

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 2 | Issue 1

2020

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Public Awareness Regarding the Right to Access Information in the Light of its Limitation by way of Public Interest in Tanzania.

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ABSTRACT

In September 2016, Parliament of United Republic of Tanzania passed an Access to Information Act, 2016 (ATI Act) into law to give effect to the constitutional right of access to information. With the coming into force of the ATI Act, every citizen now has a legal right of access to information, records and documents held by government bodies and private bodies carrying out public functions. However, access to information, like most other rights, is not an absolute right and it can be restricted in variety of instances such as for the purposes of protection of public interest. This paper therefore set out to examine level of public awareness and the perceptions regarding right of access to information in Tanzania. The study employed the quantitative survey design. The survey sought information on public knowledge or awareness of the ATI Act and knowledge or perception citizens have regarding the term public interest as a ground of limiting access to information. Findings revealed that there is a low level of awareness within the populace about the ATI Act and benefits it can bring and how they can take advantage of it. The study also revealed that citizens particularly information holders are not much aware about the meaning of the term public interest as a ground of limiting access to information in Tanzania. The study, therefore, recommends that public awareness and enlightenment about the ATI Act and its limitation by way of public interest should be increased in order to make the ATI Act more effective in Tanzania.

Keywords: ATI Act; Limitation to Access; Public Awareness; Public Interest.

I. INTRODUCTION

Access to information² has gained international prominence² as one of the basic tenets of democracy and good governance. Critical in harnessing open governments that are accountable, transparent and therefore efficient, the right of access to information is also vital

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² The term access to information, also referred to as 'freedom of information' or 'right to information' in different countries. Hence, the term 'access to information' in this study connotes similar expressions as 'freedom of information' or 'right to information' and both terms are used interchangeably in the study.

in the enhancement and realization of all other rights be it Civil and Political Rights or Economic, Social and Cultural Rights. In other words, the right to access information has an impact on the enjoyment of other fundamental entitlements that are due to human beings, including life, health and education. Therefore, without this right it would be difficult for any individual to realize any entitlement, as he or she may not be aware of its existence in first place.

Indeed, the right of members of the public to access information held by public institutions is a fundamental prerequisite for the enthronelement of good governance and the consolidation of democratic norms and practices. If there is an open government where there is full access to information regarding functioning of government then only the participants of democracy i.e. people can play an important role in the democracy³. There is no doubt therefore that if the general public knows the functions, policies and decision made, they can question the government on the basis of the information obtained, and most importantly, the reasons for the government's actions. Sharing information helps a state to build a strong cadre of informed citizenry who can participate meaningfully in the democratic process and fulfill their responsibilities efficiently⁴. In view of this, Government needs to demonstrate its commitment to a people-oriented democratic programs and legislations by adopting a Right of Information Law that is strong and effective.

Apart from that, it is interesting to note that in the past decades, the globe witnessed a surge in the number of countries adopting right to information laws. In so doing, they join those countries that had enacted such laws some time ago, such as Sweden, United States, Finland, the Netherlands, Australia and Canada⁵. Suffice it to point out that the spread of laws providing right to access information has reflected the prevailing belief that access to information is one of essential pillar in a strategy to improve governance, reduce corruption, and strengthen democracy through enhanced participation and increase development⁶.

In Tanzania,⁷ access to information is a fundamental element of the right to freedom of expression as provided under article 18 of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time (the Constitution). The above mentioned article which is vital to the existence of the freedom of expression in Tanzania, provide that

³ See, V.R., Krishna Iyer, Freedom of Information 86 (1990)

⁴ See, A.B. Srivastava, Right to Information Laws in India 11 (2006)

⁵ The right to access information held by public bodies has existed for centuries dating as far back as 1776 when Sweden became the first country to pass the Freedom of Information Act (FOIA).

⁶ See, Collin Darch and Underwood G. Peter, Freedom of Information in the Developing World: The Citizen, the State and Models of Openness (2010).

⁷ Tanzania is a country located in Eastern part of Africa between longitudes 290 and 410 East, and Latitude 10 and 120 South. The country occupies an area of 945,087 km² and is the largest country in East Africa.

the freedom of expression is all about being free to; collect, receive and disseminate news, ideas, opinion and information beyond the frontiers.

However, despite the fact that the Constitution guaranteed the right of citizens to access information but the Constitution is not specifying what information would be accessible or the procedures for accessing such information. Thus, in September 2016, Parliament of United Republic of Tanzania passed an Access to Information Act, 2016 (ATI Act) into law to give effect to the constitutional right of access to information. The virtue of the ATI Act is aptly captured in its preamble which expressly states that the law is adopted to provide for access to information, to define the scope of information which the public has a right to access, to promote transparency and accountability of information holders and to provide for other related matters⁸. Furthermore, it is important to note that the passage of this law is the culmination of strong advocacy campaign by different stakeholders including Tanzanian civil society and other non-state actors' campaign for the adoption of an access to information law. It is equally important to underscore the fact that the adoption of ATI Act in Tanzania has been greeted by different stakeholders as a step in the right direction. Different stakeholders believe that the right to access information, as a communication phenomenon will play an essential role in placing Tanzania on the right track of development through increasing people's participation in government programmes and policies as well as decision-making processes. It is in tandem with such a spirit that ATI Act emerged as one of the most pragmatic piece of legislation having immense potential to mark the beginning of a new era of governance which celebrates the potency of transparency, interaction and participation as legitimate models of democratic governance.

However, it is important to point out that like most other rights, access to information is not an absolute right. All right to information laws recognise that there are circumstances in which information should not be released because it would harm specific public or private interests. This implies that every person, whether acting as an individual or group, has a right to all information in the custody of public institutions or agencies and other relevant private bodies except where there is an overriding public interest justifying non-disclosure. In some jurisdictions, there are guidance as to what constitutes public interest and the extent to which the disclosure of information would be prejudicial to public interest while others they don't have such guidance. Suffice it to point out that though under the ATI Act, public interest is a ground for refusal of disclosure of information, there is no definition of what is considered to

⁸ See, the preamble of the Access to Information Act, 2016.

be or not to be in the public interest, leaving that to the discretion of the information holder approached.

It is equally important to underscore the fact that the passage of an access to information law in itself is not sufficient to enable citizens to enjoy their constitutional right to access information. It requires proper implementation which is a co-responsibility of both the government (supply side) and the governed (demand side). Thus, the success of implementation of the ATI Act requires information holders to understand the import of the law, on the one hand and, on the other, the public awareness is needed about the existence of the ATI Act, the importance of it and how to use it to obtain access to information held by public authorities and private bodies⁹. This implies effectively that, the effectiveness of the ATI Act may be impossible without ordinary people as well as information holders have a fair knowledge about the ATI Act, and most importantly, the information holders to be familiar as to what constitutes 'public interest' and the extent to which the disclosure or non-disclosure of information would be prejudicial to public interest.

Considering the fact that it is now more than three years since the enactment of the ATI Act, it is necessary to know the level of awareness among citizens and information holders about the right to access information in the light of its limitation by way of public interest.

In the light of the above arguments, this study interrogates the following objectives:

1. To examine awareness level of citizen about existence of ATI Act and its benefits
2. To investigate knowledge and perception citizen have on the term public interest as a ground of limiting access to information

II. METHODOLOGY

This study investigates the level of awareness among citizens and information holders about the right to access information in the light of its limitation by way of public interest. Therefore, in order to explore these issues in detail, the survey research methodology was employed to gather data for the study. The research investigation was conducted during the period of December 2019-February 2020 in Dar es Salaam Tanzania. The questionnaire was used as the instrument of data collection. The method was used due to its ability to covering a

⁹ In the particular context of human rights, knowledge of the law is not only important for protection and enforcement of rights, but also for people to have some knowledge of the human rights obligations imposed on them by law. Consequently, there is no doubt that in order to enjoy these rights one has to have knowledge of them. One cannot enjoy or enforce rights that of which one is not aware. Accordingly, one of the main factors that determines the effective enjoyment or enforcement of human rights in any society is the level of public awareness of such rights and of the mechanisms and institutions through which they are enforced.

large number of respondents within a short time,¹⁰ and more importantly, questionnaires are an excellent way of dispassionately tackling questions dealing with perceptions, attitudes and representativeness¹¹.

The obvious disadvantages associated with the use of questionnaires include misrepresentations and misinterpretations. Some respondents may not take the questionnaires seriously, answering as they think they should in order to portray or conform to a particular image¹². The researcher usually has no control over such responses other than to take cognizance of such shortcomings in interpreting the data.

In this particular research study, the questionnaires were administered to 689 respondents in Dar es Salaam (Tanzania) belonging to various sections of the government and society in general. This involved respondents employed in public and private sectors, students from various higher learning institutions, academicians/lecturers, politicians/member of parliaments and ordinary citizens. Purposive sampling was used in selecting the respondent in this study.

III. DATA ANALYSIS

From the total of six hundred and eighty nine (689) questionnaires that were designed and administered to respondents, six hundred and two (602) questionnaires representing 87.4 percent of the total number of questionnaires distributed were collected. Once I had collected the 602 questionnaires from the survey, I went through all of them just to get an orientation of responses. Out of this 602 questionnaires I had collected, thirty eight (38) questionnaires representing 6.3 percent were incomplete and I therefore left them out, choosing to work with five hundred and sixty four (564) dully filled questionnaires which is about 81.8 percent response rate which was considered adequate. The final sample size adopted in this study was therefore 564 respondents. Data generated from these responses are presented and analyzed statistically using descriptive statistics which involved frequencies and percentages.

IV. DATA PRESENTATION AND ANALYSIS

(a) Demographic profiles of the respondents

¹⁰ See, Ranjit Kumar, *Research Methodology: A Step-By-Step Guide For Beginners* 148 (3rd ed. 2011)

¹¹ See, John C. Mubangizi, *Protection of human rights in South Africa: Public awareness and perceptions*, 1 *Journal for Juridical Science* 62, 66 (2004)

¹² *Id.*, at 67.

Table 1: Gender of the respondents

Gender	Number of respondents	Percentage (%)
Male	334	59.2
Female	230	40.8
Total	564	100.0

Source: Author's research.

With regard to gender of the respondents, from Table 1 it can be seen that out of the total 564 respondents in the survey, 334 were male representing 59.2% while 230 were female representing 40.8% of the total number of the respondents.

Table 2: Age of the respondents

Age (In years)	Number of respondents	Percentage (%)
Below 30	130	23.1
31-40	152	27
41-50	118	20.9
51-60	103	18.2
Above 60	61	10.8
Total	564	100.0

Source: Author's research.

With respect to age of the respondents, from Table 2, it can be seen that age distribution of respondents is heavily dominated by age group of 31-40 years as its weight is 27% (152 respondents) in comparison with respondents fall under the age group below 30 years who represent 23.1% (130 respondents), respondents belonging from the age group of 41-50 years who represent 20.9% (118 respondents), respondents in age between 51–60 are 18.2% (103 respondents) and respondents belonging to age group 60 years and above are 10.8% (61 respondents).

Table 3: Educational status of the respondents

Educational status	Number of respondents	Percentage (%)
Post graduates and above	149	26.4
Graduates	312	55.3
Secondary education and above	103	18.3
Total	564	100.0

Source: Author's research.

Table 3 above shows educational status of the respondents, where 26.4% are post graduates and above (149 respondents) while 55.3% are graduates (312 respondents). Respondents who have completed secondary education and above are comprised of 18.3% (103 respondents).

Table 4: Occupational status of the respondents

Occupational status	Number of respondents	Percentage (%)
Employed in public sector	217	38.5
Employed in private sector	92	16.3
Unemployed	108	19.1
Others (students, retired employees etc)	147	26.1
Total	564	100.0

Source: Author's research.

It is evident from Table 4 that the largest group of 217 respondents (38.5%) are employed in public sector, followed by 92 respondents (16.3%) who identified themselves as employees from private sector and 108 respondents (19.1%) who were unemployed. There were 147 respondents (26.1%) who belongs from other sections of the society such as students, retired employees, politicians etc.

(b) Research questions relating to awareness among citizens in Tanzania regarding the right to access information in the light of its limitation by way of public interest

- **Research question one:**

Have you heard about the right to access information in Tanzania?

The first relevant question asked was whether the respondents had heard about the right to access information in Tanzania. This was important because people could not be expected to discuss what they had not heard about.

Table 5: Responses to whether respondents had heard about the right to access information

Categories of responses	Number of respondents	Percentage (%)
Yes	287	50.9
No	266	47.1
Can't say	11	2
Total	564	100.0

Source: Author's research.

In an attempt to answer this question, majority of the respondents responded in the affirmative. The data as presented in table 5 indicate that majority of respondents i.e 287 respondents (50.9%) said 'yes' while 266 respondents (47.1%) said 'no' followed by 11 respondents (2%) who had no idea about the right to access information in Tanzania. The findings shows that the number of people who had heard of the right to access information was more than the number of those who had not heard of the right to access information in Tanzania.

- **Research question two:**

Are you aware about existence of the Access to Information Act, 2016?

Table 6: Awareness about existence of the ATI Act

Categories of responses	Number of respondents	Percentage (%)
Yes	208	36.9
No	331	58.7
Can't say	25	4.4

Total	564	100.0
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Source: Author's research.

Asked whether they are aware of the existence of the ATI Act in Tanzania, the great majority 331 respondents (58.7%) were not aware about the existence of the ATI Act in Tanzania, while 208 respondents (36.9%) were aware of its existence as Table 6 above shows. About 25 respondents (4.4%) did not respond to this question.

- **Research question three:**

Are you aware of the importance and benefits of access to information law in Tanzania?

Table 7 below presents views of respondents regarding their understanding about the importance and benefits of access to information law in Tanzania.

Table 7: Awareness of the importance and benefits of access to information law

Categories of responses	Number of respondents	Percentage (%)
Yes	292	51.7
No	261	46.3
Can't say	11	2
Total	564	100.0

Source: Author's research.

In an attempt to answer this question, majority of the respondents responded in the affirmative. The data as presented in table 7 indicated that majority of respondents i.e 292 respondents(51.7%) said 'yes' while 261 respondents (46.3%) said 'no' followed by 11 respondents(2%) who had no idea about the importance and benefits of access to information law in Tanzania. Thus, from the respondents' perception it shows that government is still obliged to increase education level to its citizen about the importance and benefits of access to information law in Tanzania.

- **Research question four:**

Have you ever sought information from government or private agency since the ATI Act come into force?

The data regarding whether citizens had anytime sought information from government or private agencies since the ATI Act come into force is presented below in table 8.

Table 8: Application made by citizens to seek information under ATI Act

Categories of responses	Number of respondents	Percentage (%)
Yes	235	41.7
No	323	57.3
Can't say	06	1
Total	564	100.0

Source: Author's research

Asked whether they (respondents) had any time applied to seek information from government or private agencies since the ATI Act come into force, 323 respondents (57.3%) said no while 235 respondents (41.7%) said yes. About 1% (06 respondents) did not respond to this question. The analysis clearly demonstrates that greater majority of respondents have not applied to seek information from government or private agencies since the ATI Act come into force.

- **Research question five:**

Do you know the meaning of the term public interest as a ground of limiting access to information in Tanzania?

Table 9 below indicates respondents' views about whether they know the meaning of the term public interest as used in the ATI Act. The aim was to explore respondents understanding of the notion public interest.

Table 9: Knowledge on the term 'public interest'

Categories of responses	Number of respondents	Percentage (%)
Yes	255	45.2
No	239	42.4
Can't say	70	12.4
Total	564	100.0

Source: Author's research

In relation to the question regarding the understanding people had on the term public interest

as a ground of limiting access to information in Tanzania, it resulted that 255 respondents (45.2%) had knowledge about it, 239 respondents (42.4%) did not have any knowledge on this term and 70 respondents (12.4%) did not respond to this question.

V. DISCUSSION AND INTERPRETATION OF FINDINGS

The findings derived from the study has shown that 50.9% of the respondents had heard about the right to access information in Tanzania while 47.1% had not heard about it, followed by 2% of respondents who had no idea about the right to access information in Tanzania. The findings further showed that 58.7% of respondents said they are not aware of the existence of the ATI Act in Tanzania, while 36.9% of respondents said they are aware of the existence of the ATI Act and 4.4% of respondents did not respond to this question. The picture that emerges here is that still public awareness of the right to access information in Tanzania is unsatisfactory. Also, knowledge regarding existence of the ATI Act is low among the citizens and obviously not enough to ensure effective implementation of the ATI Act. It is equally important to underscore the fact that public awareness of the ATI Act influences not only the ability of citizens to access information, but also their understanding of the information rights accorded to them. Therefore, there is an urgent need for the government to ensure that citizens have a fair knowledge of the ATI Act, and most importantly, the potential impact of the ATI Act on citizen's lives.

The trend depicted above is also reflected in the responses regarding public awareness of the importance and benefits of the ATI Act. A total of 51.7% of respondents claimed to have known the importance and benefits of the ATI Act as opposed to 46.3% who had not. It followed by 2% of the respondents who had no idea about the importance and benefits of access to information law in Tanzania. Similarly, asked whether they (respondents) had any time applied to seek information from government or private agencies since the ATI Act come into force, 57.3% said no while 41.7% said yes and 1% of respondents) did not respond to this question. It is clear from the above analysis that the ATI Act has not been adequately put to work by many Tanzanian. Similarly, citizens seems to have inadequate knowledge about the importance of this legislation, the benefits it can bring and how they can take advantage of it. It is usually said that the value of any law can only be seen when it is tested, and a law can only be tested by citizens who are aware of their right under that law. In this regard, it can be argued that unless citizens have adequate and accurate information about the importance and benefits of the ATI Act, they will be unable to make use of it for the purposes of engendering responsibility, transparency and accountability in government.

Furthermore, the researcher probed the understanding people have on the term public interest as a ground of limiting access to information in Tanzania. The findings shows that 45.2% of respondents had knowledge about it, 42.4% did not have any knowledge on this term and 12.4% did not respond to this question. From the findings, what comes through is the fact that some of the citizens particularly information holders are still lacking awareness and knowledge about the meaning of the term public interest as a ground of limiting access to information. One may argue without hesitation that, lack of knowledge among citizen regarding the meaning of the term public interest could be a dangerous tool against effective implementation of the ATI Act. This is due to the wide power information holders had/given under the ATI Act 'to decline access to a record of information if they deem disclosure is not in the public interest'¹³. Suffice to say that citizens particularly information holders need awareness creation on the concept of public interest and how they can use the term in assessing disclosure or non-disclosure of requested information.

VI. CONCLUSION

The researcher has attempted to gather firsthand information on citizens' awareness regarding the right to access information in light of its limitation by way of public interest. The findings revealed that although the passage of the ATI Act was a welcome development, there is a low level of awareness within the populace about the ATI Act and how to use it to obtain access to public information. The plain truth is that, to realize the objectives of the ATI Act, it is important to educate the public on the need for and the benefits of the ATI Act as well as their rights and responsibilities provided under the ATI Act.

The study further revealed that citizens particularly information holders are not much aware about the meaning of the term public interest as a ground of limiting access to information in Tanzania. This may, in part, be attributed to the fact that under the ATI Act, there is no precision or guidance on the meaning of the term 'public interest'. As a result, access to information can be arbitrarily restricted on the pretext that disclosure is not in the public interest. Hence, for the Tanzanian people, the civil society and democracy to enjoy the full benefits of the ATI Act, there is the urgent need to confront and address the aforementioned challenges to the full implementation of the ATI Act.

VII. RECOMMENDATIONS

Based on the findings of the study, the researcher recommends that:

¹³ See, the Access to Information Act, 2016. section 6.

1. Public awareness and enlightenment about the ATI Act should be increased. In this regards, multimedia approach should be adopted to publicize the ATI Act, not only in the urban areas, but also in the rural communities, to enlighten the public on the need for, and the benefits of, the ATI Act, as well as their rights and responsibilities. Some methods by which information can reach people easily should be devised. Some of the methods to reach citizens easily includes printing posters, flyers, radio and television announcements, drama, blogs, websites, Facebook, twitter and mobile phone apps.

2. Wider publicity and sensitization should be accorded the ATI Act and its limitation by way of public interest by the media, civil right group and respective organs of the government. By so doing, it will educate and enlighten the general public particularly information officers/holders who are the main implementers of the ATI Act about the meaning of the term public interest and how to use it while weighing disclosure or non-disclosure of information under the pretext of public interest.

3. The government could consider integrating knowledge of the ATI Act into the primary and secondary' curriculum. This is to ensure the understanding of the ATI Act from the schools thereby inculcating the mindset of openness into the coming generation.
