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# LEGAL AND POLICY APPROACHES TOWARD REALIZATION OF THE RIGHT TO ACCESS LEGAL INFORMATION IN TANZANIA

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### Abstract:

The beginning of 2000 witnessed rising of the Free Access to Law Movements (FALMs) which aimed at encouraging nations to publish and make available all primary legal information in their countries. The FALMs resulted in the promulgation and adoption of the Montreal Declaration on Free Access to Law (MDFAL) of 2002 and the formation of the Legal Information Institutes (LIIs), which began in Europe and then spread to America. There are various lines in Europe and America like the British and Irish Legal Information Institute (BAILII), the Australian Legal Information Institute (AustLII), and the Canadian Legal Information Institute (CanLII). Africa joined in the move in early 2003 by forming the Southern African Legal Information Institute (SAFLII). Tanzania although joined late, is not far from realizing the importance of free access to legal information and LIIs. This is signified by the fact that Tanzania has joined in the FALMs, beginning by subscribing to the MDFAL of 2002, joining the SAFLII in 2013, and of late, establishing her own LII which is the Tanzania Legal Information Institute (TANZLII) in March 2019. The basis of Tanzania to join the FALMs is from the fact that the country is a member of the international instruments which guarantee the right to information. Again, the right to access information is enshrined in the Constitution of the United Republic of Tanzania (CURT) of 1977. More importantly, there is specific legislation providing for enforceability of the right to access information, one of which is legal information. The objective of this article is to analyse legal and policy strategies that are taken by the government of Tanzania in ensuring that access to legal information as one of the human rights is realized in the country.

**Keywords:**

Legal Information, Free Access to Law Movement, Legal Information Institute, Access to Legal Information

**Introduction**

Information is one of the civil rights which internationally is covered in broad meaning of freedom of expression and opinion. It is a right which is taken to be part of the international human rights norms. Globally information is taken to be very important right which enables people to enjoy other human rights like right to life, right to health, right to education and liberty. But then information is a broad concept within which there are various categories of information, like legal information, health information, education information, information on good governance, information on war against corruption and others of like nature.

In Tanzania the right to access information is guaranteed by *the Constitution of the United Republic of Tanzania (CURT) of 1977* as amended in 1984. However, information which is enshrined in the CURT of 1977 is broad and so it covers the right to access information generally without specifying one category of information. It is because of this that even legislation on access to information which are present in Tanzania do not specifically cater for legal information but rather the laws available provide for the right to information and access to information in general way. Three major laws cover right to information and access to information in Tanzania, which are *the Access to Information Act of 2016*,<sup>1</sup> *the Media Services Act of 2016*<sup>2</sup> and *the Cybercrimes Act of 2016*.<sup>3</sup> Yet none of these specifically provide for the right to access legal information. Certainly, leaving right to access legal information to be regulated and enforced through these three laws is not applauded as these laws do not assure individual right to access legal information. This article argues that it is important to have specific law for the right to access legal information as legal information and the right to access legal information is now a global movement and it is increasingly expanding now than ever before. This is a result of growth and development of Free Access to Law Movement (FALM), Legal Information Institutes (LII) and Information and Communication Technology (ICT) in legal sector.

**Methodology**

The aim of this article is to explore legal and policy approaches which the government of Tanzania has embarked in order to realize access to legal information. The article covers only Mainland Tanzania and thus it does not cover Tanzania Zanzibar which is the other part of Tanzania. This is because legal information is not a union matter and so Tanzania Zanzibar has her own independent legal regime on legal information separate from that of Mainland Tanzania.

In collection of data for this article the author applied two major methods, which are primary and second data collection methods. In primary data collection the author read and analysed various and relevant international and local legal instruments, case laws and policies on the right to expression and opinion in which there is the right to access information. There are three international legal instruments which have been explored, which are *the Universal Declaration*

<sup>1</sup> Act No. 6 of 2016

<sup>2</sup> Act No. 12 of 2016

<sup>3</sup> Act No. 14 of 2016

of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the Montreal Declaration on Free Access to Law (MDFAL) of 200. Local instruments analysed include the CURT of 1977 and the AIA of 2016. The author also explored the National Information and Communication Technology Broadband Backborn (NICTBB) policies of 2013 and 2016 and the Tanzania Legal Information Institute (TANZLII) policy of 2019. As part of primary data, the author read case laws as well.

As part of secondary data collection method, the author visited libraries, from which various textbooks, articles, conference papers and other relevant writings on legal information were investigated. These literatures were applied in theoretical framework in relation to the theme of the article. Before embarking on the crux of the subject matter of this article it is better to begin by giving meaning of the concepts.

### Meaning of Information

In order to avoid taking readers by surprise and for the purpose of maintaining coherence, it is prudent to begin by giving out meaning of the concept information. There are various definitions of concept information depending on contexts from which the concept is derived. That is why experts like Belkins (2010), Bel, (2019), Losee (1997), Isazadeh (2007), and Debons (1988) have defined information as used in science while others like Aiyar (2005) and Singh (2012) have defined it in humanities and social science disciplines.

In everyday English information is defined as knowledge which is communicated from one source to recipient thereof.<sup>4</sup> On this basis knowledge and its communication are basic phenomena of every human society. This then makes modern society to be characterized as information society, the later being a term of a society in which creation, distribution and imparting of information has become the most significant economic and cultural activity.<sup>5</sup> It is a society in which information of various forms is becoming important commodity and measurement of prosperity than physical objects.<sup>6</sup> Information society is a term which describes the form of society being created in the information age based mainly on the increasingly interactive acquisition, storage, processing, transmission, distribution and use of information and knowledge.<sup>7</sup> Information can also be defined as a knowledge that one derives from facts placed in the right context with the purpose of reducing uncertainty. Generally information is any material in any form relating to the administrations, operations or decisions of a public authority.<sup>8</sup> Thus, information is instruction or knowledge derived from external source concerning facts, particulars or as to law relating to a matter bearing on assessment.<sup>9</sup> These are just but a few definitions of the concept information as it is used in this article.

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<sup>4</sup>Capurro, R., (2003), "The Concept of Information," Annual Review of Information Science and Technology, Vol.

37, Cronin, Hochschule der Medien, p. 343

<sup>5</sup> Arora, R., (1993), Information Source: Concepts and Need for Information, Library Information Science, p. 3

<sup>6</sup> Lloyd, J.T., (2000), Information Technology Law, 3<sup>rd</sup> Edition, Butterworth, London, p. 11, in Mambi, A.J., (2010), ICT Law Book: A Sourcebook for Information and Communication Technologies Law in Tanzania and East Africa, Dar es Salaam, Mkuki and Nyota, p. 6

<sup>7</sup> Aiyar, R., (2005), Advanced Law Lexicon, the Encyclopedic Law Dictionary with Legal Maxim, Latin Terms and

Words and Phrases, Vol 2, D I, New Delhi, Wadhwa and Company Nagpur, p. 2337

<sup>8</sup> Ibid

<sup>9</sup> Singh, L.P. and Majumdar, P.K., (2005), Judicial Dictionary, New Delhi, Orient Publishing Company, p. 771

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That aside, the African Commission on Human and Peoples' Rights Guidelines of 2017 has come up with a clear definition of the term information. According to this Guideline, information is defined as follows, that;

“Information includes any original or copy of documentary material irrespective of its physical characteristics, such as records, correspondence, fact, opinion, advice, advertisement, memorandum, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the forum or medium in which it is held, in the possession or under the control of the information holder...”<sup>10</sup>

The definition given by the African Commission on Human and Peoples' Rights Guidelines of 2017 has long stressed the social, as well as the physical dimensions of information and it emphasizes on the priority to be given to the contents rather than the forum or medium in which information is stored. It further provides controlling power of the state, as the most holder of information needed by the people, in ensuring that information is available the moment the same is requested. The above meaning of the concept information is adequate and attempt to add more things in defining the concept may cause more controversy in understanding the concept itself. That notwithstanding it is submitted that information generally and legal information in particular is very important to human developments.

### Meaning of Legal Information

In any area of study consideration of the history or origin of the subject matter is necessary for an appreciation of the background, growth and future of the subject matter.<sup>11</sup> Legal information is no exception. But before trying to give its historical backdrop it is apposite to provide the meaning of the concept legal information.

According to author legal information or public legal information is any legal information produced by public bodies that have a duty to produce law and make it public (Singh, 2012). It includes primary source of law, such as legislation, case law and treaties as well as various secondary public sources, such as reports on preparatory works and law reform, and decisions from boards of inquiry. It also includes legal documents created as a result of public funding.<sup>12</sup> From this definition it means legal information is any material which contains law the same being a document or other source.

While that is the definition obtained from literature the LII of the world meeting in Montreal declared that;

- (a). Legal information from countries and international institutions is part of the common heritage of human. Maximize access to this information promotes justice and the rule of law,
- (b). Public legal information is digital common property and should be accessible to all on a non profit basis and free of charge,

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<sup>10</sup> Guideline 1 of the Guidelines on Access to Information and Elections in Africa, (2017), the African Commission

on Human and peoples' Rights Guidelines, Addis Ababa, p. 1

<sup>11</sup> Akintunde, S, E, (2017), A Brief Overview of Legal Informatics, Institute of Legal Informatics, Hanover, p. 2

<sup>12</sup> Singh, R, et al, (Eds), (2012), Access to Legal Information and Research in Digital Age, New Delhi, National Law

University Press, p. 29

- (c). Organizations such as legal information institutes have the right to publish legal information and the government bodies that create or control that information should provide access to it so that it can be published by other parties.<sup>13</sup>

According to the MDFAL of 2002 legal information like case law, legislation and other government documents form a greater role in awareness of duties and responsibilities to the citizens.<sup>14</sup> If law is accessible to all there is comparatively less chance to being its victim. One way in which law can be communicated to the people is by using communication technology. Thus, innovation of communication technology brought a big impact in access and communication of information, including legal information.

Having provided the definitions of the concepts information and legal information it is apposite now to explain, although in narrow way the right to access information generally. Hereunder the article explores the basis for the right to access legal information. The part describes the genesis of the right to access legal information and how the same gained international recognition through various international legal instruments.

### **Overview of the Right to Access Legal Information**

Emergence of legal information as independent and separate component of information presents its significance. It is therefore the responsibility of the governments in various countries to create atmosphere that fosters access to information to ensure adequate disclosure and dissemination of information in a manner that offers necessary facilities and eliminates existing obstacles to its attainment.<sup>15</sup> Without access to accurate, credible and reliable legal information citizens will not be obedient to law and courts of law will not be able to correctly and precisely decide cases according to law and long established precedents. Again, without access to accurate, credible and reliable legal information people will always be victim of law. The right to access legal information did not develop as distinct right but rather it grew from broad human right to freedom of expression and opinion, particularly the right to access information. Thus, international conventions and institutes on the right to information which are binding upon states which have ratified them, serve as paramount international source of the right to information generally and legal information in particular. These conventions in summary provide that persons have the right to freedom of expression, the right which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers.<sup>16</sup> These provisions are said to be broad in construction and, although expressly they do not mention the right to access information, in broad construction the right to freedom of express has been accepted to include the right to access information. This then is the beginning of the international, regional and local efforts to formulate the right to access information or right to information as human right issue.

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<sup>13</sup> The Principles in the MDFAL of 2002, p. 1

<sup>14</sup> Singh, R, et al, (Eds), (2012), Access to Legal Information and Research in Digital Age, New Delhi, National Law University Press, p. 29

<sup>15</sup> See the case of Navarro Gutierrez vs. Lizano Fair, SCCR, 2/4/2002, Annual Report of the O.A.S Special Rapporteur on Freedom of Expression, 2003, 159-160

<sup>16</sup> Article 19 of the UDHR of 1948, Article 19 of the ICCPR of 1966, Article 13 of the ACHR of 1981 and Article 9 of the ACHPR of 1981

The right to access information is the right of everyone to know and to have access to information he needs to make use of.<sup>17</sup> This right does not exist in isolation but it is understood as a member of larger group of civil and political rights, a component part of the fundamental right to freedom of expression and opinion, which requires governments to refrain from interfering with free flow of information and ideas.<sup>18</sup> In other words the right to information is also intricately to and necessary for the protection of all other human rights. This right is now receiving growing attention and treatment in international and regional legal instruments. The understanding of the right to provide access to information, as well as to refrain from interfering with communication of information necessary to a citizen's ability to make choice are key components of freedom of expression and opinion.

It is to be born in mind that all information which is held by government and her agencies is in principle public information. As such information held by government may only be withheld if there is legitimate reason for not disclosing it. Grounds for withholding information should be clearly and specifically established by law with the goal of protecting legitimate aims. The processes and procedure to facilitate accessing information should be simple and speedy. Thus, this article argues that in order to facilitate access to information processes for requesting information should be the least complicated and most efficient possible, and the provision of information should be quick, cheap and complete.

There are different international and local instruments which describe the right to access information generally and legal information in particular. Internationally legal instruments under concern are those which recognize the right to information and access thereto as a tenet of human right and democracy. International instruments here include the UDHR of 1948, the ICCPR of 1966 and the MDFAL of 2002. Apart from these international instruments locally Tanzania has legislation and policies which recognize the right to access information generally and legal information in particular. These are the CURT of 1977 and the AIA of 2016. Hereunder the international legal instruments are analysed and expounded in order to see how the same guarantee the right to access information in general and legal information in particular.

### **The Universal Declaration of Human Rights (UDHR) of 1948**

The Universal Declaration of Human Rights (UDHR) of 1984 is the most important instrument for declaration and protection of all human rights of all the people globally. The UDHR of 1948 has been described as 'an historic event of the profound significance and as one of the greatest achievements of the United Nations (UN).<sup>19</sup> It has also been hailed as 'the mine from which other conventions as well as national constitutions protecting these rights have been and

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<sup>17</sup> Borne, R., (2007), *Access to Information: An Instrumental Right for Empowerment*, London, Yale Law School, p.

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<sup>18</sup> See *Leader vs. Sweden*, Judgment of 26<sup>th</sup> March 1987, Series A, No. 116, Para 74. In this case the European Court

of Human Rights ruled that the right to receive information 'basically prohibits a government from restricting a person from receiving information that others may wish or may be willing to impart to him.'

<sup>19</sup> Lauterpacht, H, (2010), *International Law and Human Rights*, 9, 394 in Mashamba, J. C, *Judicial Protection of Civil and Political Rights in Tanzania: Cases, Materials and Commentary*, Dar es Salaam, NOLA, p. 7

are being quarried.<sup>20</sup> All this aims at only one fact, to show how important the UDHR of 1948 is in the world and in human rights campaigns.

At universal level access to information is not recognized as a discrete right, but is the right which is linked to and combined with the freedom of expression and opinion.<sup>21</sup> This is proved by the way Article 19 of the UDHR of 1948 is coached. The said provision states that;  
“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

From the words of Article 19 of the UDHR of 1948 it is clear that access to information is part and parcel of the freedom of expression and opinion and both are international human rights norms.<sup>22</sup> The gist of Article 19 of the UDHR of 1948 is that the right to freedom of expression and opinion includes not only freedom to seek and receive information of all kinds, but also freedom to impart information regardless of frontiers and through whatever medium. The provision does not limit the information which one may seek, receive and impart. This means people have the right to seek, receive and impart any information, be it in the possession of private institutions or public institutions and including legal information.

The UDHR of 1948 approaches of explaining the right to access information in line with freedom of expression and opinion is based in the fact that enjoyment of freedom of expression, opinion and access to information include other rights such as right to respect for the right to life, private life, right to fair trial and the right to participation in public affairs.<sup>23</sup> More importantly, it is debatably that the way Article 19 of the UDHR of 1948 has been coached integrates several human rights in one provision. It means the provision amalgamates rights rather than splitting them and therefore its understanding requires holism where there could be a danger.<sup>24</sup> On that basis since Article 19 of the UDHR of 1948 describes the right to access information within the broad meaning of freedom of expression and opinion. Thus Article 19 of the UDHR of 1948 imposes a positive obligation on states to ensure the right to access information particularly with regards to information held by the governments.<sup>25</sup> In that score and in modern time individual, in order to realize his own capacities to stand up to the institutionalized force that surround him, has found it imperative to join with others of like mind in pursuit of common objectives. Freedom of expression and opinion of individual then is essential to achieve common objective of man.

### **The International Covenant on Civil and Political Rights (ICCPR) of 1966**

The International Covenant on Civil and Political Rights (ICCPR) of 1966 is another international legal instrument in the right to access information. In perspective of Article 19 (2) ICCPR of 1966 it is a right of everyone to have freedom of expression and opinion, the

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<sup>20</sup> Fawcett, J. E. S, (1968), *The Law of Nations*, p. 158, in Mashamba, J. C, (2010), *Judicial Protection of Civil and*

*Political Rights in Tanzania: Cases, Materials and Commentary*, Dar es Salaam, NOLA, p. 7

<sup>21</sup> UNDP, (2003), *Access to Information, Practice Note*, New York, p. 3

<sup>22</sup> UNDP, (2003), *Access to Information, Practice Note*, New York, p. 3

<sup>23</sup> *Ibid*, p. 26

<sup>24</sup> Eide, A. and Eide, W. B (Eds), (1999), *The Universal Declaration of Human Rights*, the Hague, pp 549-550

<sup>25</sup> *The African Commission on Human and Peoples' Rights, Model Law on Access to Information for Africa*, (2017), Addis Ababa, p 29

right which include freedom to seek, receive and impart information. The right is specified in Article 19(3)(a) and (b) of the ICCPR of 1966, which provides that;

- “(2). Everyone shall have the right to freedom of expression; right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art, or through any other media of his choice.
- (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but those 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 (order public), or of public health or morals.”

While providing for the freedom of expression and opinion and the right to access information Article 19(2) and (3) of the ICCPR of 1966 imposes duties and responsibilities on individual who intends to enjoy the freedom and the right contained therein. For a comprehensive understanding of the freedom of expression and opinion and the right to access information as provided by Article 19(2) and the exercise of the rights as provided by Article 19(3) both of the ICCPR of 1966, the United Nations Human Rights Committee (UNHRC) published the general comment on Article 19 of the ICCPR of 1966.<sup>26</sup> The general comment thereof expressly acknowledges that Article 19 of the ICCPR of 1966 embraces a general right of access to information held by public bodies.<sup>27</sup> The general comment noted, in arriving at this position, that Article 19 taken together with Article 25 both of the ICCPR of 1966 (the latter being dealing on the right to take part in public affairs), had previously been interpreted by the UNHRC as including the right of the media to access information on public affairs.<sup>28</sup> In this way the public is ensured of accessing information through various media, including through online platforms.

The UNHRC further noted that elements of freedom of expression and opinion and the right to access information provided by Article 19 of the ICCPR of 1966 are addressed in various provisions of the ICCPR of 1966 itself.<sup>29</sup> For example Article 14 provides for the right to fair trial and Article 17 deals with the right to privacy.<sup>30</sup> Both of these provisions of the ICCPR of 1966 set out various entitlements, indirectly of course, to information. Finally the UNHRC noted that the ICCPR of 1966 imposes general legal obligation to the states which are the parties to it to make sure that persons access information.<sup>31</sup> All these are stipulated in the

<sup>26</sup> Human Rights Committee, General Comment No. 34: Freedoms of Opinion and Expression (Art. 19), 12 September 2011, ICCPR/C/GC/34 19IHR 303 (2012), p. 303

<sup>27</sup> The African Commission on Human and Peoples' Rights, Model Law on Access to Information for Africa, (2017), Addis Ababa, p. 30

<sup>28</sup> See the case of *Gauthier v Canada* (1633/1995), Merits, CCPR/C/65/D633/1995 (1999)

<sup>29</sup> Human Rights Committee, General Comment No. 34: Freedoms of Opinion and Expression (Art. 19), 12 September 2011, ICCPR/C/GC/34 19IHR 303 (2012), p. 303

<sup>30</sup> UN Human Rights Committee, General Comment No. 32: The Right to Respect of Privacy, Family, Home and Correspondence and Protection of Honour and Reporting (Art. 17), 8 April 1988, HRT/GEN/1/Rev 1; 1-2 IHR 18 (1994) and UN Human Rights Committee, General Comment No. 16: The Right to Equality before Courts and Tribunals and to a Fair Trial (Art. 14), 23 August 2007, CCPR/C/GC/32; 15 IHR 1 (2008)

<sup>31</sup> UN Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21 Rev. 1; 11IHR 905, (2004)

ICCPR of 1966 for the purpose of ensuring freedom of expression and opinion and the right to access information by the individuals.

The general comments of the UNHRC even go to the extent of detailing the contents of the legislation which state parties are required to enact to facilitate access to information. According to the general comments the legislation must include provision for timely processing of requests for information, for giving reasons for refusal of the requests to access information and for putting in place procedures to appeal against refusal.<sup>32</sup> The general comments also state that the legislation must not prescribe exorbitant fees for request for information since such fees may constitute an unreasonable impediment to access information.<sup>33</sup> This is because exorbitant fee for request for information is indirect hindrance to access information which the government may use to deny people their rights.

### **The Montreal Declaration on Free Access to Law (MDFAL) of 2002**

Struggles for access to legal information have short history although its history can be traced as way back as Confucius and Socrates eras.<sup>34</sup> The first person to initiate the struggles is believed to be John Harty. But credit for transformation of the struggles goes to Cornell Legal Information Institute (CornLII) which was founded by Tom Bruce.<sup>35</sup> CornLII is the founder of free access legal information retrieval system. It was after foundation of CornLII that movements towards formation of free access to law institutes in the world began. Among early steps towards legal information movements was formation of the Legal Information Institutes (LII).<sup>36</sup> The LII therefore represents international movement for the right to access legal information.

The LII refers to providers of legal information that is independent of the government and provides free access on a non-profit basis to multiple sources of essential legal information. The LII is a group of projects that provide free online access to public legal information, defined in the Montreal Declaration on Free Access to Law (MDFAL) of 2002.<sup>37</sup> The LII represents a reaction to a retrieve and protective attitude towards making legal materials available to lawyers and general public.<sup>38</sup> As indicated the LII movements have been the basis for major worldwide transformation in access to justice for lawyers as well as for general public.<sup>39</sup> This trend and movements towards realization of access to legal information signifies the importance of access to legal information. That is why nowadays there are websites in almost every country which provide legal information.

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<sup>32</sup> Srivastava, P.K., and Saniya, D.S., (2016), Protection of Freedom of Expression: An International Perspective, Research Scholar, Department of Law, University of Jaipur, Vol. 2, Issue 2, p. 31

<sup>33</sup> Ibid, p. 1

<sup>34</sup> Paliwala, A., (Ed), (2010), "A History of Legal Informatics," LEFIS Series 9, Zaragoza, Prensas Universitarias de Zaragoza, p. 14

<sup>35</sup> Ibid

<sup>36</sup> Ibid, p. 17

<sup>37</sup> Garvin, P.(Ed), (2010), Government Information Management in the Twenty-First Century, London, Butterworth, p. 213

<sup>38</sup> Kondos, G.R., (1973), 'Introduction to JURIS,' A Paper Presented in Abidjan World Conference on World Peace Through Law, Abidjan, p. 47

<sup>39</sup>Paliwala, A., (Ed), "A history of legal informatics," LEFIS Series 9, Zaragoza, Prensas Universitarias de Zaragoza, p. 43

Taken together the LII are the most coordinated and among the largest providers of access to legal information but are not backed up by any legal instrument except mutual understanding and consent among themselves.<sup>40</sup> This mutual understanding of the LII worldwide necessitated the formation of the FALM in 2002. A desire to have access to law via the internet has been principal means by which this cooperation was established. To put this desire into effect several conferences were convened, one of which was the Montreal Conference of 2002.<sup>41</sup> The Conference of Montreal of 2002 was a turning point towards movements for access to legal information and LII worldwide. This is so because it was in this conference that the MDFAL of 2002 was promulgated and adopted by some nations.

The MDFAL of 2002 defines legal information, creates obligations to the member states to support publication of legal information and calls up for formation and operation of the LII in individual countries, among other things.<sup>42</sup> As for definition of legal information the MDFAL of 2002 defines legal information by providing that;

“... legal information means legal information produced by public bodies that have a duty to produce law and make it public. It includes primary sources of law, such as legislation, case law and treaties ...”

Membership to the MDFAL of 2002 is by invitation and consensus of the present members.<sup>43</sup> New member therefore is admitted to it if is nominated by current member and other members reach a consensus to admit the invited new member. Membership criteria are not fixed but involves adherence to and support of the MDFAL of 2002 and activities similar to but not necessarily identical with those of the LII.<sup>44</sup> Membership of MDFAL of 2002 has ever since expanding beyond the initial members to include other national and the LIIs from North America, South America, Europe, Asia and Africa.<sup>45</sup> At the 2007 FALM Conference which was hosted by Canada initial steps were taken to turn FALM into a more formal constituted association, in the name of Free Access to Law Association (FALA). But there is no more success in this move yet.

All these were done emphasize being facilitation of public access to the law and to make legal information available for the people and general institutions, more particularly the judiciary.<sup>46</sup> It is important for the people and judges to know the law, because ignorance of the law excuses no one (*ignorantia juris non excusat*) and the judges are presumed to know all the laws of the country. Consequently, access to legal information, namely legislation, unreported case laws and Government Notices (GN) becomes an essential component of any modern legal system, irrespective of the fact that the MDFAL of 2002 is unenforceable. Thus the widespread distribution and accessibility of the legal information contributes greatly to the transparency,

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<sup>40</sup> Greenleaf, G., The Global Development of Free Access to Legal Informatics, *The European Journal of Law and*

*Technology*, Vol. I, Issue 1, Zaragoza University Press, Zaragoza, 2010, p. 44

<sup>41</sup> Ibid, p. 52

<sup>42</sup> The MDFAL of 2002 is available at [www.worldlii.org/worldlii/declaration](http://www.worldlii.org/worldlii/declaration), accessed on 25<sup>th</sup> October 2019

<sup>43</sup> The MDFAL of 2002, Paragraph 1, p. 2

<sup>44</sup> Danner, R.A., (2009), *The IALL International Handbook of Legal Information*, Geneva, p. 206

<sup>45</sup> Greenleaf, G., (2010), *The Global Development of Free Access to Legal Informatics*, LEFIS Series, Zaragoza, University of Zaragoza Press, p. 52

<sup>46</sup> Daniel, P., (2004), *Open Access to Law in Developing Countries*, Online Journal of ICT, Vol. 9, No. 12, accessed

on 11<sup>th</sup> September 2019, at 1645 hours

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openness and certainty of judicial decisions, something which is essential to the social functioning of judicial system. In fact, the possibility of identifying legal information like applicable legislation and unreported case laws contributes to ensuring the integrity of any judicial institution.<sup>47</sup> It is therefore important in any given country to have a sound system of free and open access to legal information.

Having explored the international perspective on the right to information in general and legal information in particular, by epitomising the international legal instruments on the right to access information, hereunder the paper exemplifies legal perspective of the right to access information. Under this part the article explores two laws which are relevant to the right to access information in Tanzania.

### **The Right to Information in Tanzania Perspective**

The wind of arrival of new era of the government transparency in the world did not spare Tanzania. As Tanzania is the member of the international organizations, the movements to facilitate the right to access information and access to legal information which took place in the world also invaded the country. For that even in Mainland Tanzania the right to access information is now commonplace. This is so because access to information is essential requirement for modern government and for maintenance of a civil and democratic society. Access to information provides a guard against abuse of power and mismanagement of resources by the government. In Mainland Tanzania the right to access information generally and legal information in particular is guaranteed by the CURT of 1977 and the AIA of 2016.

### **The Constitution of the United Republic of Tanzania (CURT) of 1977**

The Constitution of the United Republic of Tanzania (CURT) of 1977 has entrenched the right to access information in Tanzania. Article 18(b) of the CURT of 1977 provides for the right of every person to seek, receive and/or disseminate information regardless of national boundaries. This provision therefore guarantees the right to access information in Tanzania as a constitutional right. For that Tanzania is among the countries in the world whose constitutions have express provisions which guarantee and protect access to information by the people. But this provision does not impose obligation on the government to make information available to the public nor does it set out procedure that enables citizens to directly enforce the right through the courts of law. Nonetheless the fact that the CURT of 1977 has entrenched Article 18(b) thereof has afforded right to access information a constitutional status.<sup>48</sup> This then shows honest of the government to support the right to access information which is guaranteed in international instruments. Furthermore, Tanzania is not the only country in the world which has provision on access to information in the way Article 18(b) of the CURT of 1977 has been drafted. The constitutions of Azerbaijan, Georgia, Macedonia, Russia and Ukraine, guarantee right to freely receive information but not, explicitly, a right to receive information from the government or public institutions therein.<sup>49</sup> Thus, this is not new phenomenon in the world, and the same can be enhanced by the right to access information laws. For that although the CURT of 1977 does not create obligation to the government of Tanzania and her institutions

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<sup>47</sup> Greenleaf, G., (2010), *The Global Development of Free Access to Legal Informatics*, LEFIS Series, Zaragoza, University of Zaragoza Press, p. 52

<sup>48</sup> Open Society, (2016), 'Constitutional Protection of the Right to Information,' *Right to Information, Good Law and Practice*, available on <https://www.right2info.org/archived-content/constitutional-protections>, accessed on 4<sup>th</sup> May 2019, at 2012 hours. Herein Tanzania is listed among 60 countries in the world and 17 countries in African whose constitution guarantee access to information.

<sup>49</sup> Ibid

to provide information to the people it nevertheless guarantees access to information which is held by the government and private institutions.

Article 18(b) of the CURT of 1977 was entrenched therein in 1984 through the fifth constitutional amendments which were carried out by the Fifth Constitutional Amendment Act of 1984.<sup>50</sup> It was entrenched in the CURT of 1977 as part of the Tanzanian Bill of Rights (BoR). Ever since the inclusion of the right to information in the CURT of 1977 there has been slow progress in giving legislative binding to this right. This was so because there were no right to information laws which were enacted to facilitate access to information. Absence of specific right to information laws made it unwieldy for the citizen to make request and access information held by public institutions. The first step to give right to access information a legal force was in the constitutional review process which began in 2011 and completed in 2014. The second effort in line of Article 18(b) of the CURT of 1977 was taken in 2016 when parliament of Tanzania enacted the Access to Information Act (AIA) of 20

### **The Access to Information Act (AIA) of 2016**

Tanzania is one of the fewest countries in Africa which have a constitutional provision guaranteeing the right to access information and a specific law for the reinforcement of the provisions with procedures and penalties for none compliance. The constitutional provision is Article 18 (a) and (b) of the CURT of 1977 while the law is the AIA of 2016. The AIA of 2016 establishes the rights to access information for citizens and public at large.<sup>51</sup> The Act also, under section 9 creates obligation to the information holder to publish information. Section 10 of the AIA of 2016 provides for the procedure to follow by any person who wants information from information holder. Reading section 10(1) of the AIA of 2016 the procedure is very user friendly as it just requires the person to make request for information in prescribed form. The request for information shall provide sufficient details to enable the information holder to identify the information requested.<sup>52</sup> Section 10(4) of the AIA of 2016 takes care of illiterate or person under disability but who want to make a request for information. These persons may make request orally and the officer to whom the request is made shall reduce the request in writing. It is the obligation of the information holder to respond to the request for information as soon as the request is made and in any case within the period of 30 days.<sup>53</sup> This is therefore a good sign that Tanzania is sincere on the right to access information.

Information which is the subject of the AIA of 2016 is defined in section 3 of the Act to mean any material which communicates facts, opinions, data or any other matters relating to the management, administration, operation or decisions of the information holder, regardless of its form or characteristics. From this broad definition legal information is covered. Legislation communicates data relating to operation of various matters which are the subject of the law. Thus legislation is within the meaning of information as provided by section 3 of the AIA of 2016.

The AIA of 2016 also provides for a wide range of information that cannot be disclosed by information holder. Section 6(2) (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) of the AIA of 2016 covers exempted information. None of the above mentioned exempts cover legal

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<sup>50</sup> Act No. 15 of 1984

<sup>51</sup> Section 4(a) of the AIA of 2016

<sup>52</sup> Section 10(2), Ibid

<sup>53</sup> Section 11(1), Ibid

information to wit legislation. This is because legal information does not undermine defense and national and do not create commercial interest to the members of parliament or to the legislature itself. It means legal information is accessible free from any legal restrains so far as the AIA of 2016 is concerned.

The above part presents the position of Tanzania in so far as the right to access information and legal information is concerned. That done, the following section of the article deals with the way Tanzania responds to the world movements on access to legal information. The part describes strategies taken by the government to facilitate realization of the right to legal information. This is by strengthening ICT infrastructures. The part also point out legal information movement in Tanzania which was formed after the country had subscribed to the MDFAL of 2002 and joined the SAFLII after being invited by South Africa.

### **Legal Information Strategies in Mainland Tanzania**

The MDFAL of 2002 calls up nations to make sure that primary legal information is available and accessible by the general public. One of the easiest and cheapest ways to ensure that there is accessibility to legal information is by the same to be published online. To facilitate this there is a need to have strategies on the internet connectivity and the Information and Communication Technology (ICT). Here under the two strategies along with the Tanzania LII as one of the FALM are analysed.

### **The National ICT Broadband Backborn (NICTBB)**

The MDFAL of 2002 encourages nations to publish primary legal information on line. It is observed that publication of information generally and legal information in particular on line ensures access to it to large number of people. This is so because there is wide use of the internet by large population in the country. But to publish legal information on line is one thing and to have the reliable internet connectivity is another. The government of Tanzania has taken purposive measures to ensure connectivity of the internet to facilitate e-governance. This is done by introducing the National Information and Communication Technology Broadband Back born (NICTBB) and Fibre Cable Optic (FCO).

Tanzania has a total of 30 regions and 148 districts out of these 4 regions and 4 districts are in Tanzania Zanzibar while 26 regions and 144 districts are in Mainland Tanzania. As its efforts to accelerate economic growth and improve social wellbeing of the people the government introduced science, technology and innovation in key sectors of developments. This initiative has been carried out in line with the two National ICT policies. The first National ICT policy was of 2003 and the second is the National ICT policy of 2016.

In March 2003 the government of Tanzania formulated the first National ICT policy of 2003 after realizing that ICT has advanced globally and the same has brought about changes in other areas, particularly in knowledge management and human resource development.<sup>54</sup> The government then took initiatives to ensure that it participates in digital age by which among other issues was to embark in application of ICT in government services and get on the National

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<sup>54</sup> See mission statement in the MWCT, The National Information and Communications Technology Policy of 2003,

Dar es Salaam, 2003, p. 1

ICT Broadband Backbone (NICTBB) as ICT infrastructure.<sup>55</sup> The NICTBB roll out began in 2009 with the aim of creating service points in all regional and district headquarters.<sup>56</sup> To facilitate this there was installation of the National Fibre Optic Broadband Backbone (NFOBB) in 20 regions as by January 2018.<sup>57</sup> The regions which by January 2018 had the NFOBB are Coastal region, Lindi, Mtwara, Ruvuma, Iringa, Mbeya, Singida, Mara, Manyara, Morogoro, Tabora, Rukwa, Kigoma, Shinyanga, Tanga, Kilimanjaro, Arusha, Kagera, Mwanza and Dodoma.<sup>58</sup> The aim however is to connect to the NFOBB all regions in Mainland Tanzania and the neighbouring countries.

### **The National ICT Policies in Mainland Tanzania**

The National ICT policy of 2003 has been implemented for 13 years from 2003 to 2016. Throughout this period communication technology and ICT in Tanzania has improved, something which created technological challenges in the country.<sup>59</sup> Among the challenges being legal framework to attract investments in the sector under public private partnership (PPP) arrangement and skills and leadership to champion the integration of ICT in the socio economic development process.<sup>60</sup> The government of Tanzania has been since then making efforts to address these challenges. In the process of addressing the challenges the government reviewed the National ICT policy of 2003 and came up with the current National ICT policy of 2016.

The National ICT policy of 2016 aims at developing a country wide ICT infrastructure to facilitate empowerment of the people and to support development. This is reflected in the mission statement which is to transform Tanzania into an ICT enabled knowledge based economy through development and sustainable exploitation of ICT to benefit every citizen and business.<sup>61</sup> The major objective under the mission statement is to accelerate social economic development with potentials to transform Tanzania into ICT driven middle income economy and society.<sup>62</sup> The National ICT policy of 2016 however takes and continues with what the predecessor policy left, by encouraging the NICTTBB and installations of the NFOBB countrywide.

In order to achieve all this, the Ministry of Works, Communications and Transportation (MWCT) is implementing a phased approach for developing the NICTBB and NFOBB through the ICT Infrastructure Development Programme (ICTIDP). Primary objective of the ICTIDP is to provide broadband ICT connectivity to all Tanzanians at all levels including at the

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<sup>55</sup> The MWCT, National Information and Communications Technology Policy of 2016, Dar es Salaam, 2016, p. 12

<sup>56</sup> Kowero, A. B, (2010), Tanzania Country Level Knowledge Network: Exploiting the Potentials of the National Information and Communication Technology Broadband Backbone (NICTBB) in Tanzania, Dar es Salaam, p. 3

<sup>57</sup> The URT, NAO, Report of the Controller and Auditor General (CAG) on the Audit of Financial Statements of the Regional Communications Infrastructure Project (RCIP), CR. 4614-TA for the Financial Year Ended 30<sup>th</sup> June 2017, Dar es Salaam, 2018, p. 29

<sup>58</sup> Ibid

<sup>59</sup> The MWCT, (2016), National Information and Communications Technology Policy of 2016, Dar es Salaam, p. 1

<sup>60</sup> Ibid

<sup>61</sup> Ibid, p. 13

<sup>62</sup> Ibid

national, regional, district, community and household levels.<sup>63</sup> The NICTBB has five phases with phases I, II and III already completed as by January 2018. Phases I and II dealt with installation of Optical Fibre Cable (OFC) backbone in 24 regions of Mainland Tanzania.<sup>64</sup> These two phases aimed at enhancing national backbone infrastructure to have footprint and a service point at each district headquarters and implementation of common interest user networks such as health, education and research.<sup>65</sup> Phase IV is for rolling out of the OFC metro ring networks in urban areas and building missing links to complement the NICTBB initiatives. Lastly Phase V was for implementation of last mile broadband connectivity national wide. It is intended to provide metro networks in urban areas and the NICTBB to the government institutions, business and the general public.<sup>66</sup> All this intended to improve communication service, improving technology in delivery of financial services, connecting higher learning and research institutions, e-school project, installation of video conference and telemedicine.<sup>67</sup> Five phases of the NICTBB aims at improving service delivery by enabling easy access of ICT services to all citizens.

Through the NICTBB a good number of services are possible, like electronic banking service, mobile banking service, online bills payments, tax payments, set top box for television services, tickets online buying, video conference, e-schools and e-government service.<sup>68</sup> All this has been done by the government of Tanzania in order to bridge the digital divide in the country.<sup>69</sup> It is submitted that with the NICTBB installation and deployment even e-justice and access to legal information through ICT are also possible. Yet in all of these five phases legislature and judiciary are not expressly covered. Failure to expressly mention legislature and judiciary among the institutions to be covered by the NICTBB makes access to legal information through ICT initiatives to be not priority of the government. It is indication that before 2019 the government generally and legislature and judiciary in particular had no motive to involve in the FALM through ICT application. As communication is one of the targeted areas of the NICTBB access of primary legal information through ICT as it is encouraged by the MDFAL of 2002 in Mainland Tanzania is possible.

### **The Tanzania Legal Information Institute (TANZLII) Policy of 2019**

Tanzania is a union of two countries, which are Tanganyika and Zanzibar. In this union there are union matters and non union matters.<sup>70</sup> Among the non union matters is participation of Tanzania in the LII. For that the LII as analysed in this article is a concern of Mainland Tanzania which does not include Tanzania Zanzibar. Participation of Tanzania in the LII began when it subscribed to the MDFAL of 2002 way back in 2003. From then Tanzania began to participate in the FALM conferences. Being the subscriber to the MDFAL of 2002 Tanzania was invited by the Republic of South Africa (RSA) to the LII conference which was held in the RSA in 2017. Invitation of Tanzania to the LII conference marked official participation of

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<sup>63</sup>The URT, (2018), NAO, Report of the Controller and Auditor General (CAG) on the Audit of Financial Statements of the Regional Communications Infrastructure Project (RCIP), CR. 4614-TA for the Financial Year Ended 30<sup>th</sup> June 2017, Dar es Salaam, p. 5

<sup>64</sup> The MWCT, (2016), National Information and Communications Technology Policy of 2016, Dar es Salaam, p. 12

<sup>65</sup> Ibid, p. 11

<sup>66</sup> Ibid, p. 13

<sup>67</sup> Ibid

<sup>68</sup> Ibid, p. 58

<sup>69</sup>The MWCT, (2016), National Information and Communications Technology Policy of 2016, Dar es Salaam, p. 13

<sup>70</sup> Article 4(3) of the CURT of 1977

Mainland Tanzania to the FALM and membership to the MDFAL of 2002. In 2019 judiciary of Mainland Tanzania through the office of the chief justice established the Tanzania Legal Information Institute (the TANZLII) as a response to the requirement of the MDFAL of 2002. The TANZLII is the LII which was established in March 2019 with overall objective of publishing legal information online. It was formed as a response towards the requirements of the MDFAL of 2002. The TANZLII publishes both recent legislation and case laws which are collected from all registries of court of appeal and high court. The TANZLII operates under the auspices of judiciary of Mainland Tanzania. After the formation of the TANZLII judiciary stopped to publish decisions as it was before and now the responsibility of publishing court decisions and legislation is left to the TANZLII. This marked official and practical participation of Tanzania to the FALM.

In Tanzania access to legal information is lagging behind and one wonders as to where this trend will lead the country. There is no specific legislation covering access to legal information either in hard copy or soft copy. Several attempts have been taken to improve access to legal information including creation of the NICTBB and the FOC to provide the internet service which in one way or another facilitates access to legal information through the internet. This development is highly recommended. Obviously in order to provide access to legal information the country needs specific legislation to guarantee citizens enjoyment of access to legal information. This is so because the present legislation on access to information, the AIA of 2016 is very narrow to deal with access to legal information.

The problem yet again is created more by the fact that FALM is a new concept in the country and thus most of the people do not know that legal information is one of human rights which is embodied within the freedom of expression and opinions. Thus, even if Tanzania has the NICTBB and the FOC it is difficult for the people to enforce and exercise the right to access legal information since this right in Mainland Tanzania is new and recently developing.

### **Conclusion**

From the above discussion this article concludes by urging Tanzania to enact legislation specifically for enforcement of the right to access legal information. This is important if the right to access legal information as provided by the MDFAL of 2002 and envisaged in the TANZLII policy of 2019 is to be meaningful. Legal information will balance legal doctrines of ignorance of the law excuses no one. This means in order for the persons to be held liable for any criminal or civil wrong it is firstly paramount important to ensure that persons know the law. One way to ensure that people know the law is to make available of the legal information of the country. Thus, the said legalisation will provide obligation to the government to publish and make available all the legal information in Tanzania. The risk of relying on the MDFAL of 2002 or the AIA of 2016 is that the MDFAL of 2002 is not enforceable not only in Tanzania but also internationally. Again, the AIA of 2016 is modelled to cover information in general view excluding legal information. In this regard therefore, the government cannot be held responsible to proactively public legal information for access by the people. Failure to proactively publish or make available of the legal information puts the citizens in an awkward position of being punished for violating law in accordance of the doctrine of ignorance of the law excuses no one without the government to be held liable for not publishing the law for the people to access. It is hoped that Tanzania will be able to take up the challenge and remedy the situation.

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