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IMPLEMENTING THE RIGHT TO ACCESS INFORMATION IN THE LIGHT OF ITS RESTRICTION BY WAY OF PUBLIC INTEREST IN TANZANIA:SOME ISSUES RECONNOITERED

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ABSTRACT

This study examines challenges in the implementation of the right of access to information in light of its restriction by way of public interest in Tanzania. The study employed qualitative and quantitative approaches for collection and analysis of data. The study has observed that the Constitution of the United Republic of Tanzania, 1977 and the Tanzanian Access to Information Act, 2016 (the ATI Act) provides to every citizen of Tanzania the right to access information except where there is an overriding public interest justifying non-disclosure. However, the study revealed that the enjoyment of the right to access information and implementation of the ATI Act faces some legal and practical challenges. The challenges are found in aspects relating to the low level of awareness amongst citizens and information holders/officers on what kind of information can be disclosed or withhold under the context of public interest; absence of implementing Regulations to operationalize the ATI Act; failure by some Public authorities and Private bodies to appoint information officer(s) and give training to them on how to implement the ATI Act. The study recommends for amendments of the ATI Act to take aboard the provision(s) that gives precision or guidance regarding the meaning of the term public interest and also government to issue Regulations to operationalize the ATI Act. Furthermore, the study recommends that every Information holders should appoint and give training to information officer(s) on how to effectively implement the ATI Act.

Keywords: ATI Act, Implementation, Public Interest, Restriction to Access.

I. Introduction

The right to access information is widely recognized as a fundamental human right. It is a right whose existence allows other rights and democratic freedoms to be guaranteed (Jesse, 2011). The right to access information has recognized in international laws and by a good number of democratic governments across the globe, hence the adoption and enactment of the access to information laws by such democratic governments.

The United Republic of Tanzania is a democratic country located in Eastern part of Africa. In Tanzania, the right to seek information is officially recognized in article 18 of the Constitution of the United Republic of Tanzania, 1977 (the Constitution). The above-mentioned article which is vital to the existence of the freedom of expression in Tanzania, provide that the freedom of expression is all about being free to; collect, receive and disseminate news, ideas, opinion and information beyond the frontiers. Furthermore, in 2016 the parliament of United Republic of Tanzania passed an Access to Information Act, 2016 (the ATI Act) into law to give effect to the constitutional right of access to information held by the state and private bodies in Tanzania. Section 5 of the ATI Act gives every citizen the right to access information from state and public institutions and relevant private bodies, subject only to narrowly defined exceptions such as to protect public interest. However, mere enactment of the ATI Act in itself is hardly sufficient to enable citizens to enjoy the right to access information. It requires proper implementation which is a co-responsibility of those with rights and those with a duty towards them to understand and play their role in order for the ATI Act to realize the gains that motivated its adoption (Lemieux & Trapnell, 2016). At the same time, however, it must be noted that the effectiveness of the ATI depends largely on a variety of factors such as the level of awareness about the ATI Act amongst citizen and information holders; adequate resources in term of human capacities that allow information holders to meet their legal obligations for information disclosure; and quality of provisions that restrict access to information by way of public interest under the ATI Act.

Considering the fact that, it is more than three years after the ATI Act was adopted in September 2016, the implementation of it, is still very much in its infancy and also many Tanzanian may still not fully understand the right to access information and its restriction by way of public interest. From such a perspective, a scholarly need arises to investigate challenges facing implementation of the right to access information in light of its restriction by way of public interest in Tanzania and recommends strategies to overcome these challenges in order to foster the effective implementation of the ATI Act.



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II. Objective of the study

1. To examine the level of awareness amongst citizens and information holders/officers regarding the term public interest as a ground of restricting access to information.
2. To examine whether the existing resources in terms of human capacities in Tanzania are adequate in ensuring the effective implementation of the right to access information.
3. To ascertain challenges and measures to be taken to enhance effective implementation of the right to access information by way of public interest in Tanzania

III. Research Methodology

This study investigates challenges to the implementation of the right to access information in the light of its restriction by way of public interest in Tanzania. Therefore, in order to explore these challenges in detail, a 'mixed research approach' was employed in this study. This approach combines fundamentals of both qualitative and quantitative research approaches.

IV. Instrument of Data Collection

In order to collect the information relevant to this study, both qualitative (literature/document review and interviews) and quantitative (survey) methods were employed to gather data.

V. Sample size

Through interview method, the researcher interviewed a group of 36 people in Dar es Salaam (Tanzania) belonging to various sections of the government and society in general. The individuals were selected on the basis of their roles in society and especially their involvement with issues that relate to right to access information. At the same time, a total of 689 questionnaires were administered to respondents across the whole country and 602 of the questionnaires distributed were collected. Out of these 602 questionnaires collected, 38 questionnaires were incomplete and the researcher left them out, choosing to work with 564 fully filled questionnaires. Purposive sampling was used in selecting the respondent in this study. The research investigation was conducted during the period of December 2019-February 2020 in Dar es Salaam Tanzania. Summary of the fieldwork respondents selected for interview for this study are shown in **Table 1**.

VI. Data analysis

Qualitative data derived from interviews were carefully recorded, coded and analyzed using thematic content analyses. On the other hand, the coding and tabulation of the results emanated from quantitative data (survey questionnaire) were presented and analyzed statistically using descriptive statistics which involved frequencies and percentages.

Table 1: Summary of the fieldwork respondents selected for interview

Serial No.	Category	Number of Interviewees
1	Academics/Lecturers	5
2	Students	6
3	Politicians/ Members of Parliament	3
4	Civil servants/Information holders	10
5	Ordinary citizens/journalists	8
6	Non-Governmental Organization staffs	4
Total		36

Source: Author's research

VII. Presentation and Analysis of the Results from the Survey Questionnaire

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

Table 2: Awareness and perception regarding the term 'public interest'

Serial No.	Categories of responses	Number of Respondents	Percentage (%)
1.	Yes	255	45.2
2.	No	239	42.4
3.	Can't say	70	12.4
Total		564	100.0

Source: Author's research



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Regarding awareness and perception on the term public interest, 45.2% of respondents had knowledge about it, 42.4% did not have any knowledge about this term and 12.4% did not respond to this question.

Is the term public interest which is used to restrict access to information as provided under the ATI Act adequate and clear enough to allow effective implementation of the ATI Act?

Table 3: Adequacy of the term public interest to allow effective implementation of the ATI Act

Serial No.	Categories of responses	Number of Respondents	Percentage (%)
1.	Yes	112	19.8
2.	No	345	61.2
3.	Can't say	107	19
Total		564	100.0

Source: Author's research

As illustrated in Table 3 above, majority of respondents' i.e. 61.2% answered no while 19.8% answered yes and 19% of respondents did not respond to this question.

Have you got any training on how to deal with access to information requests?

Table 4: Training on how to deal with access to information requests

Serial No.	Categories of responses	Number of Respondents	Percentage (%)
1.	Yes	64	11.3
2.	No	178	31.6
3.	Can't say	322	57.1
Total		564	100.0

Source: Author's research

As shown in Table 4 above, 11.3% of respondents answered yes and 31.6% said no while 57.1% of respondents did not respond to this question. Almost all the respondents who did not respond to this question were those who were not information officers.

Is there any official(s) in your institution/ organization/office who specifically handles information requests and ensure proper implementation of the ATI Act?

Table 5: Designated official(s) to ensure proper implementation of the ATI Act

Serial No.	Categories of responses	Number of Respondents	Percentage (%)
1.	Yes	102	18
2.	No	140	24.9
3.	Can't say	322	57.1
Total		564	100.0

Source: Author's research

According to the illustration in Table 5 above, 24.9% of respondents said no while 18% answered yes and 57.1% did not respond to this question. Almost all the respondents who did not respond to this question were those who were not information officers.



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What are the seeming challenges associated with the effective implementation of the ATI Act in light of its restriction by way of public interest in Tanzania?

Table 6: Challenges to the effective implementation of the ATI Act.

Serial No.	Categories of responses	No. of Respondents	Percent age (%)
1.	Misconception of the term public interest	102	18.1
2.	Lack of provision for the public interest override	97	17.2
3.	Lack of guidance in assessing public interest	85	15.1
4.	Lack of training about the ATI Act to Information holders	73	13
5.	Absence of Implementing Regulations	64	11.3
6.	Citizens unaware of ATI Act and its importance	55	9.7
7.	Lack of independent administrative level of appeal	45	8
8.	Failure to designate information officers	26	4.6
9.	Undue secrecy covering civil service operations	17	3
	Total	564	100.0

Source: Author's research

Asked about what they thought to be challenges associated with the effective implementation of the ATI Act in light of its limitation by way of public interest in Tanzania, respondents gave multiple answers, with an average of two responses per respondent. The largest group of responses involving 18.1% mentioned 'misconception of the term public interest', followed by 17.2% who cited 'lack of provision for the public interest override'. Likewise, 15.1% mentioned 'lack of guidance in assessing public interest' while 13% mentioned 'lack of training about the ATI Act to information holders', followed by 11.3% who said 'absence of implementing Regulations' is a challenge to the effective implementation of the ATI Act. There were 9.7% of respondents who mentioned 'citizens unaware of ATI Act and its importance' as the challenge to the effective implementation of the ATI Act, followed by 8% who mentioned 'lack of an independent administrative level of appeal'. Also, there were 4.6% who mentioned 'failure of some institutions to designate information officers' and 3% mentioned 'undue secrecy covering civil service operations' as a challenge to the effective implementation of the ATI Act.

VIII. Presentation and Analysis of the Results from the Interviews

Awareness and perception regarding the term public interest

Throughout the individual face-to-face interviews, it was difficult soliciting clear and understandable meaning of the term public interest from many of the respondents. Overall, the responses from respondents demonstrated unanimous understanding of the term public interest as a ground of restricting right of access to information in Tanzania. Some excerpts of the responses are captured below to illustrate respondents' understanding and knowledge regarding the term public interest, quotes: "Something of serious concern or benefit to the public and not being merely of individual interest"; "Something in which the public as a whole has interest"; "A subjective determination of what is in the best interests of the public"; "Something which endanger the general welfare of the public"; and "It entail different things, according to the circumstances of each situation".

It can be inferred from these responses that public interest as a notion is very complicated to define and have not well understood by most of the citizens and information holders.

Appointment of Information Officers

One of the key findings in this aspect is the issue of inadequacy of human resource in term of human capacity for implementing the ATI Act in many public and private agencies. The responses from majority of interviewees shows that some government departments/ministries do not have information officers as per the requirement of the ATI Act. Respondents revealed that few institutions in Tanzania have so far appointed information officer(s) to handle information requests. As a result, requests for information are either unnecessarily delayed or denied. Worse enough, respondents also noted that some institutions prefer to use spokespersons to deliver information to the public instead of having information officer to do it. One respondent for stance revealed that "this attitude indicates that still information officer(s) who will be responsible to implement the ATI Act are not yet designated by some of the ministries in Tanzania". It was revealed from the interviewees' responses that, despite the ATI Act requiring every



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information holder to appoint officer(s) to deal with information request, fewer information holders had complied with this requirement.

Training to information officers about ATI Act

During interviews, respondents most of them being employees from both public and private sectors who were designated as information officers in their respective offices, were more concerned on the issue of inadequate training about ATI Act. On the whole, respondents revealed that, as a result of the lack of understanding of what the right to information entails due to the absence of training about ATI Act, most information officers are not certain on how to manage information requests and how to apply and interpret various provisions under the ATI Act. For instance, one respondent attributed such inadequate and explained that majority of the staff members in their office who are expected to assist in implementing the ATI Act are not trained as expected. As a result, according to him, 'the level of understanding about the ATI Act amongst those employees is low which may ultimately affect the implementation of the ATI Act'. Another respondent while narrating her own experience while working as an information officer in one of a public agency for almost two years now, said that no any sensitization training regarding the contents of the ATI Act have been done so far in their office. In this context she said that; 'I am an information officer responsible for implementing the ATI Act in our organization. However, as of today, I have never received any training about detail of the ATI Act'. Overall, the responses from respondents shows that majority of information officers who are required to implement the ATI Act in their offices lack training on how to implement the ATI Act. As a result, most of them have been losing confidence while deciding disclosure or non-disclosure of information under the pretext of public interest.

Challenges and difficulties in implementing the ATI Act

During interview, respondents mentioned various challenges and difficulties associated to the effective implementation of the ATI Act in the light of its restriction by way of public interest in Tanzania. Most of the respondents made their responses while touching on the following areas: Absent of the meaning of the term public interest; Lack of guidance on what information to be withhold on grounds of public interest; Failure to disclose information if public interest so demands; Inadequate public knowledge about the ATI Act; Failure by the information holders designate information officers; and Inadequate Training of information officers.

IX. Discussion of Findings

The ATI Act provides that the right to access information is not absolute and it can be restricted in variety of instances such as for the purposes of protection of public interest. However, under the ATI Act, there is no definition of what is considered to be or not to be in the public interest, leaving that to the discretion of the information holder/officers approached. As a result of the lack of understanding of what the term public interest entails, it is unsurprising that most information officers are not certain as on what type of information they should disclose or make public upon request under the context of public interest. This view has been reflected in responses regarding the understanding citizens had particularly information holders/officers with regards the term public interest as a ground of limiting access to information in Tanzania. To a large extent, analysis of the responses from respondents through survey questionnaire as shown in Table 2 above shows that knowledge regarding the meaning of the term public interest is inadequate among the citizens as well as information holders. Similarly, throughout the individual face-to-face interviews it was difficult soliciting clear and understandable meaning of the term public interest from many of the respondents. This worrisome fact from survey questionnaire and interview demonstrates that although the term public interest has regularly been used as a ground of non-disclosure of requested information, its content and contours remain uncertain. This, in part, has been attributed by the fact that currently under the ATI Act, there is no guidelines on what is considered to be or not to be in the public interest at the time of weighing disclosure or non-disclosure of information under the pretext of public interest. Furthermore, the challenge of lack of common understanding regarding the term public interest partly have been compounded by the absence of implementing Regulations to operationalize several elements of the ATI Act. Despite the fact that section 20 of the ATI Act clearly requires the Minister responsible for Legal Affairs to make Regulations for better carrying out provisions of the ATI Act, unfortunately up to now, Regulations to implement the ATI Act have not been issued. Even though Regulations to be issued may not be directly related to exemption provisions regarding restriction of access to information under the context of public interest, but it put in place various systems for implementing the ATI Act.

Consequently, despite the fact that ATI Act requires every information holder to appoint and give training to one or more officers to deal with information request, the ground reality is a bit different. Responses from the survey questionnaire as it was shown in Table 5 & 6 above has revealed that fewer information holders had appointed and trained information officer(s) to deal with information requests and other issues relating to implementation of the ATI Act. This state of affairs to great extent has led the right to access information non-effective or have little practical application. There is no doubt that, as the front-line officers who are responsible for implementing the ATI Act, information officers are required to be appointed by every information holder and be trained to acquire a complete understanding of the ATI Act so that they can be able to answer information request properly. Arguably,



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without the appointing and training to information officers who will be responsible for dealing with information requests, one cannot expect the ATI Act to be implemented effectively in public and private offices.

X. Conclusion

More than three years after the ATI Act was enacted, there have been some challenges to fully implementing its provisions. The study has revealed that these challenges are not compounded by the fact that the ATI Act is still at its cradle, rather it is partly because of lack of awareness amongst citizens and information holders/officers about the meaning of the term public interest as a ground of limiting access to information. As a result, it has affected the ability of information officers to handle information requests as well as implementation of the ATI Act. The study further revealed that, resources in terms of human capacity in Tanzania are inadequately ensuring the effective implementation of the ATI Act. Such inadequacy is indicated to be partly caused by the fact that some information holders have not yet appointed information officer(s) and give training to them on how to effectively implement the ATI Act. This state of affairs holds the potential to undermine the effective implementation of right to access information in Tanzania.

XI. Recommendations

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

1. Increasing public awareness about the right to access information and its restriction by way of public interest.
2. The ATI Act should be amended to take aboard the provision(s) that gives precision or guidance on the meaning of the term public interest as a ground of restricting access to information.
3. Establishment of an oversight body that will monitor implementation of the ATI Act.
4. Every Information holders should appoint and give training to information officer(s) on how to effectively implement the ATI Act
5. Issuing of Regulations for Implementing the ATI Act.

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