CHAPTER 5

THE MODEL LAW ON ACCESS TO INFORMATION FOR AFRICA AND THE STRUGGLE FOR THE REVIEW AND PASSAGE OF THE GHANAIAN RIGHT TO INFORMATION BILL OF 2013

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Abstract

The Model Law on Access to Information for Africa has proven to be a significant development in respect of access to information in Africa. Amidst claims that the right to information is a Western agenda which is foreign to the African socio-cultural context, the Model Law provides a home-grown, comprehensive and practical standard for member states to the African Charter on Human and Peoples' Rights on their legislative obligations with respect to access to information. This chapter describes the influence of the Model Law on the review of the Ghanaian Right to Information Bill 2013, the ongoing assiduous work by RTI advocates in Ghana towards ensuring the review and adoption by Parliament of the RTI Bill, and the difficult but successful path to this review by the 6th Parliament in 2014. The analysis examines this journey of over a decade and what informed the utilisation of the Model Law in the review of the Bill by the Parliamentary Select Committee. The discussion also looks at efforts made by the Special to support civil society organisations in Ghana in their advocacy for the passage of an effective RTI law. Most importantly, an analysis is undertaken of the disclosure practices of public institutions which may hinder the effective implementation of the law once passed.

1 Introduction

Access to information held by public institutions and agencies is globally recognised as a fundamental human right under various international and regional instruments. This right was derived from the Universal Declaration of Human Rights (Universal Declaration) adopted in 1948, which in article 19 guarantees the right to freedom of expression and opinion as well as the right to seek, receive and impart information through any form of media.

This was followed in 1966 by the International Covenant on Civil and Political Rights (ICCPR), which in article 19 recognises this right in similar wording as the Universal Declaration as follows:

> Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The ICCPR goes further to state in aricle (19)3:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary
>
> (a) for respect of the rights or reputations of others;
>
> (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

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. Access to information is premised on the principle that 'public officials hold information not for themselves but as trustees for the public good';[1] as such all information generated by public officials in the exercise of their public duty is for public consumption and should be accessible by the public.

In Africa, access to information as a right is not an entirely novel concept. The adoption of constitutional democracies by various countries in the region has resulted in the recognition by some countries, in their national constitutions, of citizens' rights to information. For instance, the constitutions of several African countries – Burkina Faso, Cameroon, Guinea, the Democratic Republic of the Congo, Senegal, Eritrea, Ghana, Guinea Bissau, Cape Verde, Kenya, Madagascar, Malawi, Morocco, Mozambique, Seychelles, South Africa, Tanzania and Uganda – provide guarantees of access to information,[2] even though the citizens of some of these countries in reality may have no access to public documents. In the absence of specific access to information laws in most of these countries, civil society organisations (CSOs) have used constitutional guarantees to the right to demand access to official information and to initiate robust advocacy for the passage of specific access to information laws.

1 See Declaration of Principles on Freedom of Expression in Africa, 2002, http://hrlibrary.umn.edu/achpr/expressionfreedomdec.html [accessed 11 November 2015]

2 Africa Freedom of Information Centre (AFIC) 'Status of freedom of information in Africa (legislation and ratification)' May 2013, https://africafoicentre.org/about-africa-freedom-of-information-centre-afic/ [accessed 11 November 2015]

Interestingly, the origin of the law on the continent has been mixed. In South Africa and Nigeria, for example, CSOs have campaigned for access to information laws and secured its passage as part of the fight for transparent and accountable governance. However, the governments of Angola, Guinea-Conakry, Niger and Zimbabwe adopted the laws on their own ingenuity but not as part of a democratisation process.[3] In Niger and Guinea-Conakry, the military juntas adopted the law a few months before leaving office in 2010 and 2011 respectively. Zimbabwe's Access to Information and Protection of Privacy Act (AIPPA)[4] was designed mainly to control the free flow of information as it contains provisions that give the government extensive powers to control the media. Some writers have described the Act as access to information in name only because, whilst its title refers to access to information, its provisions are to the contrary.[5]

Under the auspices of the Special Rapporteur on Freedom of Expression and Access to Information in Africa (Special Rapporteur) of the African Commission on Human and Peoples' Rights (African Commission) in 2013 developed a Model Law on Access to Information for Africa (Model Law) which is aimed at providing guidance to member states in the adoption, review or amendment of existing access to information laws.[6] The Model Law also aims to serve as a tool for access to information advocates in Africa to stimulate public debate on access to information at the national level and to raise awareness of the cross-cutting nature of the right to information, and the potential of this right to address issues such as poor service delivery, underdevelopment and the effective functioning of the justice system.[7]

Prior to the adoption of the Model Law, state parties to the African Charter have relied on access to information principles and legislation developed elsewhere in the process of adopting laws. As a result, most existing and draft laws on access to information did not adequately take into consideration the African socio-economic context, such as the poor record-keeping culture and pervasive culture of secrecy prevalent within the public service in Africa, the high levels of illiteracy and poverty, among others.[8] Since the adoption of the Model Law, it has been the remit of the Special Rapporteur to popularise the Model Law and its principles among member states and to encourage the adoption of national legislation on access to information. In the discharge of this responsibility, the Special

3 Freedom of Information Advocates Network (FOIANet) 'Global right to information update: An analysis by region' July 2013.
4 Access to Information and Protection of Privacy Act (AIPPA) of 2002, amended in 2003 by the AIPPA Act of 2003.
5 M Memeza 'An analysis of weaknesses in access to information laws in SADC and in developing countries' http://www.fxi.org.za/PDFs/access to informationP/access to information%20weaknesses%20analysis%20sadc1.pdf (accessed 11 November 2015).
6 African Commission on Human and Peoples' Rights 'Model Law on Access to Information for Africa' (2013).
7 As above.
8 As above.

Rapporteur has carried out several advocacy visits, and continues to visit countries yet to adopt access to information laws. One of the countries that have benefited from these advocacy visits is the Republic of Ghana, which currently has a Bill awaiting passage by Parliament.

Against this backdrop, this chapter discusses the efforts of CSOs in Ghana towards ensuring the review and passage of the RTI Bill, including the recent outcomes of this struggle, as well as the visit to Ghana by the Special Rapporteur.

In discussing these issues, the chapter looks at what informed the visit of the Special Rapporteur to Ghana, the activities she embarked upon during her three-day advocacy visit, the stakeholders she engaged with while in Ghana, as well as the outcomes of those engagements. Also analysed are the processes leading to the review of the RTI Bill by the Select Committee on Constitutional, Legal and Parliamentary Affairs, the Committee charged with working on the Bill, and how the Model Law was interpreted and applied in the review process by this Committee. Additionally, the disclosure practices existing in various public institutions are analysed against the principles contained in the Model Law.

2 Advocacy for the passage of access to information legislation in Ghana

According to a human rights report published in 1991, the call for the passage of an access to information law in Ghana dates back as far as 1989, when a group of Ghanaian journalists called for the adoption and implementation of a law that would give the public the right to access information.[9] This was during the Provisional National Defence Council (PNDC) era headed by Flight Lieutenant Jerry Rawlings, the then Chairperson of the PNDC. However, it is not clear whether the call at the time was sustained by the media and whether there was an enabling environment for CSO involvement in the pursuit of this agenda. Indeed, the Rawlings administration witnessed a number of human rights abuses including attacks on the independent press. Journalists whose coverage the government deemed 'offensive' suffered harsh reprisals.[10] Some journalists were arrested and detained without any charges.[11]

Following a referendum in 1992, a new Constitution was adopted providing for a multi-party political system and a Bill of Rights which included citizens' rights to information, amongst other rights. With the

9 Human Rights Watch 'Abdication of responsibility, the Commonwealth and human rights' October 1991, https://www.hrw.org/reports/pdfs/g/general/general291o.pdf (accessed 10 November 2015).
10 Human Rights Watch (n 9 above) 6.
11 Human Rights Watch 7.

adoption of the 1992 Constitution, democracy, the protection of rights and the quality of governance in the fourth republic have steadily improved, so much so that the country is globally regarded as the beacon of democracy in the region.[12] In terms of access to information, article 21(1)(f) of the 1992 Constitution of Ghana guarantees citizens the right to information as follows: 'All persons shall have the right to information, subject to such qualifications and laws as are necessary in a democratic society.'

Following pressure from CSOs,[13] efforts by government to operationalise the right to information began in 1999 when the first Bill was prepared.[14] However, the Bill was not tabled in Parliament until 11 years later, in the year 2010.[15] Even though the Bill had been reviewed three times (in 2003, 2005 and 2007)[16] before being presented in Parliament, CSOs remained unsatisfied with the version finally submitted to Parliament and campaigned tirelessly but unsuccessfully for the review of the Bill by the fifth Parliament.

Prior to the introduction of the Bill in 2010, a coalition of CSOs known as the Right to Information Coalition, established in 2003 under the leadership of the Commonwealth Human Rights Initiative (CHRI), had raised several criticisms on the Bill.[17] These concerns were compiled and sent to various stakeholders, including members of parliament, the then Minister of Information, Mr Dan Botwe, and the Government Spokesperson on Good Governance, Mr Frank Agyekum.[18] The government in power, then led by President John Agyekum Kuffour, assured the RTI Coalition that it would examine the critique and ensure that the proposals by the Coalition are incorporated into the Bill. The Coalition was further assured of government's willingness to pass the Bill.[19] Unfortunately, the Bill did not make it to Parliament until that Parliament lapsed in 2008.

12 CHRI 'Critique of draft RTI Bill' http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/ghana/CHRI%20critique%20of%20draft%20RTI%20bill.pdf (accessed 23 August 2017).

13 The first Bill was prepared in 1996 by the Institute of Economic Affairs (IEA), a non-governmental organisation, and submitted to government in 1999.

14 Referred to in Ghana as the Right to Information Bill.

15 The RTI Bill was first tabled in parliament on 5 February 2010, http://www.ghana.gov.gh/index.php/media-center/news/2565-parliament-begins-consideration-of-rti-bill (accessed 23 August 2017).

16 Select Committee on Constitutional, Legal and Parliamentary Affairs 'Report on the Right to Information Bill' December 2014.

17 These criticisms were contained in a document titled Options Paper, developed by the RTI Coalition in 2005.

18 The author is privy to this information due to her involvement in the activities of the RTI Coalition.

19 Commonwealth Human Rights Initiative (CHRI) Africa Office 'Report on Access to Information activities' January-December 2005, http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/ghana/ghana_rti_excerpt_from_2005_annual_report.pdf (accessed 23 August 2017).

In 2010, when the Bill was introduced to Parliament, the committee in charge of the Bill – the Joint Committee on Communication and Constitutional, Legal and Parliamentary Affairs (Committee) – embarked on a nation-wide consultation with support from the World Bank, to seek the views of Ghanaians on the Bill. Following concerns raised by CSOs during the consultation process, the Joint Committee requested the RTI Coalition to provide alternative provisions on the major areas of concern raised, in the form of an Options Paper, to guide the Committee in its review of the Bill. The Coalition granted this request and submitted an Options Paper (otherwise known as Zero Draft) to the Committee.[20] Apart from critiquing the Bill, the Options Paper proposed amendments to specific clauses to ensure that the Bill conformed with international best practice standards on the right to information.[21] The RTI Coalition in its critique of the Bill and suggested amendments, relied heavily on the then draft Model Law.[22] However, the Committee did not take any steps to amend the Bill, even though several promises to that effect had been made. All efforts by the RTI Coalition to ensure the review and passage of a Bill that conforms with international best practices and the Zero Draft submitted to Parliament yielded no result. Surprisingly, the Committee never made available to the public the report of the nationwide consultation carried out with donor funds. All the press conferences held, statements issued and demonstrations organised by CSOs fell on deaf ears until the tenure of that Parliament lapsed in 2012.

The elections held in December 2012 brought in a seemingly new yet old administration, which appeared to be forward-looking in terms of the citizens' rights to information. The administration was new in the sense that a different candidate emerged as the winner of the presidential elections, yet old as the ruling party – the National Democratic Congress (NDC) – had again won the 2012 elections. Thus, the supposedly new President, who had been the Vice-President at the time of the CSO struggle for the review and passage of the Bill by the fifth Parliament, eventually became President after the demise of the then sitting President, John Evans Atta Mills, in 2011. Following his assumption of office, President John Dramani Mahamma in November 2013 reintroduced the RTI Bill in Parliament. The Bill was read for the first time and referred to the Select Committee on Constitutional, Legal and Parliamentary Affairs in accordance with articles 106(4) and (5) of the 1992 Constitution and Order 179 of the Standing Orders of Parliament.

20 See http://www.ghananewsagency.org/politics/rti-coalition-supports-parliament-with-option-paper-45217 [accessed 23 August 2017]

21 The Right to Information Coalition 'An Options Paper/Zero draft on the Ghana Right to Information Bill 2010' (internal document of the RTI Coalition submitted to parliament). The Options Paper is available at http://www.rticampaignghana.com/publications/news/index.php?fn_mode=fullnews&fn_id=19 (accessed 23 August 2017).

22 The draft Model Law was released for public comment in April 2011.

3 Review of the RTI Bill by the Select Committee on Constitutional, Legal and Parliamentary Affairs

The Parliamentary Select Committee, at the time chaired by the majority leader, Alban Bagbin, took a radical approach in terms of engagement with civil society. First, the Committee invited the public to submit memoranda on the Bill. Second, based on the memoranda received, the Select Committee invited stakeholders to a meeting organised by the Committee, held in Koforidua in the eastern region of Ghana from 5 to 6 May 2014. The main aim of the meeting was to provide a platform for all the stakeholders that had submitted memorandums to discuss their concerns with the Committee. Various CSOs made presentations at the forum with key recommendations regarding areas of amendment. The CSOs in attendance raised the following concerns on the provisions of the Bill:[23]

(a) There were excessively long time lines within which to access information. This constituted a major setback to the right to information. The Bill contained numerous extensions of timelines, such that it could take up to 160 days from the time of a request for information to the time of disclosure. This was untenable, as timely access to information is critical to the value of the information, and unduly long timelines would only amount to a subversion of the right to information.

(b) The payment of fees for accessing information should not be an impediment to accessing information. Ideally, the only fees paid should be for the actual cost of reproducing the information, not for the effort of collating information from different departments or agencies or the difficulties in retrieving such information.

(c) A practical internal appeal mechanism should be included. Appeals emanating from an information request should be dealt with at the administrative level of public institutions so as to avoid delays, rather than by the relevant Minister who is a political appointee and who may not have the time to review the decisions taken by information officers. These internal reviews should also be conducted by senior information review officers appointed for that purpose within the organisation, in order to promote easy access to information. Further appeals from the decisions of public institutions should be made to an independent commission rather than the Supreme Court as provided by the Bill. In particular, the prohibitive costs, physical distance, time constraints and complexity of appealing to the Supreme Court will deter people from appealing against denial of requests. Furthermore, it was not clear why the Bill provided for appeals to the Supreme Court, rather than the High Court, which has the primary responsibility of enforcing fundamental human rights in terms of the Ghanaian Constitution.

23 Options Paper (n 21 above).

(d) An independent oversight mechanism should be established. There was a need for an independent commission to oversee the implementation of the Bill and enforce compliance when passed, instead of the Ministry of Justice and Attorney-General, as proposed in the Bill. Placing the oversight responsibility in the hands of the Ministry would have created an irresolvable conflict of interest. Furthermore, the nature of RTI legislation is such that it requires massive public education for the law to be effective. As such, what was required was a dedicated institution to monitor, enforce and ensure compliance with the law.

(e) There were broad exemptions which did not conform with international standards on the right to information. The Bill exempted from disclosure all information emanating from the office of the President, Vice-President and Cabinet, without providing the parameters for such exemptions. The exemptions were not subject to the 'harm or public interest test' as required by international standards. Additionally, the Bill needed to include in its scope of application private bodies, as leaving the application of the law to private bodies to the discretion of the Minister of Justice to decide would not be in the public interest. Furthermore, the categories of private bodies to be covered by the law should be specified to include private bodies that are funded by the public purse, perform statutory functions of public bodies and exploit the nation's natural resources.

These views expressed by CSOs were collated for consideration by the Committee. In the words of the Chairperson:[24] 'The Committee will diligently work on the Bill taking into consideration all the comments received and ensure that a report is presented to Parliament during the next session.'

4 Visit by the Special Rapporteur on Freedom of Expression and Access to Information[25]

Given the past experience of CSOs with regard to several failed promises by previous administrations to pass the Bill, the RTI Coalition was not willing to take any more chances in their advocacy. The Coalition ensured that it took advantage of all available opportunities to engage government.

Consequently, in 2014 the Coalition extended an invitation to the Special Rapporteur to visit the country as a way of lending support to CSOs and putting additional pressure on Parliament to review the Bill and pass it into law without any further delay. The main objective of the visit was to support the Coalition's ongoing advocacy towards the passage of an effective and efficient RTI Bill and also to officially introduce the Model

24 The Chairperson's statement was made at a forum organised by the Select Committee on Constitutional, Legal and Parliamentary Affairs in 2014.

25 The author organised and also participated in the various meetings with the Special Rapporteur.

Law on Access to Information for Africa. During the three-day visit, which took place from 1 to 3 July 2014, the Special Rapporteur held meetings with various stakeholders, including the Minister for Information; the Minister for Gender, Children and Social Protection (a former RTI campaigner); the Speaker of Parliament; the majority and minority leaders of Parliament; and the Select Committee on Constitutional, Legal and Parliamentary Affairs. She also interacted with CSOs, including various professional and religious bodies as well as the media.

Prior to the visit by the Special Rapporteur, the RTI Coalition had been working with the Model Law and had distributed copies of the Law to various stakeholders. However, Ms Tlakula's visit afforded the opportunity for popularising the Model Law and for stakeholders to have a deeper understanding of its object and purpose. Contrary to the notion of some sections of the public, including that of some politicians, that the right to information is a Western idea imposed on Africans and that Ghana was not ready for such legislation,[26] the Special Rapporteur's advocacy visit to Ghana and the official introduction of the Model Law showcased the fact that a home-grown access to information standard had been developed which takes into account the regional realities and the socio-economic context of Africa.

5 Outcomes of the visit by the Special Rapporteur

Significantly, the visit of the Special Rapporteur to Ghana lent huge support to the work of the RTI Coalition. In the past, the Coalition had been a lone voice calling for the review of the Bill and the passage of an effective RTI law in Ghana, while politicians had employed various tactics to delay the passage of the Law, including making promises that never materialised. These failed promises by politicians created the impression that they were made merely to get the RTI Coalition off their backs, albeit temporarily. However, CSOs took advantage of the Special Rapporteur's visit and engaged her on some of the advocacy strategies that had been adopted and their outcomes. The Special Rapporteur was briefed on the advocacy challenges, including the need to enhance the quality of the Bill with particular reference to the Model Law, and on developing a road map for the speedy passage of the Bill, taking cognisance of experiences from other African states. The briefing re-echoed the fact that Ghana as a nation had managed to put itself on a high pedestal in terms of democratic governance, and that all efforts had to be made to maintain that position and sustain all initiatives which had enabled the country to attain that height.

26 As one Ghanaian commentator stated: 'Ghana is not yet mature for such a law.' This was a view expressed during a one-on-one engagement with stakeholders on the RTI Bill.

During the three-day interactions with the Special Rapporteur, stakeholders spoke quite frankly, and voiced their opinions generally on the advocacy for and, in particular, the passage of the Bill. Specifically, stakeholders from the legislature identified the following as the reasons for the delay in the passage of the Bill during the previous decade:

(1) a misconception about the RTI Bill as a press Bill. It was observed that public discussions on the Bill were largely limited to the press, creating the impression that the Bill was mainly for the benefit of the press.

(2) poor public awareness on the potential impact of the Bill. The inadequate public education on the Bill and its relevance to ordinary citizens had led to low levels of public interest in its passage.

(3) poor record-keeping culture in the public service. Stakeholders noted that the implementation of the Bill when passed into law would be challenging, due to the poor record-keeping and maintenance culture at the institutional level.

(4) the culture of apathy among citizens. The entrenched Ghanaian culture of silence and indifference was perceived as having impacted negatively on the passage of the Bill. In their view, this was also likely to have an impact on the implementation of the Bill when passed into law.

(5) the negative perception within the legislature and executive of the CSO advocacy strategy. It was observed that advocacy for the passage of the Bill until recently had been tailored to create the impression that the Bill was meant to monitor the corrupt deeds of the legislature and the executive. In the view of the Committee, this negative impression has made it difficult for the two arms of government to fully support the passage of the Bill for over a decade.

Interestingly, this was the first time that public officials – members of parliament in particular – had come out openly in unison to state quite expansively what in their view had been the reason for the delay in the passage of the Bill,[27] to the chagrin of most CSOs. Crucially, the Special Rapporteur and her team as well as representatives of the RTI Coalition present, made the point that the nature of the Bill did not permit an easy understanding and appreciation of its objectives by the ordinary citizen and, therefore, was unlikely to result in the majority of Ghanaians calling for its passage into law. Furthermore, Parliament was requested to ensure that the Bill was amended to embody the minimum international and regional standards on RTI as outlined in the Model Law.

Following subsequent pressure from CSOs, coupled with support from a donor partner, Strengthening Transparency, Accountability and Responsiveness in Ghana (STAR Ghana), CSOs were invited by the Select Committee to a meeting, two months after the Special Rapporteur's visit, to discuss proposed amendments to the Bill. At the meeting, which took place in September 2014, it was discovered that the Committee's proposed

27 Some officials have in the past individually made comments regarding the Bill.

amendments had captured most of the recommendations that previously had been made by the RTI Coalition to the Committee. Subsequently, in the report of the Select Committee presented to Parliament in December 2014, the Committee made extensive references to the Model Law and the Declaration of Principles on Freedom of Expression in Africa. In recognising and acknowledging the value of the Model Law, the Committee stated:[28]

> While the Declaration of 2002 and other such laws adopted by the AU Commission have expanded on state parties' obligations under the African Charter, they do not specifically provide guidance on the form and content of the legislation to be enacted to give effect to these obligations at the domestic level. The AU Commission on Human and Peoples' Rights has therefore gone further to provide a Model Law on Access to Information for Africa.

The report by the Committee, which has been made available to the public, paved the way for discussions by Parliament on the RTI Bill. The second reading of the Bill was concluded on 24 July 2015, and the Bill was referred to the next stage in the parliamentary process – the consideration stage which involves a clause-by-clause discussion of all the provisions in the Bill. The sixth Parliament had promised that the Bill would be passed by 2016. Following the elections held in December 2016 and the expiration of the sixth Parliament on 7 January 2017, the RTI Bill reverted back to the executive for reintroduction to the seventh Parliament. The National Patriotic Party (NPP) government finally introduced a retrogressive RTI Bill to Parliament in March 2018.

6 Current challenges to the realisation of the right of access to information in Ghana

The 1992 Constitution of Ghana guarantees every citizen the right to information. However, attempts to exercise this right have faced several challenges. This section discusses some of the key challenges with the current RTI regime.

6.1 Disclosure practices in public institutions

One of the major challenges that may hinder the effective implementation of the right to information law is the disclosure practices that are prevalent in government institutions and agencies. In Ghana, for example, the experience has been that there is little or no investment in data preservation and management. As a result, it becomes an ordeal for public institutions to grant requests for information in the desired form. Again, the lack of understanding among civil servants of what citizens' rights to information

28 Select Committee on Constitutional, Legal and Parliamentary Affairs (n 16 above).

entails is a major challenge to accessing information. Public officials often respond to information requests based on a very narrow understanding of what their obligations are under the law. A monitoring of disclosure practices in Ghana, carried out by the RTI Coalition and the Commonwealth Human Rights Initiative (CHRI), Africa Office, in five regions of Ghana in 2014 and in Accra in 2015,[29] revealed the lack of willingness to release information in the following circumstances:

6.1.1 The form in which the request is made

Public institutions prefer to receive and acknowledge requests submitted in writing, stating the name, date and signature appended, except where the request is by an illiterate person. However, this is inconsistent with the provisions of the Model Law, which requires a person (whether literate or illiterate) who wishes to obtain information to make the request either in writing or orally and, where a person makes a request orally, the information officer must reduce that oral request to writing and provide a copy to the requester.[30]

6.1.2 Non-disclosure of the reason or purpose of the request

The failure to provide justification for a request for information has on several occasions been a ground for refusal to grant requests for information by some public institutions in Ghana. Some public officials have argued that providing justification will help them to determine whether or not they will give priority to the request.[31] The Model Law provides that except where the information requested is necessary to safeguard the life or liberty of a person and where the request is to a private body, a requester does not have to provide justification or a reason for requesting any information.[32]

6.1.3 Affiliation of the requester

Applicants who have made requests for information based on their affiliation with particular institutions have often had their requests granted, unlike individual citizens who have no affiliation. The impression this creates is that ordinary citizens have no right to information and that requests for information should emanate only from individuals who are affiliated with particular institutions or organisations. This is contrary to the provisions of the Model Law and the 1992 Constitution, which guarantee this right to every person whether affiliated or not. Every person

29 Report on file with author.
30 Model Law sec 13.
31 Sentiments shared by participants at an experience-sharing forum organised by the Coalition with support from UNESCO.
32 Model Law sec 13(5).

has an enforceable right to access information from a public body or relevant private body, and a private body where the information may assist in the exercise or protection of any right.[33]

6.2 Poor record-keeping and management systems of public institutions

The poor record-keeping and management systems in public institutions have also been a basis for refusal to grant requests for information. The experience is that some public institutions that are not bold enough to admit that they do not have a record management system in place prefer to adopt delay tactics as a way of making requesters grow weary and give up on their request.[34] Section 6 of the Model Law obliges every public institution to create, keep, organise and maintain information in a manner that facilitates access to information. In furtherance of this obligation, the Model Law requires that every public body must arrange all information in its possession systematically and in a manner that facilitates prompt and easy identification, and keep all information in its possession in good condition and in a manner that preserves the safety and integrity of its contents.[35]

6.3 Failure to designate information officers

In practice, requests for information have gone unanswered because of the lack of internal policies on information disclosure to the public. Most institutions do not have information officers or officers designated to manage information collection and retrieval. The result is that requests are either unnecessarily delayed or denied. The Model Law requires that every information holder must designate competent information officers and deputy information officers who will be responsible for dealing with information requests. Where a public institution fails to do so, the head of that institution will be the information officer for the purposes of the relevant law.[36]

Furthermore, as a result of the lack of understanding of what the right to information entails due to the absence of an internal information policy, most public servants are not certain what type of information they should disclose or make public upon request. As a result, any information requested, no matter how minor and whether sensitive or not, is submitted to the head of the institution for authorisation to disclose. Sometimes, district assembly heads have to wait for authorisation to disclose from the Minister who resides in the state capital, before releasing information that

33 Model Law sec 13.
34 Experiences shared by requesters who were part of the RTI monitoring exercise.
35 Model Law secs 6(2)(b) & (c).
36 Model Law sec 10.

ought ordinarily to be proactively disclosed. One of the key contributions of the Model Law is that it itemises the types of information that ought to be proactively disclosed by public institutions both annually and within 30 days of receiving or generating that information. These include all contracts; licences; permits; authorisations and public-private partnerships granted by the public body or relevant private body; the yearly band of remuneration for each public employee and officer, including the system of compensation as provided in its laws; the procedures followed in its decision-making process, including channels of supervision and accountability and detailed travel and hospitality expenses for each employee and officer; and gifts, hospitality, sponsorships or any other benefit received by each employee and officer,[37] to mention a few.

7 Conclusion

The Model Law is a proactive step by the African Commission to promote the adoption of access to information legislation on the continent. It reaffirms the efforts of civil society organisations and legitimises their desire for transparency and political participation in the region. However, in the face of authoritarian regimes and the lack of political will on the part of more democratic regimes, civil society pressure remains one of the most effective tools to ensure the adoption of access to information legislation in Africa and its effective implementation once passed. More significantly, the Model Law, as a product of robust African CSO collaboration and engagement, has facilitated its ownership and usage by African states and the CSOs advocating for the adoption of such laws, making the enjoyment of the right of access to information a reality in the lives of ordinary Africans. The Special Rapporteur's access to information advocacy and Model Law dissemination strategy, if continued, will no doubt assist in opening up the space for more public awareness on access to information, increase the pressure for the passage of effective laws and their implementation by African states, and strengthen the work of CSOs in their quest for the passage of these laws.

Furthermore, the important role of CSOs in the adoption of access to information laws cannot be overemphasised. The passage of an access to information law without input by CSOs may produce restrictive access to information legislation. However, for CSO advocacy to be fruitful and long-lasting in Ghana and in other African countries, it must involve all stakeholders, including civil servants and politicians, either as members of the CSO Coalition or as access to information champions within their own terrain. More importantly, training on the Law for civil servants and all arms of government, including the judiciary, must be a priority. An access to information regime requires a change of attitude and mindset which is

37 Model Law secs 7(1) & (2).

in sharp contrast to the colonial culture of secrecy already entrenched in our societal structures, and further strengthened by oaths of secrecy commonly sworn by public officers and other secrecy laws remaining in statute books. Indeed, the criteria for measuring the success of implementation of access to information legislation involve not the number of cases litigated, but the number of requests granted without the need for recourse to litigation. Therefore, the benefits of such legislation should be seen not only in its very progressive ability to compel public officials through litigation to release information, but rather in the power it gives to the citizenry to monitor the activities of government and to ensure effective service delivery.

The passage of an access to information law in itself is not sufficient to engender transparency. Public officials need to understand the import of the law, on the one hand and, on the other, the citizenry must be empowered to use the law. The implementation of the law may be impossible without adequate public pressure. Without continuous information requests from the public, adequate CSO pressure for compliance and the monitoring of implementation, governments may not be eager to put in place the structures that will enable the law to be effectively implemented. Specifically, proactive disclosure is key, particularly in countries where citizens are unaware of or are apathetic to their rights, which is very common in developing countries such as Ghana. Additionally, effective record-keeping and management systems are an important infrastructure for an effective access to information legal regime.

While it is rather surprising, if not disappointing, that a country such as Ghana has marked time for far too long on this one single most important instrument in the fight against corruption, CSOs in Ghana as well as the general public should not wait for the passage of the law. With a Constitution that recognises and guarantees the right to information, efforts must be made to enforce the right as guaranteed. This will help to identify and possibly address the challenges that may hinder implementation when the RTI Bill finally is passed. Thus far, the courts have shown a willingness to enforce this right as guaranteed by the Constitution. In the case of *Lolan Kow Sagoe-Moses & Others v The Honourable Minister & Attorney-General*[38] Justice Anthony Yeboah very clearly stated that '[i]t is not the legislation that vests the right to the individual; the individual has the right to information as both a human right and a constitutional right'.

38 Suit HR 0027/2015.