referenced from the **Model Law on Access to Information for Africa**.

**It defines information** as *"any original or copy of documentary material irrespective of its physical characteristics, such as records, 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."*

Information is data that is:

- i. Accurate and timely;
- ii. Specific and organised for a purpose;
- iii. Presented within a context that gives it meaning and relevance;  
and
- iv. Able to lead to an increase in understanding and a decrease in uncertainty.

	It is important to distinguish between records and information. Records are a form of information. A record means to “write something down so that it can be used or seen again in the future: to produce a record of something” <sup>2</sup> . Record also includes: a) any document, manuscript and file; b) any microfilm, microfiche, and facsimile copy of a document; c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and d) any other material produced by a computer or any other device. Information is valuable because it can affect a person’s behaviour or decision or the outcome on a particular issue. Without information it is difficult to makes accurate and targeted decisions.

**SESSION**  
**2** | **UNDERSTANDING THE RIGHT TO INFORMATION**



**AIM OF THE SESSION**

To build the capacity of participants to understand the right to information as a human right. This session will also discuss, briefly, the history of the right to information.

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**Content:** Understanding the Right to Information

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**Training Methodology:** Discussion groups, free-thinking, experience sharing, Power Point presentations

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**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 3.2

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<sup>2</sup> “record.” Merriam-Webster.com. 2013. <http://www.merriam-webster.com>

**PROCEDURE:****Activity One: The Right to Information**

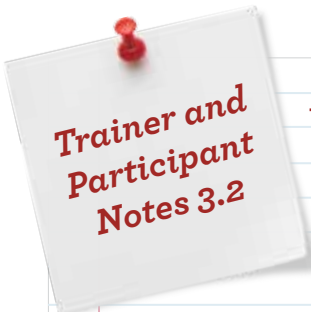
**Step One:** Divide the participants into five groups.

**Step Two:** The trainer asks the participants to discuss in their groups what they understand by the meaning of 'the right to information'.

**Step Three:** The participants present their findings.

**Step Four:** The trainer supplements and discusses the meaning of the right to information.

**Step Five:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 3.2**

**WHAT IS THE RIGHT TO INFORMATION?**

The terms 'right to information', 'freedom of information' and access to information are often used interchangeably as they mean the same thing.

Increasingly, the right to information is being regarded as a fundamental human right. The right

to information pre-supposes that every citizen has a right to know how his/her government is functioning. The right to information empowers every citizen to seek information from his/her government, inspect any government documents and seek certified photocopies thereof. The right to information includes the right to:

1. Inspect works, documents, and records;
2. Take notes, extracts or certified copies of documents or records;
3. Take certified samples of material; and
4. Obtain information in printed or electronic form.

The **Universal Declaration on Human Rights (UDHR)** was the first instrument to codify the right to information. Article 19 provides that:

*"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 and regardless of frontiers."*

The **International Convention on Civil and Political Rights** under Article 19 also contains a provision similar to Article 19 of the **UDHR**. Article 9 (1), **African Charter on Human and Peoples' Rights (ACHPR)** provides that: *“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.”* Article 19(2) of the **African Charter on Democracy, Elections and Governance** mandates state parties to guarantee free access to information. Article 6 of the **African Charter on Values and Principles of Public Service and Administration** provides extensively for the right to access information held by public service bodies. It states as follows:

1. *Public Service and Administration shall make available to users information on procedures and formalities pertaining to public service delivery.*
2. *Public Service and Administration shall inform users of all decisions made concerning them, the reasons behind those decisions, as well as the mechanisms available for appeal.*
3. *Public Service and Administration shall establish effective communication systems and processes to inform the public about service delivery, to enhance access to information by users, as well as to receive their feedback and inputs.*
4. *Public Service and Administration shall ensure that administrative procedures and documents are presented in a user-friendly and simplified manner.*

Drawing from the regional instruments, several African countries have drafted provisions on the right to information in their constitutions, while others have gone a step further and drafted separate legislation on the right to information. Article 1 of the **Rwanda Access to Information Law** provides that: *“the purpose of the legislation is to enable the public and journalists access to information possessed by public organs and some private bodies”*. The article further provides that the legislation shall establish modalities and procedures to promote the publication and dissemination of information. Article 41 of the **Ugandan Constitution** provides that: *“(1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or*

*sovereignty of the State or interfere with the right to the privacy of any other person. (2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.”*

Article 35 of the **Kenyan Constitution** provides that: “(1) Every citizen has the right of access to - (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom. (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person. (3) The State shall publish and publicize any important information affecting the nation.”

Note:

- i. Freedom of information laws have existed since 1776, when Sweden passed its Freedom of the Press Act, which granted public access to government documents. The United States of America passed the Freedom of Information Reform Act in 1966. Today, legislative provisions on the right to information are operating in nearly 94 countries in the world, up from just 13 in 1990.
- ii. Increasingly, the right to information is being recognised as a human right under international law: this means that States are legally obliged to give effect to it and, thus, respect, promote and protect the right to information.
- iii. The right to information means that anyone can request information from a public authority or private authority holding public-interest information, and that authority is obligated to provide the information.
- iv. The core of the right to information is that public and some private authorities do not hold information on their own behalf, but on behalf of the public. The public therefore has a right to access this information.
- v. Where the public or private authority cannot or does not provide the information, this should be done within legal limitations or exceptions to the right to information.
- vi. There is information that is legally exempt from publication, unless specific consent has been granted. Information that is exempt from publication includes, among others, private

	personal information, information that is important for national security and sensitive commercial information.
	vii. Many inter-governmental organisations, such as the World Bank and Asian Development Bank, have also adopted RTI policies.

# SESSION 3

## THE IMPORTANCE OF THE RIGHT TO INFORMATION



Time:  
60-90 mins

### AIM OF THE SESSION

To equip the participants with knowledge on the importance of the right to information.

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**Content:** The Importance of the Right to Information

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**Training Methodology:** Discussion groups, free-thinking, experience sharing

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**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 3.3

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### PROCEDURE:

→ **Activity One: The Importance of the Right to Information**

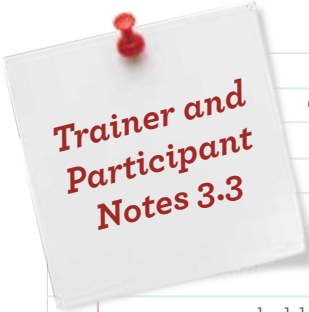
**Step One:** Divide the participants into five groups.

**Step Two:** The trainer asks the participants to discuss in their groups the importance of the right to information.

**Step Three:** The participants present their findings in plenary.

**Step Four:** The trainer supplements and discusses the importance of the right to information.

**Step Five:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 3.3**

## **THE IMPORTANCE OF THE RIGHT TO INFORMATION**

**1. Rule of law.** The rule of law primarily refers to the influence and authority of law within society, especially as a constraint upon behaviour, including the behaviour of government officials. The rule of law is a system within which the following universal principles are upheld: (i) governments and its officials and agents as well as individuals and private entities are accountable under the law; (ii) the laws are clear, publicised, stable and just, are applied evenly and protect fundamental rights, including the security of persons and property; and (iii) the process by which the laws are enacted, administered and enforced is accessible, fair and efficient. Information is critical to promoting the rule of law because access to information guarantees public accountability and ensures that the actions of public and private individuals are limited within the confines of legislation.

**2. Democracy and participation.** Information is essential for promoting democracy at different levels – grassroots, regional and policy level. Democracy involves the ability of individuals to participate effectively in decision-making processes that affect them. Democratic societies have a wide range of participatory mechanisms, ranging from regular elections to citizen oversight bodies for public education and health services, and mechanisms for commenting on draft policies or laws. Effective participation at all of these levels depends, obviously, on access to information. Voting is not simply a technical function but has to be an informed decision based on the ability to participate and engage actively in varied processes. For example, for elections to fulfil their proper function – described under international law as ensuring that “the will of the people shall be the basis of the authority of government” – the electorate must have access to information. The same is true of participation at all levels. It is not possible, for example, to provide useful input to a policy process without access to the policy itself, as well as the background information policymakers have relied upon to develop the policy.



**3. Transparency and accountability.** Democracy is not only about accountability and good governance. Members of the public have a right to scrutinise the actions of their leaders and to engage in full and open debate about those actions. Citizens must be able to assess the performance of the government and this depends on access to information about the state of the economy, social services/social systems, public spending and other matters of public concern. One of the most effective ways of addressing poor governance, particularly over time, is through open, informed debate. These debates provide a platform and space for auditing public officials through transparent, accountable and effective processes.

A secretive government is nearly always inefficient in that a free flow of information is essential if problems are to be identified and resolved. A secretive governing culture fosters suspicion and encourages rumours and conspiracy theories. In such a culture, the public is likely to treat all government information with scepticism, including public education campaigns such as those dealing with important health issues such as HIV/AIDS and malaria. Transparency and accountability is important in promoting trust among citizens to build better relations for accountability.

**4. Combating corruption.** The right to information is a critical tool for combating corruption. Corrupt practice and tendencies thrive in an environment where the right to information is not readily exercised. When the right to information is promoted effectively and when information is readily available and accessible to the public, citizens are in a position to expose corrupt practices and demand better service delivery and accountability.

**5. Reducing poverty and promoting development.** The right to information is fundamental in furthering the development of society and in eradicating poverty. Information on development initiatives such as actions promoting the Millennium Development Goals (MDGs) and different national development plans provides direction on initiating effective anti-poverty programmes, which require accurate information on problems hindering development. Meaningful debates also need to take place around policies designed to tackle the problems of poverty. Access to information can empower poor communities to battle the

circumstances in which they find themselves and help balance the unequal power dynamics that exist between governments and people marginalised through poverty.

**6. Promotion and defence of human rights.** Human rights violations, like corruption, discrimination, arbitrary arrests and detentions, flourish in a climate of secrecy. An open approach by government, which ensures that the right to information is enshrined in legislation, is critical in promoting and defending human rights.

7. Dignity and personal goals. Advocacy for the right to information has often focused on the more political aspects of the right to information. It is important to note that the promotion of the right to information also serves a number of other important social goals. The right to access one's personal information, for example, is an aspect of one's basic human dignity but it can also be central to effective personal decision-making. Access to medical records, for example, often denied in the absence of a legal right, can help individuals make decisions about treatment, financial planning and so on.

**8. Promoting good business climate.** Information is also critical for the private sector and helps to promote a good business climate. An aspect of the right to information that is often neglected is how this right can facilitate effective business practices. Commercial users are one of the most significant user-groups of information. Public authorities hold vast amounts of information, much of which relates to economic matters and which can be very useful for businesses. This is an important benefit of RTI legislation, and helps answer the concerns of some governments about the cost of implementing such legislation. Promoting a good business climate is also critical on the part of private businesses to provide information and adhere to the rule of law.<sup>3</sup>

<sup>3</sup> Content for this section was adapted from Indonesia: How Requesters can use the Right to Information Participants' Manual

→ **Activity Two: Practical Understanding of the Right to Information**

**Step One:** The trainer asks the participants to form buzz groups of three and asks each group to discuss the following questions:

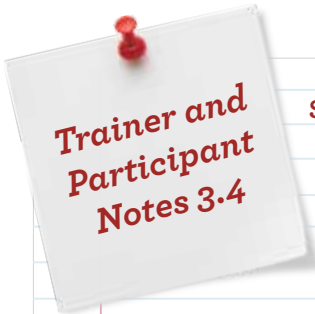
- a) How do you think exercising the right to information would impact on your life?
- b) What problems have you faced as a result of a lack of access to information?

**Step Two:** The trainer notes feedback from the participants on a flipchart.

**Step Three:** The trainer distributes the case study excerpt (Trainer and Participant Notes 3.4) to the participants in their buzz groups.

**Step Four:** In plenary, the participants discuss the case study and its relevance to the right to information.

**Step Five:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**SECURING THE RIGHT TO WATER IN RURAL SOUTH AFRICA**

The villagers in Emkhandlwini in rural KwaZulu-Natal, South Africa noticed that their neighbours in nearby villages were receiving water in municipal tankers from Ntambanana Municipality, but they were not. Their source of water was a dirty stream that they shared with their livestock. Luckily some members of the community were aware of their rights but did not know how to seek solutions to the water issue without relying on an unresponsive local government representative. With the assistance of the Open Democracy Advice Centre, the villagers used the Promotion of Access to Information Act to ask for the minutes of the council meetings where the municipality had decided on their programmes for the provision of water. They also asked for the municipality’s Integrated Development Plan (IDP) and its budget.

It took a frustrating six months before the information was released to the requestors but finally it showed that there were plans to provide water. Women from the village used this information to start asking the authorities difficult questions regarding the delivery of water. The villagers' usage of the freedom of information law and their struggle for water were also covered in the media, which may have created sufficient pressure to prompt the municipality to do something about the issue. Almost a year after the initial RTI request was sent to the municipality, fixed water tanks were installed in the village and mobile water tankers delivered water to the community.

When the water supply by mobile tankers became erratic because drivers started skipping areas, the villagers made another request for information for a service-level agreement about water delivery. The villagers were shocked to discover that there was no service-level agreement - a legal requirement in South Africa - and therefore the water delivery company could not be held accountable for non-delivery of services. This breach of the country's public finance legislation was duly reported to the Auditor General for investigation and corrective action.

***Adapted from Right to Access Information Training Manual, Open Democracy Advice Centre, 2011***

# SESSION 4

## PRINCIPLES GOVERNING THE RIGHT TO INFORMATION



Time:  
**60-90 mins**

### AIM OF THE SESSION

To generate information for the participants on the principles governing the right to information.

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**Content:** Principles Governing the Right to Information

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**Training Methodology:** Free-thinking, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 3.5 and 3.6

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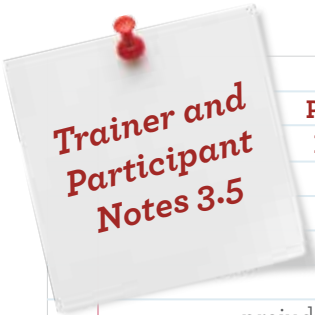
### PROCEDURE:

→ **Activity One: Principles Governing the Right to Information**

**Step One:** In plenary, the trainer asks the participants to share any principles governing the right to information.

**Step Two:** The trainer supplements this with a Power Point presentation on the principles governing the right to information.

**Step Three:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 3.5**

## **PRINCIPLES GOVERNING THE RIGHT TO INFORMATION**

**1. Fundamental right accessible to everyone.** Access to information is a fundamental human right, in accordance with Article 9 of the **ACHPR**. It is open to everyone, and no one should be privileged or prejudiced in the exercise of this right on account of belonging to a class or group howsoever defined, and whether in terms of gender, class, race, political association, occupation, sexual orientation, age, nationality, HIV status, and any other basis as cited in many African constitutions. It is not required that anyone must demonstrate a specific legal or personal interest in the information requested or sought; neither are they required to justify why they are seeking access to the information. The right of access to information shall be established by law in each African country. Such law shall be binding and enforceable and based on the principle of maximum disclosure. The law shall take precedence over other conflicting laws that limit access to information.

**2. Maximum disclosure.** This principle establishes a presumption that all information held by all public and some private bodies should be subject to disclosure. Disclosure of information may be overcome in limited circumstances. Public and some private bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. The exercise of the right to information does not require an individual to demonstrate a specific interest in the information sought. Where a public or private body seeks to deny access to information, it should bear the onus or burden of justifying refusal at each stage of the proceedings. In other words, the public or private body must show that the information that it wishes to withhold falls within the legal scope of the limited regime of exceptions.

**3. Applies to public bodies and private bodies.** The obligations of access to information shall apply to all public bodies, as well as to private bodies that are owned or controlled by the government, utilise public funds, perform functions or provide services on behalf of public institutions, or have exclusive contracts to exploit natural resources (with regards to said funds, functions, services or resources), or which are in possession of information which is of significant public interest

due to its relation to the protection of human rights, the environment or public health and safety, or to the exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right.

**4. *Obligation to publish.*** Public and some private bodies should be under an obligation to publish information. Freedom of information implies not only that public and private bodies accede to requests for information but also publish and disseminate documents of significant public interest subject only to reasonable limits based on resources and capacity. The information to be published will depend on the public or private body concerned. Public or private bodies should, as a minimum, be under an obligation to publish the following categories of information:

- i. Operational information about how the public or private body functions - including costs, objectives, audited accounts and standards, especially where the body provides direct services to the public;
- ii. Information on any requests, complaints or other direct action which members of the public may take in relation to the public body;
- iii. Guidance on processes by which members of the public may provide input into major policy or legislative proposals;
- iv. Types of information the body holds and the form in which this information is held; and
- v. The content of any policy decision that affects the public along with reasons for the decision and background material important in framing the decision.

**5. *Processes to facilitate access.*** All public bodies should be required to establish open, accessible internal systems to ensure the public's right to receive information. Public and some private bodies should designate an individual to be responsible for processing information requests and to ensure compliance with the law. A process for deciding upon requests for information should be specified at three different levels: (i) within the public body; (ii) appeals to an independent administrative body; and (iii) appeals to the courts. Where necessary, provision should be made to ensure full access to information for certain groups; for example, those who cannot read or write, those who do not speak the language of the

record or those suffering from disabilities such as blindness. Public bodies should also be required to assist applicants whose requests are unclear, excessively broad or otherwise in need of reformulation. Public bodies should not have to provide individuals with information that is contained in a publication, but direct the applicant to the published source. The law should provide for strict time limits for the processing of requests and require that any refusals be accompanied by substantive written reasons.

**6. Clear and unambiguous process.** The law shall include procedures for the right to be exercised. The process to obtain information should be simple and fast, and take advantage of new information and communication technologies where possible. Bodies falling under the scope of the access to information law should provide assistance to requesters in order to ensure that they receive the information they need. The information should be provided in a form understandable to the requestor. Information should be disclosed within a clear and reasonable deadline provided for by law. It should be available at low or no cost.

**7. Promotion of open government.** In most countries, governments and other public bodies have worked for decades within a culture of secrecy. There are two aspects to this: (i) officials do not understand their obligations to keep the public informed; and (ii) the public does not understand its right to information. If an RTI law is to function properly, it is important that both these problems are tackled. This can best be done by the public bodies themselves undertaking promotional work. This will be aimed both at officials and at the public - to educate them on their information rights and to tell them how to use legal provisions on freedom of information. Officials will also need to be educated on how the right of information law defines their obligations to the public and trained on how the new information regime works. Public and some private bodies must promote open government actively. Informing the public of their rights and promoting a culture of openness within government are essential if the goals of freedom of information legislation are to be realised. Promotional measures require strong and dedicated leadership and include: (i) raising awareness of the duty to provide information; (ii) establishing clear principles of



accountability; and (iii) establishing systems to handle and store records in a systematic manner for easy retrieval.

**8. Limited scope of exceptions.** Exceptions to the right to information should be clearly and narrowly defined and subject to strict 'harm and public interest tests'. All individual requests for information from public bodies should be met unless the public body shows that the information falls within the scope of limited regime of exceptions. A refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test:

- i. The information must relate to a legitimate aim listed in the law;
- ii. Disclosure must threaten to cause substantial harm to that aim; and
- iii. The harm to the aim must be greater than the public interest in having the information.

Information laws must specify which interests are legitimate to protect through exemption - these may include the privacy of individuals, health and safety, law enforcement, commercial and other confidential information, the safeguarding of policymaking and operation of public bodies, and national security. The fact that the information falls within the list of legitimate exception grounds is not sufficient to exempt it from disclosure. The disclosure must harm the specific interest substantially and this harm must be greater than the public interest in receiving the information. No public bodies should be completely excluded from the ambit of the law, even if the majority of their functions fall within the realm of exceptions. This applies to all branches of government. Non-disclosure of information must be justified on a case-by-case basis. Restrictions which protect government from embarrassment or exposure from wrongdoing are not justified.

- **Relationship between right to information legislation and secrecy legislation**

The relationship between RTI legislation and secrecy legislation poses a special problem. If the RTI law contains a comprehensive statement of the reasons for secrecy, it should not be necessary to extend these exceptions with secrecy legislation. This, along with the fact that secrecy laws are normally not drafted with open government in mind, and given

the plethora of secrecy provisions that are often found within various national laws, it is quite important that the RTI law should, in case of conflict, override secrecy legislation. Even more important is a rule specifying that administrative classification of documents cannot defeat the RTI law. In this context, it is worth noting that classification is often simply a label given by the bureaucrat who happens to have created a document and that this cannot possibly justify overriding the right to information.

**9. Open meetings.** Meetings of public and some private bodies should be open to the public. The right to information includes the public's right to know what the government is doing on its behalf and to participate in decision-making processes. RTI legislation should therefore establish a presumption that all meetings of governing bodies are open to the public. "Governing" in this context refers primarily to the exercise of decision-making powers, so bodies which merely proffer advice would not be covered. Meetings of elected bodies and their committees, planning and zoning boards, boards of public and educational authorities and public industrial development agencies would be included.

A "meeting" in this context refers primarily to a formal meeting, namely the official convening of a public or private body for the purpose of conducting public business. Factors that indicate that a meeting is formal are the requirement of a quorum and the applicability of formal procedural rules. Notice of meetings is necessary if the public is to have an opportunity to participate and the law should require that adequate notice of meetings is given sufficiently in advance to allow for attendance. Meetings may be closed, but only in accordance with established procedures and where adequate reasons for closure exist. Any decision to close a meeting should itself be open to the public. Reasons for closure might, in appropriate circumstances, include public health and safety, law enforcement or investigation, employee or personnel matters, privacy, commercial matters and national security.

**10. Disclosure takes precedence.** The RTI law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions. Where this is not possible, other legislation dealing with

publicly held information should be subject to the principles underlying the RTI legislation. Laws which are inconsistent with the principles of maximum disclosure should be amended or repealed. Exceptions provided for in the RTI legislation should be comprehensive and other laws should not be permitted to extend it. In particular, secrecy laws should not make it illegal for officials to divulge information that they are required to disclose under the law.

In the long term, there should be national commitment to bring all laws relating to information in line with the principles underpinning the RTI law. Officials should be protected from sanctions where they have, reasonably and in good faith, disclosed information pursuant to a freedom of information request, even if it subsequently transpires that the information is not subject to disclosure.

**11. Protection for whistleblowers.** Individuals who release information on wrongdoing (whistleblowers) for public interest must be protected from any legal, administrative or employment-related sanctions. ‘Wrongdoing’ in this context includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body. It also includes a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not. Whistleblowers should be protected as long as they acted in good faith and in the reasonable belief that the information was substantially true when they disclosed evidence of wrongdoing. Such protection should apply even where disclosure would otherwise be in breach of a legal or employment requirement.

The ‘public interest’ in this context would include situations where the benefits of disclosure outweigh the harm, or where an alternative means of releasing the information is necessary to protect a key interest. This would apply, for example, in situations where whistleblowers need protection from retaliation, where the problem is unlikely to be resolved through formal mechanisms, where there is an exceptionally serious reason for releasing the information, such as an imminent threat to public health or safety, or where there is a risk that evidence of wrongdoing will otherwise be concealed or destroyed.

**12. Costs.** Individuals should not be deterred from making requests for information by excessive costs. The cost of gaining access to information held by public or some private bodies should not be so high as to deter potential applicants, given that the whole rationale behind RTI laws is to promote the open access to information. As access to information is a right, any cost involved in authorities fulfilling this right must be considered part of ordinary public service already paid by citizens via taxes. The fact remains that when a member of the public applies for a piece of information there is a monetary cost.

Different systems have been employed around the world to ensure that costs do not act as a deterrent to requests for information. Some countries use a two-tier system, involving flat fees for each request, along with graduated fees depending on the actual cost of retrieving and providing the information. Graduated fees should be waived or significantly reduced for requests for personal information or for requests in the public interest (which should be presumed where the purpose of the request is connected with publication). In other countries, higher fees are levied on commercial requests as a means of subsidising public interest requests.

**13. Right of appeal.** Everyone has a right to appeal administratively any action that hinders or denies access to information or any failure to proactively disclose information. They have a right to further appeal to an independent body and finally to seek judicial review of all limits of their right of access to information.

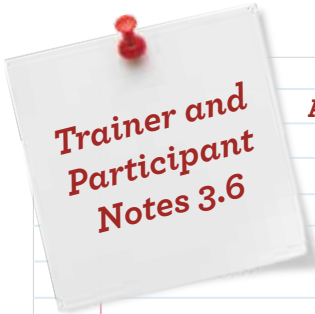
**14. Duty to collect and manage information.** Public and relevant private bodies have a duty to collect information on their operations and activities on behalf of their citizens. They also have a duty to respect minimum standards in relation to the management of this information to ensure that it may be made easily accessible to citizens.

**15. Duty to fully implement the RTI law.** Public and relevant private bodies have an obligation to ensure the law is fully implemented. This includes internal procedures and processes and the designation of responsible officials.<sup>4</sup>

<sup>4</sup> Principles 1, 3, 6, 13, 14 and 15 have been adapted from the Declaration of the African Platform on Access to Information (APAI), September 2011

→ **Activity Two: Application of the Principles Governing the Right to Information**

- Step One:** In plenary, the trainer makes a Power Point presentation on the application of the principles governing the right to information.
- Step Two:** The trainer engages the participants in the discussion on the application of RTI principles.
- Step Three:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**APPLICATION OF THE PRINCIPLES GOVERNING THE RIGHT TO INFORMATION**

These principles are essential to development, democracy, equality and the provision of public service, and are applicable, among others, to the following:

**1. Enabling environment.** Governments should ensure that the legal framework creates an enabling environment allowing individuals, civil society organisations (CSOs) including trade unions, media organisations and private businesses to enjoy access to information fully, thus fostering active participation in socio-economic life by all, in particular people living in poverty and those discriminated against or marginalised.

**2. Elections and electoral processes.** Governments and election management bodies have an obligation to provide the public with information before, during and after elections, not to interfere with media coverage, to encourage public participation and proactively publish information related to campaign spending and contributions.

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Principles 2, 4, 5, 7, 8, 9, 10, 11 and 12 are retrieved from: Article 19 (1999), The Public's Right to Know. Principles of Freedom of Information Legislation. International Standard Series available at <https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>

**3. Disadvantaged communities.** Governments have a particular obligation to facilitate access to information by disadvantaged minority groups and minority language speakers, as well as marginalised groups including women, children, rural people, the poor and persons with disabilities. Information should be available at no costs to these groups. This applies especially to information that contributes to the long-term empowerment of these groups. Governments also have an obligation to ensure equitable and affordable access to information and communication technologies (ICTs) for those with special needs and for other disadvantaged persons and groups.

**4. Women.** Governments, civil society and the media have an obligation to facilitate women's equal access to information, so that they can defend their rights and participate in public life. CSOs should be encouraged to make the best use of RTI mechanisms to monitor their government's fulfilment of commitments to further gender equality, as well as to demand the enhanced delivery of services targeted at women and to ensure that the public funds to which they are entitled actually reach them. The collection, management and release of information should be gender disaggregated.

**5. Children and youth.** Governments have an obligation to encourage the mass media to disseminate information and material of social and cultural benefit to children and the youth. Governments are further encouraged to facilitate the exchange and dissemination of such information and material from a diversity of cultural, national and international sources as well as the production and dissemination of information specifically for children and youth and, wherever reasonably possible, facilitate and encourage access to such information by children and youth.

**6. Environmental information.** Governments and inter-governmental organisations should increase their efforts in implementing Principle 10 of the 1992 Rio Declaration on the Environment and Development on the right of access to information, public participation and access to justice on environmental issues. Governments should adopt appropriate legislation and regulations to promote access and the proactive release of environmental information, guarantee openness,

fight secrecy in institutional practices, and repeal laws that hinder the public availability of environmental information. Governments' capacity to supply environmental information and the demand by CSOs for such information, as well as engagement in decision-making processes and the ability to hold governments and other actors accountable for actions affecting the environment, should be strengthened.

**7. Education.** Taking into account the close connection between the right of access to information and the right to education, governments have a duty to make publicly available information about educational policies and assessments of their impacts, school performance data and budgets for education at all government levels. Governments also have a positive obligation to provide information for each school, in particular, schools' admission policies and admission lists, information on management practices, school governance and other relevant aspects.

**8. Health.** Governments have a duty to provide access to information with a view to ensuring and improving access to health-care services and enhancing accountability regarding their provision. Civil society actors should be encouraged to implement actions to expand the reach of this type of information to all sectors in society, promote the exercise of the right to information to advance the right to health and counter its violations, undertake advocacy and monitoring actions, and directly involve individuals in them. Enhanced access to health-related information shall not preclude the protection of an individuals' right to privacy.

**9. The fight against corruption.** By contributing to openness and accountability, access to information can be a useful tool in anti-corruption efforts. Besides ensuring that RTI legislation is implemented effectively, governments have a duty to guarantee a broader legal and institutional framework conducive to preventing and combating corruption. CSOs and a pluralistic media independent of powerful political and commercial interests are critical actors in unveiling and fighting corrupt practices, and their use of RTI laws and other mechanisms enhancing transparency should be encouraged.

**10. Aid transparency.** Governments, donors and recipients have a duty to make all information relating to development assistance, including grants, loans and transfers to public and private bodies, and assessments on the use and effects of such assistance, fully public in a proactive manner based on the principles of the International Aid Transparency Initiative.

**11. Natural resources transparency.** Governments should proactively publish all information including policies, impact assessments, agreements, subsidies, licences, permits and revenues relating to the exploitation of natural resources including the extractive industries, water, fisheries, and forests. Private bodies that exploit natural resources should be required publicly to disclose the terms of such agreements and payments made to governments based on the principles developed by the Extractive Industries Transparency Initiative (EITI).

**12. Media and information literacy.** Governments, civil society, educational institutions and the media have an obligation to promote media and information literacy, to assist individuals and communities to ensure that all members of society can understand and take advantage of new technologies, and are able to participate intelligently and actively in public matters, and enforce their right of access to information. Citizens should be empowered to consume information critically and express their views on such information, as well as to seek corrections where applicable.

**13. Access to ICTs.** Governments have an obligation to (i) use ICTs and other media to ensure maximum disclosure and dissemination of information; (ii) promote and facilitate unhindered public access to such technologies for all citizens and especially for disadvantaged minority groups and minority language speakers, as well as marginalised people such as women, children, rural people, the poor and persons with disabilities.

**14. Apply in other spheres.** The principles stated above on the right of access to information also apply to various spheres that have not been listed.

***Declaration of the African Platform on Access to Information, September 2011***





# CHAPTER FOUR



## LEGAL FRAMEWORK ON THE RIGHT TO INFORMATION

The right to information has been codified in different international and regional instruments. Since the UDHR, a strong regime on the right to information has been codified in varied regional charters and conventions such as the **ACHPR; African Charter on Democracy, Elections and Governance; African Union Convention on Prevention and Combating Corruption; African Youth Charter; African Charter on Values and Principles of Public Service and Administration; and the African Charter on Statistics**. This chapter will equip participants with knowledge on the international and regional framework promoting the right to information and the different enforcement mechanisms on the right to information across the continent. The chapter is divided into three sessions: session I examines the international and regional framework on the right to information, session II looks at the codification of the right to information across the continent, and session III explores the different enforcement mechanisms on the right to information in Africa.

# SESSION 1

## INTERNATIONAL AND REGIONAL FRAMEWORK ON THE RIGHT TO INFORMATION



Time:  
**60-90 mins**

### AIM OF THE SESSION

To discuss the international and regional framework on the right to information.

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**Content:** International and Regional Legal Framework on the Right to Information

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**Training Methodology:** Free-thinking, lecture method, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape, excerpts of the international and regional framework and Trainer and Participant Notes 4.1 and 4.2

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### PROCEDURE:

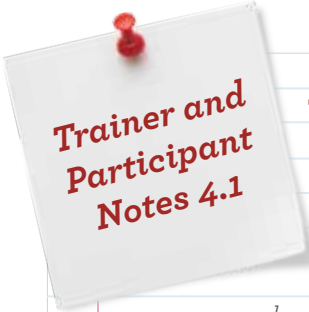
→ **Activity One: Discussion on international and regional legal framework**

**Step One:** In plenary, the trainer asks participants whether they are aware of any international and regional legislation on the right to information.

**Step Two:** The trainer writes participants' feedback on a flipchart.

**Step Three:** The trainer distributes excerpts of international and regional legal framework on the right to information and discusses and explains these.

**Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



## Trainer and Participant Notes 4.1

### THE IMPORTANCE OF THE RIGHT TO INFORMATION

#### Universal Declaration of Human Rights (UDHR)

Article 19 provides that: *“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 and regardless of frontiers.”* Countries that have ratified the UDHR are mandated to comply with the provisions it sets forth. This requirement is stated in Article 30 which provides thus: *“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”*

#### International Convention on Civil and Political Rights (ICCPR)

Article 19 provides that: *“(1) Everyone shall have the right to hold opinions without interference; (2) 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. (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”*

#### African Charter on Human and Peoples’ Rights (ACHPR)

The ACHPR was developed to promote a human rights regime peculiar to the African context and setting. The ACHPR seeks to eradicate all forms of colonialism from Africa, to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa and to promote international co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights. Article 9 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 African Charter on Values and Principles of Public Service and Administration under Article 6 (Access to Information) provides that:

1. Public Service and Administration shall make available to users information on procedures and formalities pertaining to public service delivery.
2. Public Service and Administration shall inform users of all decisions made concerning them, the reasons behind those decisions, as well as the mechanisms available for appeal.
3. Public Service and Administration shall establish effective communication systems and processes to inform the public about service delivery, to enhance access to information by users, as well as to receive their feedback and inputs.
4. Public Service and Administration shall ensure that administrative procedures and documents are presented in a user-friendly and simplified manner.

### **African Union African Charter on Democracy, Elections and Governance**

On January 30, 2007 the African Union adopted this charter specifically to: *“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.”*

The charter states that member States shall implement the charter in accordance with, among others, the principles of “transparency and fairness in the management of public affairs”. Under Article 12, it calls on member States to: *“Promote good governance by ensuring transparent and accountable administration”*, while Article 19 provides as follows:

1. *Each State Party shall inform the Commission of scheduled elections and invite it to send an electoral observer mission.*
2. *Each State Party shall guarantee conditions of security, free access to information, non-interference, freedom of movement and full co-operation with the electoral observer mission.*

### **African Union Convention on Preventing and Combating Corruption**

This convention applies both to the public and the private sectors. One of the major objectives of the convention is “to establish the necessary conditions to foster transparency and accountability in the management of public affairs” - Article 2 (5). The convention obliges African states

to respect the rule of law and good governance – Article 3 (3). Article 9 requires State Parties 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”. Article 12 (4) provides that civil society and the media should be 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”.

### **African Youth Charter**

Article 10 (3)(d) provides that States shall: *“provide access to information and education and training for young people to learn their rights and responsibilities, to be schooled in democratic processes, citizenship, decision-making, governance and leadership such that they develop the technical skills and confidence to participate in these processes”*. Article 11 (2)(i) provides that: *“States Parties shall take the following measures to promote active youth participation in society... provide access to information and services that will empower youth to become aware of their rights and responsibilities.”*

### **African Charter on Statistics**

Article 3 of the charter obligates State Parties to respect the right to information as enshrined in the ACHPR. In particular, principles 4 and 5 provide for the dissemination of statistical information as well as the protection of individual data, information sources and respondents. One of the provisions in principle 4 provides as follows: *“African statistics shall not be made inaccessible in any way whatsoever. This concomitant right of access for all users without restriction shall be guaranteed by domestic law. Micro-data may be made available to users on condition that the pertinent laws and procedures are respected and confidentiality is maintained.”* Principle 5 provides in part that: *“national statistics authorities, African statisticians and all those operating in the field of statistics in Africa shall absolutely guarantee the protection of the private life and business secrets of data providers (households, companies, public institutions and other respondents), the confidentiality of the information so provided and the use of such information for strictly statistical purposes”*.

**UNESCO – The 2008 Maputo Declaration on Fostering Freedom of Expression, Access to Information and Empowerment of People**

The right to information is essential to democratic discourse and open and informed debate, thereby fostering government transparency and accountability, peoples' empowerment, and citizens' participation. This declaration also notes the importance of contributions of free, independent and pluralistic media to sustainable and human development, poverty eradication, good governance, peace and reconciliation, sound environments and respect for human rights.

The Maputo Declaration calls upon member States to foster the free flow of information through policies founded on the four key principles of inclusive knowledge societies: freedom of expression, equal access to quality education, universal access to information and respect for cultural diversity. The declaration further calls upon States to implement commitments to freedom of expression through a legal and regulatory environment that respects press freedom and independence, and enables media diversity. The declaration also mandates States to provide legal guarantees for the right to information which reflect the principles of maximum and facilitated disclosure, protection of whistleblowers, limited scope of exceptions, independent appeals mechanisms and strong proactive disclosure rules, as well as to ensure proper implementation in practice of these guarantees.

**UNESCO –The 2006 Colombo Declaration on Media, Development and Poverty Eradication** calls on States to: *“develop national policies that address access to and participation in information and communication for people living in poverty, including access to licenses and fair spectrum allocation”*.

**UNESCO – The 2005 Dakar Declaration on Media and Good Governance**

The declaration calls upon States: *“to ensure that government bodies respect the principles of transparency, accountability and public access to information in their operations; to provide for comprehensive legal guarantees for the right to access information recognizing the right to access information held by all public bodies, and requiring them to*

*publish key categories of information and to introduce effective systems of record management, and to ensure proper implementation in practice of these guarantees; to promote wide public awareness of legislation and policies regarding access to information held by public bodies; as well as follow the principle that legislative bodies should be open to the public..."*

### **UNESCO – The 1978 Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War**

Article I provides as follows: "The strengthening of peace and international understanding, the promotion of human rights and the countering of racism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information."

Article II of the declaration states: "the exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding".

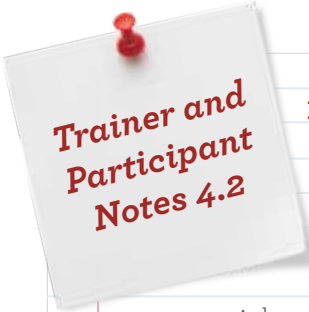
### **United Nations Convention against Corruption**

This convention was adopted by the UN General Assembly on October 31, 2003. Under Article 13, the convention identifies the following as important measures to be taken by governments for ensuring the participation of society in governance: "*(i) effective access to information for public; (ii) undertaking public information activities contributing to non-tolerance of corruption (including conducting public education programmes) and (iii) respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption*".

Article 10 states that: "*to combat corruption, each (member State) shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes and take measures for:*



	a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
	b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
	c) Publishing information, (including) periodic reports on the risks of corruption in its public administration.”
	<b>Note:</b> Violation of the rights provided under the above-mentioned instruments, either by the State or individuals, triggers varied enforcement mechanisms to protect the right to information either at the international or regional level. We shall discuss enforcement mechanisms in a later chapter.



**Trainer and  
Participant  
Notes 4.2**

## **INTERNATIONAL AND REGIONAL PRINCIPLES AND GUIDELINES ON THE RIGHT TO INFORMATION**

In 1946, the United Nations General Assembly adopted **Resolution 59(1)**, which states that the:

“Right to Information is a fundamental human right and is the touchstone of all the freedoms to which the UN is consecrated.”

The UN General **Assembly’s Resolution 217 A (III)** on the 1948 **Universal Declaration of Human Rights** states that: “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 and regardless of frontiers.”

The UN General Assembly’s 1966 **Resolution 2200 A (XXI)** on the **International Covenant on Civil and Political Rights** states that: “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.” In 1980, the Council of Law Ministers of the Commonwealth (Commonwealth Principles) issued a statement recognising the fact that: “public participation in the democratic and government process was at its most significant when citizens had adequate access to information”.

In 1999, the Commonwealth convened an Expert Group on Right to Information which confirmed that the: “right to information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the Executive, the Legislative and the Judicial arms of the State, as well as any government owned corporation and any other body carrying out public functions”. This principle was adopted by the Council of Law Ministers who went on to formulate further principles, which stated that:

- a) *Member countries should be encouraged to regard Right to Information as a legal and enforceable right.*
- b) *There should be a presumption in favour of disclosure and Governments should promote a culture of openness.*
- c) *The right of access to information may be subject to limited exemptions but these should be narrowly drawn.*
- d) *Governments should maintain and preserve records.*
- e) *In principle, decisions to refuse access to records and information should be subject to independent review.*

The ministers also called on the Commonwealth to promote these principles among its member States.

Principle III of the **Recommendations on Access to Official Documents** adopted by the Committee of Ministers of the Council of Europe in October 2002 provides: “Member States should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.”

At the 32nd Ordinary Session of the African Commission on Human and Peoples’ Rights (Banjul, The Gambia, 2002) African countries adopted a **Declaration of Principles on Freedom of Expression in Africa** which states 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 established by law. The right to information shall be guaranteed by law in accordance with the following principles:

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

*e) secrecy laws shall be amended as necessary to comply with right to information principles; and*

*f) everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.*

The World Conference on Human Rights, held in Vienna in 1993, declared that the right to development adopted by the UN General Assembly in 1986 is a universal and inalienable right and an integral part of fundamental human rights. The declaration recognises that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. The right to freedom of expression is regarded as closely linked to the right to development. The right to seek, receive and impart information is not merely a corollary of freedom of opinion and expression; it is a right in and of itself. As such, it is one of the rights upon which free and democratic societies depend. It is also a right that gives meaning to the right to participate, which has been acknowledged as fundamental to the realisation of the right to development.

**Note:** While these guidelines and principles are not enforceable because they are not legal instruments, they provide persuasive direction on international and regional discourse on the right to information. These guidelines and principles are critical for use by civil society organisations in engaging their governments and creating awareness on the need to uphold the right to information.

# SESSION 2

## CODIFICATION OF THE RIGHT TO INFORMATION ACROSS THE CONTINENT



Time:  
**60-90 mins**

### AIM OF THE SESSION

To empower participants with knowledge of the nature of RTI laws by different countries.

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**Content:** Countries with Right to Information Legislations

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**Training Methodology:** Experience sharing, group discussions, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape, excerpts of legislation on the right to information and Trainer and Participant Notes 4.3

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### PROCEDURE:

→ **Activity One: Codification of the Right to Information across the continent**

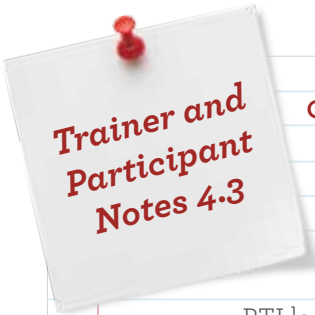
**Step One:** The trainer distributes constitutional provision excerpts on the right to information from different African countries.

**Step Two:** Participants are divided into five groups to discuss the constitutional provisions on the right to information.

**Step Three:** The participants in their groups are asked to analyse this particular legislation and determine whether it adheres to the international principles on the right to information.

**Step Four:** The participants present their findings in the plenary session.

**Step Five:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 4.3**

## **CODIFYING RIGHT TO INFORMATION LEGISLATION ACROSS THE CONTINENT**

Legal provisions on the right to information are being codified under constitutional provisions in some countries across the continent, while other countries have gone ahead and developed specific RTI legislation.

**2010 Kenyan Constitution** – Article 35 provides that:

- (1) *Every citizen has the right of access to –*
  - a) *information held by the State; and*
  - b) *information held by another person and required for the exercise or protection of any right or fundamental freedom.*
- (2) *Every person has the right to the correction or deletion of untrue or misleading information that affects the person.*
- (3) *The State shall publish and publicize any important information affecting the nation.*

**1995 Ugandan Constitution** – Article 41 states thus:

*Right of access to information*

- (1) *Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to privacy of any other person.*
- (2) *Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.*

**1977 Tanzanian Constitution** – Article 18 (b) provides:

*Every person has a right to seek, receive and, or disseminate information regardless of national boundaries.*

**2003 Rwandan Constitution** – Article 34 states that:

*Freedom of the press and freedom of information are recognized and guaranteed by the State. Freedom of speech and freedom of information shall not prejudice public order and good morals, the right of every citizen to honour, good reputation and the privacy of personal and family life. It is also guaranteed so long*

*as it does not prejudice the protection of the youth and minors. The conditions for exercising such freedoms are determined by law. There is hereby established an independent institution known as the High Council of the Press. The law shall determine its functions, organization and operation.*

**1986 Liberian Constitution** – Article 15 (b) provides that the right to information encompasses the right to hold opinions without interference and the right to knowledge. It includes freedom of speech and of the press, academic freedom to receive and impart knowledge and information and the right of libraries to make such knowledge available. It includes non-interference with the use of the mail, telephone and telegraph. It likewise includes the right to remain silent.

**1994 Ethiopian Constitution** – Article 29 (1):

*Right to Hold Opinions, Thoughts and Free Expressions*

*(2) Everyone shall have the right to freedom of expression without interference. 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 other media of his choice. (3) Freedom of the press and mass media as well as freedom of artistic creation is guaranteed. Press freedom shall, in particular, include the rights enumerated hereunder: a) that censorship in any form is prohibited. b) the opportunity to have access to information of interest to the public.*

**1996 South African Constitution** – Article 16 (1):

*Everyone has the right to freedom of expression, which includes:-  
(b) freedom to receive or impart information or ideas.*

**2010 Angola Constitution** – Article 40

*Freedom of expression and information*

*(1) Everyone shall have the right to freely express, publicize and share their ideas and opinions through words, images or any other medium, as well as the right and the freedom to inform others, to inform themselves and to be informed, without hindrance or discrimination. (2) The exercise of the rights and freedoms described in the previous point may not be obstructed or limited*

*by any type or form of censorship. (3) Freedom of expression and information shall be restricted by the rights enjoyed by all to their good name, honour, reputation and likeness, the privacy of personal and family life, the protection afforded to children and young people, state secrecy, legal secrecy, professional secrecy and any other guarantees of these rights, under the terms regulated by law. (4) Anyone committing an infraction during the course of exercising freedom of expression and information shall be held liable for their actions, in disciplinary, civil and criminal terms, under the terms of the law. (5) Under the terms of the law, every individual and corporate body shall be assured the equal and effective right of reply, the right to make corrections, and the right to compensation for damages suffered.*

Only 21 countries in Africa have developed legislation on the right to information. These are South Africa, Angola, Zimbabwe, Uganda, Ethiopia, Liberia, Malawi, Nigeria, Sierra Leone, Guinea, Tanzania, Kenya, Niger, Rwanda, Mozambique, South Sudan, Sudan, Tunisia, Togo, Burkina Faso and Côte d'Ivoire. Countries are ranked according to the progressiveness of their legislations in promoting the right to information. The rankings are undertaken by the Centre for Law and Democracy and will vary yearly. Below is the ranking of the African countries with RTI legislation as at September 2013.



Table 1: Country rankings on the right to information<sup>5</sup>

Country	Year	Sec 1 Right to Access	Sec 2 Scope	Sec 3 Request- ing Pro- cedures	Sec 4 Excep- tions and Refusals	Sec 5 Appeals	Sec 6 Sanctions and Protec- tions	Sec 7 Promo- tional Meas- ures	Total
Liberia	2010	5	30	21	27	20	7	16	126
Sierra Leone	2013	0	29	25	18	28	7	15	122
South Sudan	2014	6	27	16	26	22	8	15	120
Ethiopia	2008	5	25	21	18	25	6	14	114
South Africa	2000	6	25	21	25	14	6	14	111
Uganda	2005	6	26	23	22	11	5	5	98
Nigeria	2011	3	29	14	22	4	7	11	90
Tunisia	2011	2	20	23	21	10	1	12	89
Rwanda	2013	2	30	8	24	9	1	3	77
Angola	2002	4	20	11	18	18	0	5	76
Côte d'Ivoire	2014	2	15	20	17	13	4	5	76
Niger	2011	0	19	13	13	17	6	6	74
Zimbabwe	2002	2	16	12	14	22	1	5	72
Guinea	2010	2	27	16	9	4	2	6	66

<sup>5</sup> <http://www.law-democracy.org/live/global-rti-rating/results/>

### → **Activity Two: Considerations for Developing RTI Legislation**

- Step One:** The trainer distributes the group discussion question to participants.
- Step Two:** The participants are divided into groups to discuss the question.
- Step Three:** The participants present their discussions in plenary session and the trainer supplements this information.
- Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.

#### **GROUP DISCUSSION:**

Assuming Kaabera, a coastal African country, does not have constitutional provisions on the right to information and neither does it have RTI legislation. What content would you recommend for the country to develop RTI legislation?

#### **Trainer and Participant Notes 4.4**

#### **CONSIDERATIONS FOR DEVELOPING RTI LEGISLATION**

- a) International and regional instruments on the right to information
- b) Basic principles of human rights
- c) Article 19 of the **UDHR** and **ICCPR** and Article 9 of **ACHPR** and **African Union Treaties**
- d) **Model Law on Access to Information in Africa**



# CHAPTER FIVE



## EXERCISING THE RIGHT TO INFORMATION

Exercising the right to information is one of the elements in enhancing democratic engagement, breaking the culture of secrecy, building confidence in government institutions and strengthening their credibility and effectiveness. This chapter will explore the different mechanisms that are applicable to exercise the right to information at different levels. The chapter has three sessions: session I will discuss access to information held by public bodies and relevant private bodies; session II examines requests for information; while session III will discuss the limited regime of information exempt from disclosure

# SESSION 1

## PUBLIC BODIES, RELEVANT PRIVATE BODIES AND PRIVATE BODIES OBLIGATED TO PROVIDE INFORMATION



Time:  
**60-90 mins**

### AIM OF THE SESSION

To equip participants with knowledge about which institutions are mandated to provide information.

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**Content:** Public bodies and relevant private bodies obligated to provide information

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**Training Methodology:** Free-thinking, buzz groups, lecture method, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 5.1

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### PROCEDURE:

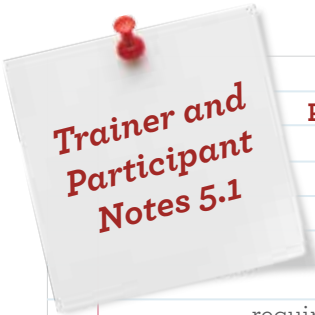
→ **Activity One: Discussion of Bodies Obligated to Provide Information**

**Step One:** In plenary, the trainer asks participants in buzz groups to discuss which institutions need to provide information.

**Step Two:** The participants share views in plenary and the trainer writes this feedback on a flipchart.

**Step Three:** The trainer supplements and provides information on which bodies are eligible to provide information.

**Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 5.1**

## **PUBLIC BODIES, RELEVANT PRIVATE BODIES AND PRIVATE BODIES**

All public bodies are obligated by the ACHPR to provide information when it is requested. However, there are instances where private bodies engage in activities of which public information might be required or some private bodies hold information important to the public. Such private institutions will also be required to provide information where such information is requested.

According to the **Model Law on Access to Information:**

*A public body is defined to mean any body: (a) established by or under the Constitution; (b) established by statute; or (c) which forms part of any level or branch of government. A private body means: (a) a natural person who carries on or has carried on any trade, business or profession or activity, but only in such capacity; (b) a partnership which carries on or has carried on any trade, business or profession or activity; or (c) any former or existing juristic person or any successor in title; but excludes public bodies and relevant private bodies. To publish, according to the model law, is to make available in a form and manner which is easily accessible to the public and includes providing copies or making information available through broadcast and electronic means of communication.*

*Public bodies, relevant private bodies and private bodies have a duty to create, keep, organise and maintain information:*

- 1. Each information holder (information holder means a public body, relevant private body and/or private body) must create, keep, organise and maintain its information in a manner which facilitates the right of access to information, as provided in this Act.*

*Any institution designated as an information holder must have an information officer. An information officer means a person designated as the information officer of a public body or relevant private body or private body.*

**Note:** The head of any institution or organisation is the information officer.

2. Every public body and relevant private body must:
- a. produce information in respect of all its activities, including but not limited to the following information;

**Proactive disclosure obligation**

Each public body and relevant private body must publish the following information produced by or in relation to that body within 30 days of the information being generated or received by that body:

- a) manuals, policies, procedures or rules or similar instruments which have been prepared for, or are used by, officers of the body in discharging that body's functions, exercising powers and handling complaints, making decisions or recommendations or providing advice to persons outside the body with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons may be entitled;
- b) the names, designations and other particulars of the information officer and deputy information officer of the public body or relevant private body, including their physical contact details and electronic addresses where persons may submit requests for information;
- c) any prescribed forms, procedures, processes and rules for engagement by members of the public with the public body or relevant private body;
- d) the particulars of any arrangement, statutory or otherwise, that exists for consultation with, or representation by, members of the public in relation to the formulation or implementation of its policies or similar documents;
- e) whether meetings of the public body or relevant private body, including its boards, councils, committees or similar other bodies, are open to members of the public and, if so, the process for direct or indirect engagement; but where a meeting is not open to the public, the body must proactively make public the contents of submissions received, the process for decision making and decisions reached;
- f) detailed information on the design and execution of any subsidy programmes implemented with public funds, including the

*amounts allocated and expended, the criteria for accessing the subsidy, and the beneficiaries;*

- g) all contracts, licences, permits, authorisations and public-private partnerships granted by the public body or relevant private body;*
  - h) reports containing the results of surveys, studies or tests, including scientific or technical reports and environmental impact assessment reports, prepared by the public body or relevant private body; and*
  - i) any other information directed by the oversight mechanism.*
- b. Arrange all information in its possession systematically and in a manner that facilitates prompt and easy identification; and*
  - c. Keep all information in its possession in good condition and in a manner that preserves the safety and integrity of its contents.*

*Every public or relevant private body is obligated to submit implementation plans, annual reports and publication of information manuals. Every public body and relevant private body must annually, within the time frame stipulated by the oversight mechanism, submit to the oversight mechanism: (a) an information publication plan with respect to its proactive disclosure obligations; and (b) annual reports on the implementation of the right to information.*

*Every information holder must publish information manuals detailing the categories of information it proactively discloses.*

**Note:** Unpublished information not to prejudice public – where a public body or relevant private body has failed to publish timeously information that falls under the ‘proactive disclosure obligation’, a member of the public who was not aware of that information may not be subjected to any prejudice if he or she could lawfully have avoided that prejudice had they been aware of the information.



Different legislations have adopted particular definitions when determining who is eligible to provide information. According to the Rwanda **Access to Information Act**, Section 4 defines a private body as a body that is not a public organ but carries any business in relation to public interest, or to rights and freedoms of people. A public body is defined in section 5 as an administrative entity established by the Constitution or any other laws or any other organ that uses money from the national budget or any money originating from tax revenues as provided by the law. An information officer is described under section 6 as a person appointed or designated by a public or private organ in charge of providing information and to facilitate those who need it.

The South African Promotion of **Access to Information Act** makes the following distinction between private bodies and public bodies

- (a) *in the case of a national department, provincial administration or organisational component-*
  - (i) *mentioned in Column 1 of Schedule 1 or 3 to the Public Service Act, 1994 (Proclamation 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of the said Schedule 1 or 3 opposite the name of the relevant national department, provincial administration or organisational component or the person who is acting as such;*  
or
  - (ii) *not so mentioned, means the Director-General, head, executive director or equivalent officer, respectively, of that national department, provincial administration or organisational component, respectively;*
- (b) *in the case of a municipality, means the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), or the person who is acting as such; or*
- (c) *in the case of any other public body, means the chief executive officer, or equivalent officer, of that public body or the person who is acting as such;*

The Nigerian **Freedom of Information Act** does not make a clear distinction between public bodies and private bodies. Under Section 2(7):

*Public institutions 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.*

The Guinea **Access to Public Information** states as follows:

*Article 3: According to the present organic law and its regulations, (i) a Public body: all structures created by the state or its decentralized bodies and (ii) Organ similar to a public body: all structures that are part of a public body, all bodies controlled, or receiving majority of its funding from the state, or all private bodies to which the state or its decentralized structures have assigned a mission.*

The **Access to Information Act** of Uganda only defines public bodies. Section 4 provides that a “public body” includes a government ministry, department, statutory corporation, authority or commission. The same section defines an information officer as the chief executive of a public body.

# SESSION 2

## REQUESTS FOR INFORMATION



Time:  
**60-90 mins**

### AIM OF THE SESSION

To equip participants with knowledge and information on who can request information and the different forms of requesting information.

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**Content:** Who Can Request Information and the Process of Requesting Information

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**Training Methodology:** Group work, case studies, lecture method, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 5.2

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### PROCEDURE:

→ **Activity One: Who Can Request Information?**

**Step One:** In a plenary discussion, the trainer asks participants to brainstorm on who can request information

**Step Two:** The trainer writes the participants' feedback on a flipchart.

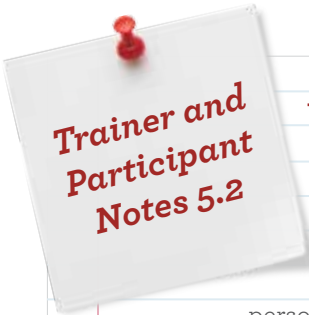
**Step Three:** The trainer supplements and defines who can request information.

**Step Four:** The trainer divides the participants into five groups and provides each group with a case study on accessing information.

**Step Five:** The participants discuss the case studies in their groups and make presentations in the plenary.

**Step Six:** The trainer wraps up and supplements the presentations.

**Step Seven:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 5.2**

### WHO CAN REQUEST INFORMATION

Article 9 of the **ACHPR** provides that “every individual shall have the right to receive information”. This means that every person has a right to access information held by public or relevant private bodies. According to the **Model Law on Access to Information**, every

person has an enforceable right to access information from:

“(a) a public body or relevant private body; and (b) a private body, where the information may assist in the exercise or protection of any right”.

Section 5 of the Ugandan Access to Information Act provides that: “(1)

Every citizen has a right of access to information and records in the possession of the State or any public body, except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person. (2)

For the avoidance of doubt, information and records to which a person is entitled to have access under this Act shall be accurate and up-to date so far as is practicable.” According to section 5 of the **Access to Information**

**and Protection of Privacy Act** of Zimbabwe: “Every person shall have a right of access to any record, including a record containing personal information that is in the custody or under the control of a public body provided such access shall not extend to information that is excluded.”

In many countries, legal instruments are published automatically in print or electronically and thus made widely accessible. Individuals or professionals wishing to access them should look to:

Table II: Where to seek information

<b>Legal instrument</b>	<b>Information source</b>
<ul style="list-style-type: none"> <li>• Legislative history of the instruments, incl. bills, explanatory notes, records on discussions in parliament</li> <li>• Final legal instruments and possible comments published by parliament or government in print, or electronically</li> <li>• Guidelines explaining contents of legislation targeting public authorities and/or the general public, published in print or electronically by the ministry responsible</li> </ul>	<ul style="list-style-type: none"> <li>• Parliament</li> <li>• NGOs participating in law drafting and/or monitoring the field</li> <li>• Internal staff handbooks</li> <li>• Ministry responsible</li> <li>• Ombudsman</li> <li>• Information Commissioner</li> <li>• NGOs monitoring the field</li> <li>• Academic works and interpretations</li> </ul>

	<p>The <b>ACHPR</b> provides a wider framework for persons eligible to access information. According to the <b>ACHPR</b> “every individual” shall have a right to access information. The Ugandan law limits access to information to its citizens only. Article 3 of the Rwandan <b>Access to Information Act</b> provides that “every person” has a right to access information. This presupposes that both natural and unnatural persons, such as companies, can request and access information. Only the South African legislation clearly defines the broad spectrum of persons with rights to request information including natural persons, businesses and partnerships, among others. Most countries’ laws will contain provisions like “everybody” or “all citizens” to promote the spirit of the ACHPR. It is important that all requesters of information are treated equally without any discrimination based on age, gender, ethnic grounds, political or economical status or position.</p> <ul style="list-style-type: none"> <li>• Every citizen of a country has a right to access information.</li> <li>• Foreign citizens and individuals shall enjoy the right to request information</li> </ul>

Table III: Examples of people requesting information<sup>6</sup>

<p><b>A women’s organisation:</b></p> <p>For an organisation that works to advocate the rights of women, it is important to have access to data about the situation of women in their country. This information could include how many girls have access to higher education, how many abortions are carried out per year, how many newly-born children die per year and how much women are paid on the labour market compared to men.</p>	<p><b>Minorities:</b></p> <p>Boma in East Buzuba have historically been an underprivileged group. They may want to know the levels of recruitment of Boma into public service positions compared to other ethnic groups; what the government is doing to redress institutional discrimination against Boma; and whether public bodies have any policies to redress social discrimination. They may seek this information so that they can develop policy recommendations or raise public awareness of discrimination issues in order to change the government policies or the public’s attitudes towards Boma.</p>
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6 Article 19. Freedom of Information Training Manual for Public Officials available at [https://www.ip-rs.si/fileadmin/user\\_upload/Pdf/Publikacije\\_ostalih\\_pooblascencev/Article\\_19\\_\\_foitrainers-manual.pdf](https://www.ip-rs.si/fileadmin/user_upload/Pdf/Publikacije_ostalih_pooblascencev/Article_19__foitrainers-manual.pdf)

<p><b>Journalists:</b> Journalists investigating reports of maladministration or corruption in public bodies may request information such as court decisions or reports on budget expenditure to verify whether or not officials have abused their power. It is essential that the media has access to such information in the public interest. If investigative journalism has to be based on rumours rather than verifiable facts, journalistic practice risks becoming defamatory, exacerbating social conflict, and the public is unable to judge the competence of the administration and the country's leadership.</p>	<p><b>Ordinary citizens:</b> A person who intends to build a house in an area near a factory has a right to know the levels of pollution caused by the factory. A woman who is about to become a mother may wish to find out about her statutory rights to maternity leave, health insurance and vaccination regime for newborn babies. Many people will want to have access to personal information held about themselves, such as medical or school records.</p>
<p><b>Businesses:</b> Private companies often request commercial information from governments, especially in relation to issues such as consumer surveys. It is economically efficient to make this information available, since it prevents duplication in generating it.</p>	<p><b>Political parties:</b> In countries with established democracies and freedom of information laws, political parties often use these laws to request information. They use the information in order to formulate their own policies, as well as to question the government and challenge them in parliamentary debates. This is useful since, to some extent, it minimises the advantages that a ruling party enjoys, and levels the playing field in elections.</p>

### → **Activity Two: Requesting Information**

- Step One:** In plenary, the trainer makes a Power Point presentation on processes for requesting information.
- Step Two:** The trainer engages the participants in the discussion as much as possible.
- Step Three:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.

**Trainer and  
Participant  
Notes 5.3**

**HOW TO REQUEST INFORMATION**

**Note:** It is important to note that the process of requesting information will vary from one country to another depending on the local legislation and procedures. The information provided here, therefore, serves as a standard guide on how to access information.

According to the **Model Law on Access to Information:**

- (1) *A person who wishes to obtain access to information from an information holder must make a request in writing or orally to the information officer of the body.*
- (2) *If a person makes a request orally the information officer must reduce that oral request to writing and provide a copy thereof to the requester.*
- (3) *On receipt of a request, the information officer must immediately provide a written acknowledgement of the request to the requester.*
- (4) *If the information officer is able to provide an immediate response to a person making a request and such response is to the satisfaction of the requester, the information officer must make and retain a record of the request and the response thereto.*
- (5) *Save in exceptional circumstances such as, where the requester believes that the information is necessary to safeguard the life or liberty of a person or where the request is to a private body, the requester does not have to provide a justification or reason for requesting any information.*
- (6) *A request must:*
  - a. *provide such detail concerning the information requested as is reasonably necessary to enable the information officer to identify the information;*
  - b. *if the requester believes that the information is necessary to safeguard the life or liberty of a person, the requester shall include a statement to that effect, including the basis for that belief;*
  - c. *if the request is to a private body, the requester shall provide an explanation of why the requested information may assist in the exercise or protection of any right;*
  - d. *identify the nature of the form and language in which the requester prefers access; and*

- e. *if the request is made on behalf of someone else, the requester is required to include an authorisation from the person on whose behalf the request is made.*

Section 6 of the **Access to Information and Protection of Privacy Act** of Zimbabwe provides that “an applicant who requires access to a record that is in the custody or control of a public body shall make a request, in writing, to the public body, giving adequate and precise details to enable the public body to locate the information so requested.” Section 9 of the Rwanda **Access to Information Act** provides that “information shall be requested... verbally, in writing, by telephone, internet or any other means of communication”. This provision delivers numerous options for making requests for information, therein making the process flexible. The South African **Promotion of Access to Information Act** is very extensive and provides as follows:

- (1) *A request for access must be made in the prescribed form to the information officer of the public body concerned at his or her address or fax number or electronic mail address.*
- (2) *The form for a request of access prescribed for the purposes of subsection (1) must at least require the requester concerned -*
- (a) *to provide sufficient particulars to enable an official of the public body concerned to identify -*
- (i) *the record or records requested; and*
- (ii) *the requester;*
- (b) *to indicate which applicable form of access is required;*
- (c) *to state whether the record concerned is preferred in a particular language;*
- (d) *to specify a postal address or fax number of the requester;*
- (e) *if the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and*
- (f) *if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request. This is subject to the reasonable satisfaction of the information officer.*
- (3) (a) *An individual who because of illiteracy or a disability is unable to make a request for access to a record of a public body*



*in accordance with subsection (1), may make that request orally. (b) The information officer of that body must reduce that oral request to writing in the prescribed form and provide a copy thereof to the requester.*

### **Assistance when requesting information**

The information officer has a duty to assist the requester during the process of requesting information. The **Model Law on Access to Information** provides that:

*(1) Where a person - (a) wishes to make a request to an information holder; or (b) has made a request to an information holder that does not comply with the requirements of this Act, the information officer must take all necessary steps to assist the person, free of charge, to make the request in a manner that complies with the prescribed process.*

### **Video or audio records**

Where the record is not a document, but a video or audio recording, the requester can request a copy if the holder of the information has access to copying facilities. When a record is on a computer, the requester can ask for the records to be printed or ask for a copy of the record in a way form she/he may want it. If the requester asks for information in a particular form, the information officer is obliged to provide the information in that form unless that would interfere unreasonably with the running of the body holding the information or damage the record or infringe a copyright.

### **When the requester has a disability**

The **Model Law on Access to Information** provides that where a person with a disability wishes to make a request, an information officer must take all necessary steps to assist the person to make the request in a manner that meets their needs. A person with a disability can request information in a different form that can enable that person to access such information. Where such a person requests that information be given in a form that would enable him or her understand the information based on a disability, the information will be given in that form in addition to a copy of the information in the ordinary form in which it appears.

Any person other than a person with a disability can demand information to be given in a particular form and information can be given in that form. Where a person has requested access in a particular form shall, it should be given in that form unless to do so would:

- o Interfere unreasonably with the effective administration of the public body concerned;
- o Be detrimental to the preservation of the record;
- o Amount to an infringement of copyright not owned by the State or the public body concerned.

### **Preferred language**

According to the **Model Law on Access to Information**, information must be provided to a requester in the official language the requester prefers. Where the information holder does not hold the information in the language the requester prefers, the information holder must have the information translated into the preferred language of the requester; and may recover the reasonable costs associated with the translation from the requester. The South African legislation provides that the requester can also state if she/he would like the information requested in a particular language. Section 9 of the Rwanda **Access to information Act** provides that information shall be requested in any of the official languages provided by the Rwandan constitution. In the case of a public record, a requester is entitled to ask for the record in a preferred language and, if the record exists in that language, be given access in that language. While there is no such requirement in the case of private records, this does not mean that a request to a private body should not state the preferred language in which the requester wishes to receive the information.

### **Costs/fees for processing information requests**

The general rule is that information should not be 'sold'. According to the **Model Law on Access to Information**:

*A requester is not required to pay any fee: (a) on lodging a request; (b) in relation to time spent by an information holder searching for the information requested; or (c) in relation to time spent by the information holder examining the information to determine whether it contains exempt information or deleting exempt information from a document. An information holder may however charge the requester a reproduction fee consisting of the*

*reasonable reproduction costs incurred by the information holder. No reproduction fee is payable – (a) for reproduction of personal information of the requester, or where the request is made on behalf of another person for the personal information of the person on whose behalf the request is made; (b) for reproduction of information which is in the public interest; (c) where an information holder has failed to comply with the time for responding to a requestor, where an extension of time has been made within that extended period of time; or (d) where the requester is indigent.*

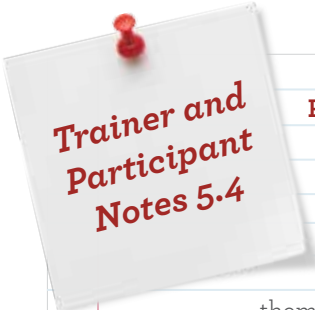
It is important to note that depending on the circumstances in each particular country, there may be as much as three parts to the fee:

- i. a request fee;
- ii. an access fee, which may have two components: a fee for searching for a record (in the case of a record that requires such a search) and a fee for the cost of reproducing the record (photocopying etc); and
- iii. a reproduction fee – if you want a copy rather than just inspecting (there are different amounts, depending on the nature of the record).

Section 7 of the Zimbabwe Access to Information and Protection of Privacy Act provides that an applicant shall be required to pay such fees as may be so prescribed for: “(a) obtaining access to any record; and (b) any service rendered in connection with the provision of access to any record by the public body concerned”. The Promotion of Access to Information Act of South Africa under Section 22 provides that: “The information officer of a public body to whom a request for access is made, must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing the request.” Article 10 of the Rwanda Access to Information Act provides the general rule that “the provision of information is an obligation without a fee”. The article further provides that “depending on the means of providing the information, charges for making copies or sending information may be charged to the applicant/requester”.

### → **Activity Three: Role Plays on When to Request Information**

- Step One:** The trainer divides the participants into three groups and gives each group a short excerpt on a specific theme which they are to use to prepare a role play on when and where they can request information.
- Step Two:** The participants in their groups formulate and rehearse the role play before presenting it to all the participants.
- Step Three:** The trainer supplements the role plays and discusses different circumstances in which the need for information may arise.
- Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 5.4**

#### **ROLE PLAY 1: POLITICAL PARTY OFFICER REQUESTING INFORMATION**

The secretary general of Banana political party often uses RTI laws to request information. The party uses the information to formulate its own policies, as well as to ask questions of the government and challenge them in parliamentary debates. This is useful since, to some extent, it minimises the advantages that a ruling party enjoys and levels the playing field in elections. Assuming you are the secretary general, when and how would you request information on issues of electricity distribution in the country?

#### **ROLE PLAY 2: PERSON WANTING TO BUILD A HOUSE**

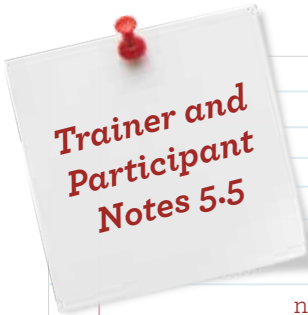
A person who intends to build a house in an area near a factory has a right to know what the levels of pollution caused by the factory are. If you are that person, when and where will you go to ask for this relevant information?

#### **ROLE PLAY 3: PREGNANT WOMAN**

A woman who is about to become a mother may wish to find out about her statutory rights to maternity leave, health insurance and the vaccination regime for newborn babies. Many people will want to have access to personal information held about them, such as medical or school records. Where will this woman go to get such information?

→ **Activity Four: Response to Requests for Information**

- Step One:** The trainer divides the participants into five groups and asks them to discuss the different responses a request for information is likely to generate.
- Step Two:** The participants discuss this in their groups and present back in plenary.
- Step Three:** The trainer supplements the presentations from the groups and provides clarification.
- Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**RESPONSE TO REQUESTS FOR INFORMATION**

**Note:** It should be noted that the response to information requests will vary from one country to another depending on the local legislation and procedures. The information provided in these notes serves to provide a standard guide on responses to requests for information.

The general rule is that any information provided to a requester by the information holder is presumed to be true and accurate in content and in form and the requester may rely on and use that information on that basis.

The information officer to whom a request for information has been made should as soon as reasonably possible, but in any event within 21 days after the request is submitted:

- a) determine whether to grant the request;
- b) notify the requester of the decision in writing; and
- c) where the request is granted, subject to the payment of any applicable reproduction fee, translation fee and/ or transcription fee, give the requester access to the information.

Where a request relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer must within 48 hours after the request is submitted:

- (a) determine whether to grant the request;
- (b) notify the requester of the decision in writing; and
- (c) if the request is granted, give the requester access to the information.

**Where access to information request is granted:**

The information officer

Where the request for information is granted, the information officer is obligated to notify the requester:

- a) of any fees payable for the reproduction fee, translation fee and/or transcription fee of any information;
- b) the form in which access to the information will be given;
- c) that the requester may apply for a review of the reproduction fee, translation fee and/or transcription fee payable or the form in which access has been granted; and
- d) where the information requested contains third-party information, the 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.

The requester

Where a requester has been given notice that his or her request has been granted, that requester should;

- a) if a reproduction fee, translation fee and/or transcription fee is payable, pay the fees; and
- b) if no fees are payable, immediately be given access to the information.

**Where access to information is refused:**

If a request for information is refused, the information officer must give notice to the requester and:

- (a) state adequate reasons for the refusal, based on the contents and substance of the request and the information considered by the information officer;

	(b) contain a reference to specific provisions of the national legislation upon which the refusal is based; and
	(c) inform the requester that he or she may apply for a review of the decision in accordance with prescribed law.
	<b>48-hour request refused:</b>
	Where after review of the request, the information officer does not consider that the information requested reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer must within 48 hours after the request is submitted:
	(a) provide notice of the decision to the requester, including adequate reasons for the decision;
	(b) inform the requester that, subject to the requester's right to apply for a review of the decision, the information officer will make a decision regarding whether to grant access to the requested information within the time period; and
	(c) inform the requester that he or she may appeal directly to the oversight mechanism in respect of the decision in accordance with prescribed local legislation.
	<b>Extension of time:</b>
	The information officer to whom a request is made may extend the period to respond to a request. Where the information officer extends the time to respond to a request for information, the information officer must notify the requester in writing of that extension. The extension should be for no more than 14 days if:
	(a) the request is for a large amount of information or requires a search through a large amount of information and meeting the original time limit would unreasonably interfere with the activities of the information holder concerned; or
	(b) consultations are necessary to comply with the request that cannot be reasonably completed within the prescribed time frame.
	<b>Transfer of a request for information:</b>
	Where a request for information is made to an institution, public or relevant private body, that does not hold that information, the institution receiving the information request must transfer the

request, or such part of it as may be appropriate, to that other public body or relevant private body. A public body or relevant private body that transfers a request for information must:

- a) make the transfer as soon as practicable from the date of receipt of the request; and
- b) immediately notify the requester of the transfer in writing.

A public body or relevant private body that receives a transferred request must immediately notify the requester of the receipt in writing. Where a request is transferred to another public body or relevant private body, the request is deemed to have been:

- (a) made to the public body or relevant private body to which it was transferred; and
- (b) received by that public body or relevant private body on the day the body to which it was originally made received it.

#### **Deferral of access to information:**

An information officer who receives a request for information may defer the provision of the information if:

- (a) the information has been prepared for presentation to Parliament, but only until the expiration of sitting days of Parliament; or
- (b) the information constitutes a report or part thereof 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, but only until the report has been presented or made available to that body or person or upon the expiration of the prescribed number of days from the date of the request, or whichever is the earlier.

If an information officer determines to defer access to information he or she must notify the requester in writing about the: (a) decision as soon as possible but not later than the provided number of days after receiving the request; (b) of the reason for the decision; (c) of the likely period for which access is to be deferred; and (d) that the requester may, within the prescribed number of days of receiving notice, make written or oral representations to the information officer regarding why the information is required before such presentation.



**Where the information cannot be found or does not exist:**

Where the information officer: (a) has taken all reasonable steps to find the information requested; and (b) has concluded that the information – (i) is in the possession of the information holder but cannot be found; or (ii) does not exist, the information officer must, as soon as possible but in any event within the prescribed number days of the receipt of the request, notify the requester in writing that the information cannot be found or does not exist. The notice to the requester must include an affidavit or affirmation, signed by the information officer stating the substantive details of all steps taken to find the information or to determine whether the information exists, including, but not limited to: (a) details of all locations searched for the information and the person or persons that conducted those searches; (b) 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 (c) any evidence relating to the existence of the information including (i) any evidence that the information was destroyed; and (ii) the location in which the information was last known to be held.

Where the information is found after notice has already been given to a requester, the information officer must immediately notify the requester in writing and (a) determine whether to grant the request; (b) notify the requester of the decision in writing; and (c) if the request is granted, subject to the payment of any applicable reproduction fee, translation fee and/or transcription fee, give the requester access to the information.

**Form of access to information:**

The **Model Law on Access to Information** recommends that access to information must be given to a requester in one or more of the following forms:

- (a) a reasonable opportunity to inspect the information;
- (b) a copy of the information;
- (c) 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;

- (d) 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;
- (e) 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
- (f) 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 access to information in a particular form, access must be given in that form.

Where the giving of access to information in the form requested by the requester is likely to: (a) unreasonably interfere with the operations of the information holder; (b) be detrimental to the preservation of the information; or (c) having regard to the physical nature of the information, not be appropriate, access in that form may be refused if access is given in another form authorised under the law. Where the requester is a person with a disability and the disability prevents the requester from reading, viewing or listening to the information concerned in the form in which it is held by the information holder, the information officer must, if that requester so requests, take reasonable steps to make the information available in a form in which it is capable of being read, viewed or heard by the requester.

***Adapted from the Model Law on Access to Information***

# SESSION 3

## REGIME OF EXCEPTIONS TO DISCLOSURE OF INFORMATION



Time:  
**60-90 mins**

### AIM OF THE SESSION

To provide the participants with an understanding of the legally prescribed exceptions to requests for information. This session will also empower participants with knowledge on some of the practical challenges faced when requesting information.

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**Content:** Exceptions to the disclosure of information and challenges faced when requesting information

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**Training Methodology:** Free-thinking, buzz groups, lecture method, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 6.6

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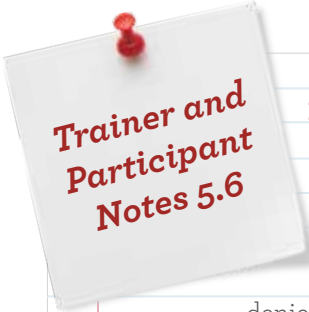
### PROCEDURE:

#### → **Activity One: Exceptions to the Disclosure of Information**

**Step One:** In a plenary discussion, the trainer asks participants in buzz groups of three participants each to discuss some of the legal exceptions to the disclosure of information.

**Step Two:** The trainer writes the participants' feedback on a flipchart and supplements this with a Power Point presentation on the legal exceptions to the disclosure of information.

**Step Three:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



## Trainer and Participant Notes 5.6

### EXCEPTIONS TO THE DISCLOSURE OF INFORMATION

The exceptions to disclosure of information will vary from country to country. Exceptions on access to information are the legally provided circumstances under which a request for information will be denied. Exceptions are prescribed by law. The Model Law on Access to Information provides some of the common legal exceptions to the disclosure of information. An information request may be denied if it falls within the following exceptions:

1. **Public interest override:** An information request may be denied by an information officer 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. The right to access information is a human right, and even as a human right the right to information is not absolute. Therefore, if no harm will result from the disclosure of certain information, there is no reason for refusing to disclose it.
2. **Classified information:** Information is not exempt from access under this Act merely on the basis of its classification status.
3. **Personal information of a third party:** An information officer may refuse a request for information if its release would involve the unreasonable disclosure of personal information about a natural third party, including a deceased individual. A request, however, may not be refused in this case: (1) where (a) the third party, whose information is being requested, does not make a representation that such information should not be granted; (b) the third party consents to the disclosure; (c) the third party has been deceased for more than 10 years, of whichever number of years apply to a particular country; (d) the information is in the public domain; (e) the information relates to the physical or mental wellbeing of an individual who is under the care of the requester and who is (i) under

the age of 18 years; or (ii) incapable of understanding the nature of the request, and giving access would be in the individual's interests; (f) the information is about a deceased individual and the requester is: (i) the individual's next of kin or legal personal representative; (ii) making the request with the written consent of the individual's next of kin or legal personal representative; (iii) the executor of the deceased's estate; or (iv) the trustee of a trust which can benefit from the deceased individual's estate; (g) the information relates to the position or functions of an individual who is or was an official of the information holder or any other public body or relevant private body; (h) the information was given to the information holder by the individual to whom it relates and the individual was informed by or on behalf of the information holder, before it was given, that the information belongs to a class of information that would or might be made available to the public.

4. **Commercial and confidential information of an information holder or a third party:** An information officer may deny a request for information if it contains (a) trade secrets of the information holder or a third party; or (b) information about the information holder or a third party that would substantially prejudice a legitimate commercial or financial interest of the information holder or third party. A request may not be refused where: (a) the disclosure of the information would facilitate accountability and transparency of decisions taken by the information holder; (b) the information relates to the expenditure of public funds; (c) the disclosure of the information would reveal misconduct or deception; (d) the third party consents to the disclosure; or (e) the information is in the public domain.

5. **Protection of life, health and safety of an individual:** An information officer may refuse a request where the release of the information is likely to endanger the life, health or safety of an individual.

6. **National security and defence:** An information officer may refuse to grant access to information where to do so would cause substantial prejudice to the security or defence of the state. According to the Model Law on Access to Information: “Security or defence of the state means (a) military tactics or strategy or military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention, suppression, or curtailment of subversive or hostile activities; (b) intelligence relating to (i) the defence of the state; or (ii) the detection, prevention, suppression or curtailment of subversive or hostile activities; (c) methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (b); (d) the identity of a confidential source; or (e) the quantity, characteristics, capabilities, vulnerabilities or deployment of anything being designed, developed, produced or considered for use as weapons or such other equipment, excluding nuclear weapons. (3) Subversive or hostile activities mean (a) an attack against the state by a foreign element; (b) acts of sabotage or terrorism aimed at the people of the state or a strategic asset of the state, whether inside or outside the state; or (c) a foreign or hostile intelligence operation.”

## THE GLOBAL PRINCIPLES ON NATIONAL SECURITY AND THE RIGHT TO INFORMATION

### (“The Tshwane Principles”)

The Tshwane Principles define “legitimate national security interest”, referring to an interest, the genuine purpose and primary impact of which is to protect national security, consistent with international and national law. A national security interest is not legitimate if its real purpose or primary impact is to protect an interest unrelated to national security, such as protection of government or officials from embarrassment or exposure of wrongdoing; concealment of information about human rights violations, any other violation of law, or the functioning of public institutions; strengthening or perpetuating a particular political interest, party, or ideology; or suppression of lawful protests. The principles do not define “national security”, but include a recommendation that “national security” should be defined precisely in national law, in a manner consistent with the needs of a democratic society.

**Note:** The government, and only the government, bears ultimate responsibility for national security, and thus only the government may assert that information must not be released if it would harm national security.

According to the Tshwane Principles - where the government asserts or confirms that the release of such information could cause harm to national security - the following shall apply:

#### **Principle 3 sets the requirement for restricting the right to information on the basis of national security grounds**

No restriction on the right to information on the basis of national security grounds may be imposed unless the government can demonstrate that: (1) the restriction (a) is prescribed by law and (b) is necessary in a democratic society (c) to protect a legitimate national security interest; and (2) 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. (a) *Prescribed by law.* The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to understand what information may be withheld, what should be disclosed, and what actions concerning the information are subject to sanction. (b) *Necessary in a democratic society:* (i) Disclosure of the information must pose a real and identifiable risk of significant harm to a

legitimate national security interest; (ii) the risk of harm from disclosure must outweigh the overall public interest in disclosure; (iii) the restriction must comply with the principle of proportionality and must be the least restrictive means available to protect against the harm; and (iv) the restriction must not impair the very essence of the right to information. (c) *Protection of a legitimate national security interest*. The narrow categories of information that may be withheld on national security grounds should be set forth clearly in law.

**Principle 4 provides that the burden is on the public authority refusing the request for information to establish legitimacy of any restriction:** (a)

The burden of demonstrating the legitimacy of any restriction rests with the public authority seeking to withhold information; (b) the right to information should be interpreted and applied broadly, and any restrictions should be interpreted narrowly; (c) in discharging this burden, it is not sufficient for a public authority simply to assert that there is a risk of harm; the authority is under a duty to provide specific, substantive reasons to support its assertions; and (d) in no case may the mere assertion, such as the issuing of a certificate by a minister or other official to the effect that disclosure would cause harm to national security, be deemed to be conclusive concerning the point for which it is made.

**Principle 5 notes that there is no exemption for any public authority to outrightly deny access to information.** (a) No public authority – including the judiciary, the legislature, oversight institutions, intelligence agencies, the armed forces, police, other security agencies, the offices of the head of State and government, and any component offices of the foregoing – may be exempted from disclosure requirements; and (b) 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.

**According to Principle 8 (state of emergency),** in circumstances of public emergency which threatens the life of the nation and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a State may derogate from its obligations regarding the right to seek, receive and impart information only to the extent strictly required by the exigencies of the situation and only when and for so long as the derogation is consistent with the State's other obligations under international law, and does not involve discrimination of any kind.



**Principle 9 provides information that legitimately may be withheld.** (a) Public authorities may restrict the public's right of access to information on national security grounds, but only if such restrictions comply with all of the other provisions of these Principles, the information is held by a public authority, and the information falls within one of the following categories: (i) information about on-going defence plans, operations, and capabilities for the length of time that the information is of operational utility; (ii) information about the production, capabilities, or use of weapons systems and other military systems, including communications systems; (iii) information about specific measures to safeguard the territory of the state, critical infrastructure, or critical national institutions (institutions essentielles) against threats or use of force or sabotage, the effectiveness of which depend upon secrecy; (iv) information pertaining to, or derived from, the operations, sources, and methods of intelligence services, insofar as they concern national security matters; and (v) information concerning national security matters that was supplied by a foreign State or inter-governmental body with an express expectation of confidentiality; and other diplomatic communications insofar as they concern national security matters.

**Principle 10 looks at the categories of information with a high presumption or overriding interest in favour of disclosure.** There are some categories of information that are of particularly high public interest given their special significance to the process of democratic oversight and the rule of law. Information in the following categories should enjoy at least a high presumption in favour of disclosure, and may be withheld on national security grounds only in the most exceptional circumstances and in a manner consistent with the other principles, only for a strictly limited period of time, only pursuant to law and only if there is no reasonable means by which to limit the harm that would be associated with disclosure. For certain subcategories of information, specified below as inherently subject to an overriding public interest in disclosure, withholding on grounds of national security can never be justified.

### **1. Violations of international human rights and humanitarian law**

(1) There is an overriding public interest in disclosure of information regarding gross violations of human rights or serious violations of international humanitarian law, including crimes under international law, and systematic or widespread violations of the rights to personal liberty and security. Such information may not be withheld on national security grounds in any circumstances; and (2) information regarding other violations of human

rights or humanitarian law is subject to a high presumption of disclosure, and in any event may not be withheld on national security grounds in a manner that would prevent accountability for the violations or deprive a victim of access to an effective remedy

**Note:** The names and other personal data of victims, their relatives and witnesses may be withheld from disclosure to the general public to the extent necessary to prevent further harm to them, if the persons concerned or, in the case of deceased persons, their family members, expressly and voluntarily request withholding, or withholding is otherwise manifestly consistent with the person's own wishes or the particular needs of vulnerable groups. Concerning victims of sexual violence, their express consent to disclosure of their names and other personal data should be required. Child victims (under age 18) should not be identified to the general public. This principle should be interpreted, however, bearing in mind the reality that various governments have, at various times, shielded human rights violations from public view by invoking the right to privacy, including of the very individuals whose rights are being or have been grossly violated, without regard to the true wishes of the affected individuals. These caveats, however, should not preclude publication of aggregate or otherwise anonymous data.

## **2. Safeguards for the right to liberty and security of person, the prevention of torture and other ill-treatment, and the right to life**

(1) Laws and regulations that authorize the deprivation of life of a person by the State, and laws and regulations concerning deprivation of liberty, including those that address the grounds, procedures, transfers, treatment, or conditions of detention of affected persons, including interrogation methods. There is an overriding public interest in the disclosure of such laws and regulations. (2) The location of all places where persons are deprived of their liberty operated by or on behalf of the state as well as the identity of, and charges against, or reasons for the detention of, all persons deprived of their liberty, including during armed conflict.

**Note:** In no circumstances may information be withheld on national security grounds that would result in the secret detention of a person, or the establishment and operation of secret places of detention, or secret executions. Nor are there any circumstances in which the fate or whereabouts of anyone deprived of liberty by, or with the authorization, support, or acquiescence of, the state may be concealed from, or otherwise denied to, the person's family members or others with a legitimate interest in the person's welfare.

### **3. Structures and powers of government**

Information covered by this principle includes, without limitation, the following: (1) the existence of all military, police, security, and intelligence authorities, and sub-units; (2) the laws and regulations applicable to those authorities and their oversight bodies and internal accountability mechanisms, and the names of the officials who head such authorities; (3) information needed for evaluating and controlling the expenditure of public funds, including the gross overall budgets, major line items, and basic expenditure information for such authorities; and (4) the existence and terms of concluded bilateral and multilateral agreements, and other major international commitments by the State on national security matters.

### **4. Decisions to use military force or acquire weapons of mass destruction**

(1) Information covered by this principle includes information relevant to a decision to commit combat troops or take other military action, including confirmation of the fact of taking such action, its general size and scope, and an explanation of the rationale for it, as well as any information that demonstrates that a fact stated as part of the public rationale was mistaken.

(2) The possession or acquisition of nuclear weapons, or other weapons of mass destruction, by a state, albeit not necessarily details about their manufacture or operational capabilities, is a matter of overriding public interest and should not be kept secret.

### **5. Surveillance**

(1) The overall legal framework concerning surveillance of all kinds, as well as the procedures to be followed for authorizing surveillance, selecting targets of surveillance, and using, sharing, storing, and destroying intercepted material, should be accessible to the public. (2) The public should also have access to information about entities authorized to conduct surveillance, and statistics about the use of such surveillance. (3) In addition, the public should be fully informed of the fact of any illegal surveillance. Information about such surveillance should be disclosed to the maximum extent without violating the privacy rights of those who were subject to surveillance. (4) These principles address the right of the public to access information and are without prejudice to the additional substantive and procedural rights of individuals who have been, or believe that they may have been, subject to surveillance.

### **6. Financial information**

Information covered by this principle includes information sufficient to enable the public to understand security sector finances, as well as the rules that

govern security sector finances. Such information should include but is not limited to: (1) departmental and agency budgets with headline items; (2) end-of-year financial statements with headline items; (3) financial management rules and control mechanisms; (4) procurement rules; and (5) reports made by supreme audit institutions and other bodies responsible for reviewing financial aspects of the security sector, including summaries of any sections of such reports that are classified.

### **7. Accountability concerning constitutional and statutory violations and other abuses of power**

Information covered by this principle includes information concerning the existence, character, and scale of constitutional or statutory violations and other abuses of power by public authorities or personnel.

### **8. Public health, public safety or the environment**

Information covered by this principle includes: (1) In the event of any imminent or actual threat to public health, public safety or the environment, all information that could enable the public to understand or take measures to prevent or mitigate harm arising from that threat, whether the threat is due to natural causes or human activities, including by actions of the state or by actions of private companies. (2) Other information, updated regularly, on natural resource exploitation, pollution and emission inventories, environmental impacts of proposed or existing large public works or resource extractions, and risk assessment and management plans for especially hazardous facilities.

### **9. International relations**

An information officer may refuse to grant access to information (a) supplied by or on behalf of the State to another State or an international organisation in terms of an international agreement with that State or organisation which requires the information to be held in confidence; (b) required to be held in confidence by international law; (c) on the positions adopted or to be adopted by the State, another State or an international organisation for the purpose of present or future international negotiations; or (d) that constitutes diplomatic correspondence exchanges with another State or with an international organisation or official correspondence exchanges with diplomatic missions or consular posts of the country, if the release of the information would cause substantial prejudice to the international relations of the State.

### **10. Economic interests of the state**

An information officer may refuse to grant access to information which relates to the determination of (a) currency or exchange rates; (b) interest rates; or (c) taxes, including duties of customs or excise if to do so would cause substantial harm to the economic interests of the state or the ability of the State to manage the economy.

### **11. Law enforcement**

An information officer may refuse to grant access to information, where to do so would cause prejudice to (a) the prevention or detection of crime; (b) the apprehension or prosecution of offenders; (c) the administration of justice; or (d) the assessment or collection of any tax or duty.

### **12. Legally privileged documents**

An information officer may refuse a request if the information (a) consists of confidential communication between a medical practitioner and his or her patient; (b) consists of confidential communication between a lawyer and his or her client; (c) consists of confidential communication between a journalist and his or her source; or (d) would otherwise be privileged from production in legal proceedings, unless the patient, client, source or person entitled to the privilege consents to the release or has waived the privilege.

### **13. Academic or professional examination and recruitment processes –**

(1) An information officer may refuse a request for information relating to an academic or professional examination or recruitment or selection process prior to the completion of that examination or recruitment or selection process if the release of the information is likely to jeopardise the integrity of that examination or recruitment or selection process. (2) Information referred to under subsection (1) must be released on request after the academic or professional examination or recruitment or selection process has been completed.

### **14. Severance**

(1) Where a portion of a record or document containing requested information is exempt from release under this part, the exempt portion of the information must be severed or redacted from the record or document and access to the remainder of the information must be granted to the requester. (2) Where an information officer severs or redacts any portion of a record or document, the information officer must indicate the length or amount of information severed or redacted in the response to the requester.

### 15. Manifestly vexatious requests

(1) An information officer may refuse a request if the request is manifestly vexatious. (2) Where an information officer refuses a request on the basis of subsection (1), the notice referred to in section 15(8) must include an affidavit signed by the information officer stating the reasons that the information officer considers the request to be manifestly vexatious.

South Africa's Promotion of **Access to Information Act** provides that information will be refused in the following circumstances: (a) mandatory protection of privacy of third party who is natural person, (b) mandatory protection of certain records of South African Revenue Service, (c) mandatory protection of commercial information of third party, (d) mandatory protection of certain confidential information, and protection of certain other confidential information, of third party, (e) mandatory protection of safety of individuals, and protection of property, (f) mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings, (g) mandatory protection of records privileged from production in legal proceedings, (h) defence, security and international relations of Republic, (i) economic interests and financial welfare of Republic and commercial activities of public bodies, (j) mandatory protection of research information of third party, and protection of research information of public body, (k) operations of public bodies, (l) manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources, and (m) mandatory disclosure in public interest.

The Uganda **Access to Information Act** limits access to information in the following circumstances; (a) cabinet minutes and those of its committees, (b) information relating to privacy of the person, (c) commercial information of third party, (d) certain confidential information, (e) information relating to the safety of persons and property, (f) information relating to law enforcement and legal proceedings, (g) records privileged from production in legal proceedings, (h) information relating to defense, security and international relations, (i) information relating to the operations of public bodies and (j) where the mandatory disclosure in public interest applies.

The **Rwanda Access to Information Act** contains a very limited regime on exception to disclosure. Information will be denied where the information is: (a) confidential information, (b) information likely to destabilise national security, and (c) where the mandatory disclosure in public interest applies.

Article 16 of the **Access to Public Information Law** of Guinea provides a wide scope of information exempted from disclosure. The information officer of an administration to whom a request is made is not required to disclose: (a) information already made public by posting or press release; (b) information confidentially received from a third party; (c) information concerning state security institutions or that which is held by them; (d) information regarding on-going judiciary proceedings; (e) information whose disclosure will cause serious prejudice to secrets protected by law; (f) information likely to endanger the life, health or security of persons or their property; (g) information whose disclosure is likely to cause the commission of an offence; (h) information whose disclosure could be prejudicial to relations with a state or an international organisation; (i) information on an uncompleted inspection, monitoring or investigation mission; and (j) personal information likely to violate the privacy and dignity of a person. The article also provides that an organisation can refuse to disclose commercial and confidential information if: (a) the information was obtained through a third party and if their disclosure can constitute a release of confidential information which is subject to prosecution; (b) the information was confidentially received from a third party and if it contains commercial or industrial secrets or if its disclosure will seriously prejudice the commercial or financial interests of a third party; (c) the information was confidentially obtained from a State or an international organisation and if their disclosure can prejudice relations with that State or international organisation.

Table IV: Justification for non-disclosure

<p><b>National security – not letting the enemy know</b></p> <p>If your country is in conflict with another, or just at a time of heightened tension, it would be legitimate not to reveal the position of troops. Freedom of information should not jeopardise a genuine national security interest.</p>	<p><b>Law enforcement – not letting the criminal know</b></p> <p>If a crime is under investigation, it would be legitimate not to publicise information about the progress of the investigation. Freedom of information should not jeopardise a criminal investigation.</p>
<p><b>Personal privacy:</b></p> <p>It will often be legitimate – and necessary – not to reveal the content of a personal file to another person. Freedom of information should not override an individual’s right to privacy.</p>	<p><b>Commercial secrecy</b></p> <p>If a company were developing a new product, it would be legitimate for details not to be made public so that they could be copied by rival companies. Freedom of information should not interfere with legitimate commercial competition.</p>

<p><b>Public or individual safety</b></p> <p>It would be legitimate for the identity and whereabouts of someone in a witness protection programme to be kept secret. Freedom of information should not put an individual's safety at risk.</p>	<p><b>Protecting the integrity of government decision-making</b></p> <p>It may be legitimate for a discussion paper within cabinet, for example, to be kept secret if the positions in it were not adopted. Governments should not be afraid to advance imaginative opinions for fear that they be made public and misinterpreted.</p>
<p><b>Legally privileged information</b></p> <p>In all legal systems, there are some types of information, such as exchanges between lawyer and client, that are privileged and may not be revealed. The purpose of this is to maintain the confidentiality between lawyer and client and, more generally, the integrity of the judicial process.</p>	<p><b>Public economic interests</b></p> <p>There may sometimes be issues of public economic policy – such as a planned change in interest rates, for example – where revealing information might cause damage to the overall wellbeing of the economy and interests of the public.</p>

	<p>These examples are all, we think, clear cut. But does this mean that all information relating to national security, law enforcement and so on should be kept secret? Clearly not. In each case where it appears that a piece of information may constitute an exception to the general rule of maximum disclosure, a three-part test must be applied to see whether it should indeed be treated as an exception and not disclosed.</p>
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### → **Activity Two: Practical Realities and Consequences of Requests for Information**

- Step One:** The trainer divides the participants into five groups to discuss the various case studies.
- Step Two:** The participants present their discussions in plenary and the trainer writes this feedback on a flipchart.
- Step Three:** The trainer supplements the presentations of the participants.
- Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



## GROUP DISCUSSION:

### Group 1

**Description of situation:** A citizen comes to a public body and asks for copies of all the decisions about the building of a gas pipeline. He mentions that the population has already paid more than was needed for the construction because some of the money allocated by government for the pipeline was used by local administration for the maintenance of hospital. The official replies that such documents are not given to everyone, and the requester may go and complain about it anywhere. The citizen goes to the head of the institution who explains the situation, but still refuses the request. The citizen makes a request addressed to a panel of independent judges. The judges listen to both sides and decide on the issue, giving reasons for their decision.

### Group 2

**You have the role of requester of information:** At all stages you appear naïve and ill-informed. In reality you are an undercover journalist testing the attitude of the public institution. Insist on receiving the information you have requested. You will not say who you are even in front of the judges. Be noisy and insistent.

### Group 3

**You have the role of information officer:** The requested information cannot be disclosed, because some decisions in this case were adopted arbitrarily, without approval through the proper channels. Find any reasons to divert the requester from the theme: it was written in the newspaper, it was said on TV, meetings were organised, and the local people have been consulted, why does he need the documents – the important thing is to have gas. When you are invited to the head of the institution, look as if butter would not melt in your mouth. When you come before the judges, recognise your mistake: “I didn’t know”, “I didn’t want to lose my job”, “and the law in any case is not respected” etc.

### Group 4

**You have the role of head of the institution:** Listen to the requester. Tell lies: we don’t have money; we have a lot of problems. Make a show of upbraiding the subordinate official. When the requester says that he will appeal to the court, express your sympathy – he will have a long journey. At the appeal, claim that you know nothing about case and are seeing the requester for the first time.

**Group 5**

**You have the role of one of the independent judges:** You must make a decision on whether the information should be released. Analyse the case according to the facts, as well as deciding whether the correct procedures were followed. Give detailed reasons for your decision.

→ **Activity Three: Practical Challenges to Accessing Information**

**Step One:** In plenary, the trainer asks the participants what they consider to be some of the practical challenges which may face requesters in their bid to access information.

**Step Two:** The participants share some of these challenges.

**Step Three:** The trainer supplements and presents additional practical challenges requesters of information may face.

**Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.

**Trainer and  
Participant  
Notes 5.7**

**CHALLENGES REQUESTERS FACE IN ACCESSING INFORMATION**

1. *Culture of secrecy.* Many officials in public institutions and relevant private institutions are reluctant to release data that is in their possession. This is because government has not always been keen to release information that is in its custody. As a result, officials from public institutions and relevant private institutions are often curious and inquisitive to find out the reason for the information request.

2. *Silence of the information holder and information officer.* Requesters of information often face silence from the institutions to which the request for information has been made.

	<p>3. <i>Responding without releasing full information.</i> In some cases a request for information will be responded to but the type of information requested may be insufficient. Information will be refused or denied on different grounds such as “not contained in the information catalogue”, “data marked as secret”, or “classified”.</p>
	<p>4. <i>Charging for information.</i> In some cases the requester might be asked to pay fees other than the prescribed legal fees or costs to pay.</p>
	<p>5. <i>Refusing to provide information.</i> Some institutions might outright refuse to grant information to the requester, even in instances where a court decision has been made that mandates the institution to make the information available. This is especially true for institutions that deal with information that falls under the Official Secrets Act or such similar legislation.</p>
	<p>6. <i>Lengthy processes.</i> Some information holders/officers will deny or refuse to grant information claiming that retrieving the information is a lengthy and cumbersome process. This can be used as a tactic to frustrate the requester.</p>
	<p>7. <i>Prohibitive requirements.</i> In some countries, such as Kenya, the consent of the president or of the speaker of the national assembly is first required before any information can be released to any member of the public. This presents an undue burden on the requester of information.</p>
	<p>8. <i>Evidence in court.</i> Where a requester challenges the refusal to access information from the information officer, she/he might have a challenge in procuring the information officer as a witness in court to produce the evidence because of varied privileges/exemptions that the information officer might have under the law.</p>
	<p>9. <i>Lack of enforcing legislation.</i> In some countries, such as Uganda, access to information legislation does not state clearly which institution will be responsible for implementing the legislation. This means that there is no institution with a mandate to guarantee implementation of the legislation.</p>

	<p>10. <i>Absence of criteria and appeals process.</i> In many cases, exercising the right to access information is challenged because of the absence of criteria and an appeals process. The information holders will often not have procedures to guide them on how a requester can challenge a refusal or denial to grant access to information.</p>



# CHAPTER SIX



## EXERCISING THE RIGHT TO INFORMATION AT REGIONAL AND SUB-REGIONAL LEVEL

This chapter seeks to equip participants with information and knowledge on the different mechanisms that can be used to enforce the right to information.

The aim of this chapter is to empower participants with knowledge on how, individually and collectively, to promote and protect the right to information. The chapter has three sessions: session I focuses on the local immediate remedies to enforce the right to information; while session II addresses regional mechanisms that can be used to enforce the right to information and session III looks at the sub-regional mechanisms.

# SESSION 1

## ENFORCING THE RIGHT TO INFORMATION



Time:  
*40-60 mins*

### AIM OF THE SESSION

To provide knowledge to the participants on the mechanisms for enforcing the right to information.

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**Content:** Enforcing the Right to Information

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**Training Methodology:** Free-thinking, buzz groups, lecture method, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 6.1

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### PROCEDURE:

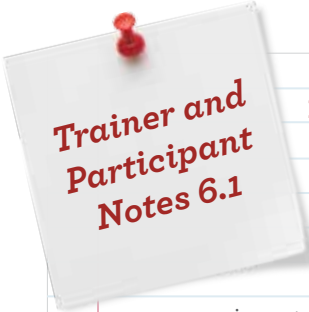
→ **Activity One: Enforcing the Right to Information**

**Step One:** The trainer asks the participants to discuss how to exercise the right to access information.

**Step Two:** The trainer writes this feedback on a flipchart.

**Step Three:** The trainer supplements and discusses the consequences of an information request.

**Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**Trainer and  
Participant  
Notes 6.1**

## ENFORCING THE RIGHT TO INFORMATION

Different local legislation will provide procedural information on how to challenge a refusal to access information. The Model Law on Access to Information provides a normative standard on how to challenge a refusal to access information. Where a requester is not satisfied with the actions taken by the information officer on the request for information or reasons advanced for refusal to provide information, the following measures can be adopted depending on each county's legislation:

### **1. Right of internal review:**

- i. A requester may apply for an internal review of any decision of an information officer.
- ii. A third party may apply for an internal review of a decision of an information officer to grant access to information containing its third-party information.

### *Application for internal review*

- (1) A requester may make an internal review request in writing or orally to the information officer of the relevant body within such days as prescribed by legislation, of the receipt of the relevant decision of an information officer.
- (2) A third party may make an internal review request in writing or orally to the information officer of the relevant body within such number of days as prescribed by law, of the receipt of a decision of an information officer.
- (3) If a requester or a third party makes an internal review request orally, the information officer must reduce that oral request to writing and provide a copy thereof to the relevant party.
- (4) An internal review request must identify the request and decision of the information officer, which is the subject of the internal review.
- (5) If an internal review request is lodged after the expiry of prescribed days, the information officer must, upon good cause shown, allow the late lodging of the request.



	(6) As soon as possible, but in any event within five days, or such number of days as prescribed by law, after receipt of an internal review request, the information officer must submit to the head of the information holder the:
	1. internal review request;
	2. information officer's reasons for the decision; and
	3. information that is the subject of the review, and notify the requester and, where relevant, the third party in writing that the documents have been so submitted.
	<i>Decision on internal review</i>
	The information holder to whom an internal review request is submitted must as soon as reasonably possible, but in any event within 15 days, or such number of days as prescribed by law, after the internal review request is received by the information officer:
	(a) make a fresh decision on behalf of the body; and
	(b) notify the requester and, where relevant, the third party of that decision in writing.
	National access to information legislation should state clearly which institution is mandated to ensure enforcement of the legislation. For example, Article 17 of the Rwanda <b>Access to Information Act</b> provides that the Ombudsman is responsible for enforcing the legislation. Where such provision is not stated, the legislation shall state the procedural mechanisms for challenging refusals to requests for information. The Uganda <b>Access to Information Act</b> provides direct recourse to the court of law when a person is not satisfied with the decision of the information officer. Section 37 provides that a person may lodge a complaint with the chief magistrate, against the decision of an information officer to refuse a request for access; or where the information officer makes an undue extension period or there are undue fees to access information.
	The South African legislation provides an elaborate provision on the manner of an internal appeal and the appeal fees payable. Section 75 provides that an internal appeal: (a) must be lodged in the prescribed form - (i) within 60 days; (ii) if notice to a third party is required it should be given within 30 days after notice is given to the appellant of the decision

appealed against or, if notice to the appellant is not required, after the decision was taken; (b) must be delivered or sent to the information officer of the public body concerned at his or her address, fax number or electronic mail address; (c) must identify the subject of the internal appeal and state the reasons for the internal appeal and may include any other relevant information known to the appellant; (d) if, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, she/he must state that manner and provide the necessary particulars to be so informed; (e) if applicable, must be accompanied by the prescribed appeal fee referred to in subsection (3); and (f) must specify a postal address or fax number.

### **Formal courts**

Depending on the local legislation, where the internal administrative remedies have been explored to access information and the requester is not satisfied with the outcome of the administrative remedies, the requester can seek the intervention of the formal courts to determine the issue and address the question of access to the particular information requested. Below are some of the decisions that courts in different countries have made on right to information cases.

### **Principle**

In **Brümmer v Minister for Social Development and Others (CCT 25/09) [2009]** ZACC 21, 2009, Brümmer, a journalist, appealed to the Constitutional Court of South Africa for an order to allow the hearing of his application for information under the Promotion of Access to Information Act, 2000, which had become time-barred. The court noted in part that: *“Apart from this, access to information is fundamental to the realisation of the rights guaranteed in the Bill of Rights. For example, access to information is crucial to the right to freedom of expression which includes freedom of the press and other media and freedom to receive or impart information or ideas. As the present case illustrates, Mr Brümmer, a journalist, requires information in order to report accurately on the story that he is writing. 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.”*

**Cape Metropolitan Council v Metro Inspection Services Western Cape CC and Others (10/99) [2001] ZASCA 56.** *“Information can only be required for the exercise or protection of a right if it will be of assistance in the exercise or protection of the right.”*

***Confidential information:***

In the case of **Peter Karuiki V Attorney General High Court of Nairobi Petition 403 of 2006**, the court noted that the records regarding salaries, allowances and benefits payable to public officers cannot be classified as private or confidential and therefore do not fall within the exceptions rule.

**Green-watch (U) Limited V Attorney General and Uganda Electricity Transmission Company Limited HCT-00-CV-MC-0139 of 2001.**

The applicant sought to obtain a purchase agreement from the government of Uganda in vain. The government denied the applicant’s request for information noting that: *“The power purchase agreement is a comprehensive document with a lot of information including the sponsor’s technical and commercial secrets. It therefore contains clauses on confidentiality and protection of intellectual property, which do not permit us to make it available to the entire public.”* The court rejected the application because the applicant failed to show that sufficient harm would result from failure to disclose the content of the purchase agreements.

***Harm and public interest test***

**Charles Mwanguhya Mpagi and Izama Angelo V Attorney General Misc. Cause 751 of 2009.** The application sought access to information on different agreements pertaining to oil prospecting and exploitation. The request for information was neither allowed nor denied but the requester was informed that the information officer needed more time to consult with other government agencies and stakeholders. The court noted that not all government business is supposed to be in the

public domain. *“There are cases where the keeping of a certain class of document secret is necessary for the proper functioning of the public service. What I believe is required of the public is for them to have the confidence that what their government are doing is in the best interest of the people.”*

### **Disclosure**

#### **Shabalala and 5 Others v Attorney General of the Transvaal and the Commissioner of South African Police CCT/23/94 [1995].**

The applicants were charged with murder and sought information in the possession of the police on the basis that it was required for the exercise of their right to a fair trial. The court made an order that denial of information contained in a police docket *“is inconsistent with the Constitution to the extent to which it protects from disclosure all the documents in a police docket, in all circumstances, regardless as to whether or not such disclosure is justified for the purposes of enabling the accused properly to exercise his or her right to a fair trial...”*

#### **M & G Limited and Others v 2010 FIFA World Cup Organising Committee South Africa Limited and Another (2011 (5) SA 163 (GSJ)).**

In this case, the applicants (a company that owned a newspaper, the editor and a journalist) applied for information regarding the tendering process from the organising committee of the 2010 FIFA World Cup. The committee declined to give the information and the applicants then approached the Gauteng High Court for an order to set aside the decision of the committee refusing to provide the newspaper with the information sought. Judge AJ Morison AJ observed that: *“Refusing access to these records would enable the organiser of this event to keep from the public eye documents which may disclose evidence of corruption, graft and incompetence in the organisation of the World Cup, or which may disclose that there has been no such malfeasance. It will make it impossible for any enquiry into those matters to be undertaken. This apparently is what the LOC wants. This would be inconsistent with the principles of transparency and accountability which underpin our Constitution, and which are given effect in the right of access to information, contained in the Constitution and in PAIA.”*

	<b>Note:</b> Where the requester is not satisfied with the decision of the local courts and has exhausted all local remedies, the requester can seek the intervention of regional mechanisms to protect and promote the right to access to information.

# SESSION 2

## REGIONAL MECHANISMS TO ENFORCE THE RIGHT TO INFORMATION



Time:  
60-90 mins

### AIM OF THE SESSION

To equip the participants with knowledge on the different regional mechanisms to enforce the right to information

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**Content:** Enforcement Mechanisms on the Right to Information at the Regional Level

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**Training Methodology:** Free-thinking, lecture method, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape, and Trainer and Participant Notes 6.2

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### PROCEDURE:

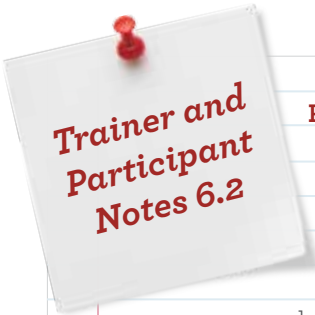
→ **Activity One: Enforcing the Right to Information at the Regional Level**

**Step One:** In plenary, the trainer asks the participants if they are aware of any international and regional enforcement mechanisms on the right to information and the roles and functions of these mechanisms.

**Step Two:** The trainer writes this feedback on a flipchart.

**Step Three:** The trainer supplements and discusses the different international and regional enforcement mechanisms on the right to information.

**Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



## Trainer and Participant Notes 6.2

### REGIONAL ENFORCEMENT OF THE RIGHT TO INFORMATION IN AFRICA

Africa has developed various instruments and bodies to establish and protect human rights on the continent. The African Human Rights System (AHRS) are the laws and structures created to work towards human rights protection in Africa. The human rights protection mechanisms include the following:

#### **African Commission on Human and Peoples' Rights (ACHPR)**

The African Charter established the ACHPR. The mandate of the commission is to promote and protect the rights guaranteed under the charter. The commission is a quasi-judicial organ composed of 11 members who are elected by the Assembly of Heads of State and Government of the African Union (AU). Members, upon election to the commission, shall serve in their personal capacity. Article 36 of the ACHPR stipulates that member States of the commission shall be elected for a six-year period and shall be eligible for re-election. In the discharge of its functions, the commission is supported by a secretary and staff appointed by the Secretary-General of the AU. The commission's secretariat is based in Banjul, the Gambia.

#### **Reporting Procedure**

##### **Process:**

**Article 62** *“Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.”*

As a treaty-monitoring body, the commission is charged with broad promotional, protective and interpretive responsibilities: including the examination of State parties' reports and consideration of inter-State, individual and non-governmental organisation (NGO) communications. The commission is mandated to receive and examine State parties' reports on legislative and other measures taken to give effect to the charter within their jurisdictions. Article

62 of the ACHPR obligates States to submit reports on the “*legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter*”. This is a non-adversarial procedure designed to encourage State parties voluntarily to ensure the full implementation of the rights recognised under the charter. For example, a State that has ratified the ACHPR is obligated to report on measures taken to implement Article 9 - on the right to information.

**Note:**

1. Once a State has submitted its report, the commission will review it and then present issues to the State.
2. During this time, the commission will publish the State report (on its website).
3. This provides NGOs with an opportunity to review the State report and draft its own report,
4. When the commission is reviewing the State report, this can provide a useful opportunity for NGOs to provide independent reports and other critical information to the commissioners in order to sharpen their scrutiny of the human rights situation in the State under review.

This is a great opportunity for NGOs to participate in reporting on processes taken to promote and protect the right to information. This process is known as parallel reporting.

**Parallel Reporting**

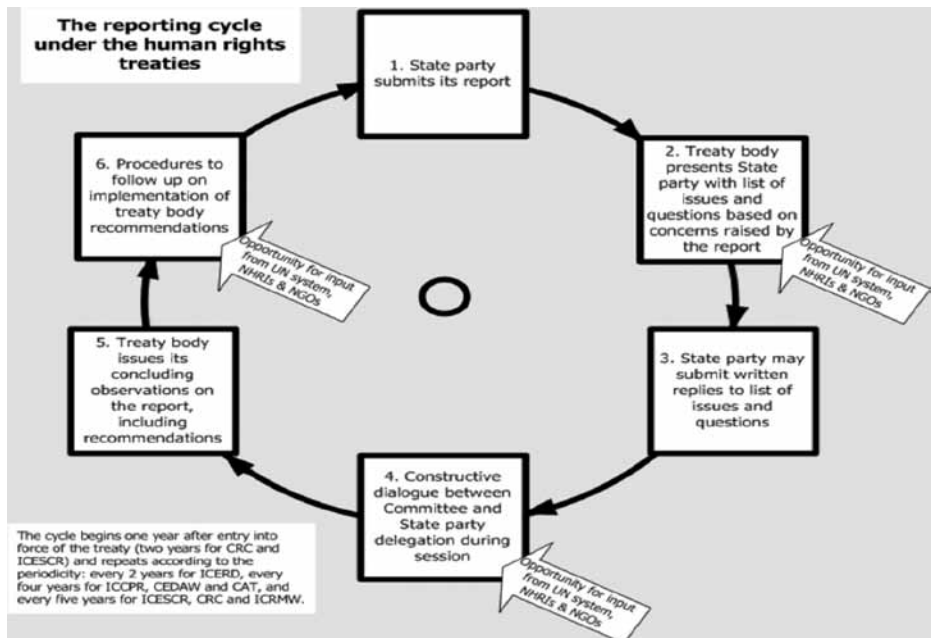
NGOs can produce an alternative report to the commission’s State report. Parallel reporting:

1. Enables the state to:
  - Take stock of its adherence to the treaty obligations.
  - Promote deeper understanding and awareness of human rights in the wider community and encourage their effective implementation on the ground.
2. Provides an opportunity for dialogue, consultation and collaboration by the state, national human rights institutions and NGOs.

3. Can be viewed by NGOs as part of the lobbying and advocacy process for greater human rights promotion and protection. NGOs can also provide recommendations that the commission can adopt when making its final decision

**Note:** This is a great opportunity for CSOs to provide information on the status of implementation of the ACHPR's Article 9. CSOs have an opportunity to co-ordinate initiatives and present a status report on the right to information in their country.

1: Example of the reporting cycle under human rights reporting bodies<sup>7</sup>



<sup>7</sup> Office of the United Nations High Commissioner for Human Rights: The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies. p.20. Geneva: Office of the UNHCHR. (2005)



### **Challenges with reporting**

1. Many State parties to the charter continue to default in their reporting obligation to the commission.
2. Where reports are submitted by States, they are generally incomplete and do not provide sufficient information for effective review of the State's human rights situation.

### **Effect of reporting**

Once the commission has reviewed the State report and the alternative report presented by NGOs, it makes concluding observations, which are an assessment of the implementation of the ACHPR by the State. They do not take the form of a judgement and are non-binding on member States. The concluding observations contain recommendations that States are often encouraged to comply with. For example, where it is evident in a State report that a particular member State does not have legislation on the right to information, the commission may recommend that the country adopts such legislation. NGOs can use the recommendation to lobby their State to draft and adopt RTI legislation.

### **Communication/complaints**

Non-State actors such as individuals and NGOs can also explore remedies from the commission. The commission is mandated under Article 50 of the ACHPR to receive individual complaints: *"The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged."*

Communications can emanate from States (Article 47) or from others present at Ordinary Sessions (Article 55). Complaints are filed by individuals or NGOs. The process for filing an individual or NGO communication to the commission is specified under Articles 55-58 of the African Charter.

- The commission's secretariat is required under Article 55(1) to make a list of the communications it receives and transmit the list to the members of the commission, who shall indicate which communications should be considered by the commission by a simple majority decision.

- The requirements for admissibility of a communication are specified under article 56 of the charter.
- To be eligible to file a communication, the complainant must be the alleged victim of a violation(s) of a right under the charter (or a representative, if the victim is unable to file on his or her own behalf).
  - An individual or NGO alleging serious or massive human and peoples' rights violations may also submit a communication.
  - The communication should refer to the charter, where relevant provisions exist.
  - Article 56 lays down requirements that the commission will consider for communications received. It is recommended that the complaint should indicate the author (even if anonymity is requested). While there is no formal requirement that the communication refer to the charter, the commission has refused to receive some Amnesty International communications on the basis that the organisation deliberately did not refer to the charter. The complaint must not be based primarily on news reports; and must not be written in a language disparaging or insulting to AU member States.

### ***Use of local remedies***

- Before a communication can be considered on its merits, the complainant must demonstrate that all domestic remedies have been exhausted (Article 56(5)). This requirement ensures that the commission does not become a tribunal of first instance. Thus, if an individual or NGO wants to bring a complaint before the commission on a violation of the right to information, it is required to exhaust all local remedies available.
  - In circumstances where it is not practical for the complainant to seek a remedy from domestic courts, or where, due to the seriousness of the human rights situation and the large numbers of people involved, such remedies are practically unavailable or “unduly prolonged”, the commission will review the complaint.

- o The burden of proof is on the party, individual or NGO alleging that it is not possible to use or exhaust the domestic remedies to prove to the commission.

**Note:** These exceptions to the “local remedies rule” provide important safety nets for communications that would otherwise not be admissible by the commission.

***Rule on confidentiality***

Article 59 of the ACHPR provides that “all measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of States and Government shall otherwise decide.”

- The examination of communications by the commission is usually conducted during private sessions, with the exclusion of the complainants.
- The commission may, however, “issue through the Secretary and for the attention of the media and the public, releases on the activities of the commission in its private session”.
- In some cases, the commission may consider the application of interim measures in order to hold the status quo or prevent irreparable prejudice against a complainant pending the examination or determination of a communication.
- The commission has also sought to conduct on-site investigations of allegations of widespread and systematic violations of human rights. Such missions require the permission of the State party concerned.

***Enforcement limitations of the commission***

While the commission is empowered to hear communications brought by States, it cannot act with any force unless it goes through the chief organ of the continental organisation, the AU Assembly. At the AU level, member States are often hesitant to interfere in the domestic issues of State parties.

### **African Court on Human and Peoples' Rights**

The African Court was established by the protocol establishing the **African Court on Human and Peoples' Rights (African Court)** adopted in 1998. The African Court has been in force since January 2004. It is a fully-fledged court with 11 judges and the first bench was elected in January 2006.

#### ***Who can access the African Court?***

Anyone can bring a case before either the African Court or the commission if they have personally experienced a human rights violation or they can do it on behalf of another person or group of persons who have suffered human rights violations. This is what enables NGOs to bring cases before the court and the commission. This means that any individual or organisation whose right to information has been violated can bring a case before the court as well as the commission. It is important to note that the organisation must have observer status before the commission.

The African Court will deal with human rights cases, including cases on the right to information. The only limitation to appearing before the court is that there must be evidence of exhaustion of local remedies or proof that the local remedies were ineffective. If the State's courts are not really accessible or the procedure has taken too long, the court will hear the case. Under Article 5 of the Protocol, the African Court has jurisdiction to handle cases brought before it by:

- i. The commission,
- ii. Any State party which had lodged a complaint to the commission,
- iii. The State party against which the complaint has been lodged at the commission,
- iv. The State party whose citizen is a victim of a human rights violation,
- v. Any African intergovernmental organisation, and
- vi. NGOs with observer status before the commission, and
- vii. individuals.

#### ***Representation before the court***

- i. Individuals bringing complaints before the court are entitled to be represented by a lawyer or any other person of their choice.

	<ul style="list-style-type: none"> <li>ii. Where the persons bringing the case before the court cannot afford a lawyer, s/he can apply to the court for free legal representation.</li> </ul>
	<p><b><i>Remedies from the court</i></b></p>
	<p>The court can make any appropriate orders to remedy the human rights violation such as:</p>
	<ul style="list-style-type: none"> <li>i. Payment of compensation</li> <li>ii. Reparation</li> <li>iii. In cases dealing with matters of grave concern, for example the preservation of a person’s life, the court can adopt provisional or interim measures which would require the situation to be maintained as it is until the court makes its final judgement on the matter.</li> </ul>
	<p>Note: All the court’s orders are binding to the parties concerned, including member States to the court which are required to comply with the judgements and also guarantee execution of judgements.</p>
	<p><b><i>Enforcement limitations with the African Court</i></b></p>
	<p>Jurisdiction of the African Court is limited to States that have acknowledged its jurisdiction. So far, States that have acknowledged the jurisdiction of the African Court include Burkina Faso, Malawi, Mali and Tanzania.</p>
	<p><b><i>Alternatives around this limitation:</i></b></p>
	<ul style="list-style-type: none"> <li>i. Where the State has not acknowledged the jurisdiction of the court, the court can still examine whether the State concerned will respond to the allegations.</li> <li>ii. Another alternative is to bring the case before the ACHPR. The African Court has jurisdiction to hear cases from the African Commission and the commission can then refer the matter to the court.</li> </ul>
	<ul style="list-style-type: none"> <li>1. Where CSOs and individuals have to bring a case before the court, the respondent State needs to make a declaration authorising the application. This is a very strong setback for non-State actors in terms of accessibility of the African Court.</li> </ul>

*“Article 34(6) At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration.”*

2. Where an NGO is bringing a case before the court, it must have observer status before the commission.

## SESSION 3

### SUB-REGIONAL MECHANISMS TO ENFORCE THE RIGHT TO INFORMATION



Time:  
**60-90 mins**

#### AIM OF THE SESSION

To equip the participants with knowledge on the different sub-regional mechanisms to enforce the right to information

**Content:** Enforcement Mechanisms on the Right to Information at the Sub-Regional Level

**Training Methodology:** Free-thinking, lecture method, Power Point presentation

**Training Materials:** Flipcharts, markers, masking tape, and Trainer and Participant Notes 6.3

#### PROCEDURE:

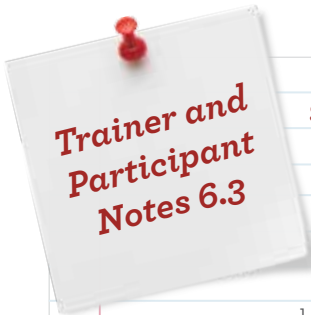
##### → **Activity One: Enforcing the Right to Information at the Sub-Regional Level**

**Step One:** In plenary, the trainer asks participants whether they are aware of any international and regional enforcement mechanisms on the right to information and the roles and functions of these mechanisms.

**Step Two:** The trainer writes this feedback on a flipchart.

**Step Three:** The trainer supplements and discusses the different international and regional enforcement mechanisms on the right to information.

**Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



### **SUB-REGIONAL ENFORCEMENT OF THE RIGHT TO INFORMATION FRAMEWORK ACROSS THE CONTINENT**

#### ***Economic Community for West African States (ECOWAS), Court of Justice***

Citizens of ECOWAS member States can file complaints about human rights violations against state actors at the regional Court of Justice. The ECOWAS court has a specific mandate and rules according to the provisions of the ACHPR. The court has competence to rule on human rights violations through an individual complaint procedure. This means that an individual whose right to access information has been violated can apply to the ECOWAS court. It is important to note that there is no need to show that local remedies have been exhausted before the case can be brought to the ECOWAS Court of Justice. An individual can directly appeal to the court even while the case is subject to a national proceeding. This means that if an individual has a case in a local court on the right to access information, the individual can also bring the same case before the ECOWAS court.

**Status of decisions:** Decisions of the court are legally binding on the member States.

#### ***Southern African Development Community (SADC) Tribunal***

The SADC Tribunal also sits as a court and has jurisdiction over all the disputes arising from the interpretation and application of the SADC Treaty, its protocols and other subsidiary legislation. The tribunal also has jurisdiction over any matter connected with other treaties and agreements concluded by SADC members among themselves and within the framework of the community and which confer jurisdiction on the tribunal. Therefore, where SADC members have concluded

treaties that contain protection of the right to information, depending on the procedure of the tribunal, an individual may or may not be able to bring a complaint before it. The tribunal does not have a specific human rights jurisdiction, but certain provisions of the SADC treaty allude to human rights, which would fall within the purview of the tribunal.

**Limitation of access:** The jurisdiction of the tribunal is limited to its members. There is also no definitive provision in the SADC Treaty or its protocols on access to the tribunal by natural and legal persons, and the audience before the tribunal is limited to State parties.

**Status of decisions:** Decisions of the tribunal are final, binding and enforceable. Member States are mandated to take all steps to ensure enforcement of judgements of the tribunal. Judgements of the tribunal are enforced in the same way that foreign judgements are enforced.

#### ***East African Court of Justice***

The court has jurisdiction over the interpretation and application of the Treaty for the Establishment of the East African Community, and may have other original, appellate, human rights or other jurisdiction upon conclusion of a protocol to realise such extended jurisdiction. Its current human rights jurisdiction is based on the ACHPR. The court is accessible by legal and natural persons, partner states and the secretary general of the community. The basis upon which any resident in a partner State may refer for determination by the court, the legality of any act, regulation, directive, decision or action of a partner State or an institution of the community is on the grounds that it is “unlawful” or an “infringement” of the provisions of the treaty. Jurisdiction of national courts is ousted wherever the treaty confers it on the East African Court of Justice, as decisions of this court on the interpretation and application of the treaty have precedence over decisions of national courts on a similar matter.

**Limitations:** The court does not have a strong human rights focus.

**Status of decisions:** Decisions of the court are binding on member States.





# CHAPTER SEVEN



## THE ROLE OF STAKEHOLDERS IN THE PROMOTION AND PROTECTION OF THE RIGHT TO INFORMATION

This chapter aims to equip participants with knowledge on the mandate of different stakeholders – including public bodies, relevant private bodies, CSOs and individuals – in promoting and protecting the right to information. The aim of this chapter is to influence the attitude of participants and raise awareness among them of the stakeholders responsible for promoting and protecting the right to information in their countries. The chapter also highlights the critical role of civil society in engaging their governments to promote and protect the right to information. The chapter has two sessions: session I focuses on the role of civil society in promoting and protecting the right to information, while session II looks at the role of public bodies and relevant private bodies in promoting and protecting the right to information.

# SESSION 1

## ROLE OF CIVIL SOCIETY ORGANISATIONS



Time:  
*40-60 mins*

### AIM OF THE SESSION

To generate an understanding of the role of civil society in promoting and protecting the right to information.

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**Content:** The Role of Civil Society in Promoting and Protecting the Right to Information

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**Training Methodology:** Group work, lecture method, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 7.1

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### PROCEDURE:

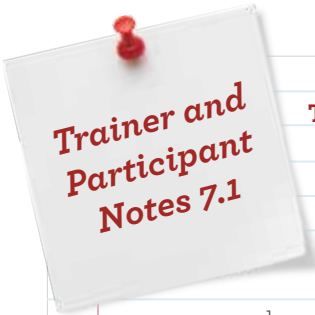
→ **Activity One: *The Role of Civil Society in Promoting and Protecting the Right to Information***

**Step One:** The trainer divides the participants into five groups and asks them to discuss the role of civil society in promoting and protecting the right to information.

**Step Two:** The trainer writes this feedback on a flipchart.

**Step Three:** The trainer supplements and discusses the roles of civil society in promoting and protecting the right to information.

**Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session



**Trainer and  
Participant  
Notes 7.1**

## **THE ROLE OF CSOS IN PROMOTING AND PROTECTING THE RIGHT TO INFORMATION**

CSOs can be defined as those organisations found in the space between the State and the household, which are voluntary in nature, and which have significant autonomy from the State. CSOs include trade unions, consumer organisations, NGOs and community based organisations (CBOs), religious organisations delivering welfare services, social workers in private practice etc. Therefore, any people's association or organisation can be referred to as a CSO. CSO's, comprising rights holders, have a critical role to play in promoting and protecting the right to information. Different strategies can be used by CSOs to promote and protect this right.

**1. Public interest litigation.** This is the protection of a public interest using legal/court processes. According to Black's Law Dictionary: *"Public interest litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."* The explicit purpose of public interest litigation is to alleviate the suffering of all those who have borne the brunt of insensitive treatment at the hands of others. For example, where people's suffering has been exacerbated by a lack of access to information, a public interest case can be brought to protect their rights.

**2. Networking and advocacy.** Interested CSOs, individuals and groups can form networks to share experiences, best practices and lessons learnt on a regular basis with regard to the promotion and protection of the right to information. The networks can also act as 'policy watchgroups' for tracking developments and progress in promoting the right to information, as well as identifying opportunities for intervening in the policy process. CSOs should also develop partnerships with key institutions, such as national human rights organisations, in order to strengthen their advocacy initiatives. CSOs can advocate through different campaigns and lobby strategies to promote the right to information, as well as to create awareness about the right to

information. A conscious effort has to be made by CSOs to generate greater awareness among the general public on their right to information and its implications, and this is strengthened by strong CSO networks or coalitions.

**3. Effective use of the media.** The media can be an effective tool in promoting access to information. The media/journalists often conduct investigative reports on service delivery issues. The reports from the journalists can be used to further promote the right to access information. CSOs can also highlight key issues and expose the wrongdoing of public institutions and functionaries through the media on the basis of evidence and information obtained through RTI legislation.

**4. Capacity building.** In order to better promote advocacy and other initiatives on promoting the right to information, CSOs need to build their capacity on the issue of the right to information. CSOs must develop strong arguments for using RTI legislation in order to evaluate and audit government programmes. The implementation of such programmes and their wide replication requires a cadre of well-trained resource persons at different levels, an effective communication campaign for community mobilisation, regular impact assessment and evaluation studies, and the dissemination of case studies and best practices.

**5. Strengthening participatory mechanisms.** CSOs play a critical role in building and strengthening participatory mechanisms at different levels, from the local grassroots to the national level. The participatory mechanisms are important in promoting and protecting the right to information, especially by championing transparency and accountability for service delivery. CSOs can also mobilise communities to take part in critical decision-making processes within their communities. CSOs can also create awareness on the right to information among communities, building the capacity of communities on the right to information and disseminating RTI legislation.

**6. Promotion of equity.** CSOs can ensure that the benefits accrued through the implementation of RTI legislation are reaped by every section of society. This is possible by facilitating and enabling the broad-based participation of all people, specifically: (a) by helping women

participate in knowing their rights through access to information; (b) by helping vulnerable and disadvantaged groups, including people living in poverty and other low-income groups, to use RTI legislation to realise their rightful entitlements; (c) through institutional measures to ensure the promotion of RTI legislation; and (d) through techniques such as advocacy training and meetings, including those that develop mediating and consensus-building skills that will facilitate effective networking and alliance formation for propagating RTI legislation.

## SESSION 2

### ROLE OF PUBLIC BODIES AND RELEVANT PRIVATE BODIES



Time:  
*40-60 mins*

#### AIM OF THE SESSION

To generate an understanding of the role of public bodies and relevant private bodies in promoting and protecting the right to information.

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**Content:** The Role of Public and Relevant Private Bodies in Promoting and Protecting the Right to Information

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**Training Methodology:** Group work, lecture method, Power Point presentation

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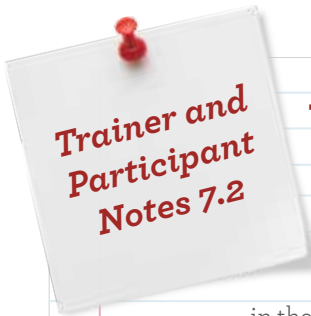
**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 7.2

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**PROCEDURE:**

→ **Activity One: The Role of Public and Relevant Private Bodies in Promoting and Protecting the Right to Information**

- Step One:** The trainer divides the participants into five groups and asks them to discuss the role of public and relevant private bodies in promoting and protecting the right to information.
- Step Two:** The trainer writes this feedback on a flipchart.
- Step Three:** The trainer supplements and discusses the roles of public and relevant private bodies in promoting and protecting the right to information.
- Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**THE ROLE OF PUBLIC OR PRIVATE BODIES IN PROMOTING AND PROTECTING THE RIGHT TO INFORMATION <sup>8</sup>**

Public bodies and relevant private bodies have often existed within a culture of secrecy. In many countries, the practice of secrecy has been promoted in the interest of the State through legislation, such as official secrets acts. While such acts usually originated under colonialism to protect the government from the public, in a democracy the public is the government. In earlier times, official secrets acts were the guiding principle with regard to information held by the government. In recent times, information held by the government is prescribed under right to information legislation. Public bodies and relevant private bodies should be more proactive in disclosing information and responding to requests for information. Below are measures that public bodies and relevant private bodies can take in promoting access to information.

**1. Publishing information – without it being requested.** Public bodies and relevant private institutions should take proactive measures

<sup>8</sup> Adapted from Article 19 (2004). Freedom of Information Training Manual for Public Officials. pp 52 -61. Available at: <https://www.article19.org/data/files/pdfs/tools/foitrainersmanual.pdf>

to publish information. Freedom of information means that the whole process of government is opened up to public scrutiny. In order to promote the right to information, public bodies need to publish information of significant public interest. Such information should not only be published, but also widely disseminated. The type of information to be published by a public body or relevant private body will depend on how that body is defined and what its functions are, as well as the specific requirements of the national law. At a minimum, each public or relevant private body should publish the following information:

- i. a description of its structure, functions, duties and finances;
- ii. details of any services it provides directly to members of the public;
- iii. any public request or complaints mechanisms, along with a summary of any requests or complaints or other direct actions taken by members of the public and the response of the public body;
- iv. a simple guide containing information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in requesting information;
- v. a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
- vi. any regulations, policies, rules, guides or manuals;
- vii. the content of all decisions and policies that affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and
- viii. any mechanisms or procedures by which members of the public may make representations or influence the way the body works.

**2. Allocate responsibility to specific staff.** The public body or relevant private body should designate an individual (or group of individuals) to be responsible for processing requests for information and for ensuring that the body complies with the law in the way that it deals with such requests. This official is often called an information officer. While the general rule presumes the head of the public or relevant private body to be the information officer, this needs to be clearly specified.



The public body or relevant private body must ensure that the public has easy access to the name and contact details of the information officer. The information officer has three basic functions:

- i. to promote the best practices of maintaining, archiving and disposing of records within the public body;
- ii. to be the main point of contact between the public body and the public on all information issues – receiving requests for information, helping individuals who are trying to find information and receiving complaints about the performance of the public body in information disclosure; and
- iii. to ensure that the public body complies with the law on access to information and promoting the best practices with regards to disclosing information.

*Information officer vis-a-vis public relations officer*

**Note:** The role of the information officer is quite different from that of the press or public relations officer. In some countries, the responsibility for handling information requests has been given to press officers or official spokespersons. This has caused problems. The role of the press officer is generally to present the institution to the public in a positive light. This is quite different from the role of the information officer, which is to promote realisation of the public's right of access to information, which means that it must be possible to gain access to unaltered documentation about the functions of a public body or relevant private body. This is not what a press officer does and the two functions should be kept completely separate.

**3. Train the information officer and other public officials (including senior ones).** In order for the freedom of information law to work properly, officials must have both an understanding of the guiding principles and knowledge of the legal technicalities on the right to information. This means that officials responsible for administering the act will need training in how to ensure effective implementation of RTI legislation.

**4. Set up or improve existing information and records management systems.**

Public bodies and relevant private bodies need to create systems to enable the public to request and receive information easily.

This requires two kinds of systems:

- i. Adequate filing and information management (“record management”) systems, so that requested information can be found in a timely manner.
- ii. Open and accessible systems by which information requests can be submitted and their progress traced.

**5. Publicise the RTI law.** The institution mandated to guarantee enforcement of RTI legislation should spearhead a countrywide information campaign. The aim should be to create awareness about the RTI law. Each public body or relevant private body also needs to adopt an information campaign to inform the public about information held by that body and how the public can access such information.

**6. Reporting on RTI activities.** Every information officer of a public body or relevant private body should produce a report annually on the activities of the public body or relevant private body in relation to providing public access to information. The report should include information about:

- i. the number of requests for information received, granted in full or in part, and refused;
- ii. how often and which sections of the freedom of information law were relied upon to refuse, in part or in full, requests for information;
- iii. appeals from refusals to requests for information;
- iv. fees charged for requests for information;
- v. how it has published information proactively;
- vi. how it has maintained records; and
- vii. how it has trained officials and informed the public about their right of access to information.



# CHAPTER EIGHT



## **ACTION PLANNING, FOLLOW-UP AND MONITORING AND EVALUATION**

This chapter focuses on how the participants can develop action plans and use the information acquired in this training to improve their advocacy on the right to information. The chapter has one session, which focuses on developing action plans and how to monitor and evaluate the impact of the training.

# SESSION 1

## ACTION PLANNING



Time:  
**60-90 mins**

### AIM OF THE SESSION

To work with the participants to develop an action plan on how they will better promote the right to information.

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**Content:** What is an Action Plan?

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**Training Methodology:** Group work, free-thinking, lecture method, Power Point presentation

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**Training Materials:** Flipcharts, markers, masking tape and Trainer and Participant Notes 8.1

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### PROCEDURE:

→ **Activity One: Action Planning**

**Step One:** The trainer shares the objectives of this activity with the participants and writes them on a flipchart.

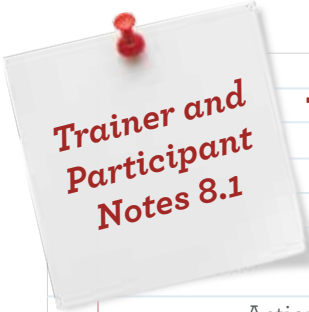
**Step Two:** The trainer discusses essential elements to consider when developing an action plan and writes them on a flipchart.

**Step Three:** The trainer draws an action plan template on a flipchart for reference.

**Step Four:** The participants are divided into three groups to brainstorm and develop an action plan.

**Step Five:** The participants present their action plans in the plenary session.

**Step Six:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



## Trainer and Participant Notes 8.1

### THE DEFINITION OF AN ACTION PLAN

An action plan is a document that lists what steps must be taken in order to achieve a specific goal. The purpose of an action plan is to clarify what resources are required to reach the goal and formulate a timeline for when specific tasks need to be completed.

Action plans are useful, because they provide a framework for thinking about how to complete a task or activity efficiently. They also help you to finish activities in a sensible order, and to ensure that you don't miss any key steps. Also, because you can see each task laid out, you can quickly decide which tasks to delegate or outsource, and which tasks you may be able to ignore.

An action plan consists of a number of action steps or changes to be brought about in your community or changes that you would want to see. Each action step or change to be sought should include the following information:

- i. what actions or changes will occur;
- ii. who will carry out these changes;
- iii. by when will they take place and for how long;
- iv. what resources are needed to carry out these changes; and
- v. communication – who should know what.

A good action plan should meet the following criteria:

Is the action plan:

- i. Complete? Does it list all the action steps or change to be sought?
- ii. Clear? Is it apparent who will do what and by when?
- iii. Current? Does the action plan reflect the current work? Does it anticipate newly emerging opportunities and barriers?

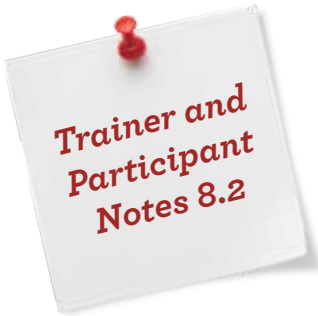
Why is it important to develop an action plan?

- i. To lend credibility to the training workshop
- ii. To establish the social contract between the training and participants
- iii. For accountability
- iv. For solidarity and commitment

Activities	When	Where	Who	Comments
Training				
Awareness creating				

→ **Activity Two: Monitoring and Evaluation**

- Step One:** The trainer distributes evaluation papers to the participants and asks them to fill them out.
- Step Two:** The participants fill out evaluation papers and hand them back to the trainer.
- Step Three:** The trainer can also choose to give the participants an assessment exercise.
- Step Four:** The trainer asks the participants if there are any emerging issues, provides points of clarification and closes the session.



**SAMPLE EVALUATION**

Topic (insert different topics which you want to evaluate)	Topic was relevant	Trainer was clear	I did not understand the topic	Topic was boring

**Assessment Exercise**

1. Why is openness important in the conduct of public affairs?
2. How does the right to information promote openness in society?
3. To which institutions or bodies would a right to information law or policy ordinarily apply? Are there any exceptions to this? What are these exceptions, if there are any?
4. Generally, what are the four main things that an institution to whom the law applies does to implement the law?
5. Who can make a request for information? Describe how various countries/jurisdictions address this issue.
6. Some countries allow a requester to request information held by private institutions, such as companies. In those instances what conditions must be met in order to make the request for information?
7. Who decides on a request for information?
8. What is the role of the (deputy) information officer or (deputy) public information officer?
9. What kind of information can a requester ask for?
10. Describe the recourse that a requester may have if s/he has been denied information.



# NOTES

# NOTES

# 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.

