RIGHT TO INFORMATION IN AFRICA

MANUAL FOR PUBLIC OFFICIALS

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This Right to Information Training Manual for African Public Officials was conceived by the Africa Freedom of Information Centre (AFIC) and designed by the Centre for Law and Democracy (CLD). The initial idea of the manual came in response to request by public officials following a successful production and launch of AFIC's civil society Right to Information Manual. Prior to this request, AFIC's RTI capacity strengthening experience with African civil society and public officials had revealed a great need for a resource of this nature.

This manual was prepared by Michael Karanicolas, Legal Officer, Centre for Law and Democracy, and Toby Mendel, Executive Director, Centre for Law and Democracy. Feedback on the initial draft was provided by Gilbert Sendugwa, Coordinator & Head of Secretariat, Africa Freedom of Information Centre, while Advocate Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information in Africa, provided the Foreword.

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Finally, we are grateful to Friedrich Ebert Stiftung for sustained partnership with AFIC's training programmes and for funding the development of this important resource. This work has benefited from the broad knowledge and expertise both AFIC and CLD have accumulated over time for which we are grateful to various participants of the respective training programmes of AFIC and CLD.

Foreword

We are pleased to present this Resource Manual on access to information for public officials which is a collaborative effort of Special Rapporteur on Freedom of Expression and Access to Information in Africa, African Freedom of Information Centre and Centre for Law and Democracy with financial support of Friedrich Ebert Stiftung.

Since the expansion of my mandate to include the right of access to information in 2005, I focussed attention on mobilising stakeholders for action to adopt access to information laws. This was necessary given that at the time only four countries –South Africa, Angola, Zimbabwe and Uganda had adopted national access to information laws. Under my leadership and guidance, we worked collaboratively with member states, national human rights institutions, election management bodies and civil society to develop promote the adoption of the Africa Model on Access to Information and the African Platform on Access to Information (APAI) Declaration both of which aimed at promoting adoption and improving the quality of access to information laws.

While progress has been made on adoption of laws with the number of African countries with access to information laws increasing from five in 2010 to sixteen in 2015, we recognise the urgent need to promote effective implementation and enforcement of the right to information laws. I am pleased to collaborate with AFIC and CLD in making this resource available.

We hope public officials and governments across Africa will find this manual resourceful and use it to guide the setting up of systems and effective implementation of access to information laws.

Adv. Faith Pansy Tlakula

Special Rapporteur

Freedom of Expression and Access to Information Africa

African Commission on Human and Peoples' Rights

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List of Acronyms

COE	Council of Europe
FOIAnet	Freedom of Information Advocates Network
HRC	Human Rights Committee (UN)
ICCPR	International Covenant on Civil and Political Rights
NGO	Non–governmental Organisation
OAS	Organization of American States
OGP	Open Government Partnership
OSCE	Organization for Security and Co–operation in Europe
PETS	Public Expenditure Tracking Survey
RTI	Right to Information
SMART	Simple, Measurable, Achievable, Realistic and Time–bound
ToRs	Terms of Reference
ToT	Training of Trainers
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization

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.

Around the world, 100 countries, covering 80% of the global population, have passed right to information legislation. Although Africa remains behind in terms of the extent of coverage of the continent, that is beginning to change. Five years ago only three countries in Africa had passed right to information laws. Today there are thirteen, most recently the Ivory Coast, which adopted a law in 2013, and several more such laws are currently under consideration (for example, the Parliamentary Assembly of Mozambique approved an RTI law on 26th November 2014).

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 marks 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, it 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.

Purpose of the manual

This training manual is targeted at African public officials who are tasked with implementing an RTI law, and particularly at those who are involved in receiving, processing and responding to RTI requests. Although the specific legal parameters vary significantly from country to country, this manual sets a normative standard for how to carry out these responsibilities in line with international human rights standards. In implementing an RTI law, public officials should bear in mind that they are giving substance to a key human right, and should undertake this process with the attention, care and diligence that implies. The manual also serves as:

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

Objective of the training

The objectives of this training are to:

i. Increase participants' knowledge of the right to information

ii. Develop participants' capacity to implement the right to information within their own public authorities

iii. Promote a better understanding among participants' of how the right to information is beneficial to both citizens and public authorities

iv. Reduce official opposition to implementing the right to information

Structure of the manual

This manual is divided into nine chapters, which explore various themes connected to RTI implementation. Each chapter is divided into sessions and each session has a defined topic, specified aim and topic activities. Each chapter and session is structured to serve as a guide to the Trainer, including step–by–step instructions, activities and discussion questions.

The bulk of the guide, and the core of every session, is devoted to in–depth presentations of key themes on international RTI standards since, above all else, the participants are here to learn. However, the Trainer should seek to keep these presentations engaging, and should interact with the participants as much as possible to maintain their full attention and interest. Given the substantive nature of these presentations, the Trainer should consider distributing them to the participants as handouts, perhaps after the course has been delivered or during the course, in order to provide them with reference materials that they can take away and share themselves. The main objective of these materials is to provide the Trainer with an understanding of the issues to be addressed in each session.

Each session has an aim, which is designed to be simple, measurable, achievable and realistic to both the Trainer and participants within the set time frame of the training (i.e. SMART), which has been estimated based on the content and training methodology. However, while the manual seeks

to provide as much guidance as possible on how to organise sessions, we are aware that every group of participants will present a unique challenge to the Trainer, who should adapt the sessions depending on factors such as the temperature of the room, the knowledge and experience of participants, and the time available.

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 for the course to be phased.

The manual also provides a step–by–step process for the Trainer to follow during the training. It thus spells out the methodology to be used and the discussions and exercises the participants are to be involved in and how they are to be conducted. In instances where a session takes a long time, the sessions have been broken up into different activities. It is recommended that the trainer also adopts a more practical procedure depending on what might work for the given audience.

Training methodology

The methods to be used in each session have also been suggested. These methods will guide the trainer on the methods to be used while conducting a session. The proposed training methods are participatory and meant to involve the participants in the training process as much as possible. Adult learners usually have a lot of experience and knowledge as well as diverse information. 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 mandatory; it is recommended that the trainer also adopts training methodologies that might work for each particular and peculiar context. The training method adopted should be relevant to the topic being discussed. A range of methodologies have been used and these include: Experience sharing, Free–thinking (brain storming), Group Discussions, Lecture methods, Role Plays and Case Studies.

The suitability of the training methods will also depend on the number of the participants at a training session. For example roles plays may not be ideal for very large groups. Lecture method 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 maintain use of 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; this is because the purpose of the training, which is to learn, would not be achieved.

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, flip chart 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 being used by the trainer, 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 in advance preferably the day before the actual training. 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. Required stationary should also be procured and organised well in advance.
iv. Arrange in advance all materials for demonstration such as games, posters etc
v. If any electronic equipment will be used, assemble and test the equipment needed to ensure that it is in proper working condition well in advance.

CHAPTER ONE: INTRODUCTION TO THE TRAINING

1

The purpose of this chapter is to establish a relationship between the trainer and the participants and build legitimate expectations for the session. This chapter comprises one session, which focuses on climate setting, including introductions, and spelling out participants' expectations, the workshop objective and the ground rules to be observed by all participants and Trainers during the training.

SESSION I: BREAKING THE ICE AND ESTABLISHING RELATIONS

Aim of the session

To build a relationship of trust between the Trainer and participants and ensure mutual respect, and mutual commitment to shared training goals.

Timeframe: 30 Minutes

Step One: The Trainer welcomes the participants to the training workshop and introduces him–or herself.

Step Two: Round of introductions of the participants. The Trainer should ask them to state which department they work for and what they do there, especially in relation to RTI. Depending on the nature of the room, the Trainer may consider injecting some fun or humorous element to the introductions, such as asking participants to mention a favourite food or drink or sports team.

Step Three: The Trainer should list the purposes of the course, writing the following out on a flipchart or whiteboard at the front of the room:

i. Increase participants' understanding of the right to information
ii. Encourage understanding of the "right to know" as a human right, and how it impacts governance procedures and principles
iii. Develop participants' capacity to implement the RTI legislation that applies in their jurisdiction
iv. Encourage participants to carry out their responsibilities in line with established international human rights standards
v. Encourage participants to reflect on the changes which an effective right to information brings in terms of the relationship between officials and the public

Step Four: The Trainer should introduce the style of the workshop, including an overview of the agenda and sessions. The Trainer should emphasise that the sessions should be interactive, with participants feeling free to interject queries, comments and observations by raising their hands, so long as this does not disrupt the flow and efficiency of the session. Although the Trainer is leading the course, the idea is that everyone should participate. Among other things, this will help ensure that the course is as responsive as possible to their needs.

Step Five: The Trainer conducts an activity which results in participants providing their expectations for the course. This could be done through working in pairs and having everyone present the expectations of their partners or through some other pedagogical approach.

Step Six: The Trainer sets out the ground rules for all participants, including the responsibilities and commitments of the Trainer and the responsibilities and commitments of the attendees. These should include:

- Committing to begin and end sessions on time
- No use of mobile telephones during sessions
- Speaking in turns and treating participants and the Trainer with respect
- Approaching participants in a respectful and egalitarian manner
- Maintaining a focus on the relevant issues
- Commitment to completing the course
- Commitment to approach the subject matter with an open mind
- Commitment to share information with co–workers and colleagues at the course's conclusion

2 CHAPTER TWO: INTRODUCTION TO THE RIGHT TO INFORMATION

Human rights are the foundation which underpins a civilised and democratic society. They are universal statements of value which should guide every law, policy and government action. A government cannot be legitimate unless it respects the human rights of its people. Among these core human rights is the right to information, which must be respected in order to guarantee proper public accountability and responsible government. This chapter begins with an introductory exercise on human rights, before going on to discuss RTI specifically, its place in the pantheon of rights and its value and importance.

SESSION I: UNDERSTANDING HUMAN RIGHTS

Aim of session

To impart participants with an understanding of what human rights are, and how the right to information fits into this relationship.

Timeframe: 45 Minutes

Step One: Divide the participants into discussion groups of four or five. Ask the participants to discuss among themselves to come up with examples of human rights, how these rights can impact their work, and why these rights are important for society. Allow ten minutes for group discussions and then ask each group to present two or three examples to the plenary.

Step Two: Presentation on human rights and international law, with a focus on freedom of expression:

- International law comes from States; this is both a strength and a weakness.
- There are different sources of international law. The most important is treaty law, whereby States formally sign and ratify treaties and then agree to be bound by them. But there is also customary law, whereby States implicitly accept as binding certain types of legal obligations.
- International law includes human rights law. Mostly this is binding on States, although it can also impose obligations on States to prevent actions by private actors which breach rights. Human rights law also imposes positive obligations on States, including to create an environment which fosters a free flow of information and ideas in society. The right to information is one of these positive obligations.
- The flagship source of human rights is the *Universal Declaration of Human Rights* (UDHR), which was adopted as a resolution of the UN General Assembly in 1948. Although UN resolutions are generally not legally binding on States, at least parts of the UDHR are broadly recognised as having gained legal force as customary international law, with the result that they are legally binding on all States. The rights contained within the UDHR were enshrined in two international conventions which were drawn up in 1966: the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights*, both of which have been signed by the vast majority of African states.[1]

1 For a full list of signatories to the treaties see https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv–4&lang=en and https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv–3&src=treaty.

- Human rights can also be protected through regional treaties, such as the *African Charter on Human and Peoples' Rights* and through domestic legislation, particularly in the constitution adopted by different States.
- Guarantees of the right to information are based on international guarantees of the right to freedom of expression, which are protected in the ICCPR and in the *African Charter on Human and Peoples' Rights*, among many other international documents. Freedom of expression includes a right to seek and receive, as well as to impart, information and ideas.
- It is universally accepted that freedom of expression is not an absolute right. Everyone agrees that it is legitimate for States to prohibit such acts as inciting others to crime or uttering threats or defamatory statements.
- The approach taken under international law is to start with an extremely broad *prima facie* guarantee of freedom of expression and the right to information which covers any form of communication of information or ideas among people. But it then allows States to restrict freedom of expression in certain cases.
- International law does not, however, give States a free hand in deciding how they restrict freedom of expression. That would render international protection for this right meaningless, because every government could impose any limitations it pleased on freedom of expression and there would be no content to the right.
- Instead, international law establishes a strict test which any restrictions on freedom of expression must meet.

Discussion: Can you think of standards that any restrictions on freedom of expression should meet?

- Article 19(3) of the ICCPR establishes the test for whether restrictions on freedom of expression are legitimate:

  "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."

- This establishes a strict three–part test for restrictions, which must:

  a. be provided by law;

  b. aim to protect one of the interests listed in paras. (a) or (b); and

  c. be necessary for the protection of the interest.

- There are a number of rationales for why restrictions must be provided by law, including for the sake of fairness, so citizens can know in advance of what they can and cannot say, and to avoid a chilling effect, whereby people steer well clear of the line to make sure they do not fall foul of the rules.

- The requirement that a restriction be provided by law also means that the rule must be sufficiently clear and precise, must be publicly accessible, and cannot allocate too much power or discretion to officials in its enforcement.

- The three–part test contains an exclusive list of legitimate interests because, as a fundamental right, freedom of expression can only be overridden by very important interests. It is not enough for governments simply to assert that a restriction protects a legitimate interest, they must show a clear connection between the restriction and the interest.
- The third part of the test, that restrictions must be necessary to protect the legitimate interest, is the most complex and a large majority of international cases are decided on this part of the text.
    a. The term 'necessary' includes a number of specific requirements, including that the restriction address a pressing need, that it be designed in a matter which is not overbroad and, indeed, which is the least restrictive of freedom of expression, and that the impact on freedom of expression is proportionate to the gravity of the risk to society which the measure intends to guard against.

Step Three: Trainer should break here and ask participants their thoughts on the three–part test, to ensure that they grasp the importance of why we have rules protecting core human rights and limiting any exceptions to these rights.

Step Four: Presentation on the right to information as a human right:

Discussion: What is the right to information? What are its main characteristics?

- Although the right to information is today broadly recognised as being a protected human right, this recognition is a fairly recent development. Authoritative

bodies started to make some clear statements about the right to information starting in 1999:

Example: In 1999, the (then) three special mechanisms on freedom of expression at the UN, OAS and OSCE stated:

> "Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented."

Example: In 2004 the three special mechanisms stated:

> "The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions."

➲ There have also been regional statements about this right.

Example: The 2000 Inter–American Declaration of Principles on Freedom of Expression states:

> "Every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
>
> Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and

imminent danger that threatens national security in democratic societies."

Example: The 2002 Declaration of Principles on Freedom of Expression in Africa states, in Principle IV(1):

"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."

Example: The Council of Europe's Recommendation No. R(2002)2 on access to official documents states, in Principle III:

"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 national origin."

- For the first time in a formally binding legal case in 2006–Claude Reyes et al. v. Chile–the Inter–American Court of Human Rights clearly recognised the right to information as part of the right to freedom of expression, stating:

"Article 13 of the Convention [guaranteeing freedom of expression] protects the right of all individuals to request access to State–held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it…. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it."

- The Court recognised that the right to information, like all aspects of the right to freedom of expression, may be

restricted. However, any restriction must be set out clearly in law and serve one of the limited set of legitimate aims recognised in Article 13 of the Inter–American Convention (which are identical to those recognised under Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR)). Importantly, the Court also held the following in relation to any restrictions on the right to information:

> "Lastly, the restrictions imposed must be necessary in a democratic society; consequently, they must be intended to satisfy a compelling public interest. If there are various options to achieve this objective, that which least restricts the right protected must be selected. In other words, the restriction must be proportionate to the interest that justifies it and must be appropriate for accomplishing this legitimate purpose, interfering as little as possible with the effective exercise of the right."

- Since that time, both the European Court of Human Rights and the UN Human Rights Committee (HRC) have recognised the right. The European Court of Human Rights finally recognised the right in a case decided in 2009, Társaság A Szabadságjogokért v. Hungary. In 2011 in General Comment No. 34 on Article 19 of the ICCPR, the HRC stated:

> "Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production."

Step Three: The Trainer should ask the participants whether they think the right to information is a human right, and whether that makes a difference to their attitudes on implementation.

SESSION II: WHAT IS THE RIGHT TO INFORMATION?

Aim of session

To build the capacity of participants to understand what the right to information is, and why having a robust right to information is important.

Timeframe: 45 Minutes

Step One: The Trainer should lead a group discussion to solicit definitions of three key terms: information, transparency and the right to information. These terms should be written on flipchart or whiteboard. The Trainer should write in key descriptors as participants suggest them.

Step Two: The Trainer should ask participants what they feel are some of the values and benefits to a robust right to information.

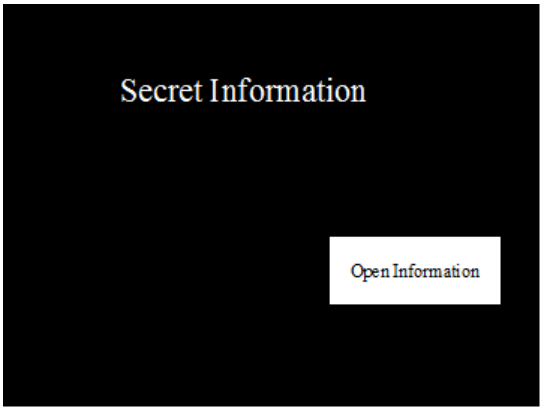
Step Three: Presentation on the importance of the right to information:

- The core of the right to information is that public authorities do not hold information on their own behalf, but on behalf of the public as a whole and that the public has a right to access this information. In other words, everyone has a right to access information held by public authorities.
- In practical terms, there are two ways of exercising this right:

  First, anyone can make a request to a public authority for information, and that authority is supposed to provide the information.

Second, public authorities should make information available on a proactive basis even in the absence of a request.

- Of course there are certain limitations–some information must be kept secret, such as private personal information or sensitive commercial information–but these should be the exception and access should be the rule, and any refusal to publish must be justified.
- This is a radical change, almost a complete reversal, from the historical situation in most countries. Before the right to information, everything was secret by default. Only a small amount was released to the public, as represented in the following diagram:



- The right to information means that information is open by default, with only a small amount being withheld for legitimate reasons, as represented in the following diagram:

- This can be a difficult transition for some officials to deal with, particularly if it happens all at once with the passage of a strong RTI law.
- The Trainer should note here that the participants may expect some resistance from their colleagues as a result, but that they should try and work to overcome the mentality that RTI presents some kind of a threat.

Example: Imagine someone makes a request for a document that you have in your possession and which is not covered by an exception (which is the case for most of the documents you hold). Previously, you would have treated the information as confidential, perhaps as a professional secret. Now you have to give that information to the requester. This clearly takes some getting used to.

- Although it is not as widely referred to as part of the right to information, proactive disclosure is a very important means of delivering openness. Most citizens will never make a request for information–even in a developed country like Canada, only 5% of citizens have ever made a request–and for them, proactive disclosure represents the full extent of access that they will have.
- There is also a close relationship between proactive disclosure and reactive or request driven disclosure because

the more information that is available proactively, the less there is a need to make a request for it. It may be noted that it is much quicker and easier to make information available proactively than to process a request (which must be registered, a receipt sent to the requester, etc.). At the same time, proactive disclosure can never, of course, be a substitute for reactive disclosure because, ultimately, what gets disclosed proactively remains at least to some extent at the discretion of officials while this is not the case for reactive disclosure.

- A third element of the right to information which has emerged in recent years is the idea of open government. To a certain extent this is an aspect of proactive disclosure, but with a few added features:

  i. Information, and especially data, is made available in machine processible formats (i.e. in excel rather than as a pdf file). This means that users can manipulate the information, perhaps combine it with other information, to create new products.

  ii. Open data can also be seen more explicitly as a dialogue, since it is meant to facilitate new and innovative uses of the information by the public. A good example of this is *www.fixmystreet.com,* an interactive website that combines information about problems in streets with geo–location data so that people can report problems with the roads in their local areas to the authorities. It also allows people to discuss the problems and to find out about problems nearby.

  iii. Information and data are made available for free instead of charging for it. While governments once used to sell higher value data, the trend now is simply to give it away for free. For example, the government of the United Kingdom used to sell very detailed maps,

known as ordinance survey maps. These maps are now available in electronic form for free.

iv. Finally, the information is provided free of copyright restrictions so that individuals are free to use the information for whatever purpose they may wish.

Step Four: The Trainer should solicit questions from the participants, and specifically should ask participants how they see the right to information impacting their respective professional roles.

Step Five: Presentation on why RTI is important, and on the key benefits of RTI:

Discussion: What are the benefits of the right to information? Why is it important in a democracy? Why is it important in your country?

- As a human right, the right to information should be respected and promoted for its own sake. However, in addition to this, experience allows us to identify seven key benefits that flow from a strong right to information:

a. Fighting Corruption

- A famous U.S. Supreme Court Justice, Louis Brandeis, famously once noted: "A little sunlight is the best disinfectant."
- The right to information is a key tool in combating corruption and wrongdoing in government. This should be of particular importance to honest officials, so that they do not get a bad reputation from the misbehaviour of their colleagues.

➲ There are many examples of right to information legislation being successfully used to combat corruption.

Example: One feature of the Ugandan education system, at least in the 1990s, was significant capital transfers to schools via local authorities. A public expenditure tracking survey (PETS) in the mid–1990s revealed that 80% of these funds never reached the schools. One of the actions taken by the central government to address this was to publish data in local newspapers regarding the monthly capital transfers that had been made to local governments. This meant that both officials at the schools and parents of students could access information about the (intended) size of the transfers. A few years after the programme had been implemented, the rate of loss to corruption had dropped to 20%.

Example: In Canada, the Defence Minister called the search and rescue service to provide him with a helicopter to transport him back from a fishing trip, even though the helicopters are not supposed to be used for this purpose. The official at the search and rescue service responded by saying: "If we are tasked to do this, we of course will comply. Given the potential for negative press though, I would likely recommend against it, especially in view of the fact the air force receives regular access–to–information requests specifically targeting travel on Canadian Forces aircraft by ministers." What is significant about this is that the official pointed to the right to information law, showing how powerful a tool it is to combat corruption. Sure enough, in due course there was a media request for the information, and the Minister's wrongdoing was the subject of extensive media coverage.

Example: In the United Kingdom, after a long fight, the records of the expenditures of Members of Parliament were released. They revealed extensive corruption and wrongdoing in relation to those expenses, in many cases in the form of abuse of the funds provided to MPs for housing in London (if they lived

outside of London). The Speaker of Parliament resigned, the first time that had ever happened in 300 years, several MPs were charged with criminal offences and dozens were unable to run for parliament at the next election.

b. Democracy and Participation

➲ Information is essential to democracy at number of levels. Fundamentally, democracy is about the ability of individuals to participate effectively in decision–making that affects them. Democratic societies have a wide range of participatory mechanisms, ranging from regular elections to citizen oversight bodies, for example of the public education and health services, to mechanisms for commenting on draft policies or laws. Effective participation at all of these levels depends, in fairly obvious ways, on access to information. Voting is not simply a technical function. For elections to fulfill their proper function–described under international law as ensuing that "[t]he 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 policy–makers have relied upon to develop the policy.

Example: Slovak law requires companies that engage in the harvesting of trees in forests to prepare a forest management plan, which must be approved by the Ministry of Agriculture. Historically, these plans were classified documents. A local NGO, the Vlk (Wolf) Forest Protection Movement, eventually managed to gain access to these plans, under the right to information law which had just been adopted. Using information in the plans, Vlk managed to campaign successfully for larger areas of forest to be protected as nature reserves. Significantly, in 2005, amendments

were introduced to forestry legislation to ensure that the information and background material used in developing forest management plans were made public. The new amendments also set a precedent for public participation in the development of forest management plans by allowing representatives of NGOs to be present at official meetings where the plans were discussed.

c. Accountability

➲ Democracy is also about accountability and good governance. The public have a right to scrutinise the actions of their leaders and to engage in full and open debate about those actions. They must be able to assess the performance of the government and this depends on access to information about the state of the economy, social systems and other matters of public concern. One of the most effective ways of addressing governance problems, particularly over time, is through open, informed debate.

Example: When U.S. President Barack Obama's new online medical coverage system was first released, there were massive technical problems. Due to complete openness about this, the problems were tracked and reported on in real time. The problems were thus repaired, and the functionality of the system improved significantly.

d. Dignity and Personal Goals

➲ Commentators often focus on the more political aspects of the right to information but it 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.

Example: In India, individuals have gone beyond using the right to information law simply to obtain information. Implementation of the right to information law is more robust than implementation of other rules (e.g. regarding the processing of applications for licenses or permissions, or the provision of benefits). As a result, individuals often use requests for information to resolve other sorts of service delivery problems (such as delay, obstruction or failure to apply the rules).

Example: A study by some students at Yale of the Indian right to information law involved three control groups. The first group applied for benefits to which they were entitled–such as a passport or food rations–and did nothing else. The second group applied for the benefit and paid a bribe–on average of about US$25–to get the benefit. The third group applied for the benefit and then followed up with an application under the right to information law for information about their claim. While the second group had the highest success rate, the third group was not far behind. This is significant, among other things, because the cost of a right to information application is just about US$0.15.

e. Economic Development

- An aspect of the right to information that is often neglected is the use of this right to facilitate effective business practices. Commercial users are, in many countries, one of the most significant user groups. Public authorities hold a vast amount of information of all kinds, much of which relates to economic matters and which can be very useful for businesses. This is an important benefit of right to information legislation, and helps answer the concerns of some governments about the cost of implementing such legislation.
- Openness also helps ensure that tenders and other public spending procedures are fair. Businesses that were unsuccessful in the tender can apply for information as to

why they failed. This not only helps keep tenders honest, but it also helps the businesses prepare better for future tenders. The World Bank, for example, now requires all successful bidders to provide key information about the bidding, such as the points awarded to the successful bid under each category and the overall value of the tender award on their websites.

- The open data that many governments are releasing in large quantities has been used by many different social actors to develop tools that benefit society in different ways. The economic value of all of this activity has been assessed at many billions of dollars.

Example: In the United Kingdom, there have been efforts to get doctors to prescribe generic rather than brand name drugs. Someone has created an application using public information whereby citizens can look up their area and see how well their doctors are doing in terms of prescribing generics. The same tool also allows policy makers to target efforts to get doctors to change their prescription practices in areas where the rate of generics is too low, thereby creating efficiencies and saving money.

f. Respect for Human Rights

- Human rights violations, like corruption, flourish in a climate of secrecy. Some of the worst human rights violations, such as torture, are almost by definition something that takes place behind closed doors. An open approach to government–which would include, for example, publication of investigations into allegations of human rights violations–is far more likely to result in respect for human rights.
- In some countries, none of the exceptions to RTI apply when the information concerned relates to human rights violations or war crimes.

g. Sound Development

- Openness promotes greater participation and hence greater ownership over development initiatives. This can help ensure sound development decisions and also good implementation of projects. It also helps ensure that development efforts reach the intended targets.

Example: In South Africa, local groups have used the RTI law to obtain water delivery benefits that they were due. In one example, villagers in Emkhandlwini had no water, whereas neighbouring villages were receiving water deliveries from municipal tankers. With the help of a local NGO, the villagers filed an RTI request for minutes from the council meetings at which water programmes had been discussed and agreed, for the council's Integrated Development Plan (IDP) and for the IDP budget. This information showed that there were plans to deliver water throughout the region, but that somehow Emkhandlwini had been left out. Armed with this information, the villagers were able successfully to reassert their claims for water.

Example: Every year, UNESCO hosts World Press Freedom Day on 3 May and the main event usually adopts a declaration on some key theme. The main event in 2014 was in Paris and the title of the declaration was: "Paris Declaration: Post–2015 Agenda: The right of access to information, independent media, and safety for exercising freedom of expression, are essential to development".

Step Six: Participants should split into groups of four or five to discuss the potential impact that a strong right to information can have for their country, and the benefits it can bring, including with regard to how it pertains to information at the public authority where they work. These ideas should be noted, and each group should present three or four.

SESSION III: RIGHT TO INFORMATION IN AFRICA AND GLOBALLY

Aim of session

To establish an understanding among participants of the growth of the right to information around the world and its current status in Africa.

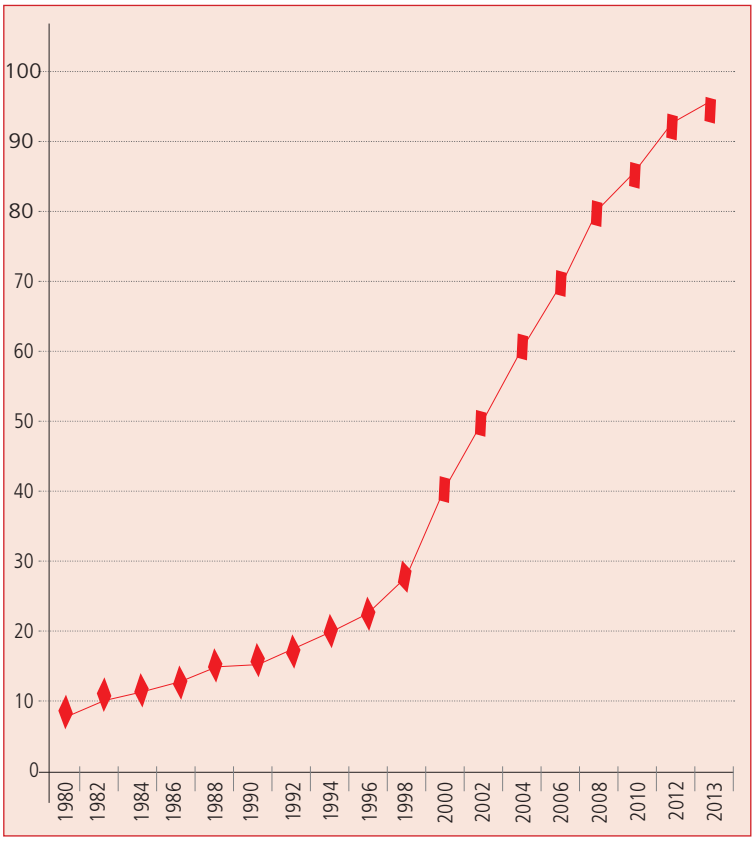
Timeframe: 45 Minutes

Step One: Trainer should engage participants in a brief discussion of why the right to information is of particular importance for Africa, and for their country.

Step Two: Trainer presentation on global perspectives on the right to information:

- Globally, 100 countries have adopted right to information laws, up from just 14 in 1990.
- Sweden was the first country to adopt an RTI law, in 1766. By 1990, 14 countries had adopted such laws, all but one Western democracies. Today, countries in all regions of the world–Asia, Africa, North and South America, Europe, the Pacific and the Middle East–have adopted such laws.
- The rate of adoption of these laws has increased sharply. Until around 1997, the rate of adoption was only about one per year, but that increased after that point to around 4 per year as the chart below demonstrates.

Figure 1: Chronologocal Development of RTI laws

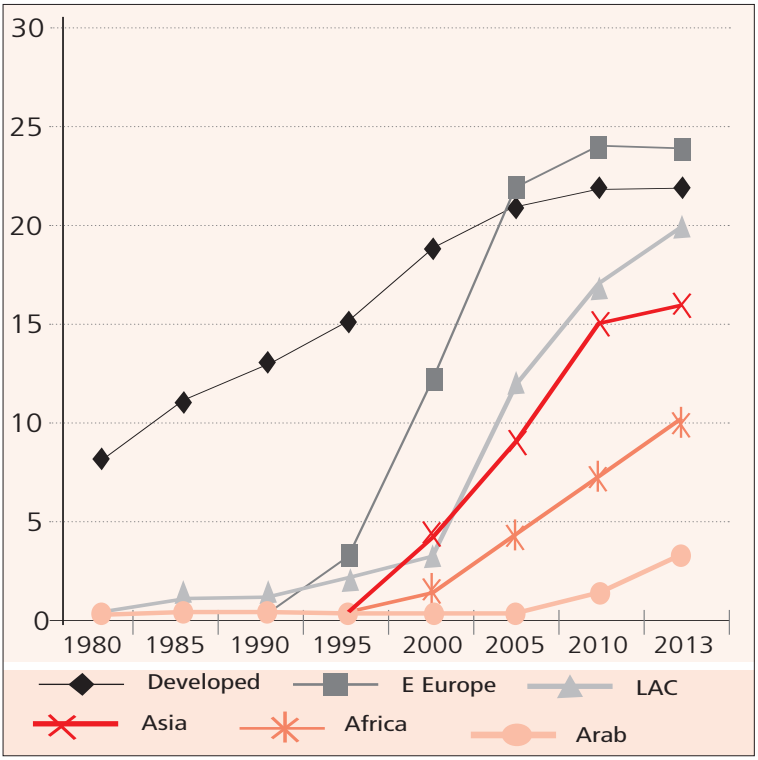


Source: RTI Rating by the Centre for Law and Democracy and Access info Europe.

- Many inter–governmental organisations, such as the World Bank and African Development Bank, have also adopted RTI policies, and there is now a huge global community of civil society organisations and experts working on RTI.
- There are a number of parallel movements to the right to information of which the most famous is the Open Government Partnership, which eight African countries–

Sierra Leone, Ghana, Kenya, Liberia, Malawi, South Africa, Tanzania and Tunisia–have joined.

Figure 2: Development of RTI Laws Broken Down by Region



- As Figure 2 shows, the developed countries were the first to adopt right to information laws and now all but one developed country–Luxembourg–have adopted right to information laws.
- Five years ago only three countries in Africa had passed right to information laws. Today there are thirteen, most recently the Ivory Coast in 2013.
- In the West, the adoption of right to information laws was basically seen as a governance reform rather than

a human right: a measure to improve governance and relations between citizens and their government.

- In other parts of the world–where citizens had direct experience of the massive harm that secrecy could perpetuate–people tend to view access to information differently, more as a foundational requirement in a democracy than simply as a governance reform.
- In countries like Bulgaria, India and Mexico, people have insisted on recognition of the right to information as a constitutionally protected value (i.e. as a human right).

Example: In Egypt, the people insisted on constitutional recognition of the right to information from the very beginning, and it was indeed included in both the 2012 'Morsi' Constitution and the more recent 2014 Constitution. Part of the reason for this was people's understanding that secrecy was part of the system that allowed the abuses perpetrated by Mubarak to take place.

Discussion: Why is it important to have a right to information in the constitution?

- While it is essential to have legislation guaranteeing the right to information, constitutional guarantees are very important as they give overriding status to the right and make it clear that it is a human right, not simply a right guaranteed by law.
- About 60 national constitutions provide guarantees for the right to information and in some countries courts have also found this right to be implicit in wider guarantees of freedom of expression. Within Africa, guarantees for the right to information are found in the constitutions of Burkina Faso, Cameroon, Democratic Republic of Congo, Egypt, Eritrea, Ghana, Guinea Bissau, Kenya, Madagascar,

Malawi, Morocco, Mozambique, Seychelles, South Africa, Tanzania, Tunisia and Uganda.

- There are a number of possible explanations for the remarkable growth in the adoption of right to information laws over the last 25 years.
- One of these is surely the very natural feeling of the idea that public authorities hold information not for themselves but on behalf of the people. The people give the government its mandate through elections and also the funding that is available to government comes from public sources. As a result, it seems very natural, at least in a democracy, to view information held by government as belonging to the people.
- Closely related to this is the changing set of expectations people have around information. In previous generations, people were largely content to vote every 4 or 5 years, feeling that that was sufficient in terms of participation. Now, however, we have much greater expectations and even demands around participation. We expect to be consulted on every development which affects us and to have a right to be involved in the governance of key social institutions such as schools and hospitals, including through oversight boards.

Example: When the government plans to build a road in a city in Canada, they provide everyone living in the area which will be affected by the road a chance to participate in discussions about it. This includes having town hall meetings and placing invitations to these meetings in everyone's mailbox. Furthermore, every piece of information about the development of the road which is available to government, such as the way it will affect traffic and any environmental reports, is available online. As a result, when householders go to these meetings, they are as well informed about the development as officials are.

- Another driver for the right to information is the radically changed relationship we now have with information, based on a complete revolution in the technology relating to information. We can now carry around far more information on our personal computers than most people have in physical form in their homes. Powerful searching tools and electronic filing mean that we have massive information resources at our fingertips and of course the World Wide Web means that we can access virtually unlimited amounts of information in seconds.

Example: 30 years ago, the very best information resource one could have in one's home was the Encyclopaedia Britannica, a 12–15 volume set that might have a few pages on the pyramids in Egypt. This was, however, a very expensive item and few people could afford it. Today, a growing number of people can access the Internet from their homes, with 1000s of pages of information about the pyramids, and almost everything else.

- Globalisation is another driver for the right to information, itself driven in part by information technology. People everywhere now know what people everywhere else have and how they relate to their governments, among other things. When people in one country see that people in others benefit from right to information legislation, they want it for themselves.
- Finally, recognition of the right to information as a human right has had a very powerful promotional effect. It is one thing to call for a governance reform to be adopted in your country and quite another to call on your government to recognise a human right. Calls for the latter are much more strident and insistent.
- In addition to these global drivers, a number of drivers at the national level promote adoption of right to information legislation.

- In many countries and indeed regions of the world–such as South Africa, Eastern Europe, Indonesia, East Timor and across the Arab World–we have witnessed revolutions which have thrown off old dictatorships and repressive regimes and put in place a process of rapid democratisation. In almost all of these change processes, adoption of right to information legislation has been a key demand.
- In some countries, such as Myanmar, undemocratic regimes have taken it upon themselves to bring about a process of rapid democratisation and in those countries, as well, adoption of right to information legislation has been a priority.
- Another trajectory is countries which have witnessed important political shifts after long periods without major political changes. In Mexico, for example, the end of 65 years of rule by one party saw the immediate introduction of right to information legislation. In the United Kingdom, as well, after 17 years out of power, the Labour Party promised to adopt right to information legislation when it finally came back into power in 1997. And similar processes of political change led to the adoption of right to information legislation in Thailand in 1997.
- In many countries, the international community has also provided both pressure and support for the adoption of right to information legislation. This was the case in Tunisia, for example, where international actors such as the World Bank offered the post–revolutionary government support for the adoption of right to information legislation.
- Support from the international community is often supplemented by support from civil society, including both international and local groups, which can play a very important role in mobilising support for the adoption and implementation of right to information legislation.

Step Three: Discussion of recent trends and challenges in RTI:

- The overall growth in adoption of right to information laws has been accompanied by a number of trends.
- One such trend has been in relation to proactive disclosure. Early laws were often quite weak in this area, with some failing to include any proactive disclosure requirements at all. This was followed by a trend whereby there were strong developments in the area of proactive disclosure, and increasingly detailed lists of proactive requirements in laws.
- Over time, however, forces such as technology, e–government and the open government movement have essentially taken over from proactive rules in laws. While it is still important to have proactive rules in legislation, to ensure that all public authorities at least provide a minimum platform of information, in developed countries the extent of proactive disclosure has in almost every case gone far beyond the minimum legal requirements, with the result that the legal rules within the RTI law have essentially lost their relevance.
- Another trend, especially in more developed countries, is for officials to try to get around right to information regimes by using private communications systems–such as private emails and private telephones. Formally, it is everywhere recognised that these communications systems, if they carry official messages, are still covered by the right to information law. But as a matter of practice it can be quite difficult to actually access the individual communications concerned.
- Somewhat in parallel to this are efforts by officials not to record certain types of information to avoid right to information obligations. Thus, discussions which would previously have been written down may be conducted

orally instead. In some cases, legislation has sought to address this by requiring certain types of public matters to be recorded.

- Right to information regimes have also come under some pressure from the open data or government movement. While these two issues are closely related and should be mutually supporting, the recent focus on open data has in some cases led to neglect for the right to information. Thus, if one studies OGP Action Plans, they tend to be significantly more focused on open data commitments than on right to information ones.
- Recent years have also seen a challenge to right to information from unduly broad and growing notions of national security and privacy as exceptions to the right. Concerns about privacy in the modern, Internet–enabled world, which are in many cases quite legitimate, have also contributed to this.

Example: In some countries, public authorities have refused to release full bills from restaurant meals on the basis that this would reveal the personal meal preferences of those involved, which has been claimed to be private. Although there is an arguable case here, it seems obvious that the public interest demands that this information be made public.

Example: A rather ridiculous example from Canada recently was when the government had blacked out the name of visiting British Prime Minister, David Cameron, from various documents relating to his visit. The basis for this was that the information was private, even though the functions were public functions that had even been open to the media (with pictures from them having been published).

- It is possible that the rate of growth of adoption of new right to information laws will slow down now, due to the fact that many of the world's democracies have already

adopted laws. However, it is still the case that only about one–half of all of the countries in the world have adopted right to information laws, with important potential for new adoptions in many regions, including of course in Africa. This potential was demonstrated clearly in the 6–month period between October 2013 and March 2014, which saw the adoption of five new right to information laws.

- Some of the particular strengths of modern right to information laws include their scope, exceptions and promotional measures. As far as scope goes, while many early generation laws did not cover the legislature and the judiciary, this is no longer the case with most laws. Exceptions were rather loosely crafted in many of the early laws, as well, and there has been a significant tightening up of the language used for exceptions in more recent laws. Finally, many early laws included few or sometimes no promotional measures, while more modern laws tend to be far more developed in that area.

Summary of Key Points: The Trainer should reiterate the main points of this Chapter:

- The right to access information held by public authorities is a fundamental human right, protected under international law, which is realised in practice both via proactive disclosure and by processing requests for information.
- 100 countries worldwide, in all regions of the world have adopted laws to give effect to the right to information, and these laws are getting stronger as time goes by.
- There are a number of reasons for this massive trend, including that the idea behind it is a natural one, that our demand for participation is increasing and that our relationship with information has been revolutionised by new technologies.

- The right is important for a number of reasons, including as an underpinning of democratic participation, to control corruption, to hold government to account, and to foster sound development.

Further Resources: The following resources, which provide additional information, should be posted at the front of the room:

- FOIAnet, a global network of groups working on RTI: http://www.foiadvocates.net/ (links to individual groups available at: http://www.foiadvocates.net/en/members)
- Comparative legal survey on RTI laws in different countries: http://portal.unesco.org/ci/en/ev.php–URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html
- Website with news on RTI issues and developments: http://freedominfo.org/
- Website with RTI laws and legal information: http://right2info.org/
- Website hosting the RTI Rating: http://www.RTI–Rating.org

3 CHAPTER THREE: INGREDIENTS OF A STRONG RTI LAW

Understanding the right to information as a human right means that governments are responsible for designing legal and policy frameworks in a manner which adequately respects, protects and empowers this right. Many States recognise the right to information through their constitutions, and even more have acceded to international treaties which explicitly protect the right. However, this recognition has little meaning in the absence of a concrete process for obtaining access to information, which ideally should include an explicit recognition of RTI as a human right, robust procedural protections, carefully and clearly expressed exceptions to the right to information, a mechanism for appealing against failures by public authorities to live up to their responsibilities and promotional measures to encourage use of the system. This chapter outlines the basics of what is needed in a strong legal framework for RTI.

SESSION I: INTERNATIONAL STANDARDS REGARDING A STRONG RTI LAW

Aim of session

To give participants a broad understanding of international RTI standards.

Timeframe: 30 Minutes

Step One: The Trainer should ask the group what "international standards" means to them and why international standards are important to consider in setting up a human rights framework. The Trainer should draw particular attention to the fact that international standards are not only crafted in the rich world. In the case of RTI, countries like India, Mexico and South Africa have been highly influential in transforming our understanding of it from a governance reform to a fundamental human right.

Step Two: Presentation on the hallmarks of a strong RTI system:

- Broadly speaking, seven main principles underlie right to information laws:

a. Presumption in Favour of Access

- A right to information law should establish a presumption in favour of disclosure. In most cases, this will reverse the pre–existing practice of secrecy which hitherto prevailed in the public sector. Ideally, the presumption should be supported by a set of purposes or objectives of the law. These should not only emphasise aspects of the right of access–for example that it should be rapid and low cost–but also point to the wider benefits of the right to information that were discussed above–such as fostering greater accountability, encouraging participation and combating corruption.

Examples: The Indian Right to Information Act states: "Subject to the provisions of this Act, all citizens shall have the right to information." This is a rights–based statement. The South African Act states: "A requester must be given access to a record of a public body" if that requester complies with the procedural rules. This is more of a procedural rights statement. Both the Indian and South African laws include clear statements of purpose/objective.

- This presumption should apply to all public authorities, defined broadly. This should include all three branches of government (executive, legislative and judicial), all levels of government (central but also governorates or provinces, districts and so on), all bodies which are owned or controlled by public authorities, including State–owned enterprises, bodies which are created by law or by the constitution, such as an information commission, and bodies which are funded by the State or which undertake public functions.
- In terms of scope, the law should also apply to all of the information held by public authorities. Better practice is to make it clear that the law applies not only to documents but also to information.

Example: A Swedish request for information related to the 'cookies' on the Swedish Prime Minister's computer was granted, and the information disclosed revealed that there were in fact no cookies on his computer; in other words, at that time, the Swedish Prime Minister did not use the Internet, which was an important public interest piece of information.

- Finally, the right should apply to everyone, not just citizens. This should include legal persons (such as corporations) as well as individuals.

Example: Article 4(1) of the Indonesian law states: "Every person has the right to obtain Public Information pursuant to the provisions of this Law."

b. Proactive Disclosure

- The law should place an obligation on public authorities to publish, on an automatic or proactive basis, a range of information of key public importance. Although the right to request and receive information is at the heart of an access to information law, automatic disclosure is also a very important means of ensuring that information

is provided to the public. It helps ensure that all citizens, including the vast majority of citizens who will never make an access to information request, can access a minimum platform of information about public authorities.

- Automatic disclosure has received ever greater attention in modern right to information laws, and many include very extensive proactive publication obligations for public authorities. In developed countries, the rate of proactive publication of information has gone far beyond the minimum requirements in the law and now serves not only as an openness tool but also to drive e–government initiatives (these standards are discussed more fully in Chapter Five).

Example: Article 4 of the Indian RTI law sets out 17 categories of information that must be published proactively, including the monthly remuneration received by each of its officers and employees, the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes and the procedure followed in the decision making process, including channels of supervision and accountability.

c. Requesting Procedures

- The law should set out clear procedures for accessing information. Although this is rather mundane, it is at the same time fundamental to the successful functioning of a right to information regime. The law should, for example, make it easy to file a request (it should be possible to file one electronically or orally and, where necessary, requesters should be given assistance in filing their requests), strict rules should be established for responding to requests, notice should be required to be given of any refusal to grant access to information and at least the outlines of the fee structure for successful

requests should be set out in law (these standards are discussed more fully in Chapter Six).

d. Exceptions

- Fourth, and very importantly, the law should establish clearly those cases in which access to information may be denied, the so–called regime of exceptions. On the one hand, it is obviously important that the law protect legitimate secrecy interests. On the other hand, this has proven to be the Achilles heel of many access to information laws.

Example: The UK Freedom of Information Act 2000, for example, is in many ways a very progressive piece of legislation. At the same time, it has a vastly overbroad regime of exceptions, with 22 different exceptions and exclusions, which fundamentally undermines the whole access regime.

- The relationship of right to information legislation with secrecy legislation poses a special problem. If the right to information 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 scattered among various national laws, means that, in case of conflict, it is quite important that the right to information law override secrecy legislation. It is, however, fine for secrecy laws to expand upon exceptions that are set out in the right to information law (such as national security or privacy, which is often elaborated upon in more detail in a data protection law).

Example: There are many laws in Tunisia which include overbroad secrecy rules. The Archives Law, for example, extends broad regimes of secrecy to many documents for 30, 60 or even

100 years. Several laws refer to the idea of "professional secrets" which is a notion that has no proper meaning. Problematical exceptions are also found in the laws on the civil service, the penal code, the data protection law and the law on the national statistical institute.

Example: Article 5 of the South African RTI law provides: "This Act applies to the exclusion of any provision of other legislation that— (a) prohibits or restricts the disclosure of a record of a public body or private body; and (b) is materially inconsistent with an object, or a specific provision, of this Act."

- Even more important is a rule specifying that administrative classification of documents cannot defeat the access 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, or his or her superior, and that this cannot possibly justify overriding the right to information. But of course classification can provide useful guidance to civil servants on whether or not a document may be sensitive, which is very different from saying that it can form the basis for a final decision about this in light of a request for information (these standards are discussed more fully in Chapter Seven).

e. Appeals

- A fifth key element in a right to information regime is the right to appeal any refusal of access to an independent body. If this is not available, then the decision about whether or not to disclose information is essentially at the discretion of public officials, which means that it is not really a right. At the same time, an internal appeal (i.e. within the same public authority) can be useful as it provides the authority with a chance to reconsider its original position and experience in many countries has shown that this can often lead to the disclosure of information.

- Ultimately, of course, one can normally appeal to the courts but experience has shown that an independent administrative body is essential to providing requesters with an accessible, rapid and low–cost appeal. Basically, courts take too long and cost too much for all but the very most determined requesters. The role of the oversight body is particularly important in terms of interpreting exceptions to the right of access, given the complexity and sensitivity of applying the regime of exceptions (these standards are discussed more fully in Chapter Eight).

f. Sanctions and Protections

- It is very important to provide for sanctions for wilful obstruction of an RTI law. Experience suggests that administrative sanctions (i.e. fines or disciplinary measures) are far more likely to be used (and hence to be effective) than criminal sanctions. Sanctions should also be available at the institutional level for public authorities which are systematically failing to respect the right to information. It is also important to provide protection to individuals who disclose information in good faith either pursuant to the law or to expose wrongdoing (whistleblowers).

Example: Article 48(1) of the Antiguan RTI law provides: "A person shall not wilfully–(a) obstruct access to any record contrary to Part III of this Act; (b) obstruct the performance by a public authority of a duty pursuant to Part III of this Act; (c) interfere with the work of the Commissioner; or (d) destroy records without lawful authority."

Example: Article 31 of the Bangladeshi RTI law provides: "No, suit, prosecution or other legal proceedings shall lie against the Information Commission, the Chief Information Commissioner, the Information Commissioners or any officers or employee of the Information Commission, or officer–in–charge of any authority or any other officer or employee thereof if any body is affected by any information made

public or deemed to be made public in good faith under this Act, or rules or regulations made there under."

Example: Article 44 of the Ugandan RTI Law provides: "(1) No person shall be subject to any legal, administrative or employment–related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment, as long as that person acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment. (2) For purposes of subsection (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or maladministration regarding a public body."

g. Promotional Measures

➲ A number of promotional measures are needed if implementation of right to information laws is to succeed. Some of the more important promotional measures include:

i. a requirement to appoint officials (information officers) or units with a specific responsibility for ensuring that public authorities comply with their information disclosure obligations;

ii. public authorities should be required to report on what they have done to implement the right to information law;

iii. systems are needed to ensure that records management practices are improved over time (public authorities cannot provide information that they cannot find);

iv. public authorities should be required to ensure that their staff, and especially the specialised officials noted in the first bullet point, receive appropriate training on the right to information; and

v. a central body should be given overall responsibility for promoting the right to information and public awareness–raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) should be required to be undertaken by law (these standards are discussed more fully in Chapters Four and Nine).

➲ Officials should also be granted legal immunity for acts undertaken in good faith to implement the RTI Law, including the disclosure of information.

Example: The following provisions from the Serbian RTI law relate to promotional measures:

Article 35: The Commissioner shall:

i. (4) Undertake necessary measures to train employees of state bodies and to inform the employees of their obligations regarding the rights to access information of public importance with the aim of their effective implementation of this Law;

ii. (6) Inform the public of the content of this Law and the rights regulated by this Law;

Article 36: The Commissioner shall lay with the National Assembly an annual report on the activities undertaken by the public authorities in the implementation of this Law and his/her own activities and expenses within three months from the end of the fiscal year.

Article 37: The Commissioner shall without delay publish and update a manual with practical instructions on the effective exercise of rights regulated by this Law in the Serbian language, and in languages that are defined as official languages by law.

Article 38: A public authority shall appoint one or more official persons (hereinafter: authorized person) to respond to request for free access to information of public importance.

i. (2) Take measures to promote the practice of administering, maintaining, storing and safeguarding information mediums.

Article 39: A state body shall at least once a year publish a directory with the main data about its work, notably:

i. (6) Data on the manner and place of storing information mediums, type of information it holds, type of information it allows insight in and the description of the procedure for submitting a request;

Article 42: With the aim of effectively implementing this Law, a state body shall train its staff and instruct its employees on their obligations regarding the rights regulated by this Law.

Article 43: A state body authorized person shall submit an annual report to the Commissioner on the activities of the body undertaken with the aim of implementing this Law, which shall contain the following data:

Step Three: The Trainer should ask the participants whether they feel these standards are relevant to their domestic circumstance, and why or why not. And how they might be adapted to fit better into the local context.

Step Four: Divide the participants into discussion groups of four or five. Ask the participants to make a list of two or three areas where they feel their domestic law is in line with international standards and two or three areas where they feel their domestic law may not be in line with international standards. After giving the groups five to ten minutes to prepare their answers, the Trainer should make two lists at the front of the room. For the areas or examples of law or practice which are not in line with international standards, the Trainer should try and stimulate some discussion as to what public employees can do to improve the situation.

SESSION II: MEASURING UP: HOW GOOD IS YOUR LAW GLOBALLLY?

Aim of session

Using the RTI Rating, this session invites participants to consider the right to information in a global context, and to assess the main strengths and weaknesses of their domestic law.

Timeframe: 45 Minutes

Step One: In advance of the session, the Trainer should consult www.RTI–Rating.org to find out how their country's legal framework scored. For the purposes of this guide, Uganda is used as a randomly chosen example, but in the training sessions the Trainer should substitute in the appropriate scores for their domestic framework.

Step Two: Discussion of what is the RTI Rating:

- Two NGOs, the Centre for Law and Democracy and Access Info Europe, have developed a sophisticated methodology for assessing the quality of the legal framework for the right to information, knows as the RTI Rating (www.RTI–Rating.org).
- The RTI Rating is based on international standards regarding the right to information, as well as better national practices.
- As Figure 3 shows, the RTI Rating looks at the quality of RTI laws across seven main indicators, namely: the Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections and Promotional Measures.

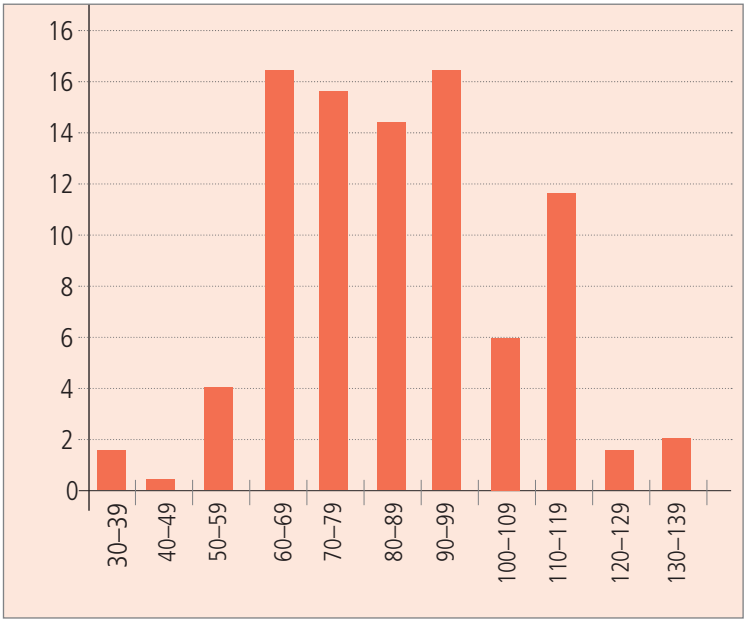
Figure 3. The RTI Rating Categories

Section	Max Points
1. Right of Access	6
2. Scope	30
3. Requesting Procedures	30
4. Exceptions and Refusals	30
5. Appeals	30
6. Sanctions and Protections	8
7. Promotional Measures	16
Total score	*150*

The Rating involves 61 indicators, each of which assesses whether a key feature of a strong RTI system is present in the law. Most indicators are scored between 0 and 2, although some have higher values, for a total maximum score of 150 points.

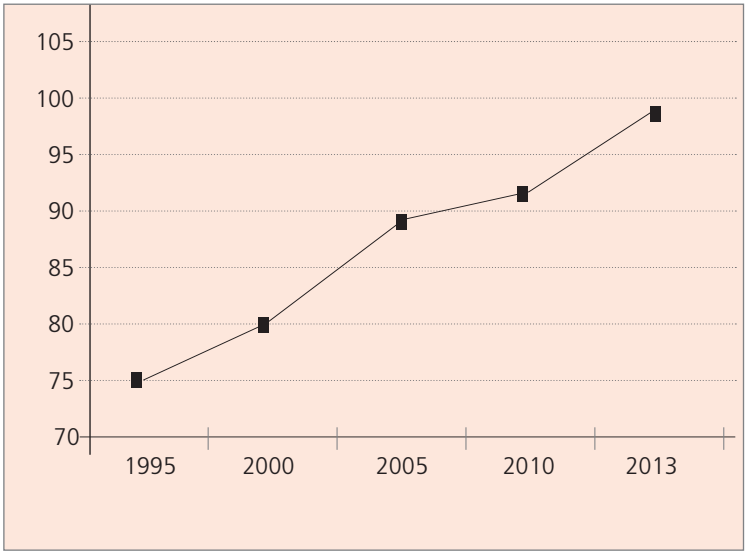
As part of the RTI Rating, every national legal framework for the right to information has been assessed.

Figure 4. Number of RTI Laws per 10–point Score Ranges



- As Figure 4 shows, the distribution of scores across the national laws falls into a Bell Curve, or normal distribution, as one might expect.
- Figure 4 also demonstrates that it is possible to achieve very high scores–the top scoring country is Serbia, with a score of 135 points out of 150, followed by Slovenia and then India, with 129 and 128 points, respectively–suggesting that the indicators are reasonable in the sense of not being impossibly strict.
- It is also possible to achieve very low scores, with Austria and Liechtenstein doing worst, with scores of 37 and 39 respectively.

Figure 5. Average Score of RTI Laws by Year



Source: RTI Rating by the Centre for Law and Democracy and Access Info Europe.

Figure 5 shows the average score of right to information laws as measured over 5–year ranges. It is interesting to note that the quality of the laws increases sharply and steadily over time.

There are no doubt a number of reasons for this:

i. As time goes on, we have developed a much better understanding of what makes a good law. In essence, as the body of experience grows, we can draw lessons from this.

ii. The above is reflected in a large number of international statements about right to information standards which can then be used as a basis for developing a law.

iii. There is a much larger and stronger global advocacy community around the right to information which pressures governments, often working with local advocacy groups, into adopting better laws. This

comprises not only civil society groups but also a number of inter–governmental groups such as the UNDP and World Bank.

iv. In addition to advocacy, the international right to information community assists governments drafting right to information laws by providing technical expertise which improves the quality of the laws being drafted.

Step Three: The Trainer should distribute copies of the RTI rating score for their country, and lead a discussion on the results. Some key discussion points are as follows, using Uganda as an example:

The RTI Rating Scores for Uganda

Section	Max Points	Ugandan Score	Percentage
1. Right of Access	6	6	100%
2. Scope	30	26	87%
3. Requesting Procedures	30	21	70%
4. Exceptions and Refusals	30	22	73%
5. Appeals	30	11	37%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	5	31%
Total score	150	97	65%

a. Right of Access

Strengths:

- Uganda scored a perfect score on this section with a broad and explicit constitutional guarantee, a clear statement of the right to access information in the law, a statement of principles calling for a broad interpretation of the law and a section noting the benefits of the right to information.

b. Scope

Strengths:

- The law applies broadly to public authorities, including the executive, legislative and judicial branches, as well as state–owned enterprises and constitutional, statutory and oversight bodies.
- It also covers all information, defined broadly.

Weaknesses:

- The law does not allow non–citizens to request information.
- The law does not cover private bodies performing public functions or operating with public funds. Given the increasingly important role being played by these bodies in most countries, this is a serious omission.

c. Requesting Procedures

Strengths:

- There are several provisions which make it easy to lodge requests. These include a prohibition on asking for reasons for making requests, the limited details which are required to be provided when making a request and a broad scope for submitting requests in different ways, including electronically.
- Receipts are required to be provided to requesters once requests have been made.
- Assistance must be provided to requesters if they are having difficulty making requests or where they need it for other reasons, including because they are disabled.

- Public authorities are required to respond to requests as soon as possible and, in any case, within a 21–day time limit, with clear rules governing extensions to this.
- Public authorities are generally required to provide information to requesters in the format they prefer, subject to limited exceptions for example to protect the integrity of a document.
- Charges for requests are limited to the actual costs incurred.

Weaknesses

- It is not free to file requests.
- There are no fee waivers for impecunious requesters.
- There are no rules providing for open and free reuse of information obtained pursuant to a request.

d. Exceptions

Strengths:

- For the most part, the specific exceptions listed are in line with international standards, although the exception for proprietary information is overly broad.
- The law contains a mandatory public interest override, whereby information which is subject to an exception must nonetheless be released if this is in the overall public interest.
- The law contains a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.
- Public authorities who refuse to provide access to information must provide a response to the requester setting out the exact legal grounds and reason for the refusal and informing the applicant of the relevant appeals procedures.

Weaknesses

- Exceptions for internal deliberations, cabinet documents and law enforcement information are not fully harm–tested.
- The law's sunset clauses only apply to certain categories of information.
- The law does not override secrecy laws.

e. Appeals

Strengths:

- The law provides for a judicial appeal against breaches of the right to information, which can be brought on relatively broad grounds and in which case the government bears the burden of demonstrating that it acted in accordance with the law.

Weaknesses

- The main problem with Uganda's law in this area is that it does not provide for an administrative level of appeal (i.e. an information commission or the equivalent). This is a major weakness in the law, which results in a significant loss of points for the law on the RTI Rating.

f. Sanctions and Protections

Strengths:

- The law provides for sanctions to be imposed on public officials who undermine the right to information.
- The law has provisions providing immunity from liability for anyone acting in good faith to fulfil their duties under the act.

Weaknesses:

- The law fails to provide for sanctions to be imposed on public authorities which are significantly or structurally failing to respect their openness obligations.

g. Promotional Measures

Strengths:

- Public authorities are required to undertake awareness raising activities. This is essential for proper operation of the law since, absent such efforts, citizens cannot be expected to know about their rights under the law or how to be able to use those rights.

Weaknesses

- The law does not require public authorities to appoint information officers, which is an important starting point for implementation of the right to information. There is also no central body which is given responsibility for promoting the right to information.
- The law imposes no obligation on public authorities to provide training programmes for public officials, nor does it establish a mechanism for record management standards to be set and applied.
- Although the law requires public authorities to report annually on steps taken to implement their disclosure obligations, there is no central body charged with consolidating this information into an overall report on the state of RTI.

Step Three: The following chart lists the RTI Rating scores for African countries, current as of November 2014:

Country	Year of the Law	RTI Rating Score	Global Ranking
1. Liberia	2010	124	4th
2. Sierra Leone	2013	122	5th
3. Ethiopia	2008	112	13th
4. South Africa	2000	109	17th
5. Uganda	2005	97	31st
6. Tunisia	2011	90	42nd
7. Nigeria	2011	88	47th
8. Rwanda	2013	77	60th
9. Angola	2002	76	62nd
9. Ivory Coast	2013	76	62nd
11. Niger	2011	74	66th
12. Zimbabwe	2002	70	72nd
13. Guinea	2010	64	84th

Where does your country fall on that list? The Trainer should lead a discussion about comparative approaches to RTI, and any surprises about which laws are the strongest. Note that the RTI Rating only measures the strength of the law itself, and does not assess how well it has been implemented.

Step Four: Distribute the list of constitutional provisions below to the participants. Divide the participants into groups, and have them discuss which provisions they think are the strongest and the weakest. Lead a discussion on how those compare to the RTI rating scores, as listed above. What is the connection between a strong constitutional protection

for the right to information and a strong RTI law? What role does each play in a strong RTI system?

EXERCISE HANDOUT: CONSTITUTIONAL RTI PROTECTIONS[2]

Timeframe: 45 Minutes

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.

2 Note–this handout omits countries that have constitutional RTI protections but which have not yet passed RTI laws such as Kenya and Tanzania.

1994 Ethiopian Constitution

Article 29:
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.

1986 Liberian Constitution

Article 15:
The right [to freedom of expression includes 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.

2003 Rwandan Constitution

Article 34:
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.

1996 South African Constitution

Article 16:
Everyone has the right to freedom of expression, which includes–(b) freedom to receive or impart information or ideas.

2014 Tunisian Constitution

Article 32:
The State shall guarantee the right to information and the right to access to information.

The State seeks to guarantee the right to access to communication networks.

Article 49:
The law shall determine the limitations related to the rights and freedoms that are guaranteed by this Constitution and their exercise, on the condition that it does not compromise their essence. These limitations can only be put in place where necessary in a civil democratic state, with the aim of protecting the rights of others or based on the requirements of public order, national defense, public health or public morals. Proportionality between these limitations and their motives

must be respected. Judicial authorities shall ensure that rights and freedoms are protected from all violations.

No amendment that undermines any human rights acquisitions or freedoms guaranteed in this Constitution is allowed.

1995 Ugandan Constitution

Article 41: 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 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.

2005 Constitution of the Democratic Republic of Congo

Article 24

All persons have the right to information.

The freedom of the press, the freedom of information and broadcasting by radio and television, written press or any other means of communication are guaranteed, subject to respect for the law, public order and the rights of others.

The law determines the conditions for the exercise of these liberties.

Summary of Key Points: The Trainer should reiterate the main points of this Chapter:

1. The right to access information held by public authorities is a fundamental human right, protected as part of the right to freedom of expression under international law.

2. Over time, a consolidated set of international standards has emerged regarding the nature of a robust RTI framework.

3. These principles include a strong presumption in favour of access to all information held by all public authorities, robust proactive disclosure measures, clear and simple requesting procedures, limited exceptions to access, an independent appeals body, sanctions for breach of the right to information, protections for employees carrying out their duties under an RTI law, and promotional measures designed to improve implementation and awareness of the right to information.

Further Resources: The following resources, which provide additional information, should be posted at the front of the room:

- *The Public's Right to Know: Principles on Freedom of Information Legislation (London:* ARTICLE 19, 1999). Available at: http://www.article19.org/pdfs/standards/righttoknow.pdf
- *RTI Legislation Rating Methodology* (Centre for Law and Democracy and Access Info Europe, 2010). Available at: http://www.law–democracy.org/?page_id(8).
- Recommendation No. R(2002)2 of the Committee of Ministers of the Council of Europe to member states on access to official documents, adopted 21 February 2002: http://www.coe.int/T/E/Human_rights/rec(2002)2_eng.pdf
- Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur

on Freedom of Expression of 6 December 2004. Available (along with their other Joint Declarations) at: http://www.osce.org/fom/66176

- *Transparency Charter for International Financial Institutions: Claiming our Right to Know* (Global Transparency Initiative, 2006). Available at: http://www.ifitransparency.org/doc/charter_en.pdf.

CHAPTER FOUR: IMPLEMENTING THE RIGHT INFORMATION

4

The passage of an RTI law does not mark the end of a country's push to provide the right to information. Rather, it marks the beginning of a new and challenging phase, namely of implementation. This transition can be particularly difficult in emerging democracies, or countries with a history of secretive government. However, while every RTI law applies to a unique spectrum of public authorities, and assigns them different responsibilities, there are certain commonalities to effective RTI implementation which have become accepted as international standards. This Chapter outlines the measures which need to be taken to implement an RTI law effectively, centred around the action areas of building institutional structures, developing systems for access, training public employees and communicating effectively with citizens to ensure broad understanding of the law.

Aim of session

Although different laws prescribe different duties, and apply them to a unique range of public authorities, it is nonetheless possible to isolate set of key strategies for RTI implementation which should apply to any robust access system.

Timeframe: 90 Minutes

Step One: The Trainer should introduce the main action areas for implementing an RTI law. These can be categorised in many different ways, but one way is as follows:

Core Activities

- A key aspect of this is the primary responsibility of public authorities to adopt a plan of action or some sort of guiding strategy for implementing the law. This should happen both centrally, by whatever body is taking responsibility for implementation overall within government, and at the level of each public authority.

a. Institutional Structures

- This refers to the various institutional structures that need to be put in place to ensure proper implementation of the right to information law. An obvious example of this is the information officers that should be appointed by each public authority.

b. Systems

- A number of systems need to be developed to ensure that the obligations under the right to information law can be consistently met. Again, an example of this is to develop a system for processing requests. Without a solid system, it is unlikely that requests will get processed in a regular and proper way, and consistently within the strict deadlines set out in the law.

c. Training

- It is clear that extensive training is needed to ensure proper implementation of a right to information law. Indeed, this training represents an example of that. Training needs to be prioritised so that those who need it most–i.e. information officers–receive it first and in more significant measure, but over time a plan should be in place to ensure that all officials receive at least some sort of training.

d. Communications

- There are important both internal and external communications needs relating to the right to information law. These include, among others, a need to ensure that

citizens understand the presence and nature of this law but also communications to give a sense to officials that the right to information is a government priority.

Step Two: The Trainer should divide the room into groups. On a piece of paper, each group should write down one example of an implementation activity which one of their offices has planned or executed that falls into each category. Once the exercise has been completed, the groups should present these examples to the plenary. As the activities are described, each participant should raise their hand if their office has undertaken a similar activity to the one being mentioned, giving participants an idea of where each office stands in relation to the others.

Step Three: In–depth discussion of the five main action areas for implementing an RTI law:

Core Activities

- A key core activity is the development of an Action Plan. Implementing a right to information law is very complex and, without an Action Plan, whatever is done to this end will simply be a set of unconnected actions. An Action Plan is needed to set priorities and put in place a reasonable plan for realising all of the many obligations under the law. It is also the main instrument against which any monitoring and evaluation should take place (i.e. it provides the framework for any monitoring and evaluation).

The Action Plan should include three main elements:

i. It should set out the main activities that will be undertaken over the timeframe to which it applies (such as 2 years).

ii. It should also indicate who is responsible for delivery of the activity. In many cases, this will be the information officer, but this will certainly not be the case all of the

time. And even where the information officer leads, s/he will often need the support of other officials.

iii. It should provide a timeline for the delivery of each activity, so that the success of delivery can be measured (i.e. were the timelines met).

Some other key attributes of an action plan include the following:

i. It should be developed consultatively, with input from many key players in the public authority, since many actions will require the support and agreement (in terms of timelines, for example) of other actors. For example, proactive publication cannot take place without the support of the IT team.

ii. Action Plans are needed at both the central level, i.e. by the body that is centrally responsible inside government for implementing the right to information law, and for each individual public authority.

iii. Adequate consideration of priorities and how to sequence them. For example, some sort of system to process requests will need to be established sooner rather than later because otherwise, as requests come in, the public authority will not be able to deal with them and this can be a very public failure. Putting in place a system for appeals or improving record management systems may be less urgent.

iv. In addition to prioritising, the Plan needs to provide a schedule for activities (i.e. a timeline for delivery).

v. The Plan should also include a monitoring and evaluation plan. Even though the monitoring and evaluation is directed at the Action Plan, it is also part of the Action Plan.

- In addition to the main Action Plan, which should be a reasonably detailed and complex document, in line with the complexity of implementation requirements overall, it may be a good idea to develop a more simplified manual or guide for 'ordinary' officials (i.e. those who are not information officers). This can be very helpful as a capacity building tool in this area and in raising awareness for all of the staff at a public authority in relation to the new legal obligations on the public authority they work for.
- Another core activity is the need to review other laws to ensure that they are in line with the new right to information law. Formally, legal rules of interpretation provide a basis for resolving inconsistencies between laws but a few points are relevant here:
  i. First, officials are not legal experts and they cannot be expected to be able to be able to resolve apparent conflicts when they arise.
  ii. Second, in many cases this can be a complex matter. For example, one rule may provide that later laws should dominate, while another law may provide that the more specialised law should dominate. What if the more specialised law is the earlier law?
  iii. In the end, a process of reviewing and amending other laws is certainly the best way to resolve the problem of potential inconsistencies in the legal framework.
- Various efforts need to be made to mainstream the right to information into the organisational systems and culture of different public authorities. This is, among other things, a key mechanism for addressing the culture of secrecy which prevails in most public authorities in the early days after a new right to information law is adopted.

- Some of the key mainstreaming activities include the following:
  i. Providing incentives for good performance in terms of implementing the right to information law. This can include incorporating performance in this area into the regular evaluations that take place (or should take place) for officials. There can be other ways of doing this, including informal ways, such as providing awards for good performance.
  ii. Sanctions are the flip side of incentives. The rules relating to discipline may need to make it clear that obstruction is a disciplinary matter and those responsible for engaging disciplinary procedures need to be made aware of this and of what might constitute a disciplinary matter in relation to this issue (i.e. what is an intentional breach and what is simply unprofessional behaviour or ignorance).
  iii. Just as the legal framework needs to be reviewed to ensure that it is in line with the new right to information law, so it may be necessary to review internal rules to the same end. In many cases, internal rules establish various types of secrecy or place obstacles in the way of implementing the law. Even the contracts which are concluded with employees (i.e. contracts of employment or personal rules of service) may need to be amended to ensure that they do not impose personal obligations of secrecy on officials, in breach of the right to information law.
  iv. Finally, the right to information needs to be integrated into central planning systems, just as this would be needed for any other type of activity. A public authority cannot, for example, deliver a major project without a budgetary and staffing allocation, and the same thing is true of the right to information. In other words,

at a very minimum, time and resources need to be allocated to this work.

e. Institutional Structures

- A key institutional structure, probably the very key one, is the appointment by all public authorities of information officers. These are the lynchpin within public authorities for delivering implementation of the right to information law.
- Some key points about information officers are that they should have the requisite knowledge/experience and the authority to move the organisation forward in terms of implementation efforts and to disclose information when it is not covered by an exception. This role is very different than a press officer or someone who works in public relations. The primary role of press officers is to impart a positive image of the public authority to the public through the press, what might be termed a propaganda role without necessarily suggesting anything negative about it. The role of the information officer, on the other hand, is to ensure that all information which is not exempt is made available, even if it is not very complimentary or positive for the public authority. The tension between these functions is obvious.
- It is very important that the appointment of information officers not only be done in an official manner (i.e. through a formal letter of appointment) but also that this role be properly recognised within the organisation. There are a few different elements to this:
  i. First, there should be a clear set of Terms of Reference (ToRs) associated with the position.
  ii. Second, there needs to be an official allocation of time for this position. The post of information officer can be quite a demanding one, with many legally imposed duties. Individuals cannot be expected to

continue to deliver all of their ongoing duties and also take on this extra burden any more than they could be expected to deliver a new project on top of their regular work burden.

iii. Third, there needs to be a clear understanding that other officers at the public authority are required to cooperate with the information officer. Ideally, this should be part of the ToRs for the position, but there also needs to be a communication from a higher official about this, preferably something formal. Basically, information officers cannot possibly do their jobs (i.e. getting information out in response to requests) if other officials (e.g. those who are responsible for the information which has been requested) do not cooperate with them. Formally, information officers do not hold any power over these other officials, so someone higher up the management chain needs to make it clear that they must cooperate with the information officer in terms of implementing the law.

➲ Information officers have a range of functions both internal and external. Some of these may include:

i. Preparing a simple guide for the public about their rights under the law and how to exercise them.

ii. Making sure requests for information are processed in line with the rules in the law.

iii. Making sure that the proactive publication obligations are met.

iv. Taking the lead in preparing an annual report on implementation of the right to information law for the public authority.

v. Taking the lead in preparing the public authority's Action Plan for implementation.

- In many jurisdictions there are formal networks among information officers. These can serve a number of important goals, including as a place to share information, discuss problems and solutions, exchange experiences and share tools. They can also be the locus for organising formal events from time–to–time, such as workshops or conferences to discuss issues and concerns. And they can even serve a support function for the role of information officers within the civil service more generally.
- Such networks could either be developed directly by information officers or their development could be led by a central body, such as the central ministry which is responsible for the right to information.

Discussion: What do you think about the idea of a network for information officers in your country?

- A second very important institutional arrangement is the identification or establishment of a central internal nodal point to deal with right to information issues. This is a body which needs to work inside government, and which plays a very different role from the oversight body (i.e. the information commission).

Example: In India, the Department of Personnel and Training serves this role. This body was given the function because training was identified early on as a key implementation need in the early days of the law.

Example: In Canada, in contrast, it is the Ministry of Justice which serves this role. This is because, in Canada, the main implementation systems and structures are already in place and the main ongoing need is for expert legal advice about the application or interpretation of exceptions, something which the Ministry of Justice is well positioned to provide.

- Training, almost by definition, is something that needs to be done centrally. This is at least true for information officers, of which there will only be one or two in most public authorities, so that expecting each public authority to design a training course for them is simply not realistic. Other training needs, for example raising the awareness of ordinary officials within the public authority, can be dealt with internally, including by the information officer (for example by providing short courses on this or even hosting informal exchanges about it).
- Many countries have put in place central electronic request tracking tools. These are essentially online electronic databases which information officers use to register requests for information as they come in. Information officers are required to fill in various fields, such as the date of filing of the request, which public authority is concerned, etc., and this process should continue as the request is processed (e.g. with information being provided on such things as the time of notification of the decision regarding the request, any fees charged, any exception relied upon to refuse the request and so on). These central databases are an extremely efficient way of tracking requests centrally and of extracting information about how requests are being processed. They also make the job of preparing annual reports much easier, since most of the information required for the report will be available at the click of a button. For obvious reasons, only a central authority can develop something like this. While in some countries–notably Mexico–this has been done by the oversight body, it makes more sense for it to be done by a central, internal, nodal body.
- Improving record management standards and systems is one of the most difficult challenges in terms of implementing right to information legislation. This requires

a lot of effort in terms both of developing standards and of implementing those standards within each public authority. Implementation needs to be done separately by each public authority but if standard setting is also done in that way it is likely to lead to a patchwork of different standards across public authorities, and also place a burden on those public authorities. It therefore makes a lot more sense for this to be done centrally.

f. Systems

- It is necessary to develop a number of different systems to promote proper and effective implementation of a right to information law. Basically, most of the main deliverables under these laws are not something that will happen by themselves, especially over time, so systems are needed to ensure that they do take place.
- A first system is to ensure that proactive disclosure obligations are met not only once but over time (i.e. that information is updated regularly).
- A second system is to ensure that requests for information are dealt with consistently, and within the time limits that are established for this. This is again a complicated matter and a whole Chapter of this Manual is devoted to it.
- A third system which may need to be set up relates to internal appeals, as mandated by some RTI laws. It is important here that the appeal be considered by a higher authority within the same public authority, rather than simply by the same authority (e.g. the information officer) again, because otherwise it is not a real appeal (even for an internal appeal).
- Proper systems need to be put in place to ensure that record management is done properly and in a manner that enables officials to retrieve documents that have been requested (and also to be able to retrieve documents for

purposes of internal work). This is an extremely complex matter which should start with the establishment of clear record management standards, preferably at a central level (as noted above). This may also require existing classification procedures at each public authority to be reviewed regularly to make sure they are in line with the regime of exceptions set out in the law.

- If public authorities are required to report annually on what they have done to implement the law, another system, at least a simple one, will be required for that. To do this successfully, public authorities need to collect at least certain types of information–most importantly relating to requests–on an ongoing basis, since this will be very difficult or impossible at the end of the year. As noted, a central, electronic tracking tool is the best way to achieve this, but if one has not yet been put in place then at least a physical database (i.e. paper records) should be maintained.
- Finally, at least a simple monitoring and evaluation system should be put in place. At its most basic, this would at least involve a regular, perhaps semi–annual, review of progress in implementing the Action Plan (which should have been developed previously). Some of the information gathering systems that are used for the annual report, in particular in relation to requests, will be useful here as well. Some degree of cooperation from other officials, such as the IT department in relation to proactive disclosure via the website, may be necessary.

Discussion: How far has your public authority gone in terms of putting in place these systems?

g. Training

- Considered as a wider organisational objective, training is a huge task since, over time, all public officials need to receive some sort of training. Absent at least some awareness raising or training, officials will be unable to understand their responsibilities, even in terms of their obligations to cooperate with information officers. And absent this cooperation, there will always be challenges in terms of implementing the law.
- Given the magnitude of the task, there is clearly a need to prioritise. It makes sense to start with information officers, given their special role in terms of leading on most implementation efforts. Also, these officers clearly need to receive more intensive training than other officials. Finally, information officers can play an important role in providing training to other staff (so again it makes sense to prioritise training provided to them).
- There are important benefits to taking a training of trainers approach to training, especially at the beginning phase of implementation of a new RTI law. External expertise may need to be brought in for the training of trainers, given that there is unlikely to be a lot of expertise inside the country, which also militates strongly in favour of a training of trainers approach, among other things to save money.
- Ultimately, all civil servants should benefit from some type of training or at least awareness raising on RTI. This will require some sort of plan with a view to reaching everyone within, for example, a period of three to five years. This plan should be included in the broader Action Plan with clear milestones (e.g. to reach one–third of all

staff by the end of the second year). Some approaches to consider in terms of reaching out to all staff:

i. It is useful to build modules on the right to information into ongoing training of different types, such as general training for new recruits.

ii. Information officers can provide some internal awareness raising within their own public authorities. This could be more or less formal. For example, it could include informal discussions at lunch time or more formal workshop style sessions.

iii. For most officers, a relatively modest amount of training should suffice to start with. A 2–hour module is probably sufficient, at least at the beginning, in an attempt to try to reach as many officials as possible.

- Efforts should also be made to introduce the right to information into wider educational forums. For example, this can be introduced as a topic for school children, for example of between 14 and 16 years old, perhaps are part of a wider programme of civic education. Efforts should also be made to include it as part of university courses, for example in law and journalism, and perhaps also in broader human rights courses.

d. Communications

- Communications are an extremely important means of ensuring that relevant sets of stakeholders remain or become informed about the RTI law and are motivated to do their best to implement it. There are two different types of communications, internal and external.
- Internal communications have two main purposes:

i. To keep staff informed about developments, such as the adoption of a new RTI law or the putting in place of new record management standards.

ii. To send out high level statements of support for implementation of the RTI law, which can play an important role in addressing the culture of secrecy

- Internal communications can take place in many different ways. An obvious one is via email, if the civil service is sufficiently online. But sometimes other forms of internal communications may be important, such as a speech by a senior official directly to staff.
- External communications are mainly about informing the public about the right to information and how it may be exercised, as well as keeping the public informed about key developments (again, the adoption of new record management standards is a good example of this).
- Public authorities obviously share this responsibility with a number of other social actors, most importantly civil society groups and the media. But public authorities often have both a formal (i.e. legal) and a moral obligation to do this.
- This is to some extent a central responsibility, but it is also an efficiency, indeed a need, for all public authorities to be involved in this. Different public authorities reach out to wide parts of the public–for example via schools, health care facilities and local government offices–and these provide significant opportunities to raise awareness about this important issue.
- There are a number of ways that this can be done:
  i. Information officers can produce simple guides for requesters which can be made available in both physical form and via public authorities' websites.
  ii. Public authorities can host celebrations of key events, such as International Right to Know Day, which takes place on 28 September each year. These can take the

form of public conferences, outreach activities (such as plays) and so on.

- As noted, there is also an important role here for civil society, the oversight body and the media. Indeed, it can be very useful for public authorities to partner with these bodies in conducting outreach activities.

Step Three: Based on the information presented, the Trainer should lead a discussion among participants of which of these actions the public authorities they work for have taken, as well as how they feel about the progress across the country's public service as a whole.

Step Four: One particularly useful step in implementation of an RTI law can be to create a network of information officers (the employee at each public authority delegated with responding to RTI requests). If no such network presently exists, the Trainer should invite participants at the workshop to consider taking this step, collecting the emails of participants to form a core "mailing list".

EXERCISE HANDOUT: MAPPING KEY STEPS

Timeframe: 30 Minutes

Working in groups of 2 or 3

Think about all of the things that need to be done by public authorities to implement the right to information. Create a brief mapping of the main steps that you believe are priorities in the first two years. Be prepared to present your results to the group.

Summary of Key Points:

- There are a number of key areas for action that are required to implement a right to information law, including Core Activities, Institutional Structures, Systems, Training and Communications.
- The development of an overarching Action Plan both by each public authority and at the central level is a key implementation tool.
- Information officers bear responsibility for implementing many of these actions but this must often take place in collaboration with other officials, and some actions will be led by other actors.
- A number of systems need to be put in place to ensure proper implementation of a right to information law. Key here are systems to ensure proactive disclosure and timely responses to requests for information.
- Training is a huge area of need which will require a degree of prioritisation, probably focusing first on information officers.

- Effective both internal and external communication systems are an important way of advancing implementation of a right to information law.

CHAPTER FIVE: MEETING PROACTIVE DISCLOSURE OBLIGATIONS

5

With the spread of the Internet, open data is becoming an increasingly important aspect of transparent governance. While the effects of this change have been more pronounced in the developed world, due to the higher rate of Internet penetration, proactive disclosure has always been central to an effective RTI system. Moreover, the spread of mobile Internet means that, even across Africa, the Internet is becoming an increasingly important tool for facilitating dialogue between a government and its people. In addition to providing a steady stream of information about key subjects, proactive publication can save time and money for government bodies, since it is far easier to place information in the public domain proactively than to respond to even one request for a document, let alone multiple requests for the same document. This chapter examines better practices and implementation challenges regarding proactive publication. While the actual requirements differ from one law to another, public authorities should be encouraged to view these as baseline standards and should strive to increase the amount of information released to the public as much as possible.

Aim of session

To provide guidance on standards of proactive disclosure and a simple formula for setting up an effective proactive disclosure system.

Timeframe: 30 Minutes

Step One: The Trainer should ask participants if they think public authorities should be legally obliged to publish certain types of information or whether a better structure would be to allow public authorities to determine this for themselves? The Trainer should initiate a discussion on what kinds of information are most important for them to publish proactively, as it relates to their official roles.

Step Two: Presentation of international standards relating to proactive disclosure:

- International standards place a clear obligation on public authorities to publish information proactively.
- In his 2000 Annual Report, the UN Special Rapporteur on Freedom of Opinion and Expression stated:

  "Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public."
- The *Declaration of Principles on Freedom of Expression in Africa* supports this, stating: "Public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest".
- Principle XI of the Council of Europe's (COE) Recommendation of the Committee of Ministers to Member States on access to official documents also calls on every public authority, "at its own initiative and where appropriate", to disseminate information with a view to promoting transparency of public administration, administrative efficiency and informed public participation.
- The COE Recommendation also calls on public authorities to, "as far as possible, make available information on the

matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold".

- Some of the key attributes of this obligation under international law are:
  i. To ensure that information of significant public interest is published.
  ii. To ensure that this information reaches those who need it (e.g. if a project affects local people, it is not enough to publish information about it on the Internet, it should also be posted on local notice boards).
  iii. To update this information regularly, as necessary.
  iv. To ensure that this information is understandable for local people (e.g. that financial information is not presented in excessively technical terms).
  v. To increase the scope of information subject to proactive disclosure over time.

Step Three: In order to understand more fully what proactive disclosure means, and how it should be carried out, it is instructive to consider better practice international standards, read in the context of the requirements contained in the Model Law on Access to Information in Africa (the Model Law) developed by the African Commission on Human and Peoples' Rights:

- It is of primary importance that proactively published materials should be distributed in a manner which maximises their utility and accessibility. The Model Law notes this at the outset, in its Definitions:

  [P]ublish means 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;

- In some cases, it may be sufficient simply to publish information electronically. Usually, this is the easiest approach. However, public authorities should be mindful of the levels of Internet use within their country and affected regions within a country, and especially among any communities to which the information most directly relates. For example, if a development project is being undertaken in a certain area, it will probably be important to make sure that people in that area know about it. In this case, in addition to posting information online, it may be necessary to post information on local bulletin boards or in public offices in the area.
- Some other ideas for proactive publication include:
  i. Regular publication of progress reports by ministries;
  ii. Publication of a public service magazine on a regular basis;
  iii. Regular media briefings and press conferences by various ministries and departments;
  iv. Use of social media tools as well as websites;
  v. Public posters and message boards;
  vi. Translating information into local languages;
  vii. Making information available via the system of libraries; and
  viii. Development of a national government communications policy and strategy.
- In terms of the form of publication, for the most part it is enough simply to provide access to the information in the form in which it was originally produced. However, it is essential that the public is able to understand certain key types of information, such as the budget, and yet this is

often too technically complicated for ordinary citizens, or even relatively educated citizens, to understand. In some cases, then, it will be necessary to provide the information in a form that people can understand. In the case of the budget, for example, it has become common practice in many countries to present a citizens' budget, a simplified version of the budget that ordinary citizens can understand. Such simplified versions may also be appropriate to explain the nature of a development project taking place in a certain part of the country, or a programme to extend certain benefits to individuals.

Discussion: Can you think of some other practical ways to disseminate information on a proactive basis? Do you think this will be different for different public authorities? Do you already have some systems for this in place? What types of information is it particular important to disseminate offline?

- Most RTI laws include a consolidated list of specific types of information which must be published proactively, and which must be kept current within a particular time period. Section 7 of the Model Law requires all public authorities to publish the following information within 30 days of its being generated:

  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.

- This information is often required to be updated on an ongoing basis and it can be difficult to achieve this over time. The number of officials within the public authority that may be responsible for producing the categories of information that are subject to proactive publication can be quite large, and so the risk that at least some of them will forget to present the information for general publication is high. As a result, public authorities will need to develop a system for proactive publication that will work in the context of the particular public authority, taking into account the number of people involved in producing the relevant information, the way that final approvals of these types of documents are obtained and so on.
- The Model Law also requires all public authorities to publish the following information annually:
  a. the particulars of its organisation, functions and duties;
  b. information containing interpretations or particulars of Acts or policies administered by the authority;
  c. details of its processes and procedures for creating, keeping, organising and maintaining information;
  d. a list of all the categories of information held by it or under its control;
  e. a directory of its employees including their powers, duties and title, indicating the permanent staff, the

temporary staff and the outsourced staff, recruitment procedures and vacancies;

f. the yearly band of remuneration for each public employee and

g. detailed travel and hospitality expenses for each employee and officer, and gifts, hospitality, sponsorships or any other benefit received by each employee and officer;

h. a description of the composition, functions, and appointment procedures of the boards, councils, committees, and other bodies consisting of two or more persons, constituted as its part or for the purpose of advice to or managing the public body or relevant private body;

i. the detailed actual budget, revenue, expenditure and indebtedness for the current financial year, including all related estimates, plans, projections and reports, including audit reports, and for any previous financial years from the date of the commencement of the RTI Act;

j. the annual report submitted to the oversight mechanism

k. any other information directed by the oversight mechanism.

➲ It is useful for public authorities to go beyond the minimum requirements set out in the law as regards proactive publication. To do this may require an assessment of what the public thinks is important in this area. Depending on the public authority, and its interactions with the public, there may be many ways to do this. The authority could, for example, provide for a 'suggestion box' on its website and also at its public offices for this purpose.

- A key challenge with this obligation is to make sure that the information is updated on a periodic basis. In many cases, public authorities make an effort to get information online once, but then fail to keep it updated. This requires some sort of protocol, as well as the active support of those officials who are responsible for producing these categories of information, since they are the ones who need to act to ensure that it is made available. Ideally, the system would involve the producers of this information communicating directly with the individuals who are responsible for the website without involving the information officer. There is no need to involve him or her and doing so simply places a greater burden on him or her and can lead to further delays.
- Experience in many countries has shown that laws can be very ambitious in terms of proactive publication but that it can be difficult for public authorities to meet these obligations within the time limits imposed by the law. This can lead to a policy–practice gap (i.e. a situation where the legal or policy requirements are regularly not being met).

In India, for example: a major study conducted five years after the law came into force showed that only 5% of all information subject to proactive disclosure obligations was actually being published. The Indian law has very strong proactive disclosure obligations. One potential solution to this is to give public authorities a longer period of time to meet proactive publication obligations.

- Some other useful observations on proactive publication:

In the UK, a different approach was taken to this issue. There, instead of setting out a long list of categories of information subject to proactive publication, the law requires every public authority to develop and implement a publication scheme, setting out the classes of information which it will publish. Importantly, the scheme must be approved by the Information

Commissioner. The Commissioner may put a time limit on his or her approval or, with six months notice, withdraw the approval. This system builds a degree of flexibility into the obligation of proactive publication, so that public authorities may adapt implementation in this area to their specific needs. It also provides for oversight by the Commissioner without placing too great a burden on him or her, taking into account the numerous public authorities to which the RTI law can apply. Importantly, it allows for the levering up of proactive publication obligations over time, as public authorities gain capacity in this area. Basically, this system ensures that, over time, the amount of information that it is obligatory to publish will increase.

i. If information is published proactively, then there will be no need for individuals to make requests for this information. It may be noted that it takes far longer to respond to a request for information–which requires providing the requester with a receipt, registering and tracking the request, and providing a formal response in line with the requirements of the law–than to provide information on a proactive basis–which simply requires uploading it to a website. It thus makes sense to extend proactive publication to any information which may be the subject of general public interest rather than waiting for a request for this information.

ii. In India, the law requires public authorities, in addition to meeting the minimum proactive publication requirements, to publish as much information as possible on a proactive basis so as to minimise requests.

➲ One final note is that information which is disclosed pursuant to a request should be considered to be in the public domain, and so it may make sense to publish it

proactively in case anyone else might request it. The Model Law makes this expressly clear in section 86:

> (1) Subject to subsection (2), information to which a requester is granted access under this Act is thereafter information in the public domain.
>
> (2) Where a requester is granted access to his or her personal information or personal information of his or her next of kin or someone for whom he or she is the legal personal representative, that information will not be in the public domain only by reason of that grant of access.

Step Four: The Trainer should lead a discussion on how the standards in the Model Law compare against those in the relevant domestic law. The Trainer should ask whether the participants think that the standards in the Model Law are reasonable and, if they are stronger than the requirements in the relevant domestic law, should urge the participants to aspire to the Model Law standards. The discussion should also touch on the extent to which they have put in place systems for proactive disclosure in their own public authorities.

Step Five: Given the challenges associated with keeping information accessible in areas with low Internet penetration, the Trainer should brainstorm with the group about the best systems for doing this, with ideas being posted at the front of the room.

Key Points:

- Proactive disclosure is a very important means of delivering the right to information to the public and indeed, for most citizens, it will represent the only way that they access information from public authorities because they will never make a request for information.

- International law establishes minimum standards for proactive disclosure, including that key categories of information should be disclosed in this manner.
- It also makes sense to publish any information that may be of general interest on a proactive basis, since it is much easier and quicker to do this than to process even one request for that information.
- It can be a challenge to ensure full publication of information subject to proactive publication obligations, and an even greater challenge to make sure that this information remains up–to–date both in the sense of updating information that changes over time and in the sense of making sure that information that is produced on an ad hoc basis is uploaded regularly.
- Providing information electronically via a website is very efficient and important, but certain key categories of information also need to be made available in other ways, so as to ensure that they reach the people who need to access them.

CHAPTER SIX: PROCESSING REQUESTS FOR INFORMATION

6

An efficient and effective system for processing requests lies at the heart of a robust right to information regime. In some cases, aspects of the procedure will be spelled out in the RTI law, such as a requirement to assist requesters in formulating their requests or a timeline for responding. Other aspects of the process may be set by regulations adopted by a minister or the oversight body, or left to the discretion of individual public authorities. However, when establishing a system for processing requests, public officials should bear in mind that they are putting in place a framework for fulfilling a key human right, with the gravity, importance and resources that this entails. This chapter spells out key international standards for processing requests, considered in the context of the Model Law on Access to Information in Africa.

Aim of session

To provide guidance on how to put in place an efficient and user–friendly system for processing requests for information.

Timeframe: 80 Minutes

Step One: The Trainer should open the session by asking, in general terms, what the participants think makes good customer service. In dealing with a shop, restaurant or other business, what makes you as a customer or a client want to return? Noting the most relevant answers at the front of the

room, the Trainer should ask the participants if these values could be incorporated into a system for processing access requests. The Trainer should ask the participants about their experiences in receiving or otherwise being involved with the processing of information requests, and whether they think their systems reflect these qualities.

Step Two: Presentation on international standards for processing access requests:

- It is important, from the outset, to understand that "information" should, in the context of RTI, be understood in the broadest possible terms. The Model Law includes this definition:
  i. **[I]nformation** includes 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 under this Act; reasonable reproduction cost means the minimum market rate of reproduction;
- As a human right, the right of access should also be understood in broad terms, and it should extend to foreigners and legal persons. The Model Law says:

  2(a) Every person has the right to access information of public bodies and relevant private bodies expeditiously and inexpensively.

  (b) Every person has the right to access information of private bodies that may assist in the exercise or protection of any right expeditiously and inexpensively.

- The degree to which requesting procedures are set centrally, either by the RTI law or by regulations, varies from State to State. However, public authorities should try to design requesting systems so as to be in line with international better practices whether or not this is formally required. This should include allowing access to be made by any means of communication. As the Model Law states:

  13(1) A person who wishes to obtain access to information of 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.

- Although it is not mentioned in the Model Law, increasing numbers of States are establishing systems for filing requests online. The utility of this obviously depends on the level of Internet penetration and digital literacy in the country, but it is nonetheless an important step for public authorities to consider, taking into account that it is significantly easier for applicants to post requests online, and that it is also a lot easier for public authorities to process these sorts of requests.
- Another important question is where requests should be received. For electronic requests, this will require a dedicated email address as well, ideally, as an online system for submitting requests via the website.
- In a robust system, public authorities should be able to receive requests via any of their public offices throughout the country. This requires putting in place a system for ensuring that requests lodged in various places are somehow transmitted to the centre for processing, or

are processed at the place they are received, where this is possible (this requires having staff who know how to do this, as well as the availability of the information at that location).

- If a request is submitted orally, the information officer needs to translate it into written form and provide a signed copy to the requester. In all cases, it is better practice to provide requesters with a written acknowledgement of the request, including the date on which it was made and ideally the name of the officer receiving the request.
- An efficient system for handling RTI requests should include a central registry. The most efficient way of registering requests is through an electronic system since this could be done from different locations online and it allows for simple updating and entering further information (e.g. the date of responding to the request, any fee charged, etc.). However, this requires considerable especially up–front resources, as well as government which is sufficiently networked to make this work. A possible electronic tool for keeping a central registry of all requests which are made to a public authority, as well as the manner in which these requests have been processed, is provided in Annex 3.
- If an electronic database for requests is designed well, it can also be used to generate the information that is required for the annual report (how many requests were made, how long it took to process them, etc.).
- Ideally, there should be a central electronic register of requests, rather than requiring each public authority to design their own registration system.

Example: of this is Mexico, where the oversight body (the information commission) developed a central electronic registry of requests which can also be used to file requests; this is

hugely efficient for both requesters and public authorities and generates a significant part of the annual report almost automatically.

- If an electronic registration system is not possible, some system should nonetheless be put in place.
- Registration requires each request to be given a unique file number as a request for information. Part of the system of registration also involves providing requesters with a receipt, which should indicate the unique file number of their requests. Normally, this would be provided in the same way as the request was lodged (i.e. electronically, via mail or directly in person). A possible form for providing requesters with a receipt for their requests is provided in Annex 1, Form B.
- Public authorities should be fairly flexible regarding how a request is made. Although there should be no requirement to use a particular form, it will streamline the process if a standardised form is developed. An example of a possible form for making requests is provided in Annex 1, Form A. However, a request should never be refused simply for a technical failure to comply with a particular requesting procedure. As the Model Law makes clear, all that matters is that sufficient information is provided:

  13(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 safe–guard the life or liberty of a person, include a statement to that effect, including the basis for that belief;

(c) if the request is to a private body, provide an explanation of why the requested information may assist in the exercise or protection of any right;

(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, include an authorisation from the person on whose behalf the request is made.

- Another important point is that requesters should not be required to provide a reason, or explanation for their request. They are exercising a right, and should not need to justify it.
- Good RTI laws require officials to provide assistance to requesters in filing a request as needed, particularly if they are unsure about what information they are looking for, or are disabled or illiterate. However, regardless of whether this is a legal requirement, officials should consider it part of their duties. Once again, the Model Law addresses this issue, stating:

14(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 com–ply 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 this Act.

(2) 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.

- Once a request has been received, the first step in responding is determining whether or not the public authority even has the information. While this sounds obvious, it may not be as easy as it seems. It is fine if the information officer knows exactly where to find the information, but this is often not the case.
  i. Where the information officer does not know where the information is, he or she needs some way of sending out a request to others within the public authority to help him or her find it. An approach or system needs to be developed for this.
  ii. Where the information officer knows approximately where the information should be, he or she can simply approach the relevant unit.
  iii. Where this is not known, one approach would simply be to email everyone at the public authority, but this could be annoying and wasteful, especially if there are a lot of requests. Another approach would be to develop an email distribution list of more senior staff who collectively have a very broad understanding of the information held by the public authority, to which requests for information could be circulated on a regular basis.
- In addition to the technicalities of the system, other officers at the public authority need to know and understand that they have an obligation to cooperate with the information officer. Part of the answer to this is training. But part is also having a clear set of rules which include a requirement to cooperate with the information officer.
- Speedy responses are among the most important aspects of a robust RTI system. When receiving a request, the

information officer should first consider whether they are able to provide an immediate response:

> 13(4) If an 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.

- If an immediate response is not possible, the office should respond as quickly as they can, despite the fact that most laws include concrete maximum timeframes. Section 15 of the Model Law sets this as 21 days, although some countries' laws limit response times to two weeks, or ten working days. An example of a possible form for responding ot requests is provided in Annex 1, Form C.
- Some laws allow public authorities to extend this time period. This provision should not be used routinely, but only in cases where a request is exceptionally difficult, or involves a large amount of information. If an extension is necessary, the public authority should inform the requester immediately, and provide them with an explanation.
- Once the information is located, there needs to be an assessment of the applicability of any exceptions. This is the subject of detailed consideration in the next Chapter.
- There also needs to be a system for severing exempt information, if only part of a document is exempt (i.e. so that the rest of the document can still be provided). The public authority will need to think of a system of how it will do this. It is relatively simple for electronic documents, but even here it at least requires some thought (e.g. is the system to black out the exempt text or simply to cut it out of the document, which can have unintended effects, such as altering the formatting). And this is less immediately obvious for paper documents (at

least it requires a special pen which can reliably blacken out exempt information).

- Better practice when severing information is to indicate how much information has been removed. Here, the situation is reversed. It is normally pretty easy to do this with physical documents (through a combination of physical blacking out and page numbers where whole pages are removed) but less obvious for electronic documents, at least where the exempt text is cut out of the document (this would require leaving a marker indicating the location and amount of material that has been removed).
- When access is being provided, any preferences indicated by the requester as to the form of access should be taken into account. This can raise a number of issues which need to be thought about:
  i. If the requester wants to inspect the documents, does the public authority have a location (i.e. a room) where this can happen and the facilities for this (e.g. a chair and desk)? If not, this will need to be arranged.
  ii. Providing a physical or electronic copy is normally simple enough but what if the requester asks for an electronic copy of a physical document? The public authority needs to determine whether it will go to the effort of scanning a document for a requester.
  iii. In some cases, a requester may want to receive a transcript from an audio or audiovisual record (e.g. a tape recording). This can be quite difficult and time consuming and, once again, systems and rules need to be developed for this. For example, how long a tape will the public authority agree to transcribe? If the format is one that is commonly available (e.g. an electronic audio file that can be read by commonly

owned devices, such as a mobile phone), will the public authority insist on providing it in that format to the requester or will it still transcribe the content?

- Responses should always been in writing and, if a request is refused in full or in part, they should include a reference to the reasons for the refusal and information about options for appealing the decision. As the Model Law states:

> 16 (1) Subject to subsection (2), the information officer to whom a request is made may extend the period to respond to a request in section 15(1) on a single occasion for a period of not 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 21 days.
>
> (2) If any part of the information requested can be considered by the information officer within the time period specified under section 15(1), it must be reviewed and a response provided to the requester in accordance with that section.
>
> (3) If a period to respond to a request is extended in terms of sub–section (1), the information officer must forthwith after the decision to extend has been taken by him or her, but in any event within 21 days after the request is received, notify the requester in writing of that extension.

(4) The notice in terms of subsection (3) must state

(a) the period of the extension;

(b) adequate reasons for the extension, based on the provisions of this Act; and

(c) that the requester may apply for a review of the decision in accordance with section 41.

➲ Although better practice mandates that it should be free to file an access request, most RTI laws allow public authorities to levy fees for the reproduction and delivery of the information. These should ideally be set centrally, and subject to strict controls.

The Model Law has this to say on fees:

23(1) 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.

(2) Subject to subsection (3), an information holder may charge the requester a reproduction fee consisting of the reasonable reproduction costs incurred by the information holder.

(3) 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, 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 request under section 15(1) or, where an extension of time has been made under section 16, within that extended period of time; or

(d) where the requester is indigent.

(4) Where a request is made that information released under this Act be made available in a language other than a language in which it is already held by the information holder under section 22(2), the information holder may recover the reasonable costs of such translation from the requester.

(5) Where a request is made that a written transcription be produced of any information released under this Act, the information holder may recover the reasonable costs of such transcription from the requester.

The collection of fees requires a system to be put in place for assessing and collecting the fee, preferably to facilitate payment in different ways (cash, cheques, credit cards). Receipts will need to be issued and there will need to be some system for entering the fee into the books and making sure that it is processed in accordance with the general rules relating to collection of fees that apply to the public authority. Some public authorities will already have systems for this in place while others, which do not normally collect fees from the public, may not.

Where the request is likely to cost a lot, the public authority may wish to consult with the requester in advance to make sure he or she is willing to pay that fee, before it actually goes ahead with copying the documents.

Step Three: Responding to requests for information is complex and public authorities need clear protocols or guidelines on how to do this to make sure they respond within the strict deadlines set out in the law, and to ensure proper coordination and cooperation within the public authority to this end. The Trainer should ask the participants whether their public authority has adopted a protocol for responding to requests yet and, if not, whether they have plans to do so shortly. The Trainer should ask if they have any system for verifying if requests have been or are being dealt with in time.

Step Four: Even if all of the systems mentioned in this Chapter are in place, there can still be major challenges to processing information requests efficiently and effectively. The Trainer should provide an overview of the more common challenges, which are:

i. Other officers say they do not have but the information officer knows they should have it. In this case, it might be useful to remind other officers of their obligations under the law and also the potential consequences (and sanctions) for non–compliance.

ii. In many cases, other officers delay in responding to the information officer, putting pressure on the time limits. They often do not see this as part of their core work and certainly not as a priority. Awareness raising among staff about the legal requirements of access to information and about how this is a core part of the work of a public authority can help here.

iii. Even with the best systems in place, there are almost certain to be various challenges in terms of processing

requests in accordance with the rules, including the time limits, on a regular basis. While some 'slippage' is almost inevitable, the goal should be to process a large majority of requests in a timely and appropriate manner.

iv. One of the most common problems is processing requests within the time limits.

Example: In the Six Question campaign, where six questions were lodged in 80 countries, the average time taken to respond to requests was 62 calendar days, significantly longer than the 10–20 working days (30 calendar days) period established as a maximum in most of the world's right to information (RTI) laws. Only nine countries responded to all six questions in, on average, 30 days or less, and only three managed to meet this timeline for each of the six requests.

➲ There are a number of reasons why it can be difficult to meet the time limits:

i. Other work priorities are given precedence over responding to requests.

ii. Other officials upon whom the information officer depends delay or do not cooperate. This can include the officials who are responsible for the information or more senior officials who need to make final decisions about release of information.

iii. It can take some time to find the information (either because of poor record management or because this is simply difficult) or it can take time to compile the information from different documents.

iv. It can be difficult to decide whether or not an exception applies. In more complicated cases, this may require referring the matter to a more senior official and some sort of inquires may need to be made.

v. It may be necessary to consult either with private third parties who provided the information or with other

public authorities which have some interest in the information. Where they do not see this as a priority, this can take some time.

- An extreme variety of the issue of delay is a mute refusal, which is a complete failure of the public authority to respond to the request. Although this should never happen, in practice it is all too common.

Example: In the Six Question campaign, the level of mute refusals (a complete lack of response from the authorities) was particularly high, representing 38% of all requests, even after up to three attempts to get a response. Fully 55 of the 80 countries covered by the exercise provided at least one mute refusal, and 15 responded to five or six requests with administrative silence.

- Another common problem is providing wrong or incomplete information. This can happen for a number of reasons:
  i. The official responsible for the information does not do a good job in identifying the information which is responsive to the request.
  ii. The request is not as clear as it could be, or the officials processing the request do not read it carefully.
  iii. There is bad faith and some information is deliberately hidden or withheld.
  iv. It is complicated to find all of the information responding to a request and so shortcuts are taken and only part of the information is provided.
- Where it really is quite difficult to respond fully to a request, it is legitimate to discuss this with the requester and ask if they would be satisfied with only parts of the information or whether there are certain parts that are more important for them.

- Attempting to charge excessive fees is another problem in many countries. Officials should remember that RTI requests are a human right, and should not be viewed as an opportunity to profit, or fill budgetary gaps for the public authority.
- Tracking requests is often done poorly, in most cases because no system is in place, although this can also happen where care is not taken to enter each request into the system or where requests are processed in different locations by different people and the tracking systems are not properly integrated. Having a sophisticated, central tracking system can make a huge difference here.

EXERCISE HANDOUT: SCENARIOS THAT CAN ARISE

Timeframe: 30 Minutes

Working in groups of 2 or 3

You are the information officer at a public authority which has received a request for information. How would you deal with the following scenarios, or what procedures you would put in place to ensure that they will not happen again:

i. You realise after a request has been received that you do not have any contact details for the requester.

ii. A requester approaches you who is disabled and cannot fill in the form for making a request.

iii. You have read the request carefully, but you cannot really understand what information the requester is looking for.

iv. After reading a request, you realise that it is very general in nature and it would take a long time and require a lot of photocopying to satisfy it.

v. You are pretty sure that the public body does hold the information requested, but you are not sure where to find it.

vi. You have approached the relevant officials in the public body, and they say that they do not hold this information, but you feel sure that they should hold it.

vii. You have approached the relevant officials in the public body, and they say that they do have the information, but they cannot find it.

viii. You believe that the information in the request is not held by your office but by another office.

ix. You have passed on a request to the relevant officials, but 10 days have gone by and they have not responded (keeping in mind that requests need to be answered within 15 days).

x. You have passed on a request to the relevant officials, but they complain that they are too busy right now, and will deal with the request later.

xi. The requester indicates that she would like to receive the request in electronic form (and thereby avoid paying fees), but the information is only available in printed form.

xii. A request has taken a long time to process, because the information was spread across many documents, which had to be searched through to find it. It also involves photocopying a lot of pages. How will you calculate what fee, if any, to charge the requester.

xiii. After processing a request involving 100s of pages of photocopying, you present the requester with a bill for the photocopying and she indicates that if it will cost that much, she doesn't want the information.

Key Points:

- Any individual and any legal entity, whether local or foreign, should be able to make a request for information.
- Requests should be accepted whether they are in writing or orally, in person, by mail or electronically, and should only be required to include limited information about the requester and the information sought. Assistance should be provided where necessary. Requests should be registered and the requester should be provided with the registration number.

- The information officer should respond to requests as expeditiously as possible.
- Public authorities should to put in place systems or protocols to ensure that this happens, including instructions to all officials to cooperate with the information officer. This should include systems for finding information where its location is not obvious.
- Requesters should be able to stipulate different ways of accessing information, such as inspecting documents or getting copies of them, and public authorities need to have in place the facilities for this (especially for providing a place to inspect documents).
- Fees should be limited to the cost of copying and sending the information to the requester and public authorities need systems for assessing and collecting fees.
- Meeting the time limits is a particular challenge in many countries, and even avoiding mute refusals is often problematical. Other challenges include avoiding providing incomplete or wrong information and poor tracking of requests.

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CHAPTER SEVEN: INTERPRETING EXCEPTIONS

Although access to information is a human right, it must, like all human rights, be balanced against other rights and interests. Maximum transparency does not mean total transparency, and every government will have information which must legitimately be kept secret. However, in keeping with RTI's status as a human right, these exceptions to access should be interpreted as narrowly as possible, and applied in line with the public interest. This chapter spells out key international standards for interpreting exceptions, considered in the context of the Model Law on Access to Information in Africa.

Aim of session

To provide guidance on how to interpret exceptions found in an RTI law and when information can be legitimately withheld.

Timeframe: 60 Minutes

Step One: The Trainer should start the session by asking participants to list examples of information which is exempted under the country's RTI law.

Step Two: Presentation of international standards for interpreting exceptions:

- The matter of exceptions to the right of access to information is probably the most conceptually challenging issue that officials have to deal with in this area.

- The right to access information held by public authorities (the right to information) is part of the general guarantee of freedom of expression under international law (this protects the rights to seek and receive, as well as to impart, information and ideas).
- As such, this is subject to the three–part test for such restrictions on freedom of expression, which requires any restrictions to:
  i. be provided by law;
  ii. protect one of the interests listed under international law; and
  iii. be necessary to protect this interest.
- Any law restricting freedom of expression must have the purpose of protecting one of the aims listed in Article 19(3) of the ICCPR. This list, which is exclusive so that governments may not add to it, includes the following interests:
  i. the rights or reputations of others;
  ii. national security;
  iii. public order; and
  iv. public health and morals.
- In the context of the right to information, this is generally understood as requiring restrictions to meet an analogous three–part test:
  i. The restriction must aim to protect one of a limited number of interests set out in the law which conform to the list of protected interests noted above.
  ii. Information may be withheld only where disclosure would cause harm to one of the protected interests (as opposed to information which merely relates to the interest).

iii. Information must be disclosed unless the harm to the protected interest outweighs the overall benefits of disclosure (the public interest override). It may be noted that, under international law, the public interest override only works one way: to mandate the disclosure of information where this is in the overall public interest.

➲ Principle IV of the Council of Europe's (COE) Recommendation of the Committee of Ministers to Member States on access to official documents, titled *"Possible limitations to access to official documents"*, reflects this test and also provides an indication of what sorts of interests might need to be protected by secrecy. It provides as follows:

1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

   i. national security, defence and international relations;
   ii. public safety;
   iii. the prevention, investigation and prosecution of criminal activities;
   iv. privacy and other legitimate private interests;
   v. commercial and other economic interests, be they private or public;
   vi. the equality of parties concerning court proceedings;
   vii. nature;
   viii. inspection, control and supervision by public authorities;
   ix. the economic, monetary and exchange rate policies of the state;
   x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

- Classification is not relevant; otherwise, mere administrative action could defeat the right of access (i.e. anyone could put a classification mark on a document which would render it secret and the right to information would have no meaning).
- In some countries–e.g. Mexico–there are procedures that aim to ensure that classification is correct; these include oversight of initial classification, including by the oversight body, as well as regular review of classification to make sure it is still current.
- At the same time, this is still not better practice and, in most countries, classification is used simply as an internal procedure for signalling that information is sensitive, rather than as a rule for non–disclosure.
- The issue of the relationship of the RTI law with other laws is complex. Better practice is to protect all important confidentiality interests in the main access to information law and then not to allow these exceptions to be extended by other laws (while at the same time they may be clarified by other laws). At a minimum, only laws which conform to the standards set out above (i.e. the three–part test) are legitimate.
- The exceptions in the Model Law are found in sections 27–35. They provide for information to be withheld if it would be harmful to: personal privacy, third–party commercial interests, the life, health and safety of individuals, national security and defence, international relations, the State's economic interests, law enforcement and academic or professional examinations and recruitment processes. The Model Law also allows an exception for information which is subject to legal privilege.

- At this point, the Trainer should go through the exceptions listed in the applicable local law and compare them to the list in the Model Law.
- All of the exceptions should be interpreted in line with a requirement of harm. In other words, it is not enough for information to merely be related to a protected interest. Rather, it should only be withheld if there is evidence that its disclosure would cause real and specific harm to a protected interest.
- Even if information would cause harm to a protected interest, better practice is to disclose it if the overall public benefit from the release of information would outweigh the potential for harm. This balancing, called the public interest test, is a hallmark of progressive RTI systems. It is included in section 25 of the Model Law:

  25(1) Notwithstanding any of the exemptions in this Part, an information holder may only refuse a requester access to information if the harm to the interest protected under the relevant exemption that would result from the release of the information demonstrably out–weighs the public interest in the release of the information.

  (2) An information officer must consider whether subsection (1) applies in relation to any information requested before refusing access on the basis of an exemption stated in this Part.

  Another important principle for exceptions is severability, whereby it is preferable to release information in a redacted (severed) form than to refuse to release it entirely. As the Model Law indicates:

  36(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.

- Better practice laws also provide for an overall time limit for most exceptions, for example of 20 years. This is in recognition of the fact that information becomes much less sensitive over time. At the same time, some countries provide for a special procedure to extend confidentiality even beyond the 20–year limit in highly exceptional cases where extended confidentiality really is necessary (for example, this might apply to extremely sensitive national security information).
- Where information has been provided to a public authority on a confidential basis by a third party, better practice is to consult with that third party when a request relating to the information has been received. In some cases, the third party may not object to the release of the information, and this makes the whole process very simple (the authority just provides the information). In other cases, the third party may object to the release of the information. In this case, the consultation provides him or her with an opportunity to put forward reasons as to why the information should not be disclosed, and then for the authority to take these into account when making the final decision about this.

Step Three: The Trainer should lead a brief discussion about the challenges in applying exceptions and listen to see if the participants voice particular confusions or concerns in this area.

The discussion should lead into the following presentation on challenges in applying exceptions:

- Applying exceptions is a sensitive matter and public authorities need to agree on systems for this. Such systems should identify who decides on whether exceptions are applicable and they should be designed in such a way as to ensure that this can be done within the timelines.
- This is a bit tricky because the person who is responsible for the information will normally be in the best position to determine whether or not an exception is applicable but this person may also have conflicting views about whether or not to release the information:
  i. The author of a document will often have a sense of ownership over the document and not necessarily want to release it publicly.
  ii. If the document exposes weaknesses or inefficiencies or worse within the public authority, these are more likely to relate to the author or person responsible than to other people.
- Ideally, the official responsible for the information would work with the information officer to determine whether or not an exception applies.
- Where these two officials cannot resolve the matter between themselves, there needs to be either a way to resolve the matter (for example by giving the information officer final say in the matter).
- There may also be cases where, due to the sensitivity or difficulty or implications of making a decision about disclosure, the matter needs to be referred to a more senior officer.
- At the same time, it should be noted that as the decision goes up in terms of seniority, it can get more difficult to resolve and this also takes time. More senior officers also

tend to be very busy and are also often more concerned about political implications than less senior officers.

- It is of fundamental importance that the decision be made on an objective basis (i.e. an objective consideration of whether or not the exceptions apply) rather than a political basis, or due to any concerns about the potential for embarrassment as a result of the public disclosure of the contents.
- In assessing the applicability of an exception, the burden always rests with the public authority seeking to justify the refusal, both as to the harm that would be caused by releasing the information and the non–applicability of the public interest override. This is based on the fact that access to information is a human right, and it is always for the State to justify limitations on rights.
- The key initial consideration is whether making the information public poses a risk of harm to one of the interests protected in the law. When considering this, rational analysis based on the standards in the law must be applied rather than relying on preconceptions and previous practices/assumptions/prejudices.
- This involves three key elements. First, the officials should identify the specific interests within the exception that would be affected by the release of the information, beyond a general sense that the exception applies.

Example: The fact that information relates to a business or even to the competitive activities of a business is not of itself relevant. The issue is what specific harm would result from the disclosure of the information: would the business lose clients? Would a competitor be able to steal the business secrets of the business?

Example: This is perhaps particularly important in relation to national security where assumptions about the need for secrecy can

be very wrong and they need to be tested rigorously against objective criteria. In many countries there is reluctance to disclose information about weapons but the performance capacity of most weapons systems is well known and one's enemies can often easily find this out so refusing to disclose only prevents one's citizens from knowing what one's enemies already know.

- Second, the official must establish that there is a causal relationship or a direct link between the disclosure of the information and the creation of a serious risk of harm and that that risk is not based on other factors.

Example: If a country has a weak army, it will be insecure. This risk does not come from being open about the army but from the fact that that army is weak. The same applies to a business that is failing. Secrecy should not be used to prop up weak institutions or businesses.

- In assessing this, the imminence of the risk after disclosing the information is an important consideration. If the risk would only materialise a long time after the information had been disclosed, it is likely that the causal relationship between the disclosure of the information and the realisation of the risk is low.
- As part of this, the official should consider whether or not the risk could be limited by removing/severing information. Put differently, the official should consider what, specifically, within a document is sensitive and remove only this part of the document. In most cases, refusals to disclose the whole of longer documents cannot be justified because it is very unlikely that the whole document is sensitive.
- The third element is that the risk should be real, and not speculative. It is not appropriate to deny a fundamental human right on the basis that something might result,

even if this is very unlikely. Otherwise, it would almost always be possible to refuse to disclose information.

- One way of ensuring this is, once again, to look at the imminence of the risk. If the harm would only materialise a long time after the information has been disclosed, then the risk probably not only depends on other factors (so that the second element is not met) but is also rather speculative in nature (the third element).

Example: In some countries, officials have claimed that when requests are made for the bills for meals paid for on the public purse, the specific meals that they ordered should not be disclosed because this is an interference with their privacy. This is not a real risk, but simply a speculative one since it would only be by putting together many pieces of such information that one could possibly start to determine private information about the individual, and even then it would be speculative (for example that they were a vegetarian because they did not eat meat or a Hindu because they did not eat beef).

- After determining whether or not disclosure would pose a real risk of harming a legitimate interest, the official must conduct a public interest assessment to see whether the larger public interest warrants disclosure of the information.
- The first step here is to identify the various public interests that may be served by disclosing the information. It is useful to make a list of them to make sure that all of them are captured.
- The public interest benefits should then be compared with the harm posed to the protected interest to see which is more weighty.
- Note that this is difficult because it often involves comparing very different types of considerations. In particular, the harm is often a specific harm to a specific individual (such as the exposure of their privacy or a risk to their business).

In contrast, the benefit is often much more general, and public, in nature, and may also involve longer–term considerations (such as the exposure of corruption).

- In most countries, more weight is generally given to a broad public benefit than to a private harm, especially taking into account that this is a human right.
- In general, it is not legitimate to ask requesters for the reasons for their requests. However, their reasons may be quite important in the context of assessing the public interest override. For example, where a media outlet is requesting information which may disclose corruption with a view to publishing it, this may have a very important positive impact in terms of exposing and hence addressing the problem of corruption, whereas if the request is from a private business which simply wants the information for private commercial purposes, this benefit would likely not be realised. As a result, where this seems likely to be relevant to the assessment of the public interest override, it is appropriate to ask requesters what they want the information for, but only if it is made quite clear to them that they are under no obligation to provide this information (i.e. that providing it may help them get the information but they do not need to do this).

Step Four: The Trainer should lead the participants in a role–playing exercise, based on the problems in Handout 2. The participants should be broken into groups and each group should be broken into three sub–groups, one representing the requester, one the public authority which has refused to provide information and one the judge who has to decide on the matter. Participants should work together to analyse the case and should then be prepared to act out their roles in front of all of the other participants, in a role–play exercise.

Key Points:

- International law imposes a three–part test for assessing whether restrictions on the right to information are legitimate as follows:
  i. Does the information relate to one of the protected interests listed in the law (which is legitimate under international law)?
  ii. Would disclosure of the information harm that interest?
  iii. Does the overall public interest still call for disclosure of the information?
- Administrative classification of information is irrelevant to the applicability of an exception and, ideally, the access to information law will override other laws in case of conflict.
- Clear procedures need to be agreed for how to apply exceptions (i.e. who makes the decision and how, procedurally, this is done).
- The assessment of the risk of harm should not be based on prejudice but on clear evidence of a risk to a specific, legitimate interest which is not speculative. The information should be withheld only where the risk is directly causally related to disclosure of the information.
- Once a risk of harm has been identified, this should be compared to the potential public interests that would be served by disclosing the information and, if these are greater than the harm, the information should still be disclosed.

EXERCISE HANDOUT: INTERPRETING EXCEPTIONS

Timeframe: 60 Minutes

Scenario 1:

The Army decided to build a bridge across a river that runs through one of its military bases. After engineers for the army chose the most suitable location for the bridge, a contract to construct the bridge was awarded to a state–owned construction company, Mammoth Constructions, whose head, Mr. Big, is rumoured to be embezzling money. A few days after the bridge is built the Army is transporting a truckload of weapons over it and it collapses, several soldiers are killed and the load of weapons is lost into the river. It is uncertain whether the collapse occurred because the bridge was improperly built, poorly sited, or because the Army had been transporting vehicles and weapons that were too heavy for the bridge's specifications.

Several family members of those killed have approached a local NGO to ask for help in finding the truth about what happened to their loved ones. The NGO decides to file a right to information request with Mammoth Constructions for information about the building materials they used. The NGO also files a request for the personal financial records of Mr. Big. The NGO also files a request with the Army for information about the site where the bridge was built and why it was chosen.

Separately, delegates from a village that is just downriver from the military base are concerned that the weapons which were dropped into the river contain components that are poisoning their water supply. Their representatives file an access to information request with the Army about the nature of the cargo that disappeared into the river.

All of these RTI requests were refused, with the public authorities citing various exceptions. The NGO and the village delegates come together and file an appeal in court. For each group, one of the participants should act out the role of the requesters, arguing why the information should be released, while another should act out the role of the public authorities, and defend the refusals with reference to the appropriate exceptions. A third participant will play the role of the judge/information oversight officer, and adjudicate the issue. Use international standards to argue the case.

Scenario 2:

Ms. Bullets, the National Chief of Police, has been behaving erratically lately. She gave a press conference where she rambled erratically for 10 minutes, and then vowed that her officers were "engaged in a war" with the country's journalists and NGOs, before being hustled off of the platform by her aides. Alarmed by these comments, and her other unusual behaviour, a local NGO, Dogood, has filed an access to information request for Ms. Bullets' medical records, asking if she has been suffering from any form of mental illness. They have also applied for details of any action plans being implemented by the National Police that specifically targeted NGOs or journalists.

There is also speculation that Ms. Bullets' dislike for NGOs stems from her ongoing battles with the Congress for Lovers

of Ducks (CLD), an advocacy group devoted to protecting the breeding areas of endangered waterfowl. CLD has been protesting against the development of the Duckland Oilfield, which is located next to a national park with a large duck population. The rights to exploit the oil were awarded to a private company in which Ms. Bullets, along with several other high ranking police officers, own shares. Since CLD began protesting the proposal to drill in the Duckland Oilfield they have been subject to repeated police raids. CLD has now filed an access to information request for any police information related to CLD or the Duckland Oilfield.

Given her lack of diplomatic skills, questionable financial dealings and her tendency to make brash and reckless statements, an NGO called PoliceWatch has been wondering why Ms. Bullets was appointed to her position in the first place. They have filed a RTI request to the government asking for any records surrounding Ms. Bullets' appointment.

All of these RTI requests were refused, with the public authorities citing various exceptions. Dogood, CLD and PoliceWatch have now come together and final a case in court to obtain access to the various pieces of information requested.

For each group, one of the participants should act out the role of the requesters, arguing why the information should be released, while another should act out the role of the public authorities, and defend the refusals with reference to the appropriate exceptions. A third participant will play the role of the judge/information oversight officer, and adjudicate the issue.

CHAPTER EIGHT: PROVIDING OPPORTUNITIES TO APPEAL

8

To be effective, an RTI framework needs a system for redressing wrongs and monitoring compliance. Experience suggests that there will always be resistance to transparency, particularly in situations where government agencies are being asked to move from a system of almost total secrecy to one of robust transparency. Even in cases where public officials have a healthy and positive attitude towards RTI, there will be situations where they misunderstand their obligations, or how to apply the regime of exceptions properly. In these instances, it is vital to have in place a mechanism for reviewing these decisions, and providing recourse to requesters who feel their right to information has not been adequately respected. This chapter discusses the different levels of appeal which a progressive RTI system will have. Some sections may be less relevant in certain countries. For example, if the training is being carried out in a country without an information commission or commissioner, a discussion of how these bodies function will not be directly relevant, although it would still be useful. In these cases, the Trainer should adjust the length of time allocated to the different parts of the discussion, as appropriate.

Aim of session

To work with the participants to understand the appropriate role of an oversight body and how an effective appeals process should be structured.

Timeframe: 45 Minutes

Step One: The Trainer should begin by asking participants why an appeals system is necessary and what they see as the purpose of an appeals process.

Step Two: Presentation on oversight and appeals:

- It is clear under international law that one must have a remedy outside of the public authority where access to information is refused or other breaches of the law remain unresolved.
- Better practice is to provide for three levels of appeal: an internal appeal within the same public authority that originally processed the request, an appeal to an independent administrative body and an appeal to the courts.
- In many countries, the law provides for an internal appeal. This can be useful in terms of helping public authorities to resolve matters internally and quickly. It can also be useful because more junior officials are often nervous to disclose information, whereas senior officers may be less so. An example of a possible form for making appeals is provided in Annex 1, Form D.
- In most countries, one can lodge a final appeal with the courts. This is an important level of appeal because, ultimately, one does need the courts to decide upon the more complicated and difficult questions, especially relating to exceptions. The more involved and probing examination of issues that takes place before the courts is necessary to resolve these issues in ways that are broadly acceptable within society.
- Experience has shown that an independent appeal, before an administrative body (e.g. an information commission) is essential to providing requesters with an accessible, rapid and low–cost option for resolving complaints. The courts are simply too expensive and complicated, and take too

long, for most requesters. The role of this oversight body is particularly important in terms of interpreting exceptions to the right of access, given the complexity and sensitivity of this aspect of the system. But it is also important to resolve the often far too common procedural failures to apply the law properly (such as delays or refusals to provide information in the form requested).

- A strong RTI law should provide for broad grounds for appeal, basically for any violation of the rules in the law relating to the processing of requests. This should clearly include refusals to provide information (i.e. application of the exceptions) but also the provision of wrong or incomplete information as well as procedural breaches.
- Internal appeals need to be 'new' in the sense that they are different from the original decision. If the head of the public authority or a minister was involved in the original decision, there is no possibility of a proper appeal because the decision will be dealt with by them, or someone working under them. So it is important that, at the first stage, any elevation of decision–making about responding to the request should not go all the way to the top of the organisation.
- In practice, most appeals can be divided into roughly two groups: those that involve procedural issues and those that involve the application of the regime of exceptions.
- In many cases, procedural issues are relatively easy to resolve. In some instances, these will be the result of an administrative error rather than a specific decision (for example, a failure to respond at all or to respond within the time limits or the imposition of excessive fees). These can also involve contentious issues such as an extension of the time limits or a reasoned refusal to provide information in the format sought. At the same time, these sorts of

cases rarely involve the difficult issues that come up in relation to exceptions.

- Disputes about exceptions, on the other hand, can be very difficult indeed to resolve. Furthermore, substantive issues relating to exceptions can be expected to keep coming up on an ongoing basis, even decades after the law has been adopted. These are complex issues and new claims regarding exceptions keep arising.
- A third type of appeal, which essentially involves complaints to the effect that the wrong information (or incomplete information) has been provided, tends to be more akin to procedural complaints (i.e. based on administrative error as opposed to a more contentious matter), but they can also involve difficult interpretations.
- Mediation can be a very good way to resolve issues, especially for the first category of appeals. There is often no need to go into a formal process of adjudication, with a hearing where both sides present their views. This is particularly true if the problem is simply that a public authority has failed to process a request. The resolution of this is simple, at least in theory: the public authority must move forward and process the request.
- In case of mediation, the oversight body will normally contact both parties unofficially and provide them with an informal sense of how the matter should move forward. If the parties accept that and resolve the case, then further processing of it will not take place (i.e. it will be classified as having been resolved). Otherwise, the matter may need to move forward to a formal resolution process.
- It is important that the oversight body or information commission be independent of the government because its role is to review the decisions of the government (i.e. of public authorities). If it is not independent, it would

not be able to provide an objective review of cases and would often simply reaffirm the original decision by the public. This would not only be unfair, it would also be a waste of time for requesters (and ultimately a waste of money for the public).

- At the same time, protecting the independence of such a body is not necessarily an easy task, especially in countries where there is not a long tradition of having such independent bodies.
- In terms of independence, the manner in which members of the body are appointed is key.

Example: In India, information commissioners are appointed by the President upon the recommendation of a committee consisting of the Prime Minister, Leader of the Opposition and a Cabinet Minister appointed by the Prime Minister. While this is weighted towards the government, it at least ensures that the opposition has a seat at the table and can protest publicly against any non–independent appointments.

Example: In Japan, the Prime Minister appoints the Commissioners upon the approval of both houses of parliament. Once again, there is some weighting towards government, but the process is open and there is plenty of opportunity for the opposition, not to mention civil society and the media, to make a fuss if there are problems.

Example: In Mexico, appointments are made by the executive branch, but are subject to veto by the Senate or Permanent Commission. This is somewhat similar to the system in Japan.

Example: In the United Kingdom, appointments to the post of Information Commissioner, like all senior appointments within government, are made on a competitive basis. Anyone interested in holding the post can apply, and will go through a selection process, ultimately overseen by an independent civil service body.

- A number of other measures are important to protect the independence of the body:

i. Members, once appointed, should enjoy security of tenure so that they are guaranteed a fixed period of time in the post and it is difficult to remove them once appointed. Better practice in terms of the latter is to allow members to be removed only where they fall foul of certain basic rules (failing to attend meetings without reason, incapacity, criminal behaviour) and with certain protections (i.e. that they can appeal any removal to the courts).

ii. Better practice is to prohibit individuals with strong political connections from being members. Common exclusions or prohibitions include elected officials, civil servants and employees or officers of political parties, or anyone who has held such a post during the last couple of years.

iii. As the corollary of these prohibitions, there should also be some positive requirements, namely that the person has relevant expertise for the position, such as expertise in fields such as law, information management, journalism, and so on.

iv. If the government controls the budget, it also controls the body, so an independent budget process is key to the independence of the oversight body. Ideally, the body should have its budget approved by parliament, instead of by a minister or other senior government official.

v. If it is to be effective, the oversight body needs to have certain powers. These can be divided roughly into two categories: powers to investigate and decide on appeals and powers to resolve problems once it has reached a decision.

vi. The following powers are important if an oversight body is to be able to investigate complaints properly:

vii. The body should have the power to review the information which is the subject of the complaint, whether or not it is classified or claimed to be exempt. Absent this power, the body cannot properly discharge its responsibility to decide complaints. Knowing what is actually in the requested documents is essential to being able to determine how sensitive they are. Better practice is thus to give the oversight body access to all information and documents that have been requested as well as other information that it deems to be important to be able to decide the request. At the same time, while it should have the power to order disclosure of the information, it should itself also respect the confidentiality of that information (i.e. it is up to public authorities, after being ordered to do so by the oversight body, to actually release the information).

viii. It is not enough for the oversight body simply to have access to information. It must also be able to hear witnesses and, for this purpose, to compel witnesses to appear before it. It may need to hear witnesses, for example, to gain an understanding of the sensitivity of a certain issue (whether a security issue, a business competition issue or a privacy issue) or to understand better the claims made by the public authority or the requester.

ix. Finally, better practice is to give the oversight body the power to inspect the premises of public authorities. While this is a more extensive power, which should rarely need to be used, in some cases inspections have revealed that public authorities do hold information which they claimed they did not. Inspections may also help the oversight body to understand, and thus resolve, more structural problems at public authorities in terms of complying with the law.

Example: Article 18(3) of the Indian RTI law provides: "The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, in respect of the following matters, namely:—

i. summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
ii. requiring the discovery and inspection of documents;
iii. receiving evidence on affidavit;
iv. requisitioning any public record or copies thereof from any court or office;
v. issuing summons for examination of witnesses or documents; and
vi. any other matter which may be prescribed."

- Once the oversight body has considered an appeal, and if it decides that the complaint was justified, it needs to have adequate powers to order remedies.
- Better practice is that the oversight body should have the power to issue legally binding orders. This is necessary because, if the oversight body is limited to making recommendations, many public authorities can be expected to ignore them and the requester would need to go to court to find satisfaction, thereby undermining the whole point of having an oversight body.
- In a robust system, the oversight body should have specific remedial powers, including:

i. For the requester, to order release of the information. However, there should also be other remedies, such as to order that access be given in a certain form, a reduction in the fee and perhaps even compensation

where a delay in the release of the information has caused the requester hardship or a commercial loss.

ii. The body should ideally also have the power to order the public authority to undertake structural reforms in certain cases, namely where it is experiencing systemic problems in meeting its obligations under the law. An example of this might be to order the body to provide training to its officials where they are failing to meet their obligations due to a lack of understanding of the rules, or to order it to manage its records better, where poor information management has resulted in it being unable to locate documents sufficiently quickly or perhaps at all.

Example: Article 19(8) of the same Indian RTI Law provides: "In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

- require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
- by providing access to information, if so requested, in a particular form;
- by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
- by publishing certain information or categories of information;
- by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
- by enhancing the provision of training on the right to information for its officials;
- by providing it with an annual report in compliance with clause (b) of sub–section (1) of section 4;

- require the public authority to compensate the complainant for any loss or other detriment suffered;
- impose any of the penalties provided under this Act;
- reject the application."

Step Three: The Trainer should lead a discussion on the extent to which the oversight mechanisms in your country meet these international standards and, to the extent that they do not, how they should be improved.

Key Points:

- International standards mandate that requesters should have the right to appeal against claimed breaches of the right to information law.
- Better practice is to provide for three different levels of appeals: an internal one to a superior officer within the same public authority that dealt with the original request; one to an independent administrative oversight body (information commission); and one to the courts.
- The information commission should have the power to resolve disputes both through mediation and through an adjudication procedure.
- It is very important that the information commission be as independent from government as possible and that it have the power both to investigate complaints and to order appropriate remedies where it finds that the law has been breached.

CHAPTER NINE:
CHARTING A PATH FORWARD

9

Now that participants are equipped with a robust understanding of international standards for the right to information, and of the components of a strong RTI system, this Chapter offers practical guidance for establishing or improving the RTI system at their public authority. In approaching this chapter, the Trainer should attempt to revisit lessons learned in previous sessions, encouraging participants to recall and apply the information that was imparted earlier in the training.

Aim of session

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

Timeframe: 80 Minutes

Step One: The Trainer should ask participants about the key measures they have taken to implement the RTI law thus far, and to think critically about the efficacy of those measures as weighed against the legal requirements, and against international RTI standards as discussed in the previous Chapters.

Step Two: Presentation on three key additional elements of implementation (i.e. beyond the direct systems discussed in previous sessions): reporting, promotional measures and monitoring and evaluation:

- In a strong RTI system, every public authority should be required to produce an annual report, which should be submitted to a central oversight body. The oversight body should, in turn, then produce a central report on the state of implementation of the RTI in the country. A list of items which should be included in these annual reports is provided in Annex 2.
- These reports serve a number of important purposes. They provide valuable information about what is happening pursuant to the right to information law, absent which even simple questions like how many requests are being made cannot be answered. They also provide a picture of the differences between different public authorities, including such things as which ones are getting more requests, which have taken more steps to implement the law and which are relying more heavily on certain types of exceptions. They thus provide a basis for assessing how well the system is working and whether certain types of adjustments may need to be made to improve implementation.
- The information officer is normally the person who is responsible for producing this report, but he or she may need cooperation from other officials in this activity.
- The public authority will have an easier time producing a strong report if the officials think in advance about what information is needed and try, as far as possible, to put in place systems to collect it on an ongoing basis, than if they wait until the end of the year and then attempt to compile all the information.
- A particularly important part of the reporting is providing details about the requests that have been received:

i. If the number of requests is very low–say just one or two–then it may not make sense to put in place a very

sophisticated system for processing the data, but as the number of requests increases, which can be expected over time, it makes sense to have a more sophisticated, i.e. automated, system.

ii. Important types of information that could be mandated for inclusion are: the number of requests received, the number of times assistance was provided, the types of responses to requests (e.g. provided the information in full or in part, refused the request, directed the applicant to already published information, transferred the request to another public authority), how many requests were urgent (i.e. because they related to information regarding life or liberty), the time taken to respond to requests, including the average time, any fees charged, the exceptions relied upon to refuse requests and how many times each was used, and the number of complaints and appeals.

iii. It is clear that this is an enormous amount of information and that having a simple automated system for tracking requests and how they are being dealt with would be a great asset for producing a comprehensive report. A central tracking system will also be very useful in terms of managing requests internally (e.g. to notify the information officer when the time limit for responding is approaching and so on).

iv. In some countries–such as Mexico and Canada–there are central tracking systems for all requests within the national public service. Having a central tracking system requires the provision of some initial costs (e.g. developing the software and making sure information officers know how to use it) but once such a system is in place, it is a very powerful tool for tracking requests not only within each public authority but also over the whole of the civil service. It seems likely that, in the end, it will save time and money to invest in a good request tracking

tool, especially if this is done at a central level for the whole civil service. At the same time, this is only realistic if all or at least most information officers have access to computers which are connected to the Internet.

- Although the requirement differs among different RTI laws, it is good practice for reports to contain the following other types of information:

i. The steps that have been taken to develop a protocol for processing requests (we noted in Chapter Six that this was a necessary step to ensuring that public authorities could process requests properly and in a timely fashion).

ii. Information about the Plan of Action. This is another step that should be taken by each public authority to make sure they are implementing all of their obligations under the law. The Plan of Action could even include a protocol for processing requests (although the latter should eventually take the form of an instruction from a senior official to all staff since it will require cooperation between different staff members and, in particular, for all staff to cooperate with the information officer).

iii. Steps taken to prepare a guide for requesters. Note that it is perfectly acceptable simply to adapt a guide that has been prepared by another public authority. The guide should be quite simple and does not need to be more than a few pages. This should be provided on the website and also be made available in physical form at each public office of the public authority.

iv. The measures taken by the public authority to meet its proactive publication obligations. This should include both online and offline publishing measures, as well as any systems that have been put in place to ensure that proactive publication continues to take place over time and that information is maintained in an up–to–date form.

v. A description of the main problems the public authority, or the information officer, has encountered in terms of implementing the law. This is important to help ensure that attention is brought to bear on these problems and that measures are taken to address them.

vi. Finally, a list of any recommendations for reform that the public authority wishes to make. These might be of a legal or of a practical nature. Public authorities are a key stakeholder in the right to information system and, collectively, they are likely to have an enormous amount of information about how the system works and where it is failing. It is very important for the government to receive their recommendations about how to improve the system.

Step Three: The Trainer should ask the participants how many of them have a system in place for gathering and processing the material spelled out above. Even if this is not a legal requirement in your country, the Trainer should stress the importance of thinking about these types of information, for the sake of measuring the performance of the public authority.

Step Four: Presentation on promotional measures:

- Right to information laws are not self–executing. In order for them to work effectively and to be able to deliver the hoped for benefits effectively, there is a need for robust promotional measures, including to inform the public about their new rights, to train officials and so on. The annual reports just discussed are one such promotional measure, but there are several other important ones.
- Appointing an information officer, an individual or office with overall responsibility for processing information requests and overseeing implementation of the RTI law within the public authority, is an important first step. Although this officer should not be responsible for all of

the work involved in implementing the law, they should be the lead point within the organisation for this, and bear overall responsibility for moving the system forward. Unless and until an information officer is appointed, it is almost impossible for a public authority to properly implement an RTI law.

- Beyond merely appointing an information officer, it is important for that person to be allocated enough time and resources to play this role effectively. In other words, these duties should not merely be added on to the job description of an existing employee without relieving them of their other duties.
- The appointment of the information officer should be formal in nature and he or she should have a clear set of responsibilities or terms of reference, based on the duties spelled out in the law and throughout this manual. Furthermore, for the information officer to be successful, he or she will need the cooperation of other officials working at the public authority. This should be made clear to other staff, for example through a formal statement along these lines from a senior staff member.
- Public authorities also have a responsibility to educate the public or raise general public awareness about the new right to information law.
- One aspect of this is that each public authority should prepare a guide for the public on how to use the law and how to make requests from that authority. This can be quite simple–2 or 3 pages–but it should be clear and be made available in physical form at the public authority's offices as well as online on their website, if one exists.
- The other measures that need to be taken will depend on the nature of the public authority and the extent of its interactions with the public. Some public authorities–like

the ministries of health, education and the police–interact extensively with the public while others, like finance, may have less direct interaction.

- One simple measure is to place posters alerting the public to the right to information in every public office or waiting room at each public authority. If this were done everywhere, it would not be long before everyone had at least some idea about the right to information.
- The Trainer should encourage the participants to think creatively about other measures to promote RTI. Some common activities include holding public workshops and other events, hosting an activity annually on International Right to Know Day (28 September), and holding events to inform the private companies that interact with the public authority about the right to information and the possible implications for them.
- Another very important promotional measure is to improve the record management practices at public authorities. This is important to give effect to the right to information. The ability to respond effectively to an access request depends on the ability to locate the documents which are responsive to a request. It is also important as a management tool, in order for officials to be able to perform their other functions properly. In other words, good record management is an important tool for being able to work effectively in the public sector (and, for that matter, in the private sector).
- A key element of good record management is to develop and then apply clear standards, which should ideally be developed at the central level and made binding for all public authorities. There are several advantages to this approach:

i. It ensures uniformity of record management standards.
ii. It is efficient inasmuch as each individual public authority does not need to develop their own standards, with the effort and expertise that this implies.
iii. It avoids a situation where smaller public authorities have less developed and less sophisticated or effective record management standards.

- Record management is a huge task for public authorities and, consequently, it might make sense to only apply newly adopted standards to new documents which are being created, as opposed to devoting large amounts of resources to reorganising the enormous volume of older records which most public authorities hold.
- Digitisation can also have an impact here, given how much easier computer files are to reorganise and manipulate. Other challenges include how to ensure the preservation and integrity of records over time and safeguarding the authenticity of final copies of records. In a digital context, it is easy to confuse drafts and final copies and to replace, overwrite or otherwise destroy records. At the same time, digitisation is clearly the way of the future and wherever possible it makes sense to focus energy and resources on digital record management systems.
- Public authorities should also create and maintain an up–to–date list of all of the documents they hold, most particularly in digital format but ideally more broadly than that, which should be made available on the website.
- For purposes of this list, public authorities need to define what they consider to be a 'document', which will clearly be a more limited idea than 'information', as broadly defined under RTI principles (which, for example, includes emails).

- An initial effort will be required to create this list, which will require the participation of almost all staff, in order to ensure that the list is comprehensive.
- Once this list is created, there will be an ongoing need to keep it updated. Ideally, this can be done through an online tool, which would enable automatic registration of a document as soon as it is created. But this is only practical where most or nearly all officials are using Internet–connected computers.
- Communications are also important, and should be carried out both internally and externally. The latter, which are aimed at raising public awareness, were addressed earlier. Internal communications have a dual function, which is both to raise awareness among officials about the nature and importance of RTI, and to make it clear that RTI is taken seriously by the public authority and that officials are expected to adapt their behaviour so as to meet the obligations of the new law.
- There are a number of ways that senior officials can communicate messages about RTI to staff, including via email or through in–person meetings. One of the key messages that should be disseminated is to inform staff about the right and to make it clear that senior management view this as a matter of great importance.
- These messages can also inform staff about their obligation to cooperate with the information officer and to otherwise work towards the establishment of the main implementation systems. The messages can also be used to inform staff about changes that are being or have been introduced, such as the adoption of new legal rules or the establishment of new systems for making lists of documents or undertaking proactive publication.

- Another important and challenging promotional measure is providing training to officials, which this training also reflects. This has a number of aspects:

i. In principle, all officials need to receive some training/ sensitisation on the right to information.

ii. An institution's Action Plan should include a section detailing how the public authority intends to provide training to all of its staff and especially how it will train its information officer(s).

iii. There is clearly a need to prioritise training aimed at information officers, given that they bear a significant part of the burden of implementation. This training also needs to be significantly more in–depth than the training provided to 'ordinary' officials. Indeed, information officers, once properly trained, can play a role in training the remainder of the staff. For information officers, dedicated training courses over at least two days–along the lines of the present training–will be needed to start with.

iv. Information officers can also offer less formal training for staff at the premises of the public authority. This could range from very informal information sharing sessions (for example, over lunch), to more formal presentations and training modules.

- In due course, modules on the right to information should be included in school programmes, for example for children in the 13–15 year age range. This way, over time, all citizens will be aware of this right.
- Consideration should also be given to incorporating modules on the right to information into different university courses, such as general courses on human rights for law students, or other courses for students of public administration, journalism and so on.

- Public authorities should develop an Action Plan for their work in the area of RTI, which should, in particular, address the following key issues:

i. Set out the key priorities for the public authority over the time period of the Action Plan (e.g. 2 or 3 years), indicating clearly the activities the public authority will undertake.

ii. The Action Plan should provide a clear timeline for achieving priority activities. In some cases, these may be expressed as percentages. For example, the authority may indicate that it will provide training to 50% of its staff during the first two years. A timeline is very important as a yardstick against which progress in implementing the Action Plan can be measured.

iii. The Action Plan should clearly indicate who is responsible for undertaking each priority action. In many cases, the information officer will be the lead person, but he or she will usually need the support and cooperation of other officials. This should be indicated clearly in the Plan, which should also serve as a tool for defining responsibilities. In allocating tasks, especially to the information officer, it is important for a realistic assessment of the amount of time that each task will take to be prepared, and to make sure that the person responsible actually has the time available to accomplish the task (otherwise, it will not get done and the Action Plan becomes just an aspirational as opposed to a proper planning document).

- Some of the key priorities that should probably be included in the Action Plan include the following:

i. Measures to be taken to meet the proactive publication obligations. This should include any measures to develop a website as a key tool for proactive disclosure, what will be done to create a list of documents that are published

and that are available electronically, and a list of what will be made available proactively.

ii. Measures to ensure that requests and appeals are dealt with in accordance with the rules, including the time limits. This should include any protocols and measures that will be put in place to ensure the proper processing of requests.

iii. Measures to improve record management.

iv. How (annual) reporting will take place.

v. The training plan.

vi. Any other measures, such as those regarding public education, internal communications, systems for tracking requests and so on.

Step Four: Presentation on monitoring and evaluation procedures:

- It is very important to monitor and evaluate progress towards achieving the Action Plan, because otherwise it can become simply a statement of aspirations as opposed to a real planning tool. If progress is good, the Action Plan may need to be amended and a more ambitious programme adopted, while if progress is weak, it may be necessary to adjust the Action Plan so it responds more closely to realistic goals. Note that the monitoring and evaluation should, therefore, take place against the Action Plan.
- It is important to think carefully about how to measure progress against commitments, as this is not always obvious. While it is clear enough to compare having provided training to 35% of staff as opposed to 50%, it may not be obvious how far along preparation of a protocol for processing requests is or whether partial steps towards proactive publication have been sufficient.

- The monitoring and evaluation approach should be action oriented, not theoretical. It should aim to produce recommendations which can be acted upon, rather than merely a report about what happened. Put differently, this is about looking forward, not looking backward (except as needed to plan forward).
- When thinking about recommendations flowing from a monitoring and evaluation exercise, it is important to be aware of cases where senior management support may be needed to implement the recommendations (and, in these cases, support from that quarter should probably be sought before the recommendations are made).
- Thought also needs to go into what types of support and systems are needed to monitor progress. For example, the IT team may need to monitor progress on development of the website and the training team, if one exists at the public authority, may need to monitor training activities. This should not be done at the end of the process, as it will be much harder to collect information afterwards than on an ongoing basis as tasks are being done.

EXERCISE HANDOUT: DEVELOPING A PLAN OF ACTION

Timeframe: 45 Minutes

Working in groups of 2 or 3

Working in a group, discuss and agree on the outline of a Plan of Action for your public authority for implementation of the right to information law. This should include a list of priority actions, an indication of who within the public authority is responsible for undertaking the action, and a two–year timeline for when each action will be completed. Be prepared to present your results to the group.

Key Points:

- If it is to be successful, right to information legislation requires active steps to be taken to promote implementation.
- A key measure is the preparation of an annual report, for which the information officer normally bears lead responsibility, though he or she will often need support from other officials.
- A number of other promotional measures should be included, such as: public education and outreach; record management; preparation and publication of a list of documents held; and an internal and external communications strategy and training.
- To set priorities and to provide time limits for completing actions, each public authority should develop an Action Plan setting out what it will do to implement the law over the coming period, for example of two years.

- The Action Plan should include a monitoring and evaluation element, which will indicate whether and to what extent the commitments in the Action Plan are being met.

ANNEXES: EVALUATION

A form for evaluation of the training programme is provided in Annex 4.

ANNEX 1: FORMS

FORM A: REQUEST FOR INFORMATION

FOR DEPARTMENTAL USE

Reference number .....

Request received by.....

(state name, surname, position, unit and contact details of receiving officer),

on..... (date)at(place).

Signature of Receiving Officer

A. Applicant's Information

1. Contact details (email, telephone and/or address)

B. Information Relevant to Request

1. Name of public authority
2. Description of document or information sought (provide document name or reference if available and provide enough detail to enable the officer to identify the document)

.....
.....
.....
.....
.....
(add additional pages as necessary)

3. If your request is granted, you may be charged the applicable fees for reproduction of the document and for mailing copies to you (no fee will be charged for inspection of documents or for electronic copies). Fees will be waived for:

   a) Requests for personal information about the requester.

   b) Where the requester is below the poverty line.

   Please describe here any reasons why you believe the fees should be waived in your case:

.....
.....
.....
.....
.....
(add additional pages as necessary)

4. If you wish, you may stipulate the form in which you would like to access the information, as indicated below (failure to check off any of these will result in the information being provided to you in the simplest form for the public authority, normally photocopies of the information):

a) Inspecting the document(s)
b) Copying the document(s) using your own equipment
c) Obtaining a copy of the document(s) in electronic form
d) Obtaining a true copy of the document(s) in physical

form

e) Obtaining a written transcript of sound or visual document(s)

f) Obtaining a transcript of the content of document(s) (where this is possible

using equipment available to the public authority)

5. If you believe that your request should be processed within two working days because the information is needed to protect the life or liberty of an individual, please indicate that and provide the reasons why you believe this to be the case:

.....

.....

.....

.....

(add additional pages as necessary)

FORM B:
ACKNOWLEDGEMENT OF A REQUEST FOR INFORMATION

1. Reference number of the request - - - - - - - - - - - - - - -

2. Request received by

.....
.....
(state name, surname, position, unit and contact details of receiving officer), ...
on .....
. (date) at .....
. (place).

3. .....
Address provided for delivery of information.....
.....

4. .....
Short description of the information sought.....
.....
.....

Signature of Receiving Officer

FORM C:
RESPONSE TO A REQUEST FOR INFORMATION

A. Information about the request

1.Reference number of the request.....
2.Name of the public authority .....
3. .....
Date the request was received and the name of the receiving officer .....
.....
4. .....
Address provided for delivery of information.....
.....
5. .....
Short description of the information sought .....
.....
.....
.

B. Response to the request

1.The information is already available in published for form .....
Location where the information is available including, where applicable, the URL:.....
.....
.

2. The information is not held by the public authority and:

a) The request was transferred to another public authority
.....
Name of that public authority:

b) The request is being returned to the requester..... O

3. (1) The information is being provided:

a) In whole..... O
b) In part (see below under refusal) ..... O
(2) The information is being provided in the following form:

i) Inspecting the document(s) ..... O
ii) Copying the document(s) using your own equipment...
.....
iii) Obtaining a copy of the document(s) in electronic form
.....
iv) Obtaining a true copy of the document(s) in physical
form ..... O
.....
v) Obtaining a written transcript of sound or visual docu-
ment(s) ..... O
vi) Obtaining a transcript of the content of document(s)
(where this is .....
possible using equipment available to the public authority)
O
(3)If this is not the form stipulated by the requester, the
reasons are as follows:
(4)The following information describes how to access the
information (only filled out as .....
. necessary, for example where the information is being
inspected):
(5) Information about any fees being charged, along with
a breakdown of the fees:

5. (1) The request is being refused:

a) In whole..... O
b) In part ..... O
(2) Description of the part of the information which is
being refused:

(3)The reasons why the request is being refused in whole or

in part:
(4) The provisions of the Act which are being relied upon to refuse access:

NOTE: You have the right to lodge an internal complaint against this decision. To lodge a complaint, please use Form D and send it to: [ADD CONTACT INFORMATION]

.....
C. Signature

Name of Officer.....
.....
.....
Date

FORM D: INTERNAL COMPLAINT

FOR DEPARTMENTAL USE

Reference number.....
Request received by .....
(state name, surname, position, unit and contact details of receiving officer),
on .....
.....
(date) at (place). .....
Signature of Receiving
Officer

A. Information about the request

1.Reference number of the request.....
2.Name of the public authority.....
.....
.....
. 3.Date the request was received and the name of the receiving officer .....
.....
.....
.....
4. Address provided for delivery of information.....
.....
.....
.....
.
5. Short description of the information sought.....
.....
.....
.....
(add additional pages as necessary)

B. The decision being appealed against

Mark the appropriate box with an 'X'.	
	The request was refused, in whole or in part, for any reason
	The request was not processed in accordance with the established time limits
	Excessive fees were charged
	The preferred form for access was not respected
	Insufficient notice was provided
	Any other issue

C. Nature of the complaint

1.The facts on which the complaint is based

.....
.....
.....
.....
.....
. (add additional pages as necessary)

2. .....

The substance of the complaint

.....
.....
.....
.....
.....
.....

(add additional pages as necessary)

ANNEX 2: ANNUAL REPORT

CONTENTS OF ANNUAL REPORT

The Annual Reports which all public authorities are required to produce should include the following elements:

1. General Reporting

a. A general description of any Plan of Action that has been developed as well as an overview of the extent to which the authority has met the targets in that Plan.

b. Whether or not the authority has produced a guide for requesters, as well as steps taken to disseminate that guide.

2. Proactive Publication

a. Whether or not the authority has established a website and, if so, a description of the whether the website has a special section on the right to information, which includes the following information:

   i. the applicable legal framework, including links to the Act and all implementing regulations;

   ii. all past annual reports produced by the authority; and

   iii. forms and contact persons for making requests and appeals.

b. Whether or not the authority has developed and made available a description of all of the documents that it holds.

c. The extent to which the authority has made available the information required to be made available on a proactive basis pursuant to the Act and the ways in which this information has been disseminated.

d. A description of the key challenges and issues regarding the proactive publication of information, along with any recommendations for reform.

3. Processing of Requests

a. A description of the steps the authority has taken (a) to develop a detailed protocol for the internal processing of requests, (b) to put in place procedures for the processing of appeals, and (c) to develop an electronic system for tracking requests.

b. The number of requests for information received, along with statistics on the manner in which they were received (i.e. in person or by fax, mail or email).

c. The number of times assistance has been provided to requesters, along with an overview of the types of assistance provided.

d. The number of requests granted, refused, in full or in part, and which are pending, along with the average time taken to process requests.

e. The number of requests processed on an urgent basis due to the fact that they involved information needed for the protection of the life or liberty of a person, along with the average time taken to process such requests.

f. For requests which are granted, in full or in part, information about the form in which access was provided, and the fee charged, including the average and maximum fee, and the number of fee waivers granted.

g. For requests which are refused, in full or in part, information about the grounds for the refusal, including the number of times each exception in Decree–Law No. 2011–41 was relied upon.

h. The number of requests for information which was not held by the public body, the number of requests transferred to other public bodies and the number of requesters referred to information which was already published.

i. The number of internal appeals and the nature and outcome of these appeals.

j. The number of appeals to the courts and the outcome of all such appeals that have been decided.

k. A description of the key challenges and issues regarding the processing of requests, along with any recommendations for reform.

4. Central Organisational Matters

a. The number of times officials have been sanctioned for wilful failures to meet their obligations under the law and the number of public complaints received, as well as a description of the types of failures these cases involved and any sanctions applied.

b. A description of the steps taken to improve administrative document management within the authority.

c. A description of the training provided to the officials of the authority.

d. A description of the cost implications of implementing the Act.

ANNEX 3: TRACKING TOOL

See accompanying spreadsheet for tracking tool.

ANNEX 4: EVALUATION FORM

EVALUATION FORM

For the following, please circle one number with 1 being the worst and 5 the best. Please give any comments in the space provided.

1. Logistical Arrangements

b. How were the course arrangements overall?

Comments *1* *2* *3* *4* *5*

.....
.....
.....
.....

c. How were the accommodation and food?

Comments *1* *2* *3* *4* *5*

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d. How was the overall organisation?

Comments *1* *2* *3* *4* *5*

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2. Trainer

a. Did you find the trainer interesting and competent?

Comments *1* *2* *3* *4* *5*

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.....

b. Did the trainer stick to the topic and cover it well?

Comments *1* *2* *3* *4* *5*

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c. Did the trainer keep to the timeframe?

Comments *1* *2* *3* *4* *5*

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3. The Manual

a. Were the assigned topics relevant and interesting and did they meet with your expectations? Were there other topics that might, given time constraints, have been included? Should some topics not have been included?

Comments *1* *2* *3* *4* *5*

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b. Was the programme well designed (logical sequence, sessions leading well into the next one, duration of sessions, number of sessions)?

Comments *1* *2* *3* *4* *5*

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c. Was the material presented well (clear, understandable, comprehensive)?

Comments *1* *2* *3* *4* *5*

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d. Was there and appropriate balance between different kinds of activities (group discussions, group and individual exercises, presentations)? Where the different activities well designed and useful?

Comments *1* *2* *3* *4* *5*

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e. Do you have any comments for improving the Manual?

.....

f. Will you use the Manual in your future work?

Yes *No*

4. The Different Sessions

a. For each session, please rate it based on the relevance of the topic, the quality of the material presented and the overall design of the session (including balance in terms of pedagogical approaches), providing any comments as well.

Session 1: Introduction to the Training

Comments *1* *2* *3* *4* *5*

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Session 2: Introduction to the Right to Information

Comments *1* *2* *3* *4* *5*

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Session 3: Ingredients of a Strong RTI Law

Comments *1* *2* *3* *4* *5*

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Session 4: Implementing the Right Information

Comments *1* *2* *3* *4* *5*

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Session 5: Proactive Disclosure

Comments *1* *2* *3* *4* *5*

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Session 6: Processing Requests for Information

Comments *1* *2* *3* *4* *5*

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Session 7: How to Interpret Exceptions

Comments *1* *2* *3* *4* *5*

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Session 8: Appeals and Oversight

Comments *1* *2* *3* *4* *5*

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Session 9: Charting a Path Forward

Comments *1* *2* *3* *4* *5*

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5. General

Do you have any suggestions for improving future workshops?

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Any other comments:

Name (optional)

.....

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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.

Africa Freedom of Information Centre
fesmedia Africa
FRIEDRICH EBERT STIFTUNG
Centre for Law and Democracy